



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

SELECT COMMITTEE ON A SOCIO-ECONOMIC
CONSEQUENCES OF THE NATIONAL COMPETITION
POLICY

**Reference: Socio-economic consequences of the national competition
policy**

THURSDAY, 9 SEPTEMBER 1999

SYDNEY

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SENATE
SELECT COMMITTEE ON THE SOCIO-ECONOMIC CONSEQUENCES OF THE
NATIONAL COMPETITION POLICY

Thursday, 9 September 1999

Members: Senator Quirke (*Chair*), Senators Brown, Coonan, Lightfoot, McGauran, Mackay and Murray

Senators in attendance: Senators Brown, Coonan, Mackay and Quirke

Terms of reference for the inquiry:

To inquire into and report on the National Competition Policy, including:

- (a) its socio-economic consequences, including benefits and costs, on:
 - (i) unemployment,
 - (ii) changed working conditions,
 - (iii) social welfare,
 - (iv) equity,
 - (v) social dislocation, and
 - (vi) environmental impacts;
- (b) the impact on urban and rural and regional communities;
- (c) its relationship with other micro-economic reform policies; and
- (d) clarification of the definition of public interest and its role in the National Competition process.

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Committee met at 8.44 a.m.

CHAIR—I welcome everyone to this public hearing of the Senate Select Committee on Socio-Economic Consequences of the National Competition Policy. The terms of reference agreed by the Senate require the committee to inquire into and report on the national competition policy, including (a) its socio-economic consequences, including benefits and costs to unemployment, working conditions, social welfare, equity, social dislocation and the environment, its impact on urban and rural and regional communities, its relationship with other micro-economic reform policies and clarification of the definition of public interest.

The committee is required to present its report on the first sitting day of October 1999. Before we commence taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence which is given before it. Parliamentary privilege, for those who have not appeared before a committee previously, means special rights and immunities attached to parliament or its members and others necessary for the discharge of functions of parliament, without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given by him or her before a Senate committee or any other committee of the Senate is treated as a breach of privilege and you are accordingly protected.

[8.45 a.m.]

O'NEILL, Mr Dennis Russell, Chief Executive Officer, Australian Council for Infrastructure Development

FROST, Mr Philip John, Director, Policy, Australian Council for Infrastructure Development

CHAIR—I welcome Mr Dennis O'Neill and Mr Philip Frost. We do prefer all evidence to the committee to be given in public but, should you at any stage wish to give part of your evidence or answers to specific questions in private, you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, and at the conclusion of remarks I will invite committee members to ask you questions.

Mr O'Neill—Thank you, Mr Chairman. I would like to briefly make some general points and then illustrate those points by reference to some examples from the electricity, water and rail sectors. Our organisation, which represents the principal investors in and operators of public infrastructure, is very much part of the new breed, if you like, of providers of public infrastructure. While I use the word 'new' advisedly, I should say that in fact there is in excess of a 200-year history of private provision of public infrastructure, something that is not widely known and, indeed, something which perhaps is reflected in your interim report in terms of the lack of or absence of education by governments of the community as to the benefits of national competition policy.

For the record, may I point out that water has been privately delivered in France since Napoleonic times, the canals of the UK were developed by private investors in the 18th century, and all of the early railroad developments in Britain and Europe were privately invested in, as were early electricity generation and telephony. The era of public ownership of these assets is really very much an era that comprises only the last 70 to 90-odd years.

In terms of national competition policy, from the perspective of infrastructure investors there remains flaws in the implementation of that policy. Many of these flaws have already been identified by the committee. These flaws, if not remedied by governments acting together—and particularly I believe with the Commonwealth government taking a leadership role—will result in entrenched negative market signals, which in turn will affect the investment behaviour by those private companies seeking to invest in future infrastructure opportunities.

There are some examples I have to start with. In the electricity sector we have a national market in effect in the eastern states from Queensland through to South Australia. However, the current market price for electricity is not running at sustainable levels, such that investors would be attracted to invest in new baseload capacity. I make this point particularly in relation to Victoria, where supply and demand are converging quite rapidly due to economic growth and, because of inadequate capacity in the interlink, it is not possible ultimately to supply any shortfall to Victoria by taking up the overcapacity that exists in New South Wales. At the same time we are seeing investment plans in Queensland for new power stations which will require that higher price and, therefore, there is actually some uncertainty

currently afoot in the marketplace as to whether those power stations may be built because the sustainable pricing will not be available to them.

The reason for that lower pricing, apart from overcapacity, is in our view the ongoing ownership of and operation of corporatised power generators in such a way that there are strong perceptions—and I cannot put obviously firm evidence; we do not have access to their books—in the private sector that those corporatised power stations and, in some cases, distributors, are operating in a non-commercial manner; that is, were they owned by private investors there would be constraints and information feedback mechanisms to the boards and management of those companies which would cause them to operate in a far more commercial way in the market.

I will give you a precise example. One need look only at the current court case involving the New South Wales distributor Pacific Power, in which there is potential liability to that company of in excess of \$650 million or \$660 million. That liability ultimately may well be a liability that the New South Wales taxpayer has to be solely responsible for, unless of course the operators of that company or the government have taken out insurance. That I suspect is not the case.

That is an example of poor risk management, which is an issue we believe goes to the heart of governments not owning even corporatised businesses, because we are seeing here—particularly in New South Wales and to some extent in Queensland—the question of competitive neutrality, which is a central plank of the national competition policy not being implemented in a ‘real’ manner. Again, only perceptions from the private sector, but we go to the question of the true cost of capital for those businesses. It is uncertain as to whether those corporatised businesses are in fact receiving a subsidised rate of capital from state treasuries. We have the issue of risk that I have just mentioned and, in that respect, where we are seeing in effect subsidised operation or high-risk environments, those are businesses that really should not stay in the hands of government ownership.

In relation to regional and rural communities, particularly in New South Wales, we believe they are waiting an unnecessarily long time for upgrades to their water and waste water facilities because private sector involvement is being restrained to traditional D & C—design and construct—contracts. Therefore, they are being denied the opportunity to get the pricing efficiencies, the innovation and the new technologies associated with the build-own-operate or the build-own-operate transfer types of mechanisms which are being rapidly implemented in Victoria.

I might say, however, that even in Queensland there have been some isolated examples of that latter style of project delivery, to the credit of certain local governments there. I suspect part of the problem in New South Wales is related also to the fact that there are 126 local government areas which need to be dealt with individually in relation to these commercial opportunities. There is a degree of consolidation in other states that has made some advances in the water sector more feasible there. I would like to add that implementation of the national competition policy alone is insufficient to deliver the social and economic and environmental gains that are anticipated from that policy.

From an infrastructure perspective, I would like to place on the record that it is most important—and I cannot overemphasise this—that tax changes relating to particular provisions of the tax act—sections 51AD and Division 16(D)—which go to the heart of the ability of the private sector to invest in public infrastructure, and in particular to marry up private additions to existing public networks, are most critical. We are looking forward very much to the government's deliberations on the review of business taxation to ensure that changes are made to those two particular provisions I have mentioned.

In rail—to give another example—New South Wales maintains monopoly businesses in relation to track ownership and track maintenance. The view from the private side of the fence is that the rate of change to allow competitive access to the business opportunities in those two areas is too slow, from our point of view. The bottom line is that the private sector is willing but it does not have endless patience. The companies that have come to Australia—if they are overseas companies—or the Australian companies which have turned their attention to these opportunities will not wait endlessly for these market opportunities to open up. They will turn their attention elsewhere, most likely offshore.

AusCID supports a number of the observations and conclusions in the committee's interim report. Certainly there needs to be more education. The education, I believe, should be a joint government and private sector effort to ensure that communities have a better understanding of both the objectives of national competition policy and the benefits that are beginning to flow from it. You have identified already some of the early data emerging from the Productivity Commission's report which, from my reading, points very clearly to significant pricing benefits that have already emerged in the last few years. However, I would like to add as an aside that, in relation to a number of the pricing changes that the Productivity Commission noted and the chart of which appears in your report, I am disappointed that no notation has occurred in relation to the increases in pricing which are identified in that chart and which may be due to a change in the charging regime.

I will give a prime example. When South Australia outsourced its water requirements to the private sector, in parallel with that outsourcing it also changed from a rate based water charging system to a consumption based water charging system and that, indeed, resulted in increases in pricing. But that was because they were shifting from one system to another. So I feel that some clarification is therefore required when collecting data on price changes to ensure that there is a more accurate understanding of the reasons behind the price changes.

As I understand it, in South Australia there is a very strong public perception that outsourcing or privatisation of that type equals increased prices. Equally, in terms of regional or local unemployment impacts due to privatisation and application of NCP, you have the example of the Latrobe Valley in Victoria where some of the early electricity corporatisation and privatisation changes were implemented and where there is quite significant local unemployment impact. That example is pointed to time and again as to why NCP carries with it unacceptably high social cost. When one looks elsewhere in the economy, there have been changes, for example within Telstra, in terms of reduced employment, yet if you look at the telecommunications sector as a whole there have been great increases in employment. So I think there is a tendency to an apples and oranges type of comparison from time to time and more clarification is needed in that area.

As a final point, one issue I would like to flag which I have not seen referred to elsewhere—either in the report or in some of the inputs to the committee or comments on NCP—is a concern that emerged only fairly recently. It is whether the form of implementation of national competition policy that we have is leading to potential for problems in relation to strategic planning. Again, if I use the electricity sector as an example, traditionally the engineers were very much in charge of power station planning at state level. It probably led to excesses, such as the overcapacity that resulted in the 1970s, but there is a grave risk that if the market pricing signals do not quickly stabilise they will lead to excesses in the other direction, because without those pricing signals where are the future investors going to get a clear message that it is now appropriate for them to put their hundreds of millions of dollars on the table for new baseload capacity?

The Victorian government, for example, will no longer step in and build those power stations. It is looking to the private sector to do it. The private sector needs appropriate signals. Therefore, stable markets, adequate competition and adequate regulation of monopolies certainly are the way to go. But that must lead to a pricing signal that is appropriate for the outcomes that we are after.

As a final aside, we agree with your observation that the dual roles of the NCC be separated and I would add a further point. We have some concerns currently being negotiated with government about the role of the ACCC. In relation to airport contracts for privatised airports the ACCC is currently arguably unwinding some of the contractual rights that were won by the owners of those airports when the sales were negotiated with the federal government. There is, shall we say, a certain degree of creative tension between the left hand of government and the right hand of government in respect of those outcomes. We would find it valuable were this committee to recognise that those sorts of tensions need to be resolved.

CHAIR—Let me just start out by taking you through a bit of your evidence. Firstly, it seems that what you are putting to us is a plea for more private infrastructure to get government sensibly out of it. You mentioned a moment ago about tax changes that you thought were necessary. I wonder if you could take us through that.

Mr O'Neill—Certainly. If I may firstly say, though, Mr Chairman, it is not necessarily more private per se. We are quite happy to have competition with corporatised entities, but those corporatised entities, as they exist and operate in Australia at this stage of the implementation of NCP, we suspect are getting a free leg up. It is about removing that free kick they are getting. The free kick exists in a number of ways: it is existing either through questions over the cost of capital in terms of their balance sheets; it is a question over the nature of their behaviour commercially.

For example, New South Wales generators, we believe, would not have chased market share at the expense of pricing were they responsive to shareholder feedback—let's say even annually via an annual general meeting of shareholders—because if those shareholders were recipients of dividend cheques on, say, a six-monthly basis and those dividend cheques suddenly disappeared, which they largely have when you look at the flows to the New South Wales Treasury from the generators and to a lesser extent from the distributors, there would

be screams and outrage. The mums and dads would be relying on those dividend cheques and they would not be getting them.

At the moment with corporatised entities, the erstwhile shareholders in those entities in New South Wales get an opportunity once every four years to voice their opinion about how their interests are catered for, but they get it only indirectly through the ballot box. By then—

Senator COONAN—If they understand it.

Mr O'Neill—If they understand it at all, correct. It is generally out of sight out of mind. There is an example of accountabilities, or lack of accountabilities, and a different form of corporate governance for a corporatised business than applies to a private business. I cannot convert it specifically to dollars and cents because the shareholders do not receive those cheques, but it clearly adds to a strong perception from the private sector side of the fence that the corporatised businesses of government can do things and get away with things that a fully private company cannot. When it comes down to exposing those ultimate shareholders to an unwelcome degree of risk—and I can point to Sydney Water—why should Sydney Water be bidding on the Manila water supply? Why should any New South Wales government business be operating offshore? Why should any Queensland government business be operating offshore and putting at risk shareholders' funds ultimately? Leave that to the private sector.

We have the recent example of GIO where risk management was not handled well and it is the shareholders who are screaming, but they are the appropriate people to scream. With corporatised government businesses that process is not as easily entered into. What we are asking for is simply a real 'competitive neutrality' to be introduced. We think this can be done by tightening up competitive neutrality guidelines and by also having a much clearer leadership role driven by the Commonwealth government through COAG in monitoring the development and implementation of competitive neutrality guidelines, with perhaps a beefed up role for the NCC in that respect.

When it comes then to the tax side of the fence, what we are looking for there very simply is that the impediments currently existing in the tax system in relation to infrastructure investment—and they are contained very much in those two provisions I mentioned in my opening address—the way would be cleared for a much wider range of projects at a much lower dollar value to be delivered. I will give you an explicit example. At the moment it is widely accepted by the financing industry that it is difficult to do a build-own-operate privately financed infrastructure project for much less than about \$30 million, simply because one has to run the gauntlet of the ATO in getting clearances under section 51AD or division 16(d), that your project does not infringe the tax act as it currently exists. Running that gauntlet costs of the order of half a million dollars plus, by the time lawyers have been employed, accountants have been employed and the various corporate structures are put together to ensure that the project passes muster.

Half a million dollars on top of a \$50 million project can be damaging to the return on that project and the return on investment, but generally it gets passed. So \$50 million plus, \$30 million plus or thereabouts, okay. On a \$5 million water project, with half a million

dollars of front costs it cannot be done. It kills the project. That being said, in Victoria they have successfully delivered a build-own-operate transfer water project for as low as \$7 million. I think Mr Frost has experience of a run of stream hydro project in New South Wales that went for \$17 million. The reason in the first case is that it is a bit like baking biscuits: the water projects are all very similar and once you have done one you can stamp out a few others. It is like building cars: you get efficiencies of reproduction of the style or the model of the thing.

Senator COONAN—It does not work with the Collins class unfortunately.

Mr O'Neill—Unfortunately when building two or three items it is much more difficult. In the case of the hydro scheme, there were some green tariffs available for the power coming from that project and that higher level of power revenue helped to sustain the front end costs, the inefficiencies of financing such a low value project. What we are looking for in those taxation changes is to be able to lower the efficiency threshold which should open up a much wider range of projects in, say, the \$2 million, \$5 million, \$10 million and \$15 million range in regional and rural Australia.

It will also do a second thing for us which is most important. At the moment, because of our tax act, it is not possible to have co-funding by private and public sources of money through what are called shadow payments or shadow tolls to put in new infrastructure. With the availability of shadow payments—which are very much a feature of an innovation called the Private Finance Initiative, which was a UK innovation which originated I believe in the Thatcher era and now has been taken up gleefully by the Blair government and recently legislated in Japan—it would be possible, for example, to upgrade rural bridges using private capital but paying for those bridge upgrades through cash streams coming from state treasuries, possibly hypothecated from higher registration fees from the trucks using those bridges, which could be measured electronically. You could also upgrade regional and rural water more readily by accessing local government rating streams. That is not possible now.

Senator COONAN—You made a number of points so I hardly know where to start. I think you covered a very interesting range of potential difficulties. One that I am particularly interested in is the impediments of local government municipalities in New South Wales. Can you elaborate a little bit on how difficult it is, say in relation to water, to deal with however many different municipalities there are?

Mr O'Neill—Certainly there is a numerical impediment. In Victoria now they have compressed the ownership entities or the local government entities to something like 15. I think they went to 17 but they are now back to 15. In New South Wales, as I mentioned earlier, the number is 126.

Senator COONAN—And there is a lot of resistance, I gather, to amalgamation.

Mr O'Neill—Indeed. In fact, I am inclined now to the view that rather than consigning that structural challenge to the too-hard basket, I think we are going to look more closely—both private sector and government—at how one can educate those local government areas to the benefits that might flow. I think largely it is about dealing with change management issues. Every one of those 126 LGAs will have its own shire engineer with his own set of

pumps and pipes. Maybe it is part of educating them to talk to their neighbours. Without having political amalgamation of LGAs you may still be able to look at a way forward that might involve project amalgamation whereby neighbouring LGAs could share the same common source, for example, of water, waste water processing and probably waste management processing, and thereby achieve project efficiencies.

However, I suspect it is going to have to come from the grassroots up. If they do not want to rise to that challenge, they are going to be looking over the border to Noosa where there is a very interesting water example which is delivering very well, or down to Victoria and seeing communities getting better quality water, which has a health benefit, and perhaps rivers getting cleaner water fed into them from sewage treatment plants which has an environmental benefit. Maybe some degree of competitive federalism will lead them to recognise that they have to play catch up and change their attitudes.

Senator COONAN—Some of the conversations I have had with various councils around New South Wales have indicated there may be a move, at least in some of them, to look to those efficiencies and retain the actual council structure so that there are representatives from local communities and perhaps a larger governing body, if you like, or a board that might be able to better utilise these resources. In fact, some of the councils are doing that. They are certainly sharing some of the resources they have, so I suppose there is some hope there.

I know you come very much from the point of view of infrastructure, and rightly so, but I want to explore with you, if you will, what your view is about what we can do as government to deal with the socioeconomic impact of the very positive benefits beginning to flow through from competition, but also the pretty awful socioeconomic problems for people who are getting the pointy end of the stick, where the benefits are not as even as they might be. To pick a topical matter to explore this: the dairy industry, as you know, is undergoing a very painful process of reconstruction at the moment and it is going to see, of necessity, certainly dozens if not hundreds of dairy farmers in New South Wales leaving what they have known as their livelihood.

We all understand that once Victoria deregulates—and it intends to—the rest of the country probably has to fall in line or certainly adapt. But what is your view about how we look after people? Restructuring packages are all well and good, but we are looking at a far greater impact, I think, on the infrastructure of little communities and their ability to sustain themselves.

Mr O'Neill—That is true, but as I do not have an agricultural background perhaps I can respond to your observation by pointing to an article which I think one of your former colleagues, Peter Walsh, wrote as perhaps his parting column in the *Australian Financial Review* a year or so ago and in which he addressed this very issue. He said the national competition policy really ought not to be looked at as a whipping boy for the changes that are occurring in the bush. It is one of the inputs that is leading to change but he pointed to, as a person who comes from the land himself, the global changes, the technology changes and the productivity and efficiency changes that are occurring through all sectors of modern economies as leading to the sorts of outcomes you have highlighted. I agree, though, that to the extent there is an acceleration of change and there is a short, sharper shock—particularly locally—the pace with which NCP is implemented could well be a factor.

Therein lies my earlier comment about perhaps the inadequate work done by governments collectively, and the inadequate educational role adopted by governments collectively, in preparing communities for changes and, indeed, in making sure the various arms of government—those that, for example, provide the safety net—were prepared and able to deliver their services into the areas in question. I am sure there are also taxation changes required to extend that safety net in terms of capital gains type rollover if you are a holder of assets and the ability to have people retrained or relocated for other opportunities and so on.

Mr Frost—I would like to add to some of the comments that Dennis made there. What we are seeing, I think, in relation to things like the dairy industry and a few others, is the rolling back of competition that has been held like a dam and not reacting to market pricing signals. Once we have a proper pricing signal facility, you will get not a rush of change but a gradual change as the prices change.

The other thing is that good infrastructure, where it is delivered into the bush, is actually providing further opportunities for employment. We were talking earlier last week on a number of different opportunities and businesses that have grown in regional New South Wales. Dennis was talking about the mining industry and the engineering side of the mining industry that has been developed around Dubbo and those sorts of places. There is a range of specialist pockets of expertise that have grown as a result of the application of good quality infrastructure and communications. Once you have competition policy working properly rather than just the initial big change, you get a regular turnover and you do not get these massive changes that happen.

Senator COONAN—Yes, it is a good point. We can do something about timing, as you said. We can also, I suppose, do something about equitable distribution of the benefits of competition—which is really what you are talking about, I suppose. If you can get good infrastructure into areas that are obviously going to need it, you obviously then build on the benefits. Is that what you are saying?

Mr Frost—That is correct, yes. You provide the opportunities for people to transfer from one industry, for example, into another industry.

Senator COONAN—That then throws up the question of how you identify, for instance, what a local region needs, what it is capable of and what sort of infrastructure is going to work there. From my travels around regional New South Wales, it seems to me that local people are best placed to be able to identify those things. Perhaps what governments need to look at is how you can coordinate the role of encouraging private investment into appropriate areas. Do you think that is right?

Mr O'Neill—That is exactly right, Senator. I should add that over the last two years, AusCID has managed, for the Department of Transport and Regional Services, a program called the Institutional Investor Information Service, which was designed to achieve some of the outcomes that you have just referred to—in particular, to go around regional Australia from an infrastructure perspective and try and assess what the needs are, how to go about identifying them, how to get city based institutional investors to understand what the needs are in the bush, how to get the bush based sponsors or project proponents to understand, and

how you put some numbers to an institutional investor and make them stack up so that you get private investment. In the end we concluded that there are still many constraints. Part of the problem is allied to something you mentioned. It is that when you go to the bush and to communities and say, 'What infrastructure do you have and what do you need?' you tend to get a wish list and you need filters, carefully constructed, to bring the wish list to a needs list. That is work that I think governments could be involved in more successfully.

We also need better assessment methodology to understand social benefits and to cost them and to understand environmental benefits and to cost them, because the preponderance of infrastructure projects in rural and regional areas have a much higher social and environmental benefit than do, for example, most urban infrastructure projects. Consequently, if left entirely to the market, there will be a preference to invest only in the urban projects because you can get the cash flows that will give the return on investment.

We do not yet have satisfactory mechanisms in this country to look at a given project and agree, 'That's the component that's economic; the private sector can invest in that component and get a market return. That's the social and environmental benefit; that's the component the community has to invest in through taxpayers' funds,' and then we put the two together. At the moment it is largely the tax act constraints that stop the two being put together but, even if we get that fixed, we need to understand what the social benefits are, what the environmental benefits are and how you put a dollar value against them.

Mr Frost—I would like to add a comment there. The bush has, where it has appropriate infrastructure, considerable advantages and opportunities. Provided there is logistics and transport infrastructure available, which means anything that is built or manufactured can be transported, and that the communications are sufficiently good—and clearly the bush has been concerned in the past with the inability in some areas to get cheaply and appropriately onto the Internet and communication services—

Senator COONAN—That is very much being addressed.

Mr Frost—I agree with that—but there is also health and education. In those three areas, where those particular infrastructure and services are provided, you generally have a cheaper cost structure. You have at present a work force that is looking for work, and anybody who is in a position to come up with entrepreneurship and identify a need to manufacture or produce services can do so with cheaper land, cheaper rent and, it has to be said, probably a cheaper labour force. That actually does add to the efficiency that exists and the ability of those areas to compete with city based manufacturers and service providers.

Senator BROWN—I am interested in the idea of costing environmental and social benefits. The question arises for me: if you cannot put a dollar value on such benefits, do they exist?

Mr O'Neill—They certainly exist, in my view. I do not necessarily agree that we can put an objective dollar value on them. Therefore, the view that many of us in the private sector would promote is that you at least identify a methodology whereby a broadly agreed dollar value is put on and it is consistently applied. Part of the problem we have is that it is not consistently applied and we have this apples and oranges comparison.

The example I would throw up is the Alice to Darwin railway link, to which \$100 million of federal taxpayers' funds have been allocated. Did the people who made that recommendation to government adequately assess the social benefit that accrued—or that they believed accrued from that \$100 million investment of taxpayers' funds—and compare it against, for example, the upgrading of maybe 40 regional dirt airstrips to all-weather medium jet capability, for which you could have done 40 of them for about \$2½ million each. For the same \$100 million, there are two alternative uses of those taxpayers' funds. There is no methodology that has been applied to identify which is the better way of going.

Senator BROWN—What do you do with a value like wilderness?

Mr O'Neill—I cannot answer that question simply because it is not something that has factored, in our experience, into the application of infrastructure investments.

Senator BROWN—But surely that is a matter for concern, where you have the private sector affecting a value which the community thinks is important but dismissing it in its calculations because it cannot put a dollar sign on it.

Mr O'Neill—I do not agree that it is the private sector that is dismissing it in its calculations, because it is not for the private investor to put a value on that if it cannot get a return from it. It is for the government of the day to put a value on it and to put taxpayers' money into ensuring that private money and taxpayers' money collectively get the return that is required of that particular asset.

Senator BROWN—But don't we get into a difficulty here? With the national competition policy, is the private sector wanting government to release traditional powers it has had to determine what is good for the community in the wider sense? Are you not saying therefore that the private sector wants a slice of the action but does not want the full spread of responsibilities that government has had or that elected parliaments have had?

Mr O'Neill—I am not saying that at all. I am just saying that if there is a community good or a community benefit to come from even a private project, that community benefit has to be met by government inputs.

Senator BROWN—But surely the private sector has to weigh up community benefits, too, in what it does. Isn't there an ethical problem here if the private sector is not taking into account community benefits? You spoke about the Victorian private sector needing appropriate pricing signals for new infrastructure investment as far as electricity—I think, on that occasion—was met.

Mr O'Neill—Yes.

Senator BROWN—If the electricity generating system becomes a matter for the private sector, then doesn't the private sector have a responsibility to see that electricity supplies are maintained to the community?

Mr O'Neill—Why?

Senator BROWN—Because the private sector has taken on the profitability of the energy sector in that case from government—what has been a time-honoured government responsibility—surely therefore it takes on the responsibility for the wider community interest as well.

Mr O'Neill—Let me put it to you this way. Would you like your superannuation funds invested in a business that delivers inadequate returns, or zero or even negative returns, because that business was adopting, as you put it, a social responsibility to deliver community benefits that have no commercial return? Would you want your superannuation funds invested in that type of business?

Senator BROWN—No, but we have a very important matter here, which is the private sector wanting privatisation of traditional areas of government activity. I am trying to find out from you as a representative of that sector whether the private sector is willing to take on the responsibility for delivery of services, and equitable delivery of services, and for the evaluation of non-dollar values in what it is. I think the answer is no, isn't it?

Mr O'Neill—No. The answer is yes, it will take on board the responsibility, provided it can get a commercial return for its investment. If that commercial return, because there is a high degree of social benefit associated with the investment, cannot be achieved, then it is appropriate that the beneficiaries of that social benefit—that is, the community—in some other fashion meets the shortfall in the return. Traditionally that is done by looking to government either for subsidies or for grants or for taxation assistance in the form of incentives.

Senator BROWN—We are moving a bit away from what I was exploring before, but what you are saying here is that if it is profitable the private sector is interested.

Mr O'Neill—Correct.

Senator BROWN—If it is not profitable, the government should do it.

Mr O'Neill—I am saying it is not an either/or, because sometimes both can do it. The future in this area is about partnerships between the private sector and government.

Senator BROWN—But I did hear you, I think, say that if it is not profitable, the private sector should not be involved.

Mr O'Neill—It will choose not to be involved, because it will not want to fritter away shareholders' funds.

Senator BROWN—Isn't that a form of socialising losses and privatising profits?

Mr O'Neill—It is in the sense that there are always going to be projects that have a higher social return than an economic return, and in that case governments have the choice. We are not saying, for example, through the national competition policy, that the answer is 100 per cent private sector delivery. We are saying that there will be appropriate areas where the private sector can do the job better, there will be other areas where full government

delivery is more appropriate, and there will be probably a large grouping in the middle where a joint public-private approach can be adopted. It is a question of looking at the types of investment opportunities and the types of services to come up with the answers you are seeking.

Senator BROWN—How do you think that non-renewable resources should be assessed as far as the cost of them to the person who is exploiting those resources is concerned?

Mr O'Neill—By non-renewables you are basically talking mineral resources. Is that right?

Senator BROWN—Mineral resources, forest resources, very often water resources as well.

Mr O'Neill—I am not sure I fully understood your question. The cost to the developer—there should be a cost on the development for using them up?

Senator BROWN—How do you assess the costs, for example, to the next generation of not having those resources available?

Mr O'Neill—I think that is an area of policy development which is still being worked on by a large range of people. I have had some exposure to the background to sustainable development issues, and the intergenerational aspect of that is something which I believe has not yet been adequately resolved in a pricing sense.

Senator BROWN—That is a problem, isn't it?

Mr O'Neill—I do not want to go on about it, but I have a bias because of a background in mining where I would argue that the view mineral resources are non-renewable is actually an inappropriate view because of the sheer enormity of them and also because it does not take into account human ingenuity and technological advance. In the case of water resources, they are essentially renewable. It is how we use them and how we store them and allocate them which is the problem, and often that is a problem because of inappropriate pricing structures.

On that point I should add one of the key objectives we would see here is that where there are social or environmental benefits to be had from projects and where city to bush types of subsidies are required—and we agree they are necessary in many cases—let us make them transparent. If we are going to have subsidies, let us subsidise the delivery mechanisms. Let us subsidise the pipes and the wires. Do not subsidise consumption because, if you subsidise consumption, you then lead to distortions and you get a perverse outcome.

Senator BROWN—Just one last question, if I may, because you spoke of city to bush subsidies. Why is it that the bush produces all the needs that we in the city have to survive, from the food on our plate to the clothes on our back, but they are our poor cousins and we are talking about subsidising them?

Mr O'Neill—Because the answer in economic terms is largely that they are commodity producers and commodity producers cannot set their price. Commodity producers are price takers, not price setters in an economic sense and technology and productivity changes are actually driving down the real pricing of commodities in the marketplace over time such that they are victims of their own technological success unfortunately—the Peter Walsh argument—and that is why they are suffering the loss of amenity. That is why we, because of the population density we have in our cities, can get the productivity and the output gains which require us to share some of that benefit—the distributive issue that Senator Coonan raised with people who choose to live in the bush in small communities.

CHAIR—Thank you, Mr O'Neill. Thank you, Mr Frost.

Mr O'Neill—Thank you.

Mr Frost—Thank you.

[9.35 a.m.]

BRAZENOR, Mr Graeme Alexander, Federal President, Australian Association of Surgeons

TAYLOR, Mr Theophilus Anthony, Treasurer, Australian Association of Surgeons

CHAIR—I now welcome Mr Brazenor and Mr Taylor. We do prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks will invite committee members to ask you questions.

Mr Taylor—My association would like to thank the committee for this opportunity to make a brief statement to supplement our submission. The AAS, or the Australian Association of Surgeons, is a body representing proceduralists, predominantly surgeons, and membership is voluntary. I should like to summarise our submission into two concepts: the first is the complicity of services with TPA ramifications and the second is that surgery provides a quality service, not a product. At the end of the day these concepts must sustain the argument for a better outcome for the consumer.

Let me start with the complicity of services. As outlined in our submission, medical training to specialist level takes 11 to 15 years after leaving school. Colleagues give freely of their time on a voluntary basis to educate, train and supervise the trainees. Once out in the competitive work force, colleagues are supportive of each other. Frequently we seek opinions from our colleagues, help each other out with major surgery and cover each other when on leave or night duty. Minimal financial agreements occur with these arrangements. This complicity of services enhances both quality and efficiency. Surgeons ethically find difficulty in complying with a fiercely competitive market.

This brings me to my second point: surgeons provide a quality service, not a marketable product. From trainee programs to the end of a surgeon's working days, quality control must take precedence. Once we treat surgery as a marketable product to be advertised and sold to the consumer at a profit, business ethics compete with clinical decisions. We support the AMWAC work force assessments each three to five years to monitor supply of surgeons as outlined in the submission, but consumer demand is difficult to operate in the economic health care model which has a major free service in the public sector. We do not have a level playing field in medicine.

Contracting in both the private and the public sector is a paradox. Contracting of surgeons will force surgeons' wages down but will exclude others from their place of work and, hence, it is in conflict with TPA proposals where freedom of choice for the consumer is removed. Competition policy and social dislocation of the work force as outlined in the submission do not sit well from the consumer benefit's point of view. In relation to collective bargaining and third-line forcing, these have been well presented to the committee by the AMA's submission and the AAS fully supports these arguments. Thank you for your attention. We would be more than happy to answer questions.

Mr Brazenor—I would just like to add that we are concerned that the ACCC seems to display little understanding that turning health services and particularly the delivery of surgical services into a completely free market would hurt the consumer. We believe it would be a greater hazard to patients and we believe there would be a huge rise in discretionary surgery, and that is not in anybody's interests.

CHAIR—Thank you very much. I have an interest in this area, in particular the surgical training schools. I wonder if you could tell us about that. Some of the allegations that were made some months ago now by various people who have come before this committee were that these schools do not necessarily pick the best and the brightest of students, and in fact they use a system where they pick who is known to the system, usually someone whose father or mother—usually father—is already prominent within the different surgical disciplines to train. So we are not necessarily, through the current system, getting the best surgeons to do all the various work they do in this country.

Mr Brazenor—I know of no substantiation for that at all. There was nobody medical in my family at all—I am the first—and I never met that. I competed fiercely for every resident and registrar job I went for. There was nobody backing me except the people that I worked for and it was quite obvious to me that if you did a good job you got picked and if you did not do a good job you were out. In the whole of Victoria I know of only possibly half a dozen people who might have had prominent forebears—fathers or mothers in medicine. I really find it very difficult to credit such a statement and I think it is silly. I must say it sounds awfully like sour grapes.

My experience of the system—and I came through it with nobody to help me—is that the only thing that had a bearing on my selection was whether I did a good job as a resident and whether my trainers thought I was going to hurt people. Right now, as we sit here, in Australia in the training centres of this nation, there are some conversations going on about trainees and these will be mainly, 'Is this man or woman going to hurt people if we let them through the training post, if we let them into an accredited training position, if we let them out the other end?'

You referred to the best and the brightest. How do you quantify that? I topped my medical course. I was first in my year and yet I am the first to say that I do not particularly want to take my kids to a doctor who was first in his year. I think I am an exception, but by and large people who do well academically are not necessarily good doctors. Some of them would not know how to talk to a patient to save the patient's life and some of them are very bad decision makers. I can remember—this is 10 or 15 years ago when you could dress down somebody who was bloody incompetent without being strung up before a tribunal—roasting a person for seeing one of my patients in the middle of the night and prescribing a tranquilliser to somebody who was actually short of oxygen. This person had been accepted into the training scheme and I told him that if he ever did that again I would see that he was out of the training scheme.

That is the way business is done, and that is the reason why we are very uncomfortable about the ACCC looking at colleges and thinking it is some sort of boys club. It is not. We have no connection with the college. We are members because we have to be. We pay this bloody great whopping subscription every year purely for accreditation purposes. Our

association is in fact in competition with the Royal Australasian College of Surgeons. Our membership is voluntary, and we only have about one in four surgeons because the people who belong to us are enthusiasts and worried about more things than the other guys. We are in competition with the college. It is not in our interest to support the college, but we believe there has to be an independent accrediting body. It pains me to say it but I think the college does it as well as I could conceive of it being done.

Mr Taylor—The Royal Australasian College of Surgeons has in fact got structured interviews, and you are possibly aware that they have actually addressed a lot of these issues in discussion with the AMA. Certainly when I look back also at our own training program—I am a urologist—we certainly have had difficulty obtaining high quality trainees into our program. It has been the opposite; we have sought widely. With the last five trainees, we have actually taken eastern state trainees in Western Australia because of our quality. So there is a paucity in fact of high quality trainees.

Mr Brazenor—We have also had the phenomenon in Melbourne in recent years of people finally—having been hammering on the door to be admitted to an accredited training position—dropping out during the first year because they look at the lifestyle and think, ‘Forget it.’ This is becoming more of a phenomenon. It is not as simple as you think.

CHAIR—No, it is not, but I come from South Australia and I can assure you there is a bit more over there where fathers look after their children within the surgical colleges. The list is quite long in South Australia.

Mr Brazenor—I did have a female trainee from South Australia who I thought was fantastic. She is now a local doctor. I asked one of the South Australian neurosurgeons, ‘What happened to Verity Cooper?’ and they said, ‘Yes, it was an interesting concept that we would train a woman.’

CHAIR—You are proving my case.

Mr Brazenor—Absolutely. I was horrified at that, but it had nothing to do with her parents. It had to do with the fact of her gender, for God’s sake. That was 12 years ago and I would have hoped things were better now. But that was not a college thing, that was a personal thing. That was a senior neurosurgeon I was talking to.

CHAIR—Let us not get down into the specifics of that. But I will ask you this. Your organisation represents a voluntary association of medical specialists across the whole of Australia.

Mr Brazenor—Surgeons, yes.

CHAIR—Are you in competition—I dare to use that word here—with the surgical colleges? What services does your organisation provide to your members? How does it relate to the whole scheme of things? That may be a better way of putting it.

Mr Brazenor—We take a political interest. We are the people who are more likely to turn up to an AMA meeting and castigate Dr Brand for what he is doing when we see the

interests of surgical patients and surgeons threatened. The college, being a collegiate body, spends 95 per cent of its time looking after standards. I can tell you that because, as President of the AAS, I get to sit on the College of Surgeons Council. That is a very boring two days because 95 per cent of it is concerned with training standards and standards of practice and very little of it is concerned with appearing before committees like this and regulating what the AMA does. That is our specialty and that is why only one in four surgeons actually pays us our sub every year; the rest of them get a free ride.

CHAIR—One last question before I go to Senator Coonan. If I want to have my gall bladder out and a friend of mine is a surgeon who keeps hoping that he is going to get it—probably one day he will—how would he or any other surgeon determine the price for the removal of that? Is there a fixed schedule of fees that comes out for these sorts of operations? Is that largely followed, or is it individual choice?

Mr Brazenor—It is basically set by the Commonwealth medical benefit schedule fee.

CHAIR—Very few charge that, though.

Mr Brazenor—Exactly—very few charge that. But that is the basis from which we work. There are regional differences, depending on what the market will bear. In Melbourne, very few people charge above the Australian Medical Association recommended fee—and since the ACCC not many of us charge the AMA fee either. We are more likely to charge above or below that—usually below. In New South Wales, in neurosurgery, 30 per cent of charges are above the AMA recommended fee. So there is a local market variation. There is certainly a variation in patient to patient. I can tell you that my billing behaviour is that about 15 per cent of my private patients are charged the full AMA fee and the others are charged varying levels downward but never below the CMBS.

In 1995 we had a survey commissioned by Brent Walker, an actuary, called the Tillinghurst study, and he looked at surgical fees all around the Pacific rim. He looked at Singapore, Hong Kong, United States and New Zealand. We are the cheapest and we are quite proud of that. We believe we are the cheapest, firstly, because we do charge responsibly as a profession. But we cannot take all the credit. Part of that is because the CMBS schedule of fees has an enormous inertia and that has risen much less than CPI and average weekly earnings—the graphs diverge over the past 15 years—and that has acted as a brake upon what surgeons and specialists in general charge.

CHAIR—Thank you very much.

Senator COONAN—I would like to pick up once again on accredited training. You are obviously in positions where you can judge whether someone is going to be a very good trainee. I can understand that. In fact, to a large extent, the same thing happens at the bar—that is my profession—and what chambers you get taken into largely have those sorts of constraints. But, as we move towards the next millennium, it worries me a bit that we are not being much more rigorous in criteria for selection and some very worthy people might miss out under the method you have described, and that I understand very well.

Mr Brazenor—What sort of criteria do you think we are not taking into account?

Senator COONAN—I do not know. You said basically it is whether or not somebody is going to kill somebody. It seems to me there might be something else that you would take into account.

Mr Brazenor—We do.

Senator COONAN—Is it written down anywhere? Can we see what it is?

Mr Brazenor—No. Well, it might be actually. If you look at the submission of the College of Surgeons to this committee, it is fairly well described in that. But the whole point about it is that it is still an apprenticeship, and it is an apprenticeship because this is difficult. You need to study a resident from afar, doing his or her resident job, to see how they handle people and to see how they handle crises and to see how they handle nursing staff and other people who are part of the team. Applicants are declined entry to accredited surgical training positions because they do not speak English properly, because the nurses hate them and cannot work with them, because they rub patients up the wrong way and offend people, because they behave badly when things are stressed, because they are dishonest or because their hands are no good.

There are all sorts of reasons why eventually Joe Bloggs gets it instead of Anita Feldman because when people sit back and say, ‘Okay, who’s going to make the best surgeon? Who’s going to kill the fewest number of people, be most empathic with their patients and not put up our medical malpractice premiums?’ it is a geometric function of all those things that I have mentioned. You say quantify it. Are you going to put this on business? Are you going to say to BHP, ‘Look, in the new millennium, when you’re selecting your middle and high order executives, we’re very worried that you’re not actually quantifying the basis on which they’re selected’?

I think we do at least as well as BHP and, in fact, for all of the heat and energy that goes into the selection of trainees and the re-examination every year as to whether they should be advanced further in the licensing process—and again this is not our business; I am defending the college here—I do not see how it could be better done. A lot of my colleagues put in hundreds of hours a year on selection committees for the college, interviewing and doing examinations and things. If the community ever has to pay for that, it will cost hundreds of millions of dollars a year. That is another point we want to make about total deregulation of the health industry.

Senator COONAN—Do any otherwise appropriate trainees who would perhaps proceed through this process quite happily get denied entry, do you think?

Mr Brazenor—I cannot answer that for sure. Occasionally you see them on television—the *7.30 Report* or *Four Corners*. But I think what is a greater worry is that I do see people who get into training programs who should not. So it is a very difficult sieve to apply. Some people who probably should get in do not, and some people who do get in probably should not.

Mr Taylor—Could I add to that. There is a structured format for trainees. In fact, if applicants come in, they are interviewed by the TA and E board of the particular specialty in

the state. They are given a very structured interview, questions, so you avoid things like bias towards sex, race and so on.

Senator COONAN—So it is not entirely arbitrary?

Mr Taylor—No, that is right. Then, having made your selection of the trainee, you are also obliged to debrief those who have failed as to the reasons why. So it is very structured. Subsequently through the training program, you vet the trainees every six months with a report coming from the trainee board in the state to the federal body, and a log book of all their work is kept and vetted. It is a very formalised system of training. If during the training process the trainee is not up to standard they are counselled; they are given appropriate warnings, et cetera.

Senator COONAN—Thank you. My last question on this point is: do either of you know what the outcome was of the ACCC's review of orthopaedic surgeon training and—I think in some other areas—oncology may have been another one?

Mr Brazenor—No, we have not been notified of any results of such a review.

Senator COONAN—You have not had to participate in it?

Mr Brazenor—No.

Senator COONAN—Thank you.

Senator BROWN—I came from the bush and was first in the family and went through medical school and I did not run into that problem either, although it sounds like we were lucky not to have been in South Australia. But do you think national competition policy threatens that intangible evaluation that you have been talking about? There are so many factors there. Competition policy seems to want to quantify things and evaluate everything according to a numbers system. Do you think that is possible ultimately?

Mr Brazenor—I think you can quantitate anything. Whether or not you gain, I am not sure. That would not worry me or my association if all we had to do was quantitate the interviews and quantitate the personality inventory and quantitate the dexterity even. When I get a trainee in neurosurgery and they advance through several years of training, the ultimate test really is when we open your head to fiddle with your speech area and we are both looking down the same microscope, me and my trainee, and I say, 'Okay, there's the aneurism, there's the outpouching on the artery. If you touch it in the wrong area, it'll blow up and the patient will die.' We both know that, so I rarely say that. But then you watch how they do it. You cannot actually control their hands, so that is the final crux. That is the most unpredictable aspect of the whole thing, because up until that point they have been selected on the basis of parameters that almost always exclude the dexterity bit. You cannot really assess that until you ask somebody to do something really difficult. There are no tests that we know of. I mean you watch them suturing in casualty and that is fine, anybody can be trained to do that, but when you are presented with a trainee who is good at empathy, who is good at interviewing patients, who appears to be honest and trustworthy and who appears to be the sort of person who is not going to operate like a dead dog on a chain there

are still hoops for them to jump through. Quantitating all of that I am not sure is going to help. All of surgical training arose as an apprenticeship. The reason it is one of the few apprenticeships still left, one of the few true apprenticeships, is that we have not discovered a better way to do it. It is very difficult.

Senator BROWN—What about the volume—that is, the numbers—of people taking up those apprenticeships? Is there any artificial governing of that or is that just whoever happens to turn up and is qualified will make it?

Mr Brazenor—No. It is limited mainly by the number of hospital training positions. When I decided that I wanted to be a neurosurgeon, I rang all of the heads of units in Melbourne and told them who I was. I went to see most of them and basically I got the first position that was available. But you can only train a neurosurgeon, for example, in a big public hospital with a big throughput and a minimum of three neurosurgeons. They are the guidelines published by the college, for very good reasons. We have seen people trained by one neurosurgeon in a one-man unit and it did not really work very well. That is not just here but in the States where big studies have been done. You seem to need at least three people in a unit, you need a big throughput and, unfortunately, you need four years of advanced training as a registrar before you can license that person to go out and practise unaccompanied. So the major restriction is in fact training positions.

Senator BROWN—What about the regional hospital that maybe cannot accommodate a neurosurgeon but might need an orthopaedic surgeon?

Mr Brazenor—They send orthopaedic trainees out to peripheral centres, but they do not spend all of their time out there. They tend to rotate three months or six months at Wangaratta or somewhere like that.

Senator BROWN—In some of these areas there is a concern that doctors from overseas are able to provide a service that locally trained doctors are not prepared to.

Mr Brazenor—Yes.

Senator BROWN—But impediments are thrown up in the way of overseas trained doctors because of exclusivity, if you like.

Mr Brazenor—It is very hard for you, representing the Australian population—I guess I am not telling you anything—to discern whether that very intense examination of the overseas graduate has a major aim of restriction of numbers or whether it is because we cannot quite accept the qualifications that they have. I have actually given free tutorials to a young man from Syria who was an ophthalmologist in Syria and he is now working as a general practitioner here. He could not get through that foreign medical graduate exam. He was a friend of a friend, so I took him on ward rounds around the hospital where I worked for six months and gave him free tutorials and he finally passed. But I have to say to you that I think the difficulty was real. It was partly a language difficulty, and you really do have to understand the language of the people you treat. Many of these graduates do not have good English, and that is a problem, and you should not licence them just out of the goodness of your hearts. They should have decent English. Many of them have not been

trained up to our standards. That is about all I can tell you—and it is anecdotal. I think the people to grill on that are the surgical colleges, or the specialist colleges who set the parameters for the examinations. But from my experience I am not aware of that being done to restrict numbers. I am more aware of the fact that there is a real danger with foreign medical graduates with understanding of language and in what they have been taught.

Senator BROWN—You mentioned at the outset some sort of independent arbiter or some sort of more independent assessment of medical standards or medical accreditation. How would you see that evolving?

Mr Brazenor—With respect to what, Senator?

Senator BROWN—I think accreditation. There is a—

Mr Brazenor—Do you mean of a foreign graduate or a new graduate?

Senator BROWN—Both.

Mr Brazenor—Some years ago I was on a committee of my university medical school at Monash and I tried to get Professor Schofield, the dean, to incorporate some reference to clinical competence in the mission statement of the medical school. He refused. He felt that the medical course was an education, to which I replied, ‘I hope when you get your central crushing chest pain you are treated by somebody who is really well educated but probably bloody clinically incompetent.’ It is very difficult to know how to accredit people as doctors and I think the medical practitioner boards probably do a reasonable job at that simply because I do not know of a lot of people who should not be doctors per se. It is much harder when you are a surgeon. I think the examinations put up by the college of surgeons are very rigorous. I cannot tell you how rigorous I found them. I have never been so stressed in my whole life as when I took my second-part neurosurgical exam. A number of candidates take two, three, four goes to get it and these are intelligent people doing neurosurgery at high volume in a training position. So I think the exams are fine, and that is said from having hated them every moment.

I think the harder business is when you look at people getting on a bit. How do you look at Brazenor and say, ‘Well, has he done the continuing medical education so that I would still let him tinker with my brain?’ That is a much harder question. The college is now persecuting us about our continuing education and our continuing certification. I have to fill in a thing every year which says how many clinical meetings I go to, how many overseas meetings I go to, how many papers I have published. If I do not meet the criteria in about five different sections of that they do not reaccredit me for the next year.

There are no actual consequences of that at the moment. In fact, two years ago I failed that because my kids had been sick and I had not gone to many meetings. So I failed the bit about going to meetings, conferences. In fact, nothing bad happened and I am still in practice. But I can see in future that the community may demand that I have to get my CME points every year for me to go on practising as a neurosurgeon. I have no problems with that, and I do not think our association would have any problems with it either, except to say that I still want that to be in the hands of people who know what they are doing. I have

confidence in the college. They are such a pain in the butt—you probably will not accept that from me—but again I make the point that I have no love for the college, we are in competition with the college and I think the college is intrusive. It is aiming to control surgeons as much as possible. I think the community is well served by the college. I think it would be less well served by the intrusion of bureaucracy who simply wanted more numbers. I do not think that would achieve anything.

Senator COONAN—Can the college make judgments about your competence? How could they?

Mr Brazenor—Absolutely. If, for example, a surgeon has a number of complaints made against him—usually this comes via the medical practitioners board in that state but occasionally complaints are made actually to the college—the college will send a person out. In other words, somebody will ring me up—I did this recently and I went to Western Australia. A complaint had been made about a young neurosurgeon there and they rang me up and I went out—for no other reason than, I don't know, I like travelling on aeroplanes—and interviewed him. He presented a few of his patients to me and we discussed some cases. I looked at the operation records for several very long operations that he had and basically we sat down and decided how we could address this.

So there are mechanisms—they are ad hoc but there are mechanisms—within the profession to do this. In general, nobody is suffered to practise who should not be doing so. There is peer pressure. For a start, I do not want anybody putting up my medical malpractice premiums, thank you very much.

Senator COONAN—That is pretty compelling.

Mr Brazenor—It is compelling, although we are somewhat legally exposed in doing that. I wrote a report on this young man to the hospital that had temporarily suspended his accreditation. It was made clear to me afterwards that if that had been an unconstructive report or construed by the young man as unconstructive he probably could have sued me for defamation. I had no protection from anybody. But this goes on all the time and by and large there are not too many defamation suits. It is something which the profession has addressed.

CHAIR—Thank you very much, gentlemen.

Mr Brazenor—Thank you.

Proceedings suspended from 10.08 a.m. to 10.18 p.m.

RIX, Mr Stephen, Principal Policy Officer (Resigned), Public Interest Advocacy Centre

HALL, Professor Ralph, Director, Public Sector Research Centre, University of New South Wales

SMALL, Ms Raeleen Lisa, Researcher and Policy Analyst, Public Sector Research Centre, University of New South Wales

CHAIR—Welcome. We do prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, and at the conclusion of your remarks we will invite committee members to ask you questions.

Mr Rix—Thank you very much. If I could start, there is something which I do need to put on the record. I was the Principal Policy Officer for the Public Interest Advocacy Centre and I prepared the submissions made by the Public Interest Advocacy Centre to the committee. I am no longer employed at the PIAC. I am now employed by the Ministry of Energy and Utilities, a New South Wales government ministry, but I am here representing PIAC and only PIAC. Nothing I say has anything whatsoever to do with my new employment at the Ministry of Energy and Utilities.

We would also like to thank the committee for rescheduling our appearance. We were originally scheduled to appear separately but, because of the work we have done together on this issue and in the preparation of our submissions and other work over the last three years, we thought it would be better for us to reschedule. Thank you very much for allowing us to do that. I would also like to put on record our thanks to the secretariat for reorganising the schedule at such short notice.

I will start by saying the major issues I would like to talk about this morning are the role of the National Competition Council and some matters to do with the implications of the role out of national competition policy in respect of public utilities and the problematic elements of that for consumers of their services, particularly low income consumers, in a competitive market. In our initial submission—and we have made two—we pointed to the National Competition Council's characterisation of the role of parliament and government in the implementation of the national competition policy and we raised some serious concerns with their characterisation of the respective roles of those two arms of government.

I notice the committee has picked up other issues which we raised in our submissions in the interim report, but the committee did not actually pick up on that point about the respective roles of the executive and the legislature in our system of government. I have been told by a number of people that I am flogging a dead horse by talking about this issue, but I actually believe this is a very important issue. In our initial submission we pointed out that the National Competition Council in some of its statements, including its annual report I think for 1997-98, had actually said that essentially parliament was responsible for the implementation of the national competition policy. I believe that is a view which needs to be challenged publicly because if it is allowed to slide through it will enter into the public record and could be utilised at later times to justify any statutory authority, which the NCC

is effectively, in arguing that case. That is, in fact, not the case. It is government's role to implement policy and it is parliament's role to oversee and to ensure that the policy is being implemented correctly by calling the executive to account.

We also raised concerns about some confusion the NCC seems to have about its role as a regulator or an implementer of government policy. In this case it is the Australian government's policy, known as national competition policy, and the NCC's role as an advocate of that policy. It is our view that it is not appropriate for the NCC to be an advocate of national competition policy and its various forms of implementation; rather it is the NCC's role to oversee the implementation of national competition policy by the signatory governments. I would also like to say that the NCC's position on the role of government and parliament and what it has placed in the public record raises real concerns for me because it does not seem to have an appreciation that government policy can change over time.

While it is not in the submission, if I could put it in the vernacular idiom, if you like, if the National Competition Council's view of the role and status of policy developed at any one time was actually applied in a broad sense, Australia would still have military forces in Vietnam. That is the logical outcome of the NCC's position. Since then the NCC has made further statements about its own role and it said—and this is in our second submission made on 29 April this year—that one of the roles of the NCC is to shield government from criticism in the implementation of national competition policy. We actually believe that is an incorrect and inaccurate view of its own role; that it is government that is responsible for the implementation of policy and there is no justifiable reason for a statutory authority putting itself in the position of shielding governments from genuine and legitimate criticism from the community.

We also said—and I notice that the committee has picked up on it and the criticism is being made not only by us but also by local government in particular, as reported in your interim report—about the inadequate amount of community education around national competition policy. I deliberately used the word 'education' there for awareness rather than advocacy. The responsibility for alerting people to national competition policy, its implementation and its implications has fallen back on organisations such as the Public Interest Advocacy Centre, the Public Sector Research Centre, the Consumer Law Centre in Victoria and other small and impoverished organisations to actually do that work. I could expand on that if the committee would like me to, as can my colleagues from the Public Sector Research Centre.

I would also like to point out that in our first submission to the committee we also provided a case study of where the Public Interest Advocacy Centre, and in particular the Environmental Defenders Office in New South Wales, took the initiative to ensure that there was a structured manner by which community and environmental concerns could be raised and suggestions could be raised in the national competition policy review of agricultural and veterinary chemicals legislation in New South Wales. I could talk more about that if the committee would like us to do that. I would now like to pass to Dr Hall.

Prof. Hall—Thank you. As I have said, I have recently been appointed Director of the Public Sector Research Centre, which is a centre established in the Faculty of Arts and Social Sciences at the University of New South Wales. I am going to hand over to Dr Small

who has been employed at the centre for 2½ years and has been responsible for writing the submission to you on this matter.

Ms Small—And who has been temporarily promoted. I am not actually a doctor at all. That is an error. I would like to state at the start that we broadly support the position of PIAC. As Mr Rix has stated, we work closely together and the concerns that he raised we also feel, but I will not expand on those as he has talked about them in some detail.

I would like to briefly talk about some of our concerns with national competition policy, many of which reflect the issues that you have raised in your interim report. Firstly, I think it is important to emphasise the disparate impacts of national competition policy on different groups and to be aware and to develop policies for ameliorating those impacts on particular groups in the form of adjustment assistance or an adequate evaluation of public interest and public benefit tests.

I think it is also important to be aware that competitive neutrality does not simply mean that governments have their advantages removed. In many cases the disadvantages experienced by government bodies are not adequately assessed in the process of competitive neutrality. I am talking about issues of freedom of information, privacy, the role of the ombudsman and so on. These all place costs on the public sector and those costs should be adequately evaluated in the process of applying competitive neutrality.

There is also the issue of the inadequate evaluation of the impacts on particular communities associated with national competition policy. I am thinking specifically here of the case of the application of Carpentaria Rail Co. in Queensland for access to significant infrastructure. In that case the application was not successful, but in the discussion of the National Competition Council around that issue and the discussion of the designated minister it was brought to the fore that there was inadequate evaluation of the impacts of particular restructuring proposals on the communities involved.

I would like to emphasise also that, although contracting out, as you point out in your report and as the National Competition Council has pointed out, is not required by national competition policy, but at the same time as you are aware it is consistent with national competition policy, it is a form of carrying out national competition policy. To that end it is still used as a political tool. National competition policy is still used as a political tool by governments to protect itself from criticism on that point.

CHAIR—Could we hurry up a little, otherwise we are not going to have much time for questions.

Ms Small—Sure. In terms of rural and urban impacts there is the issue of cream skimming associated with, for example, postal services where the cross-subsidies are potentially eroded between regional and urban centres and the impact that has on rural communities. Finally, the public interest, as we have seen, has been interpreted inconsistently. The National Competition Council has been cautious to maintain as broad an approach to it as possible to deal with individual situations, but that, to a large extent, has undermined its applicability and its implementation in certain situations. It simply has not been developed enough. I will leave it there.

CHAIR—Thank you very much. I am not sure who wants to take this question or if all of you have an opinion on it, but do you actually think the competition policy as such was a good idea or are you saying to us that really it is not a bad idea but there are a number of casualties of this particular policy that have not been properly or appropriately looked after? Do you see any redeeming qualities in competition policy at all?

Mr Rix—Yes, I do. The redeeming features of national competition policy are, firstly, that what we call the public interest test, and what the National Competition Council call the public interest test, and what each of the regulatory agencies in each of the jurisdictions calls the public interest test, is best described actually as the public benefit, public cost test. The term ‘public interest’ is never used in national competition policy. I think it is in paragraph 3.1 or section 3.1 of national competition policy that there are a number of criteria that have to be used in the assessment of the public benefit and the public cost. That listing of criteria is inclusive, not exclusive. In other words, other things can be brought into the equation. Those things include the social equity impact and the environmental, ecologically sustainable development impact. It is extremely worth while to have those matters listed explicitly as being taken into account in the review of legislation, the application of competitive neutrality and the other parts of national competition policy.

The question is not, ‘Is that a good thing?’ The question is, ‘How is it being implemented and is it adequate for the purpose?’ I would say, however, the idea that you need national competition policy which is based on a view that the outcomes of creation of a competitive market will be good—in the absence of evidence that it will be bad—as an underlying theme for what we have recognised as a necessary review of legislation across all jurisdictions and the coordination of those reviews, may have been misguided at the time when the policy was brought into place. The reviews themselves are worth while and looking at the application of some principles is worth while, but whether it needed to occur under the idea or the ideology of the creation of competitive markets I think only history will tell. But my personal view is that history will tell us it was too narrow a focus to have taken.

Prof. Hall—Can I make a statement there. I think it is an open question as to whether national competition policy is a ‘good thing’. The Hilmer report simply accepted it as an axiom. It was not questioned in the report. It simply took it as a self-evident truth. There was no debate about the benefits of national competition policy or whether it was overall a good thing. One of the thrusts of our submission is that, whilst there is a rush to document the economic benefits of national competition policy, the actual costs of that policy are inadequately conceptualised. There are two costs and one that we have drawn attention to is the social costs. The social costs are attempted to be incorporated in some clauses in the public interest, such as the social welfare costs. They are there, but our view is that they are not adequately considered.

The other, of course, is the environmental cost of national competition policy. Until you build in adequate treatments of the social and environmental costs we cannot answer the question whether competition policy is a good thing. I think it is still an open question and it needs to be adequately considered in terms of those costs.

CHAIR—Thank you very much. Ms Small, do you add anything?

Ms Small—Yes. The presumption in favour of competition that is inherent in the policy is a concern in the sense that it requires opponents of particular instances of restructuring to mount the case, to present the evidence, as to why that should not occur. In the Carpentaria example, the opposing forces included a public sector trade union concerned about the impacts on their members, yet the resources of a union like that to gather the evidence necessary to prove their case was overwhelming and hindered the overall process. Essentially what I am getting at is that the onus is generally on potentially small groups who are concerned about the environment, concerned about the social impacts, concerned about impacts on rural communities, who simply do not have the resources to come to the party in the sense of national competition policy.

CHAIR—Thank you very much.

Senator COONAN—I just wanted to pick up on a couple of the themes in your paper. I am going to put a couple of propositions to you that you might not agree with. I ask either or any of you to comment. I think this inquiry has seen that there are some fairly clear economic benefits starting to emerge from competition, but equally clearly I think the committee has heard some fairly convincing evidence of winners and losers. We have also heard some fairly convincing evidence that, in identifying causes or causation, it is very difficult to pinpoint competition as the culprit. That has been said by a number of witnesses. How do you see the way forward here in terms of greater equity of distribution of the benefits that are starting to emerge?

Mr Rix—If we take equity, to take one example—Senator Brown, I heard you ask a question of some of the previous witnesses how we deal with environmental impacts essentially in an economic way. That is what I understood to be your question. My answer would be that a move we could make would be to monetise the externalities; that is, to apply a monetary value to what economics has considered to be externalities—both positive and negative. The example I give would be work that was done by the Resource Assessment Commission a few years ago around a particular mine proposal—I can never remember whether it was South Australia or the Northern Territory; I think it was Sovereign Hill—and the work they did on the monetisation or the quantification of the value of heritage and religious sites for Aboriginal people.

That is one way of doing it. Exactly the same idea of monetising or quantifying the externalities, the things that fall out of the bottom of the application of any policy, is a way of proceeding on this matter. An example in the social area may well be: how do we quantify or begin to quantify the costs of the provision of child care in the home vis-a-vis the cost of providing child care in a child-care centre and where are those costs being borne? The argument would run something similar to this, and this is a hypothetical: if we create a system whereby the provision of child care is forced into the open market and the costs of those centres is so great that a number of them close down and forces the parenting unit to undertake the child care, that does not mean the costs have gone away; it simply means the costs have been shifted from where it can be measured to where it is not measured.

It is similar to the argument about how you bring the costs of household labour or the value of household labour into the national accounts. I know of very little work that has actually been done on that. More work has been done on the bringing in or quantifying of

the costs of environmental degradation and resource depletion into the national accounts than has been done on the social side, as far as I am aware. There has been some work done at the UN and there has been some work done at the ABS. I am not familiar with it, I am not sure how far it has advanced, but that sort of approach is a first order thing. It does not mean that you can only do it in terms of money, but at least it gives it some legitimacy if you can do that. That would be my approach.

Ms Small—State governments also have a role, I think, in investigating the impacts on particular communities—for example, the New South Wales government I understand is moving some of its fine processing work to the Hunter Valley, perhaps in recognition of the fact that that area is suffering from reductions in mining and the energy industry—issues like that of active policy development by state governments to address the social hurt that particular groups are experiencing. That may involve training of particular groups, assistance to particular communities in terms of establishing potentially new industries in areas or examining those sorts of issues, being given expertise to establish the skills that a particular area has and alternative uses for their resources would be useful, I think.

Senator BROWN—Do you know whether the national competition policy defines ecologically sustainable development?

Mr Rix—No, I do not.

Ms Small—I do not think so, no.

Mr Rix—Competition policy agreement is what—1994, from memory. You would have to look at the debates that were going on at the time about what ESD meant in 1994 to understand what it meant in that context.

Senator BROWN—It came to the fore at Rio in 1992. My experience in all of this is that the term is used universally by everybody and has no definition whatever and cannot be brought to ground on it because it is in some ways an oxymoron. By ‘ecologically sustainable development’ people mean economically sustainable development and they get the two mixed up. The private sector in particular does this with great deliberation; one of those is the forest industry.

What I wanted to follow up on from the environmental point of view is that I think externalities are a measure but they are well short of the mark. It is very difficult to measure the externalities coming from a quantification of love or, indeed, wilderness. But in Tasmania we have got the situation where there are now more than 3,000 jobs dependent, in the service and tourism industries, on forests staying vertical—and those jobs are increasing—and there are some 2,400 jobs dependent on cutting the trees and, as the rate of cutting increases due to automation and other things, that number of jobs is diminishing. And there are massive subsidies going to the cutting down of trees and not to the keeping up of trees—a situation of almost land rights going to the tree cutters while there is a denial of rights to the local businesses involved in taking people to see the trees that are standing.

National competition policy seems to have totally failed in this area. Although we have had the most rigorous assessment of the forest industry, there has been no assessment of

opportunity lost to a competing industry which is actually providing jobs and so on. Why is it failing? Why is there this terrible failure of looking at community good, let alone environmental good, in such a clear case as that, where the dynamics of the economy are going from an old way of looking at forest to a new way? If we forget the externalities about the beauty of the forests and so on and rare and endangered species and simply look at job creation, where the money is going—because the money from tourism stays in the local area, the money from woodchipping goes to Tokyo and Melbourne—why is the national competition policy silent and totally absent in that situation? Do you know?

Prof. Hall—Because it is easier to quantify benefits but almost impossible to quantify the costs that you are talking about—and they are not just environmental costs but social costs as well. It has been the failure of cost benefit analyses of the last 20 to 30 years; it is never able or not interested in quantifying those social and environmental costs because they are long term. They are not short-term interests, they are not serving short-term interests, they are not serving short-term profit. They are long-term, unquantifiable, or at least difficult to quantify, consequences of policies, and traditionally governments and the private sector have never taken those into account because they think it is going to be solved in the long term and it is not a matter of immediate concern.

Senator BROWN—If I can go to another analogy here, because I am interested in the resource base which the private sector says ought to be open to competition, we have got competition between the utilisation of native forests and the utilisation of plantations. There are massive public subsidies going into native forests but none into plantations. We have got legislation going through the parliament at the moment which is cementing advantages to those people who are exploiting native forests, but the regional forest agreement process did not even look at the plantation sector as a feasible and prudent alternative or even as a competing alternative. How can that be in this age of national competition policy?

Mr Rix—I am not familiar with the forestry issue. It is not something that I have done any work on whatsoever, ever, in any organisation that I have worked for and I am not competent to comment on it. But I do feel somewhat competent to comment on the notion of how do things work. Why do we have these problems? I am becoming increasingly convinced that one of the causes of the problem is our accounting systems. You would be familiar, Senator, with this notion that our accounting systems only measure one set of variables or one set of values which are recognised in neoclassical economics whereas other things are not, and the relationship between neoclassical economics, the national accounts and company accounts is quite clear really.

Work which has been done on company accounting or enterprise accounting to incorporate things which have not been previously accounted for is work that I think deserves great support and advocacy, in terms of getting the Association of Accountants to pick it up and run with it, to develop standards, to argue for the broad implementation of those new standards and so on, in exactly the same way as—well, not the Australian government—the Australian accounting organisation, the Australian Bureau of Statistics has been involved in work of that nature with the United Nations system of national accounts.

The ABS put out two publications about five years ago on the environment. They were bloody excellent documents because they talked about this and they talked about the relative

value of using satellite accounts as opposed to incorporating them into the main body of the national accounts. Exactly the same principles can be applied to enterprise accounting, and that may be a first point at which to try and get some sort of reasonable perspective on what is actually occurring on the ground.

Senator BROWN—Thank you. I was wanting to ask Ms Small one question coming out of what you had to say. Can you think of any conceivable reason for why the public sector should have freedom of information—which I think is a good thing—and the private sector not have it?

Ms Small—No, really. I guess it is an issue of administrative costs being placed on particular bodies—for example, private sector bodies which are considered unacceptable—and there are also issues of commercial-in-confidence which are constantly brought up, associated with the rights of essentially private companies to keep information to themselves, to not have a social responsibility as—

Senator BROWN—That is written into the public sector FOI laws anyway.

Ms Small—So essentially I guess it is the different priorities—it is the emphasis placed on the rights of the private sector to do what they will with their information.

Senator COONAN—It is an accountability issue, probably.

Ms Small—It is an accountability issue, particularly when private sector companies become involved in the provision of social services, yes.

Senator BROWN—Yes. The private sector perhaps is just not willing to pay, put money out, to a public good. It is not enhancing its profit line, so to speak.

Ms Small—Exactly. With the House of Representatives inquiry into contracting out, representatives of the private sector argued that they could deliver services cheaper because they did not have these requirements of freedom of information, privacy requirements and so on. And this was a good thing, this was a valuable way of being more efficient. But you have to weigh up whether that is the way you want to go, if that is more efficiency or if that is less accountability.

Senator MACKAY—I want to tease out a bit more of what I think is the critical issue that you have touched on and that is the measurements that are used in our society in terms of the neoclassical approach and so on, how you actually calculate GDP and how you actually calculate a productivity rate within an economy. We have had Treasury before us and I still do not believe, even from a neoclassic perspective, that they were able to give any clear indications as to what were the likely economic benefits down the track in terms of GDP percentages of NCP. But it does come back to a much broader issue, which is: how do you calculate GDP and so on? As far as I am aware, you are right; there is not much being done at all in this country in terms of social variables, environmental variables and so on. Are any of you aware of any work that is being done overseas in terms of this, because I would be interested to get hold of it?

Mr Rix—Yes. If I can give you a couple of references now and make a couple of suggestions, there is an American economist called Repetto who has had a number of articles published in *Scientific American* over the last five or six years which talk about the application or incorporation of environmental matters into the national accounts of Costa Rica in particular. The issue is forestry, so you are probably aware of it, but I am putting it on record that it exists. I think it is the Danes who have prepared two sets of national accounts, one of which brings into the main body of the national accounts resource depletion and environmental degradation. They have also talked about the preparation of satellite accounts.

I am never too sure what the exact powers of a committee are, but the Australian Bureau of Statistics is the Australian representative to the UN on the preparation of the system of national accounts. There are at least two initiatives that have been under way for some considerable period of time: one is on the incorporation of environmental matters into national accounts and the other is on the incorporation of social matters into the national accounts. The ABS would be able to provide detailed information about that.

I will also give an undertaking to the committee to go away and talk to some other people about that work on the social issues and national accounts because I am aware of some people who are doing it, or are involved in it, but I do not want to drop them in it at this stage.

Senator MACKAY—I would appreciate that. Also, I think it may be worth, Chair, at some point getting the ABS to appear in front of the committee. It is a critical issue. If we cannot get straight answers from Treasury about the direct economic impact I think the ABS statistics need to be looked at.

CHAIR—Good suggestion.

Senator MACKAY—There are some difficulties there, I think, inevitably in terms of how they are operating.

Mr Rix—I am aware, Chair, that you want us to move on, but there is also the chap—you would know his name, Senator Brown; I can never remember his name—who runs the native animal farm, zoo, reserve, whatever, in South Australia.

CHAIR—Dr Walmsley.

Mr Rix—That is him—the only man to successfully breed the platypus. He prepares his own company accounts incorporating environmental matters. He is brilliant.

Senator MACKAY—Yes, all right. Just related to that, the whole issue of the disparity of impact in terms of NCP and the fact there is no—coming back to this issue again—disaggregation of impact, there are not adequate measurements in terms of impact, I am interested in terms of international comparisons. If you take the US and the EU, they have very aggressive regional policies, for example. They have a very aggressive regional assistance program—done differently, obviously, in terms of both blocs. I do not know if you are aware of this, but do you know what their attitude to what we broadly term national

competition policy is? It would seem anathema to say, ‘Do you use particular chosen policy direction which is to actually assist regions quite unabashedly?’

In terms of this work that is being done nationally, to bring it back to that original point, is anybody here aware of EU or US attitudes, how it fits into an interventionist regional assistance policy and how that then may also affect what is happening internationally in terms of the determination of GDP, national accounts and so on?

Ms Small—I am aware that with the failure of the various governments to introduce the Multilateral Agreement on Investment, there has been a move to introduce into the World Trade Organisation similar ideas and a sense of a competition type of arrangement at that level. That has been supported by many of the developed countries but opposed by some of the developing countries who require essentially a more balanced social approach to development in their countries. But at the same time I am not quite sure how particular countries who do depend heavily on their assistance for their particular industries would accept that. It has certainly been an issue that has been pushed in the World Trade Organisation forum, which is meeting in Seattle in November, I think.

Senator MACKAY—We could obviously ask the secretariat to do this, but are you aware of anything that is happening in relation to this delay at the international level? Take the US as a better example: it is a major, developed country which has a very strong, in different ways, interventionist policy in terms of assisting regional US. At the same time, obviously, at the WTO level a completely different line is argued. That is the point I am getting at. I am wondering whether there are any international studies or if you could have a look for us, which would be quite useful. We tend to be a bit insular in terms of where we stand—insular on one level and open on another level.

CHAIR—I am sure the witnesses will take that on board. We will break now for about 10 minutes.

Proceedings suspended from 11.00 a.m. to 11.15 a.m.

MARGRIE, Ms Linda Ann, Macarthur Home and Community Care Development Worker, Macarthur Community Care Forum

CHAIR—We do prefer all evidence to the committee to be given in public but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks we will invite committee members to ask you questions. At the end of your evidence, could you make yourself available for Hansard should they have any issues they want to clarify.

Ms Margrie—Thank you for inviting me here today. I must admit I feel quite out of my league. I am not used to this sort of thing. The Macarthur Community Care Forum is a forum related to the Home and Community Care Program. We service clients who are frail aged, younger people with disabilities and their carers. The forum has a lot to do with a lot of the other councils, such as ACOSS, which I am sure you will receive submissions from. We are a little group. We live out in Macarthur, in Campbelltown, and we cover rurally isolated areas and the metropolitan area of Campbelltown.

I would like to mention one of the big things that seems to be coming up for services. I guess my presentation is about what is happening on the ground. I am not necessarily referring to any research we have done, but what we have seen from sitting in people's lounge rooms which is starting to cause us some concern is that there seems to be an idea that competition is going to be the be-all and end-all and will fix all our wonderful problems. While that may be so with electricity and telephones—and I do not know much about that; I would not know whether my phone bill is cheaper—in the community care sector we have grave concerns about the actual care that our clients are getting and the vulnerable types of people that we service in our community.

Most of our clients have had their personal power taken away through disability, injury or their socioeconomic situations. The people we are speaking to are saying, 'Linda, I don't want a choice. I just want whatever I get to work and I want to be able to ring someone and say if I have a problem.' What seems to be happening is that we seem to be moving a recognised way of delivering our community services from a local level. Our local services are usually run by volunteer management committees made up of local people who want to lend a hand. Those committees, in our view, have been able to be very flexible according to their changing local needs, whereas once you start talking about big players coming into the arena there is much more bureaucracy to try and go through to change something which may be important to a client. While it may seem quite superfluous, for a client to be able to phone that service and get that change immediately is pretty important for those clients out there. We do not wait until 100 people decide they do not like pumpkin on their Meals On Wheels, we listen to one person, if she does not, and then try and fix it.

Because of the scarce resources, we have had to build up strong networks and strong cooperation locally. When you look at the two definitions of cooperation versus competition they seem to be very diametrically opposed. At this point we have a lot of services that perhaps operate on 20 hours a week coordination, no clerical support and volunteers. That is how they operate. They have a volunteer management committee that knows the local area

but do not have legal experience, do not have experience writing tenders and marketing themselves. They have experience in their local area and in responding to that need.

We have a concern—and I have started to see it locally as the person who facilitates the network and forum and tries to encourage cooperation—that people are not sharing ideas as much as they used to. We were in an environment where, in our area, we worked very hard to make sure people were not competitive and tried to, say, hijack funding. We looked at how we could best do it. Quite often when funding came up we actually would support an organisation which was totally different from perhaps the one we were involved in because we felt that was best placed in the local area.

What we are starting to see, since our funding body, the age and disability department—and I believe it has come through the whole HACC Program—has been introducing an expression of interest process with competitive tendering, is that we are finding people are not sharing their ideas. They are not saying, ‘Look, we tried this wonderful new idea at our frail aged day care centre and we are adopting a granny or having pets for therapy. Why don’t you try it at yours?’ It is kept secret because ‘If we have to go for funding again next year, that could be a feather in our cap and we do not want it to be in yours as well.’ While that is not happening to a great extent, as the expression of interest is relatively new, there seems to be that sort of flavour starting to come through.

Also, with the introduction of for profit providers into the arena, that has also changed the way the network works. While we have welcomed those providers into the forums where we sit and discuss issues and lobby for client advocacy, because of profit structures and things like that, obviously they do not attend every month because they have their businesses to run. Since we do not have businesses to run, we have community based organisations, it is important for us to get together and share those ideas and pull together to see how we can do the best for our clients.

One of the other things that happens is that community services, since we are not in a competitive environment, can sometimes make some changes and quite often kick up a stink to the politicians, the funding bodies and other people like that because we can say what our clients are saying to us and try and pass it on. In a competitive environment people are already starting to say, ‘We’d better not make too much of a fuss about that because we could get a black cross against our name next time funding comes through.’ They are the types of concerns that have been brought to my attention as the HACC development worker.

What we are noticing, as the expression of interest process progresses, is that more small community based organisations are starting to lose out. They are just going to disappear. They do not have the expertise to write flash tenders in the jargon that perhaps somebody sitting on a funding panel may think is appropriate. They do not have the time and they also find it very difficult to keep up the enthusiasm. I assisted three groups last year in an expression of interest process and it took us over a week dealing with their management committees. I am not a legal person—I had two hours training from my funding body on how to put together an expression of interest—and we did the best we could. A lot of work went into that, a lot of budgeting and a lot of support from a lot of volunteers, not by paid workers. That submission did not get up. For whatever reason, a submission got up from an organisation that had not been previously within the local area and was a member of one of

the big charities. While we are working with that group, and hopefully working very successfully with that group now, that caused a lot of disappointment in the local area.

This management committee has said to me, 'Well, we are not going to do that again, Linda. That was a waste of time, I had six assessments for clients that I had to put off for a week.' So there were six people not getting meals because we had to somehow figure out how to join this professional arena of competitive tendering. Rather than being able to market our service to clients, we are having to market it to government. That was a big concern.

The other concern came when this big player did join the arena. In the next round of funding we looked at putting a consortium together, which seemed to be the answer we were given by government—that is, a way for small players to still be part of the arena but be attractive to funding bodies. When we went to put in this consortium we tried to include the new big player and were told by their coordinator, 'I'm sorry, I can't join in with you to try and do something locally because my organisation state-wide will actually be competing against you.' So again, at a local level, there was that feeling of, 'Look, we're trying to do our best but if this continues on, the fragmentation is actually going to end up in people not referring their clients and not having a good relationship.'

The only way our clients can get the holistic service they need is if we continue to talk to each other, if we do not have boundaries such as funding and that sort of thing stopping us from ringing somebody and saying, 'Look, I need a hand here. This client is getting three days a week service from me but she really needs more. Can you help me out one day a week?' If that type of thing does not happen, who ends up missing out? It is the clients. We have a grave concern that many of these people come from an era where they say, 'We do not complain and we're lucky to get anything so we don't want to rock the boat,' and they are actually going to end up more confused in a competitive environment than they would in the other environment where there were local people.

It is becoming, as I said, increasingly obvious that small organisations will not survive. While I understand it may be much easier for a funding body to fund three organisations to provide the whole of the care in the area than it is to fund the 25 which might be set up at the moment, those organisations, from what we can gather, have wonderful policies, have beautiful big glossy manuals and everything else, but that does not guarantee what happens on the ground. While we cannot guarantee the small organisations as well, I tell you what: the local network is pretty quick to jump on the bandwagon if something is going wrong.

Word of mouth soon gets around and a service that perhaps is not responding to its clients' needs and being flexible is pretty quickly sorted out. Through a monitoring process which is government instituted that may get sorted out 12 months later when the final monitoring comes around, or it may even get glossed over by policies. Some organisations seem to have the best policies in place but their clients feel that the service is rude and does not treat them right and unless they have very specific needs, they are not catered for.

I think the local area seems to be where the problems surface first and, in the old structure, we were able to try and jump on that very quickly. I am not saying that is the answer to everything—there are a lot of bloody awful services out there that should have

been defunded—but I do feel that the move to competition as the answer to that is actually causing much more fragmentation. Also, from the ground, it is the most incredible waste of money I have ever seen in my life. Things that could have bought a community bus are now being spent on advertising in the *Sydney Morning Herald* and on legal processes to make sure that the expression of interest process has got its i's dotted and its t's crossed, whereas before, the local area was asked what it needed and that money was filtered down through that.

I guess that is where we are coming from and perhaps it is not the same level of professors and professionalism and research organisations you have been hearing from, but there are a lot of concerns on the ground by those vulnerable people. We are not talking about much money, so we need to make sure that it gets to as many people on the footpath as we can, rather than getting stalled perhaps in processes.

CHAIR—I think you have made one of the most impressive cases I have heard before this committee, so do not be self-deprecating with us. I think your oral submission here has covered most of the issues, but let us deal with a couple of things. No doubt the competition policy supporters would say: how do we know that the clients are happy with the services? What sort of things under the old system, in your words, were in place which actually guaranteed customer satisfaction or client satisfaction?

Ms Margrie—Probably not that much different from what would be in a competitive organisation, other than that there were more players in the arena, so a client may be getting three or four services. Now they are not going, nine times out of 10, to tell the service about the problem. They are going to feel like, 'No, I might lose my service.' But they may tell the volunteer who comes in on Friday from another organisation, 'Look, I really don't like that home care lady that comes in.' That sort of thing can get back to organisations very quickly. In our sector, my project acts as a central point for client complaints, so if a client has a problem with a service and does not wish to speak to anyone else, they can speak to me and I can assist them to put in a complaint against that service. There are also other avenues—such as community nurses and those types of people—that are going in.

That may still happen in a competitive environment, but my concern is that as the players decrease so does that level of informed information from other sources. So if there are only three players who end up being big players in the area, if they have state-wide objectives rather than local objectives, is one complaint locally going to be considered important against the state-wide perspective? But if we have only got \$40,000 and we have to service 3,000 square kilometres in Wollondilly, two complaints are pretty important and we look at, 'How can we change our service?' If you have 6,000 clients, one is not much.

CHAIR—So what you are saying is if there were problems under the old system of service provision, of client unhappiness with that provision, nothing has changed in the way these things are assessed. Competition policy has not done a thing to empower your clients to determine whether your service or any other services are appropriate or properly delivered?

Ms Margrie—Some things have been put in place by our funding bodies under monitoring, where questionnaires have actually been sent out to clients and things like that,

which has never been done before from the funding body. We have always evaluated our own services. But from a ground point of view, I would say they are a minimal success. Most of the clients do not understand the language used in them, so most of the answers they get are wrong.

CHAIR—I will finish on this and then hand over to the other committee members. Are you an employee of the council body out there in Macarthur?

Ms Margrie—No.

CHAIR—Is your income solely from the provision of these services and your organisation is dependent on it?

Ms Margrie—My program, the HACC Development Project, is funded through the ageing and disability department under the HACC Program. I am auspiced by a local community based organisation called Macarthur Disability Services who also auspice three or four other projects in the area. I have no link with council. We are an independent community organisation but my clients are the services in the area.

CHAIR—Thank you very much. Again, I commend you on your oral submission.

Senator BROWN—Linda, you spoke about volunteers and the statistics show that they are dropping out right around the country. Why is that?

Ms Margrie—There are many reasons. The classic thing is the amount of people now in the work force. Many women with children who were staying home used to volunteer. Because of the economic situation that is no longer possible and both people are working, so that takes a great chunk out of the volunteer pool. Our volunteers are also getting much older, which is great because then they say, 'I could need the service in three years so I'm going to do a really good job as a volunteer.' But what happens then? We are looking at new avenues for volunteering in conjunction with things like Work for the Dole and those types of things. We are now looking at volunteering, in our area anyway, as much more of a training experience and a pathway perhaps to employment for people. We are looking at investigating that and also looking at it from a community perspective. If we can keep that local community flavour people are much more likely to volunteer to an organisation locally than they are to somebody they see as having quite a lot of resources and this is just a way of getting out of paying people to provide the service.

Senator BROWN—Is that thinking very strong out there? Are people turned off by that idea: why should they volunteer when people are getting good money to do these jobs anyway?

Ms Margrie—I guess the bigger the organisation gets, yes, the more they start feeling like that. If it is a small, struggling community organisation that is running the lamington drive 'because we need a new bus', then they come to the party and say, 'It's all right. We've all got to pull together and help people in our town.' The bigger the organisation gets, the harder it is, and also with more players in the arena you have more people fighting for volunteers. With respect to the submission I spoke about before that did not get up, that

organisation already had 150 volunteers that could have started the work we were applying for the next day. The new player got it, the service was not set up for 12 months, and now they have to try and recruit volunteers which this other organisation is also doing. So the more players there are, the more strains you have on society for volunteer grabbing. Again, people do not say, 'Well, look, there's so-and-so over there. You might want to volunteer for them a day a week as well.'

Senator BROWN—Finally, you were talking about the waste of money. Is there any check done that you know of? Do you know of any way in which government or anybody else is overseeing or is overseeing the money going into ads in the *Sydney Morning Herald* rather than into a community bus?

Ms Margrie—It seems to me—and I could be completely wrong and I am sure there are wonderful fluffy jargon statements to cover it—that the rhetoric keeps coming back, 'We're increasing client choice. This is what the consumers want. We want a consumer based funding model where the consumers decide the services,' and what I am concerned about is that there are many consumers with very valid points but there are also very strong lobby groups who perhaps do not represent the wide range of consumers that we service. I think that is showing. We are looking at crises now in supported accommodation for people with disabilities, those types of things. Everyone said deinstitutionalisation was wonderful, but what happens afterwards when those dollars do not come through to the community?

I think the way the answers are done, you need to look five years into the future. I have a concern that these policies have been introduced with a very short consultation time and the consultation constantly seems to be—what I get back from ministers—'Well, you're just trying to protect your own sector. Community services hasn't worked. You're resisting change.' The argument we are bringing up seem to be thrown away as, 'Well, that would happen anyway.'

CHAIR—I would like to take you a little bit further on what you said a moment ago to Senator Brown. The deinstitutionalisation we have experienced for both physically and mentally handicapped persons in this country has been a process over the last 10 or 15 years. How much of your work is involved with clients who would fit into those particular categories?

Ms Margrie—Depending on the service, home care service would be definitely involved, community nursing; probably more disability funded services rather than HACC services, which also operate in our area, but supported accommodation and that type of thing does not actually come under the HACC arena—but home care does. One of the big impacts we have to look at—and this sounds very simplistic—is that when people were institutionalised, and I am not saying that is right or wrong, the Home and Community Care Program more or less was looking at frail aged people, perhaps somebody who is 45 and had a stroke—those types of things. This is very hard, but our client turnover occurred. Somebody may be in your frail aged day care centre, they may come when they are 70, but they may pass away when they are 79, so that space is freed up then for another person to come through.

With deinstitutionalisation, we have to come to terms with people entering the support sector when they are 30. They want to have a normal social life, they may want to go on

and get employment, but they are going to be supported for the next 60 years, not for a small turnover of time. So that has probably been the biggest impact on the community sector—that period when someone actually requires care—and I do not think the resources have come along with it to try and cater for that. There are also very high needs, which perhaps community agencies have not been used to dealing with in the past, which require a high level of medical care and that type of thing, and that is another issue.

When you look also at early discharge, where do the dollars for that come in? Somebody gets early discharge, they come into the community care sector; again, creating an enormous call on home care services. If you put the two of those together, you have a dramatic increase in the type of care and the actual number of clients requiring care.

CHAIR—Thank you very much. That was very good evidence.

Ms Margrie—Thank you.

[11.40 a.m.]

LILIENTHAL, Dr Craig Martin, President, New South Wales Council of Professions

CHAIR—I now welcome Dr Lilienthal. We do prefer all evidence to the committee to be given in public but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks we will invite committee members to ask you questions. At the end of your evidence, could you make yourself available for Hansard, please, in case there are any issues they want to clear up.

Dr Lilienthal—Certainly. Thank you for the invitation to further the submission of the New South Wales Council of Professions. The council here in New South Wales is made up of representatives of 13 professions. It is the longest serving and the oldest council of professions in Australia. Our patron is the governor of New South Wales. In fact, the last three governors of New South Wales have been our patrons.

The previous submission of the council is before you and I am well aware of the submission by the Australian Council of Professions, a body with which we are affiliated. The New South Wales Council of Professions' submission has attached to it two policy documents which we produced here in New South Wales, entitled 'National Regulation and Competition' and 'Ownership of Professional Practices'. I understand that the purpose of this inquiry is to further comment on the interim report that has been produced so I certainly do not intend to go over any matters that have already been submitted. I would like to restrict my comments to the interim report, which I must say I found most interesting and I could empathise with. Not wearing an expert's hat at any time, but just being a citizen of this country and aware of the national competition policy, I found the remarks contained within the interim report most refreshing and I could empathise with those.

Sadly, though—and this is the main reason for being here—when I read the 140-odd pages, a couple of phrases appear very seldom indeed and they are 'standards' or 'professional standards' and 'qualifications'. I note the terms of reference of this inquiry include under (d) 'clarification of the definition of public interest' and its role in the national competition process.

What the Council of Professions is particularly concerned about is the lack, I suppose, of acknowledgment within the interim report that the maintenance of professional standards and professional ethics is in the public interest. We believe that it should be addressed in this report and it should be considered seriously by the national competition policy.

I have a particular interest in health because I am also the medical secretary of the AMA here in New South Wales and the representatives of the ACCC, Professor Fels and Mr Sitesh Bhojani, have addressed a number of meetings that I have attended. On each occasion when members of the audience have raised this issue about the maintenance of professional standards and quality and ethics, representatives of the ACCC have, I suppose, retired to the concept that the ACCC does not determine policy, it simply enacts the legislation. We find

that a rather defensive move which avoids their discussion or consideration of public interest when it comes to professional standards and ethics.

The New South Wales Council of Professions wishes to reiterate the concept that we believe it is in the public interest for professional standards to be maintained. Our patron, as I mentioned, is the governor of New South Wales and, on the last three occasions he has addressed our organisation, over the last two years he has emphasised the need for the council to help maintain professional standards and professional ethics, that being most important for the community. We believe, in the public interest, the circle comes back to there being a need to maintain professional standards and the quality of service, yet sadly there are few references to that in the interim report.

The Council of Professions represents 13 different bodies and clearly there is a diversity of opinion. I am a little biased towards the health care professions because I am a member of that group. The sorts of things that we are concerned about are, for example, in maintaining professional standards, the ownership of professional practices. Within the medical profession we are concerned that there has been a decline in professional standards with the commercialisation of medical practices, because medical practices can now be owned by public companies, by corporations, by non-medically qualified persons.

Certainly, other professions, such as the dentists and the pharmacists at this particular stage, still have by and large control over the ownership of professional practices and some of them believe that is important to maintain in order to maintain professional standards, whereas the lawyers and the accountants are keen on some sort of deregulation such that they can set up multidisciplinary practices so they will have a practice which can be owned by a combination of lawyers and accountants and they believe that is in the public interest. Clearly, our council supports that. But the crucial issue here is that even in multidisciplinary practice, as proposed by the lawyers and accountants, it would be owned by the professional group, not by the commercial group, by a profit motivated group or by a public company where clearly the whole purpose of an incorporated practice is fundraising or profits for its shareholders.

That is the sort of thing we are particularly concerned about. We can throw in there the advertising regulations as well. We believe that the deregulation of advertising regulations exposes the public to influences which may not be necessarily in their best interests. Certainly, it is not an emotive problem to look at advertisements about cars and kettles, but with respect to advertisements which play on vulnerable people—the impotence clinics, the cosmetic clinics—we believe that the deregulation of the advertising regulations such that they now in medicine are equivalent to that covered in the Trade Practices Act are exposing vulnerable people to manipulation. We believe that deregulation has gone too far.

Senator BROWN—Those two examples you gave, is that advertising that would not have been allowed a decade ago?

Dr Lilienthal—Correct.

Senator BROWN—That is interesting, thank you.

Dr Lilienthal—We know that Commissioner Merilyn Walton, who is the commissioner for the Health Care Complaints Commission in New South Wales, has similar views to the AMA—which is an unusual combination. She, too, believes that the deregulation of the advertising regulations has led to more complaints and people at risk, more vulnerable people being exposed to inadequate services. Clearly, that is a health care profession issue and it does not necessarily relate to accountants and lawyers and surveyors and engineers, whom I also represent, but it is one aspect of the diversity of our interests at the Council of Professions.

CHAIR—Senator Brown, do you want to carry on with that?

Senator BROWN—Just to follow up from that, if the people overseeing national competition policy are not involved in standards and qualifications, surely their argument would be that they are not undermining those. They do not have any say in those so therefore national competition policy is not leading to a lowering of standards. What would you say to that? Therefore the public interest is not being affected.

Dr Lilienthal—Correct. We clearly, in some areas at least, believe otherwise. We believe that it is leading to lowering of professional standards. If we take the impotency clinics—which the Health Care Complaints Commission here in New South Wales has already had an inquiry into and has made some recommendations to state government—clearly, with respect to the quality of care—and a lot of it is anecdotal—the patients who gave evidence to the inquiry and the doctors sitting on the inquiry came to the conclusion that the quality of care being provided to those patients attending the impotency clinics was less than satisfactory.

Senator BROWN—Were they all professional clinics? Were they clinics that all had doctors?

Dr Lilienthal—They all had doctors providing the professional services but they were owned and controlled by non-medically qualified persons and there were certain commercial pressures applied to the professional people working there.

Senator BROWN—Did that not put the doctors working in those clinics in danger of not abiding by professional ethical standards, for example, or quality standards?

Dr Lilienthal—Correct. That is why complaints were made about them to the Health Care Complaints Commission which, in turn, was instrumental in having the inquiry brought into existence.

Senator BROWN—I see these ads all over the place. I do not see ads much but, you know, they do bounce out and hit you in the face. Surely the business is still booming and surely nothing has happened as a result. Despite an inquiry occurring there has been no action taken to ameliorate a problem that exists, if one does exist.

Dr Lilienthal—I appreciate that and I do not know why. Maybe it is in the hands of the state parliament to enact some legislation which will improve the situation. In terms of impotency I think the commercial world has had an influence on those clinics with the introduction of Viagra as a tablet. I think a lot of the impotency clinics have lost their

clientele. I am guessing; I do not have any evidence to support that. Certainly, prior to the availability of that medication the Health Care Complaints Commission, the medical board and the AMA were most concerned about the standard of professional services provided at those clinics, as a combination of the advertising brought about by the owners of those clinics and the commercial pressure applied to the professional people working within those clinics.

Senator BROWN—Would that not have been allowed before because advertising of services, medical services to do with specific conditions and so on, was not allowed?

Dr Lilienthal—Yes. Medical advertising was controlled by a regulation associated with the Medical Practice Act. A decade ago it was very tight. Doctors could not advertise unless you had a plate that was X millimetres by Y millimetres and the letters and the qualifications and the like were prescribed. In the mid-eighties, I believe, that was watered down considerably but the Medical Practice Act regulation which came into effect on 1 September 1998 here in New South Wales basically deregulates medical advertising to the equivalent of that which is permissible under the Trade Practices Act; in other words, as long as it is not deceptive or designed to deceive or imply inadequate standards, it is perfectly okay.

So we have now seen a plethora of advertisements which were not there previously—multicoloured advertisements in the *Yellow Pages*, on the Internet, in newspapers—advertising services such as impotency clinics, sexual dysfunction clinics, cosmetic clinics. We believe they are playing on the needs of vulnerable people who are attracted to those clinics rather than going to their own general practitioner and having their proper needs assessed so there will be a referral to the most appropriate health care service rather than be attracted through commercial advertising directly to a commercially motivated clinic where the whole spectrum of services may not be available to them.

Senator COONAN—I think some of the criticisms you make are probably very sound, but I do think there is a middle ground here because obviously there is a need for some of these services. People really do need sometimes to have corrective or cosmetic surgery.

Dr Lilienthal—Absolutely.

Senator COONAN—They worry about impotency, and quite rightly so, they worry about being bald—all sorts of things.

Dr Lilienthal—Correct.

Senator COONAN—And the very best treatment that they can access ought to be available. I think there has been a real difficulty with actually accessing information, understanding what other patients' experiences have been with that particular person. I do not mean this as a total generalisation. Often I think GPs just refer to somebody who they know of, they do not necessarily know the practitioner involved. I am wondering if you, as a professional body, have thought about where there might be better public information—sound information—made available to the public which does not have to be always through a GP and this circuitous process, where there is no guarantee that you get the best anyway. You just get what the general practitioner thinks is appropriate.

Dr Lilienthal—There are two issues in that. Many patients come into practices these days with printouts from the Internet and they know a great deal more about some of the diseases they think they are suffering from than the general practitioner. They may lack objectivity but, nevertheless, there is no shortage of access to medical information if you wish to receive it.

Senator COONAN—Marvellous for hypochondriacs, I would think.

Dr Lilienthal—Yes. As a part-time general practitioner I find it quite threatening when many patients know a great deal more about their diseases than I do. But that does not mean that we cannot fulfil our role as general practitioners. The most important thing is not to simply refer patients off to your friend down the street but to exert professional input into, ‘This is the patient before me. That’s my patient. I’ve got to do the best for that patient. Which of the specialists I know is the most appropriate for this particular patient’s needs?’ I might be familiar with the work of four or five cosmetic surgeons, but I will select the one that I think is best suited for this particular patient from my experience and refer my patient to that particular person, on the basis of personality, what the particular needs are, surgical ability, communication skills and the ability of the specialist to keep me and the patient informed about what is going on.

So the GP is the coordinator of patient care and provides the patient with a much better overall spectrum of service and quality of service. That is much better than the patient looking up the *Yellow Pages* and seeing a big glossy ad with a before and after photograph which who knows how was created and saying, ‘Well, that looks like a good X, Y, Z. I’ll go to that particular doctor.’ I think the same applies with most professional bodies. I do not want to single out medicine or dentistry or the health care services, but lawyers as well. You might see an ad in the paper which says, ‘Is your baby brain damaged? If so, come to us. We’ll get some money for you.’ They are terrible advertisements which invite those who should not be invited, so to speak.

Senator COONAN—Is it your view that patients, clients—whatever the professions are that you are representing; I know you represent a very broad spectrum—are really perhaps best served by other people being satisfied with the service they have received? I have always found that word of mouth is probably the most effective way of finding out how others have perceived the delivery of services.

Dr Lilienthal—There is a difference between perception and reality, of course. In my other lives I have been involved with medical litigation of complaints. We know that the doctors and the dentists and the nurses who have the most complaints about them are the ones that are the least able to communicate and have the most communication difficulties or fewer communication skills. I have seen some medical practitioners and dentists who have unbelievably articulate and wonderful communication skills get away with blue murder.

CHAIR—They are usually called politicians! But keep going.

Dr Lilienthal—Yes. That comes under the definition of professions and I have only got 13 bodies to represent here, Mr Chairman.

Senator COONAN—You were talking about perceptions not necessarily delivering in reality—

Dr Lilienthal—Yes. As a GP I will select for the patient the specialist whom I believe will genuinely provide the best service. Word of mouth from friends tends to say, ‘He was a nice doctor,’ but that does not necessarily mean that he or she was a good doctor or is the right doctor for this patient with this condition. Certainly, it is important that the patient is confident with the doctor. In the last few days I have had patients come in and say, ‘I want to be referred to this doctor,’ and there is enormous pressure applied to us. ‘Where did you get this doctor’s name from?’ and ‘Why? Why do you want to see this particular doctor?’ That has to be all sorted out, in the patient’s best interests.

Senator COONAN—I know you represent 13 different bodies. What is happening with national standards and national certification of all these various professions? Are they all in different stages?

Dr Lilienthal—Yes, they are all in different stages.

Senator COONAN—I know for instance that the legal profession seems to ebb and flow a bit.

Dr Lilienthal—Some of the bodies are national bodies, some of them are state bodies and some are led by the national body and sometimes the states drive the national body. Where legislation exists—and there are some of our bodies that have not got specific legislation regulating them—all the bodies at the state and national level are reviewing their performance, their act, the legislation, to see how they need to change in order to comply with the national competition policy.

CHAIR—You said we did not say very much about standards and qualifications, that in fact as you went through it we did not say that. I will take that as a bona fide criticism. It is something that we will as a committee—I give you that commitment—have a serious look at for the final report.

Dr Lilienthal—Thank you.

CHAIR—Of course, what we were there to have a look at was the question of the full impact of competition policy a few years downstream and, in fact, what impact that has had on the professions and a whole range of different things in rural and regional Australia. That is something we need to look at and I give you the commitment that we will certainly take that on board.

You were saying a minute ago that a patient comes in to you and you will send that patient off, for cosmetic surgery or whatever, to the practitioner whom you think is the most appropriate for that particular person.

Dr Lilienthal—In consultation with the patient. I would explain to the patient why I want to send him or her to a particular doctor. It is not a matter of being directive; it is a

matter of advising the patient where I think in my professional experience that patient would be best served.

CHAIR—This does not have a lot to do with this inquiry, but can I put to you that, if I were you, I would be very careful about putting that sort of evidence because that sounds awfully paternalistic. I am in the business right now of buying a rainwater tank, and I know a lot of people who are professionals and a lot of people who have bought rainwater tanks before and I want to get the evidence from them, but at the end of the day I will pick my own rainwater tank.

Dr Lilienthal—Sure.

CHAIR—There are a lot of patients, there are a lot of consumers of medical services in this country, who have made a number of criticisms about the paternalism of the profession, and I am glad you have qualified that a bit further, because I think that is one of the criticisms of medicine.

Dr Lilienthal—I practised in the bad old days when we were very directive and very paternalistic. I have worked in medico-legal work for 20 years. We have changed from being paternalistic to listening to the patient, communicating with the patient and making decisions with the patient about health care. I accept that—and it is better—it really is more rewarding for the doctor as well as for the patient. We have, however, seen a couple of legal decisions handed down in medical negligence cases over the last year or so where the courts have actually put the wood on the medical profession and basically said, ‘You have to direct the patient to go to this specialist because, if the patient doesn’t go, they will end up with a nasty disease.’ So there is a bit of medico-legal pressure being applied to us to be more directive, which we have great difficulty trying to cope with.

More importantly, buying a water tank is, with respect, a lot different to having someone look after or make recommendations to you about your health and your health care services. You can evaluate the quality of the metal and the height of the tank and what it is going to cost and what its life expectancy is, but when it comes to health care standards it is a much more sophisticated, diverse and multilayered concept which is left in the hands of a group of professionals who have your interests at heart. It is just not a matter of getting the printout from the Internet and being able to judge whether you need an open cholecystectomy or laparoscopic cholecystectomy. It is much more multilayered than that.

CHAIR—Yes, it is. I will give you a better example than the rainwater tank. Five years ago I went blind in one eye and I consulted eventually five medical specialists and there was a split opinion: three said it was caused by one thing and two others said it was caused by something else. But I well remember the suggestion that it was a tumour at the back of my eye, which had me rather concerned for about 24 hours. Being in a room with three specialists with all sorts of lights, the room in darkness and them measuring this, that and the other, and talking a language other than anything I had ever heard before, I got sick of this—because I am not a very patient person—and got up and turned the light on and said, ‘Now, are you lot going to tell me whether I’ve got a tumour there or not, in English?’ It was only at that stage that I was back in control of what was going on.

It may well be the case, as you are saying, that courts are forcing doctors back into that mould, but I think that is an issue. I must say when they told me, 'No, we discounted that half an hour ago,' I would have appreciated being told that half an hour earlier. From then on I took control of where this thing went because it was pretty clear that none of them knew what was happening. In fact, one of them told me, 'We'll only know at the autopsy, and it won't bother you.' He was a friend of mine, too.

Dr Lilienthal—I think that demonstrates the job of the doctors is quite often never simple and is often quite complicated. If five specialists were arguing about what your diagnosis was, that only demonstrates the difficulty that we face when trying to come to the correct advice or the best advice we can to offer to our patients.

CHAIR—Thank you for that. I thought I would go into that particular area because I do not see the separation, as you do, between the purchase of products and services and my medical needs. I do not think it is quite as clear-cut as you think. I still believe it should ostensibly be my decision, and I congratulate you on the way you incorporate your patient in that and provide the best evidence to the patient because that is very important. I hope the courts are not militating against that.

Dr Lilienthal—Thank you. Could I add, though, it does not matter what the information is, what the diagnoses are that the five doctors come to, in the end it is the patient's decision as to whether they wish to accept or reject that advice.

CHAIR—Sure.

Dr Lilienthal—We cannot force and we do not want to force our patients to do anything. We provide them with the advice. It is up to them to accept it or not.

Senator COONAN—I think you really hit the nail on the head when you said it is a matter of how you communicate it, because it is adequacy of information and appreciation of the risk that really is the legal aspect that the courts are dealing with.

Dr Lilienthal—Correct. The risk of treatment, the risk of non-treatment, yes. But, as I say, I represent 13 different professions rather than just the medical profession and we are, as a body, most concerned that in the public interest there could be a decline in professional standards if the National Competition Council is not sensitive to the needs of professional standards.

CHAIR—You have raised a very important issue which I am sure the committee will chew over at length. Thank you very much, doctor, and I sincerely mean that.

Dr Lilienthal—Thank you very much.

[12.09 p.m.]

KIDNIE, Mr Murray, Secretary, Local Government and Shires Associations of New South Wales

McBRIDE, Mr Shaun, Policy Officer, Local Government and Shires Associations of New South Wales

CHAIR—I now welcome Mr Kidnie and Mr McBride. The committee does prefer all evidence to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement, and at the conclusion of your remarks I will invite committee members to ask you questions. Before you leave, however, if you could check with Hansard to see if there are any issues that they wish to be cleared up. Over to you, gentlemen.

Mr Kidnie—Thank you. To fill you in, firstly, on who we are, the Local Government and Shires Associations of New South Wales are two organisations with a common secretariat, of which I am the secretary. We represent all 177 councils in New South Wales, the general purpose councils and, on top of that, there are a number of county councils and specialist bodies such as waste boards. So we have 100 per cent membership of local government in New South Wales and we are the representative body which speaks on behalf of local government.

We have been involved with the implementation of competition policy from the outset. The New South Wales associations were involved with the Australian Local Government Association in the early COAG meetings. We were signatories to the original agreement. We have worked closely with the state government of New South Wales on the implementation of competition policy. Our principal grievance would be that, unlike local government in other jurisdictions, the state government in New South Wales has not seen fit to provide local government with a proportion of the competition payments, and we feel somewhat disadvantaged by this. There have been quite considerable costs on councils just in terms of the implementation of the requirements of competition policy, let alone sharing in the benefits, which is arguably the reason why the states receive competition payments. There is also some concern amongst our membership, particularly in rural and regional local government, that there has been quite a significant impact of competition policy on the communities they represent.

CHAIR—Mr McBride, do you want to add anything?

Mr McBride—No, not at this stage.

Senator MACKAY—With regard to your last comment about the tranche payments, what is happening to them? Are they just subsumed by state Treasury?

Mr McBride—Yes.

Senator MACKAY—So essentially it is going to state consolidated revenue.

Mr McBride—Yes.

Senator MACKAY—Or disappearing?

Mr McBride—I do not think it disappears. We have made representations to government—to the Premier, to the Treasurer and the Minister for Local Government—arguing the local government position that we should get a share of the payments, as happens in Queensland where I think local government gets 20 per cent of the payments to the Queensland government. Even Victoria, which has had a fairly adversarial approach to local government from a state level, gets about nine per cent of the competition payments. The New South Wales government has not seen fit to provide any assistance to local government.

Senator MACKAY—Are you aware of any transparency in relation to tracking? If we, as a committee, were to ask the state government of New South Wales what they do with the tranche payment moneys from the Commonwealth, is that a transparent process?

Mr McBride—As I understand it, it is treated in very much the same way as the financial assistance grants are treated. It goes into consolidated revenue.

Senator MACKAY—So it is just untied. Do you have any idea of how much the implementation of NCP may have cost local government in New South Wales?

Mr McBride—It is hard to put an absolute figure on it in that the costs materialise at different levels. There have been several million involved in the water reforms and restructuring at that level. That is probably easier to quantify. But then there are things like just implementation of competitive neutrality principles and so on which involve a lot of costs which are disbursed widely between councils in training, in procedures and assistance. It is very hard to quantify the total, particularly given there are 177 councils and each are affected differently and the costs are absorbed in different ways.

In certain categories we have estimated figures. May I just refer to a document. For example, in certain aspects of competition policy, like standardisation of registrations, costs to local government are significant. Costs actually to New South Wales users are significant—local government is a large user of heavy vehicles—in that New South Wales registration fees went up to bring them in line with the national level. There were several million dollars involved in that—I think about \$6 million per annum alone. In reform of the electricity industry, the amalgamation of the former county councils, who were responsible for distribution, into these six corporatised state run distributors that we now have—the former county councils were owned by the councils who constituted the body—a revenue stream has been lost which is now with state government, a revenue stream which would have been previously a local government revenue stream. Again, it is hard to quantify what that dollar would be that was lost there this year. It is a different corporate structure, but the equivalent of what the state is now taking in dividends from those bodies would probably be an example. Those are two examples. So the cost would be—conservatively, not on an ongoing basis—probably around \$50 million or more, I would think. You would have to do a dedicated audit.

Senator MACKAY—In relation to this issue of the disparity of approach from various state governments, you are correct that even the Victorian government does pass on some of the tranche payments to local government. Has this been brought to the attention of the National Competition Council?

Mr McBride—Yes.

Senator MACKAY—What has Samuels's response been—go and talk to the state government?

Mr McBride—Yes.

Mr Kidnie—We think the Commonwealth should actually require the states to on-pass some of it. It should be a requirement on the states.

Senator MACKAY—That is what I am getting at—how to do that.

Mr Kidnie—If you go back to the original documentation when I think the Productivity Commission—whatever its name was at the time—did an assessment of the benefits to the Australian economy of Hilmer, large chunks of the benefits were areas for which local government is responsible such as water reform, building and development approvals and the regulatory regime operated by local government which has been a major area of change and reform in most jurisdictions. These were some of the big ticket items in the overall benefits of Hilmer. If there is an argument that the state should share in the benefits because the nation does, then we think there should be some flow-on to local government.

Queensland has the strongest case because local government has effectively full control of water distribution, whereas in New South Wales local government has probably the second greatest involvement in water supply, but that is only outside of Sydney, Newcastle and Wollongong—but it is more extensive than in any other jurisdiction other than Queensland. Queensland has also got a stronger case in that the Brisbane City Council is doing a lot of transport type functions that would otherwise be done by states. If you look at the role and function of local government by jurisdiction, New South Wales is second only to Queensland.

Senator MACKAY—It just strikes me as odd that the NCC can actually withhold tranche payments to, say, a state government like Queensland in terms of, from their perspective, lack of expeditiousness I suppose in the reform process but vacate the field of any view in relation to local government. I guess we are stuck with the Federation as a model, whether we like it or not, which is one of the reasons why this committee put a strong case in its interim report that really the role of COAG has to be beefed up in terms of implementation of NCP. Have you any views in relation to that? I know local government is on COAG, so that would be better than nothing, but in terms of the implementation and perhaps revision of NCP what would be an appropriate mechanism from your perspective?

Mr Kidnie—It was significant in that at the first COAG local government was a signatory to the competition principles agreement but then in the funding arrangements it was excluded.

Senator MACKAY—That is right.

Mr Kidnie—In recent times, as you pointed out in the interim report, COAG really has not met. In some ways the difference between COAG and the Premiers Conference is that local government is there. I think this has been a quite deliberate strategy by the current government. We would like to see local government represented as a partner in the Australian system of government.

Senator MACKAY—Mr McBride, I think you talked about the implementation side of the NCP. Where do you think councils in New South Wales are on national competition policy principles and the responsibilities they bear? We as a committee have found a huge disparity across the country.

Mr McBride—I think you would find a disparity across the state, but I think you would find probably a lot of your larger councils are very well versed on the competition policy principles, particularly those who by nature of their operations are, for example, involved in water and sewerage supply where there is a strong impetus to be heavily involved. There is a fair amount of compulsion in that matter, so you would find, say, the large water supply councils at Gosford, Wyong and Shoalhaven are very clued up on the principles. Some of the other larger operators would be as well. Those which have commercial business operations as part of councils—and they vary—are also clued up partly because of the requirement to set their prices in a competitively neutral manner if they are in one of those areas where there are potential private sector suppliers.

So in all cases where it is relevant I think most of the councils are pretty well clued up on it. There is still, of course, a lot of confusion in neutrality principles in determining what you factor in and what weightings you put on it—this artificially constructing a market price in a non-market, which is a strange process in itself but it still causes confusion. I also find that with state government bodies, with tender panels we have been involved with, where state government bodies keep bidding for what used to be their work against potential external suppliers. They are still having trouble coming to terms with that, but people realise they have to put in tax equivalents and build in a return on capital or return on investment and so on. So those principles are widely accepted.

The rigorousness of the application would vary widely and the principles in New South Wales have been set that way. The full adherence applies to businesses if revenue is over \$10 million which really, for local government, only tends to capture the water and sewerage operations. They are activities defined as businesses that have revenues of that size. In most cases of council activities that are designated as businesses—it could be advertising and things like that, or saleyards and such—revenues generally fall below that so they are obliged to apply principles but not in such a rigorous manner as with the large water ones. The Gosford-Wyongs and Shoalhavens have to do a full corporatised model—not physically but distinctly separate the activity from the council in its accounting and reporting. For smaller councils, where the revenues might only be less than a couple of million, that is not required but the principles still need to be applied.

Senator MACKAY—In relation to the competitive tendering aspect, which is a bit of a hot issue I read in the papers with the local government elections, is there any anecdotal or

empirical evidence that you have about the employment consequences in regional New South Wales?

Mr Kidnie—The competition principles agreement between local government and the state government actually does not deal with competitive tendering. We have discussed this with the NCC. It actually is not a requirement of national competition policy per se.

Senator MACKAY—Here again we have a problem with different state governments interpreting it differently. It is bizarre.

Mr Kidnie—Absolutely, yes. We negotiated an implementation process with the state government that does not require councils to implement CCT. I think it reflects comments that are made in your interim report, that NCP was used as a banner to run any public sector reform in the last 10 years. We recognise there were a number of what we termed associated reforms, which was to do with improving efficiency and performance of the work force and so on. We have run a number of programs in terms of the agreement to try and deliver on those policy objectives of state government.

We have been quite innovative in terms of benchmarking, performance measurement. We have run programs to do with workplace reform in local government, all of which we think has been successful and has produced results in terms of improved performance in productivity in local government without some of the pain that is associated with CCT. So we have been quite happy with that aspect of it in New South Wales. The stuff that has actually been getting some media in the last couple of days is actually where councils have to tender for work on state roads. It is not that they have to competitively tender themselves.

Senator MACKAY—Thank you for that.

Mr Kidnie—I will just go back to the first question about the awareness—again I think it relates to the comments in the interim report—that the implementation of competition policy was done in a fairly heavy-handed sort of manner and not with a great degree of sophistication at the outset. The councils were very conscious of the requirements of NCP for two reasons: firstly, the Cabinet Office conducted a series of workshops very early on in the process of implementing competition policy and basically explained to councils and state agencies that, ‘This is going to be the end of the world as you know it,’ that they were going to introduce the Trade Practices Act and, ‘You would all end up with \$10,000 fines—\$10 million fines for the organisation and half a million dollar fines for COEs of councils’—all of whom went into apoplexy and started ringing organisations such as ours and state government agencies dealing with local government.

We were on the back foot from then on really, that this was going to be a disaster for local government and for local communities. As it turned out, I think the competition agreement negotiated between local government and the state government of New South Wales does not have those draconian impacts that were prophesied at the outset. The ACCC were involved in a number of workshops with us when we went around and explained this to councils quite extensively over a period of some months. They were actually very good, very cooperative. There have not been massive cases against councils but if there were some cases where there was potentially a breach of the Trade Practices Act they have worked with

councils constructively and it has been resolved in a non-judicial way. I think that has been a really positive experience on the part of councils and on behalf of some of those agencies.

At the beginning there was a doctrinaire, a fire and brimstone approach, which really was not very constructive. It set a lot of hares running. A lot of councils commissioned Trade Practices compliance audits and things of that nature, which really was not all that necessary. If it had been done in a more collaborative approach—and I guess this is going back to COAG and trying to get a partnership approach—there would not have been quite so much angst and I do not think there would have been quite so much concern in the community that this was going to be a major negative.

Mr McBride—That panic Murray was referring to was also partly promoted by the consulting industry, if you like. A lot of the legal firms naturally saw the opportunity and were putting the fear of God into people.

Senator COONAN—On a slightly different angle, I am just interested in your views about the pace of this process. Do you think that it has all gone too fast? Is there any case for looking at perhaps slowing it down a bit?

Mr Kidnie—Dealing with councils per se, as opposed to the communities they are representing, we have been quite happy with the timetable negotiated with state government. It has needed some support, it needs some explanation as to what the purposes of it are. Again, there has been a tendency for central agencies to be a bit insistent about the strict letter of competition policy and not a commonsense interpretation of what this means. Whether people have metered water in Brewarrina is not going to make or break Australia's international competitiveness. That sort of public benefit test has not always been applied with the level of commonsense perhaps it should have been but, by and large, I think it has been a realistic timetable and I think, by and large, local government has delivered.

Senator COONAN—I suppose you have just given an example of one but I would be interested to clarify the point. Have you noticed great differences between the ability of rural and regional Australia and metropolitan members to respond to this in the same sort of time frame?

Mr Kidnie—Yes. There is the level of technical expertise that is required to do some of the complexities of the accounting to ensure you are doing it on a competitive neutrality basis. Where your prices are set in that context is an added burden on small councils that are very underresourced. You would have to ask yourself if finally it was actually worth it.

Senator COONAN—That is interesting. I realise this is a hot issue and I do not know whether you are the right people to ask but you will obviously tell me if you are not. What is your view about how the whole process would be enhanced or assisted—I think it follows on really from your last answer—by some rationalisation of resources between councils, mergers or whatever, which is being at least mooted from time to time in New South Wales?

Mr Kidnie—As a state association representing councils, we have been promoting and encouraging councils in a process called voluntary structural reform for the last two—

Senator COONAN—That is a good phrase, yes.

Mr Kidnie—There are now 24 councils that are in the process of proceeding with voluntary mergers. There are a number of others that are still in the process of putting their proposals together. We have been promoting voluntary structural reform, which is not necessarily just amalgamations but could mean having individual councils as decision-making bodies but a common work force, which has happened with Concord and Drummoyne. We have been promoting those sorts of models, not so much from the economic efficiency aspect of trying to drive down the cost of providing services but—again, particularly in regional and rural Australia—it is our view that councils have a key role to play in the delivery of a whole lot of those natural resource management issues where both state and Commonwealth government have a number of objectives.

Councils are the vehicle that can do the practical implementation of that, but small, solely rural councils with a population of a thousand or two and a very limited technical staff really cannot deliver on some of those things. They either have to do it collaboratively or come together between those rural communities and the urban communities they often surround and do those things together. There have been some very successful examples of that around the ACT in the south-east group of councils in New South Wales.

Senator COONAN—With health resources and all sorts of things?

Mr Kidnie—Yes. They actually put together a composite state of the environment report and have done a composite environmental management plan. It is that sort of cooperation we would see as being the way forward.

Senator COONAN—You can see it as a movement more into perhaps regions rather than sort of just each little council.

Mr Kidnie—Absolutely, and often on a sort of bioregion or a catchment basis or something of that nature.

Senator COONAN—Some natural amalgamation perhaps of features?

Mr Kidnie—You are not necessarily amalgamating the decision-making structures of the councils but you are—

Senator COONAN—Rationalising the resources.

Mr Kidnie—Yes—to deal with issues that cut across more than a council area, which is often those sort of environmental issues or often economic development issues. It is better to deal with them collaboratively.

Senator COONAN—Use of water, I suppose, that sort of thing.

Mr Kidnie—Yes.

Senator BROWN—Has anybody looked at or obtained a legal readout on the disparity between funding that you were talking about earlier, between Queensland and New South Wales, for example, under section 99 of the Constitution?

Mr Kidnie—No.

Senator BROWN—It might be interesting. It might come to nothing but it would not involve the state government; it would involve the federal government ensuring that regions were not disadvantaged in the way in which its funding is distributed.

Mr Kidnie—That is a very good suggestion. Thank you.

Senator BROWN—The Local Government Association has done work on environmentally sustainable development but I always have a dickens of a job finding out what that means. Do you have a definition?

Mr Kidnie—I am sure we do in some of our policy documents. We have two or three people on our policy team who have been working on those areas in particular.

Senator BROWN—I wonder if you could provide that to the committee, please, because it is part of national competition policy that we have ecologically sustainable development, or at least it is mentioned in there. It would be good to see what your definition is and then how it is implemented. Is your view that it is taken with any degree of seriousness around the place or is it generally a term that just floats through the ether?

Mr Kidnie—In relation to competition policy?

Senator BROWN—Either specifically in relation to competition policy or as a matter that is considered.

Mr Kidnie—That is the point I was trying to make before. We see ourselves as major players in developing better environmental outcomes for the communities we represent, both in urban areas and regional and rural New South Wales. There has been quite a proliferation of state legislation dealing with catchment management, native vegetation, threatened species and so on, which has complicated the development process. There has been a lot of criticism of government that this has made it impenetrable for developers to get proposals up and approved. One of the ways we see we can assist in both of those criteria, the environmental agenda and promoting development, is by having an integrated approach at the local and regional level. Not only that, but it would be our view that in terms of a total public sector approach it can be more efficiently delivered through a local government structure or a regionally based local government structure than it can by having a proliferation of state agencies having turf wars about who has responsibility for which piece of state legislation and then having to lodge an application for a development with a council. It then has to get approval by the EPA, the Department of Land and Water Conservation, National Parks and Wildlife and so on.

We have made submissions recently to the review of the planning scheme in New South Wales, saying we really need to have a local planning process that integrates those

requirements of state agencies, but then the councils have the final say, that the criteria applied by state agencies has to be identified in the plan and the councils have the decision-making process. I think we have been keen to try and build those sorts of processes into the initiatives we have been doing and it is more in that direction than it has been about the strict application of NCP and trying to reduce the numbers of staff. Let us try and work smarter, look at the current policy objectives of their communities and of state and Commonwealth government and look at how local government can contribute to that in a constructive way.

Senator BROWN—I notice in another state the Local Government Association's newsletter is funded by a corporation that seems to have quite an interest in selling its services to local government. Where do you draw the line on that in having fair and aboveboard competition?

Mr Kidnie—We are a bit old-fashioned in relation to who we get to sponsor things. We have actually developed sponsorship policies for the state association to make sure that we are at arm's length from the commercial decision but we are quite happy to accept sponsorship from them.

Senator BROWN—You do not see any possibility of potential conflict of interest if you do that, as in Tasmania where Boral is funding the newsletter of the Local Government Association?

Mr Kidnie—There could be but I think in New South Wales we have managed to avoid that. Interestingly, we have accepted sponsorship from some of the major financial institutions in that we have a policy of actually developing a local government bank. So we are quite happy to accept their sponsorship and then compete with them on their terms.

CHAIR—Thank you very much.

Proceedings suspended from 12.41 p.m. to 1.45 p.m.

PORTER, Mr Denis Noel, Executive Director, New South Wales Minerals Council

CLACHER, Mr Kenn, Coordinator, Hunter Rail Access Task Force, New South Wales Minerals Council

CHAIR—We do prefer all evidence to the committee to be given in public but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement. At the conclusion of your remarks we will invite committee members to ask you questions.

Mr Porter—Mr Chairman, thank you for the opportunity to appear before the committee. The New South Wales Minerals Council is the industry association which represents the coal and mineral, mining and quarrying companies and exploration companies in New South Wales. I believe it is important to place Australia's national competition policy in the context of the need for micro-economic reform in its broadest sense. In the 1980s Australia's economy was, in many respects, poorly equipped to deal with the challenges of increasing global competition in terms of both trade and investment. Our standard of living was falling relative to many other developed countries and relative to a number of the Asian tiger economies.

The efficiency of many of our key infrastructure and service sectors was, at best, mediocre and in some cases appalling. Our rail, electricity and water supply sectors, our waterfront and our ports were all far below world best practice in terms of efficiency. The costs of these sectors to both industry and consumers were far too high with monopoly profits also built into prices in some cases. Our labour market arrangements were far too rigid, with a centralised approach to wage fixing and work practices providing little scope in many industries to negotiate arrangements which encouraged maximum productivity. Unemployment peaked at over 11 per cent in 1992. I hate to think what our unemployment rate, our interest rates and our rate of inflation would be today if we had not seen the reforms across the economy which began in the 1980s and accelerated in the 1990s.

The national competition policy reforms, which only began in earnest in 1995 with the passing of the Competition Policy Reform Act, were arguably some years too late when we consider that Australia floated the dollar in the early eighties, a move which in effect recognised the need to become a much more open and competitive nation. The Productivity Commission released a research paper recently which looked at Australia's productivity performance. Australia's multifactor productivity growth, a measure which includes both labour and capital, averaged close to 1.5 per cent per year in the sixties and seventies. It fell to around 1 per cent a year in the eighties and early nineties but between 1993-94 and 1997-98 it averaged 2.4 per cent. I believe 1998-99 would have been another strong year. This lift in our national performance was no accident. The factors driving it are no doubt many and varied. However, the overall micro-economic reform process, including national competition policy reforms, has arguably been a major and possibly the major factor.

The Australian minerals industry has been one of the major industry sectors which has argued for many years for micro-economic reform, including the opening up of government

business enterprises to competition and for the elimination of de facto taxes as part of the charges of these enterprises. In New South Wales the main bone of contention has been in relation to rail freight rates for the coal industry. This issue was covered in our submission to this inquiry some months ago.

Like other commodity prices, coal prices have been trending down in real terms for a number of years. In the last couple of years prices have fallen sharply, partly as a result of the economic crisis in key Asian markets, particularly Japan and Korea. The coal industry has seen major restructuring, including major job losses over the last two to three years. The reforms in rail pricing, as well as reforms in areas such as electricity and ports, have assisted the industry to come through an extremely difficult period and in a much more competitive position. Without these reforms we believe that the industry is likely to have seen even greater job losses.

Mr Chairman, your committee's interim report raises a range of issues in relation to national competition policy, some of which are outside the brief of our council. However, our unique experience with some aspects of the operation of this policy does provide us with some appreciation of how the policy might be more effective and more readily accepted by the community. We agree with the interim report that there could be improvements in the way the public interest is identified and explained. The nature and extent of direct and indirect subsidies should be more explicitly identified so that if these are reduced as a result of national competition policy, the former recipients are aware of the nature of the change. Governments can decide whether they wish to replace the subsidy with a benefit which is funded in a more transparent and efficient manner than previously.

The operation of national competition policy could be improved in several ways. For example, the inclusion of a limit by the NCC to make a recommendation on declaration of a service and certification of an access regime would be of value. Inclusion of a time limit for the Commonwealth minister to make a decision on certification is also desirable. The presence of such provisions in the Trade Practices Act would lead to a more transparent process. This would have avoided the situation where the application by the New South Wales government for certification of a rail access regime has dragged on for over two years—and still without a decision.

The House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform recommended in the Neville report that if a designated minister does not respond to an NCC recommendation for declaration, the service in question should be considered to be declared rather than not declared as under the current legislation. We support that recommendation.

Senator COONAN—Sorry, do you just mean self-executing? It will happen unless it is otherwise declared?

Mr Clacher—Yes.

Mr Porter—More specifically in relation to rail, implementation of the other recommendations of the Neville report would greatly enhance the efficiency of the Australian rail industry, which should benefit more remote parts of the country. A requirement for the

NCC to conduct a public consultation process on declaration and certification applications is desirable. While it currently does this, it is not obliged to. Mr Chairman, they are the opening comments we would like to make. We would be very happy to elaborate on those or to answer any questions. **Senator BROWN**—Does the council have a definition of ‘ecologically sustainable development’?

Mr Porter—I do not know that we have ever formally adopted a definition but the definition that was in the Brundtland report some years ago was a reasonable one. That was basically carried over into the ESD process of the early nineties, so I think we would accept that. It all gets down to how you put that into operation. There is great divergence of opinion on those sorts of details.

Senator BROWN—The council itself does not have a definition of what that term means?

Mr Porter—No. As I say, the Brundtland definition and what was in the ESD process we would broadly agree to. I was a member of one of the nine ESD working groups that Prime Minister Hawke set up in the early nineties. Although people could agree on some of those broad issues, a broad definition of ESD, once you started to get into the detail the differences of opinion started to emerge.

Senator BROWN—Once you started to implement it.

Mr Porter—No, but in terms of what it is. It is fine to agree on how you integrate economic and environmental conditions into decision making, because that is what it is partly about, but then it is a matter of balance—in some cases compromise and so on. As you know, different people have different views on emphasis.

Senator BROWN—Except ‘ecologically sustainable’ means just that, does it not?

Mr Porter—Yes, but I guess industry groups—not only ours—believe that if you stress the ecological to the exclusion of the economic it can come around and bite you.

Senator BROWN—Yes, I am aware of that. I am keen to get to the point at which we face up to environmental loss being part of economic development. If you have ecological sustenance you very often do not have economic development. It is just a process of honesty.

Mr Porter—Yes.

Senator BROWN—I am just surprised that the council does not have a definition itself of ‘ecologically sustainable’. Anyway, let me pass from that to the cost of reparations for mining activities, for example, or rail activities. How do you think they should be assessed?

Mr Porter—The cost of reparation? The modern mining industry does a very good job in terms of environmental management and land rehabilitation and so on. Basically a modern mining project recognises the need to account for those costs and return the land to an equivalent sort of state. We are recognising those.

Senator BROWN—What about Ok Tedi?

Mr Porter—Ok Tedi is incredibly complex. I do not know all the fine details but BHP is grappling with that at the moment. I do not have a simple answer for Ok Tedi. If you go back to when the project started, some of the assumptions under which it was started proved to be false or wrong. I do not have an answer to what BHP should be doing now or what it should have done in the early days.

Senator BROWN—I think they are trying to sell the mine.

Mr Porter—That is one option.

Senator BROWN—Yes, but it is an option that leaves the environmental loss to the community to be picked up by government, not by the industry. The point I am trying to draw out here is that in this age of level playing field, I think you would agree that it is the mining industry's responsibility to pay for economic damage and also pay fully for restoration in the wake of its activities.

Mr Porter—Yes, but as I said before, Ok Tedi is an extremely unique case. But certainly our member companies in New South Wales accept the need to account for those environmental costs. They are built into projects and government approval systems recognise them. We also have things like security deposits which place a financial obligation on companies. If they do not do the right thing there is a financial system in place for someone else to be able to put things back in place afterwards.

Senator BROWN—At what point do you put in compensation claims for the mining industry if it is denied access to a natural area because of the natural attributes?

Mr Porter—It depends on the circumstances. In New South Wales one of the things we have been arguing for, with some success last year, is that rather than opening up national parks for mining we want a more flexible land use categorisation system. The New South Wales government introduced a new system last year called crown reserve. This is a system which only applies to certain areas where you can recognise the conservation values in the area and some of the commercial values, such as minerals. So rather than having a simple choice between a national park where no mining is permitted, full stop, and some other area, you have this additional system. That was a positive move.

Senator BROWN—How do you think the mining industry should meet the obligation as a whole for those components that might close down or even go bankrupt and not be able to fulfil their obligations either to the environment or to the society they are working in?

Mr Porter—I do not think the mining industry at large has a responsibility for an individual project that might go bad or might go bust; just as when a manufacturing plant closes down and causes damage, other manufacturing industries do not have an obligation. Each company has an obligation. The government systems that govern the approval processes and the monitoring processes and so on have an obligation to make sure that things are done in the correct way. I do not have a problem with individual projects being responsible for their own environmental issues.

Senator BROWN—That being the case, how are you to ensure the public good or the public benefit if a mining corporation does close down and does not fulfil its environmental obligations? Does that go back to government?

Mr Porter—If a government has not put a system in place that has required the company to do the right thing or if it has not got a system in place with a security deposit which provides the money for the government to restore the land, then the government will have to wear the consequences. As I say, I do not think it is appropriate for other mining companies to have to wear the blame and the cost of one particular project that is outside their control.

Senator BROWN—Another thing I would like to look at, which is right away from that, is that the current federal government is putting \$111 million this year into research and development for fossil fuels, looking at, amongst other things, how to ameliorate the greenhouse gas problem, but has put nothing into renewables. What do you think about hidden subsidies of that variety going to one industry and not to another?

Mr Porter—Senator, that is an incorrect statement. The federal government, through the AGO and the Department of Industry, Science and Resources, is putting quite a bit of money into renewable energies in terms of R&D, commercialisation, demonstration projects and so on.

Senator BROWN—Let us look at solar power. Do you know how much the federal government is putting into that?

Mr Porter—I do not know the numbers. Senator, I am happy to talk about these issues for hours but we came here, I thought, to talk about national competition policy.

Senator BROWN—That is true but I am looking at the level playing field here. You did talk in your presentation about governments making decisions about subsidies, including hidden subsidies, so I was wanting to eke out how governments might avoid giving hidden subsidies of that variety to one part of an industry but not to another when they are in direct competition.

Mr Porter—Senator, it is appropriate in this modern day and age for governments to be putting money into both renewables and the traditional fossil fuel energy technologies and issues and so on.

Senator BROWN—But do you have a problem where they are putting it into one but not the other?

Mr Porter—It depends on the circumstances. In today's circumstances it is appropriate to be investing in both areas. That is what is happening.

Senator BROWN—Finally, there is the problem of greenhouse gases and global warming itself. We are currently in the hottest year in human history as far as records are concerned. There is a very big body of scientific opinion now which says that this is going to have economic as well as social and environmental ramifications coming down the line.

Do you think it is time we built in some system of ensuring that those who are most creating the problem—this is through the production of greenhouse gases—are from now made most liable? We are hedging our bets, if you like, as a society, just like an insurance company. This is what the insurance industry was set up for. We can see right in front of our eyes these huge economic penalties coming down the line for greenhouse gas production. But it seems that we are inactive in trying to offset that prudently by having a fund to help those who are going to most lose out to meet their costs. Do you not think it is time that we—at government level at least, if not at industry level—took account of this and made sure that there was an offset?

Mr Porter—We could debate this one for a long time but the Australian government I think is moving fairly cautiously in terms of this whole debate and that is appropriate. One thing you did not mention is that Australia, because of its economic structure and because of the countries with which we compete both in terms of trade and in terms of new investments is somewhat different from the rest of the OECD countries. If we move too far too fast, we damage our industries' competitiveness, we get industries like aluminium, other mineral processing, other heavy industry moving to the developing countries. They may end up producing far more greenhouse emissions than we do here with no net benefit to the globe. This is not an easy issue to solve by Australia shooting itself in the foot. It certainly will not be solved that way.

Senator BROWN—I will just ask a follow-up question, because this is very important to this whole question of competition policy, and it becomes a global matter: do you know of any moves, either by the mining industry or by government, to get international agreement about meeting the enormous costs coming down the line of global warming? Can you see any difference between that and the relevant advent of putting forward money that you were just talking about for land reclamation or rehabilitation after the mining industry has moved on?

Mr Porter—Senator, the big difference is that land rehabilitation is something that is under the direct control of a particular company. It is recognised, certainly in all the developed countries and increasingly in the developing countries, that is the appropriate way to manage new projects, be they mining or any other major project. The big difference between that and greenhouse is that the solution to greenhouse has to be global in the long term. If countries like Australia, as I said, move too far too fast, we damage ourselves with possibly no impact or even a negative impact on global emissions.

Senator BROWN—This is damage to ourselves in terms of competitive edge?

Mr Porter—Indeed.

Senator COONAN—I want to ask a couple of questions about your statement about a major flaw in the New South Wales government's rail reforms in that the regime does not comply with the competition principles agreement. That is on page 3 of your submission. Would you like to elaborate on that, please, and tell us how it does not comply? I know that it is a sensitive issue and it is the subject of some litigation but, to the extent you can, can you fill us in?

Mr Porter—I will get Kenn to answer that, but if I can just preface this by saying we have made major moves in terms of the rail access regime and rail reform in New South Wales. The state government, of course, broke the old State Rail Authority up into four units and that was very positive. Last year the Premier referred the key issues of particular valuation and rate of return to IPART, the state government pricing tribunal. That decision came down earlier this year. That decision has resulted in a realistic rate of return for those assets. That has now flowed into rail freight rates. We have had some big moves and big wins there. There are a whole lot of other very complex issues which Kenn is much more equipped to deal with than I could be.

Mr Clacher—As you suggest, the differences of opinion as to in what respects the regime does not comply are illustrated by the fact that, when we made an application for declaration of the use of the Hunter railway line, the NCC recommended to the New South Wales Premier that he declare that service. It could not do that unless it considered the regime did not comply with the competition principles agreement. The Premier did not respond to that recommendation. He said nothing and, under the Trade Practices Act, he is deemed to have not declared the service.

Senator COONAN—He does not have to give reasons, does he?

Mr Clacher—No, if he does that he doesn't. That is correct, yes. He had a choice of saying, 'No, I will not declare this service and these are the reasons.' He could have done that. He decided instead to say absolutely nothing and, under those circumstances, he does not have to give reasons. This was commented on in the Neville report. As a result of the non-decision of the Premier we appealed to the Australian Competition Tribunal. We have had many directions hearings but have still not had a hearing of the matter itself because of the delays that have arisen as a result of an application by the Rail Access Corporation to the Federal Court to hear the question of whether the moratorium applies or not.

At the time we made our submission to your committee the result of that Federal Court case was not known, but soon after the Federal Court found in our favour, which means the moratorium on government coal carrying services in the Competition Policy Reform Act did not apply to the service we were seeking. In other words, we were entitled to proceed. As Denis said, a significant improvement has occurred since we made our submission, particularly evidenced by the application to IPART to recommend values for the rate of return and asset values and to clarify some cost definitions in the rail access regime.

The recommendations of IPART will be automatically incorporated into the regime—a new regime gazetted on 19 February this year which was somewhat different from the old one which incorporated a number of the points that we were seeking, but by no means all of them. I might also say that offer of the submissions we have made to the NCC and to other bodies we have not seen any statement by the NCC, say, of the respects in which they thought the regime did not comply. It can only be inferred from what they have accepted by way of amendment of the old regime.

Senator COONAN—How is your industry being impacted by, if you like, these impediments to the implementation of full competition policy in New South Wales in this area?

Mr Clacher—It has effectively been paying monopoly rent. When the regime was established it was recognised finally that there was a monopoly rent. We had been in discussion for many years with the New South Wales government and they had not, until that time, actually publicly acknowledged that there was a monopoly rent component in rail charges. The regime did, in fact, acknowledge when it was established in 1996 that there was indeed a monopoly rent component. That was acknowledged at the time to be something like \$52 million per year, which was a direct monopoly rent imposed on the industry. That is a fairly large or significant proportion of the total New South Wales coal industry's average profits over the past several years.

The result of the IPART inquiry in effect says that there is something like another \$20 million or \$30 million of monopoly rent being charged which was not acknowledged at the time. As a result of the IPART report something like \$20 million or \$30 million additional rail charges have been taken. Rail charges have reduced by that amount. So what it means is that the industry has been paying \$70 million or \$80 million in monopoly rent plus further charges, which are difficult to quantify, through lack of efficiency in the operation of the rail industry. These now impact directly on the ability of the New South Wales coal industry to compete in international markets.

Senator COONAN—You begin to understand why you did not get your declaration. Thanks.

CHAIR—In essence, what you are saying is that it is the lack of application of NCP in the railways which is hurting your members. Is that what you are putting to us?

Mr Porter—I think we are showing the benefits of the application of that policy to the industry, but it has been a long and hard struggle. State government treasuries do not give up those extra revenues very easily. But, to its credit, the government did break up the old SRA into four components.

CHAIR—But the process is continuing, or has it come to a halt?

Mr Clacher—It is continuing. In particular, it is continuing as part of the IPART report. It could not identify the appropriate asset values to apply to access charges. We have only just today been advised that the wheels have been set in motion to appoint a consultant to determine what those asset values should be.

CHAIR—Obviously, the minerals that your members are exporting would rely on rail transport, particularly low value mineralisations such as coal.

Mr Clacher—Yes.

CHAIR—What are the other mineralisations that require rail transport?

Mr Porter—We have some copper, lead and zinc from Broken Hill, for example, and from Cobar. In terms of tonnage, coal is by far the most dominant commodity. In fact, the Hunter Valley coal system has been and still is the only profitable part of the New South

Wales rail system. That is what the argument has been all about—the government not wanting to give up that additional profit.

CHAIR—Income stream—yes. Thank you very much, gentlemen.

[2.23 p.m.]

LAIRD, Professor Philip Glencoe (Private capacity)

CHAIR—Welcome, Professor. Do you have any comments to make about the capacity in which you appear today?

Prof. Laird—I appear as a private citizen but I have extensively drawn on the resources of the University of Wollongong in the preparation of the submission and the underlying research.

CHAIR—We do prefer all evidence to the committee to be given in public, but should you at any stage wish to give part of your evidence or answers to specific questions in private you may apply to do so and the committee will consider your request. I now invite you to make a brief opening statement and at the conclusion of your remarks I will invite committee members to ask you questions. At the end of your evidence, could you remain on the line for a short while in case there are any matters which Hansard wish to clarify with you. Over to you, Professor Laird.

Prof. Laird—Thank you, Mr Chairman. The central thrust of the submission is that, firstly, land freight is important to Australia. Secondly, rail should be doing a lot more of the nation's land freight task and, because it is not, road is being overworked to the point that Australia has the highest road freight per capita measured in net tonne/kilometres per person in the world. Thirdly, national competition policy is not fixing this problem, which has two parts: poor mainland intercity track as identified by a Senate references committee in 1997 followed by the House of Representatives standing committee on transport in 1998, the Smorgon Rail Projects Task Force this year and the Productivity Commission draft report. In some ways national competition policy is actually making the problem worse and the three following areas come to mind. Firstly, the first CPA tranche compensation payments required New South Wales to reduce their heavy truck annual charges. The amount of reduction was to slash the heavy semitrailers at 42½ tonnes gross vehicle mass from about 8,000 to 4,000 a year and to slash the B-doubles from about 14,000 or 15,000 to 5½ thousand to bring them in line with the National Road Transport Commission recommended or officially determined charges.

In the second area, national competition policy is driving rail to reduce its rail freight rates in areas where it can make a profit, most notably coal. The impact is shown in Queensland. Before, NCP funds were available for mainline rail deviations under both mainline electrification in the eighties and mainline upgrade in the mid-nineties. Now, Rockhampton-Townsville concrete resleepering is so budget constrained that it may have to proceed without any realignment.

The third area is where rail reform has had some positive attributes but one of the unintended consequences was downsizing of the skilled railway engineering base. In summary, the real problem is not so much rail competition—particularly in areas where markets are thin, like less than 10 million tonnes of freight per year on a given section of track—but road-rail competition. The Australian Transport Council, comprising the nation's transport ministers, two years ago agreed that this matter should be addressed as a matter of

urgency and the progress is not inviting, except for the diesel question. Even then it is not the straight-out win for rail, getting rid of that fuel excise. That concludes the summary.

Senator BROWN—Referring to that last sentence of yours about the change in subsidies or the refund of the diesel fuel tax, effectively, the figures I have seen have shown that has actually further advantaged road transport. Have you done an assessment of that?

Prof. Laird—It is my understanding that the coal and grain clients of rail will do well out of the reduction because they will be able to negotiate reductions in rail freight rates from the rail systems, but when it comes to the area of general intercity line haul freight, because road uses energy per tonne kilometre at a rate three times faster than rail, it means with rail going from 35c to zero cents, diesel fuel excise is, say, two units of gain but the road going from about 43c to 20c is one unit of gain multiplied by three. So for the line haul intercity freight I would expect the road freight industry will gain a minor advantage on that contestable market.

Senator BROWN—Is road freight, such as B-doubles, paying for the cost of the roads?

Prof. Laird—No. The primary submission drew on New Zealand road user charges, which are mass distance based, and they showed that if those charges applied in Australia, B-double operators over long annual distances with heavy mass would be paying four times what they currently pay. For heavy semitrailers the ratio is about three. One could say that the New Zealand instance is perhaps high—perhaps too high—but equally well, there is a large body of evidence going back to the 1980s with a series of state and federal government inquiries which showed the road freight sector was not making an equitable contribution to road system costs. So arguably, they are being subsidised; the order of subsidy to the articulated trucks was estimated in a 1988 BTCE report to be over \$1 billion. It could now be pushing \$2 billion per year.

Senator BROWN—Finally, how would you go about trying to work out the incidental environmental costs of either road or rail transport in terms of air pollution, human morbidity and mortality and even the greenhouse gas penalties coming down the line?

Prof. Laird—I think it is an area, Senator Brown, where a lot more research is needed. For example, in 1990 the Inter-State Commission recommended that a study be done of the rail freight externalities, including environmental and social costs. Nine years later your committee may well ask, ‘Where is this report?’ For the road one, some work has been done but I would not call it at an advanced stage at all. In some areas the states have done more, particularly New South Wales, which feels the pressure most.

Senator BROWN—Who was obliged to do that report or investigation? Do you remember?

Prof. Laird—It was a recommendation from the Inter-State Commission that it be done by the Bureau of Transport and Communications Economics. This agency was a good professional agency that was massively downsized in the last three years. It really needs its strength to be rebuilt to the strength of about four years ago.

Senator BROWN—Do you know if that report is anywhere near completion?

Prof. Laird—No. The Inter-State Commission recommended in 1990 that it be done. I have no knowledge of it having been done.

Senator BROWN—Maybe our committee can ask about that.

Prof. Laird—I would be interested to see the answer.

Senator BROWN—All right, we will do that.

Senator MACKAY—One of the key themes which has come through in the committee's deliberations is the lack of clarity on a state by state basis and also intrastate in relation to national competition policy. There has been quite trenchant criticism about lack of coordination, role delineation, education and so on. There has also been some criticism about the role of the NCC and, inter alia, the ACCC. I wonder whether you have any suggestions to address some of these concerns or whether you share them.

Prof. Laird—I share them. In regard to the NCC and land freight, they had some inquiries into rail-rail competition. You really have to ask: what is the point in devoting a whole set of resources to looking at competition on the Alice Springs-Darwin railway line that is not even being built? The other problem with the NCC in this area is that they feel very constrained by their terms of reference, as I understand it, in that they cannot address the much more pressing issue of road versus rail competition for land freight. In a way it goes not so much to the NCC itself but to the terms of reference that it was given, presumably under the competition principles agreement.

Senator MACKAY—In relation to the sense they feel about the constraints on the issue of road versus rail, how were their terms of reference restrictive in that regard? You might tease this out a bit more.

Prof. Laird—It is my understanding regarding the inquiries they have had that the issue of road-rail competition came up in the Carpentaria inquiry, which was the first cab off the rank they dealt with. They did acknowledge it was an issue but it does not seem to have featured much since. I have written to the NCC asking them to look at it more closely. To me the bottom line seemed to be, 'The Productivity Commission is holding an inquiry into progress in rail reform. You are best to address your concerns to this Productivity Commission inquiry.' That I was pleased to do, but I noted that what the federal government departments were saying to the NCC on the issue was quite constrained. In fact, I think they are more open in their submissions to the Neville committee—that is the House of Representatives committee. One has to ask why there is so much emphasis on rail-rail competition and why the NCC is so constrained that it cannot really address the main question of road-rail competition?

Senator MACKAY—I am wondering, Professor Laird, why they believe they are constrained. They have a fairly open charter. I am not sure why they are constrained or why they feel that they are constrained. I am not sure, actually, whether they are, are they?

Prof. Laird—I feel that question would be best addressed to the NCC, or perhaps the ACCC. All I can say is that I did take up the issue in writing with the NCC. They wrote back a three-page letter and the bottom line seemed to be, as I recall it, ‘You really ought to make a submission to the Productivity Commission.’ If I can take that one step further, the Productivity Commission in its draft report on rail reform recognised, in brackets, that you cannot have true rail reform unless you have some road reform as well. It recommended in March this year that there be an inquiry into road provision, funding and pricing. Here we are six months later and where is it? We are now 13 months out from the tabling by the chairman of the House of Representatives committee looking at rail—the member for Hinkler—of the rail report and we are still awaiting a formal response from government.

The Neville committee tabled its report on roads, *Planning not patching*, in October 1997. We have roads which we are now advised are costing this country more than \$7 billion a year, as of 1997-98, plus all the other costs which are of the order of \$100 billion a year when you consider vehicle operation, vehicle purchase, road crashes costing in the order of \$10 billion a year, and noise and air pollution. But here we have a very important report which almost two years later is still awaiting a response from government. This takes me back to the observations of the Australian transport ministers who, in their historic rail summit in September 1997, felt competitive neutrality should be addressed as a matter of urgency. That was two years ago. I believe that your committee would be in a position to ask questions and be in a better position to get answers than a humble academic.

Senator MACKAY—Are you aware whether there has been any approach to the ACCC in relation to the examination of this competitive neutrality road-rail?

Prof. Laird—I am not aware of any approach on that. I am aware of appeals to various other jurisdictions from NCC determinations on rail matters, of rail access or rail-rail competition but I am not aware of any approach to the ACCC on the road-rail issue.

Senator COONAN—I want to pick up a bit on the thrust of your submission where you make a pretty good case for the challenges to road-rail competition. In particular you say that NCP principles have really lent themselves to some pretty awful decisions—I suppose that would be a fair summary. I am looking in your submission, in particular under the heading ‘National competition policy—a Clayton’s land transport reform,’ where you refer to the fact that a report identified 15 public authorities connected with rail operations in Australia—which is an outstanding number. But if you had your druthers—and I realise there are all sorts of constraints and it is not up to you, but nevertheless you can provide a valuable input to this committee and a value opinion—how would you see national competition policy being implemented in a positive way to assist road-rail competition, say, over the next five years?

Prof. Laird—Firstly, as per that submission on page 4, I would seek to have the terms of reference, or the guidelines it operates under, addressed so that it is specifically charged with the responsibility of addressing road-rail competition for land freight. That may need a COAG process to get up. Secondly, we have to say we are on a giant experiment with the disaggregation of rail systems. The Queensland Minister for Transport at a function only last Friday said, ‘We intend to remain vertically integrated and publicly operated.’ Whereas there may have been some push to cut Queensland Rail up or divest some of its functions to the

private sector, there is a case for recognising that it is the strongest and the best system in Australia, offering both freight and passenger services and there is a case for leaving it that way.

So instead of giving government effort to try and push privatisation further, I would try and get the sector more profitable by improving the main line track condition. That needs some rail deviations built in New South Wales and the Adelaide Hills, just as they have built 160 kilometres of rail deviations in Queensland over the last 12 years. I would try and address the question of competitive neutrality for access pricing and then, at the end of the five years, I think the rail asset would not be subject to disposal at a fire sale price but at a better price.

Senator COONAN—Thank you. That gives us some food for thought. You were talking there about vertical integration in Queensland. Can you explain the process of vertical separation? I think you deal with it in your submission. You say it has been rejected in the United States, Canada and New Zealand, yet we adopted it. What is wrong with it and what can we do about it?

Prof. Laird—Firstly, it has had some advantages in New South Wales, which was a very large system before. But in New South Wales it went the furthest, whereby a single rail operator was split into four: one authority to own the track, another authority to maintain the track, a third authority to run freight services and a fourth to run the passenger services.

Equally well you could have a two-way split, like a track owner or a person who controls access to the track and people who run the trains sitting on the track. For example, National Rail runs interstate freight trains—and some intrastate freight trains now too by the way—and it gets track access from other authorities. Theoretically, the model had appeal, but it certainly cost National Rail its chance of making a profit in the current environment and thus depressing its sale price. Although it has helped with some reforms, like shaking up a system which perhaps needed a bit of a shake-up, one wonders whether, if you have a hard look at it, maybe Queensland was right to resist the pressure to split up the system and perhaps Queensland was right to retain its vertical integration. The interaction between, say, the train—the steel wheels and steel rails—is a lot more complex than rubber-tyred vehicles on a road.

Senator COONAN—Thank you.

CHAIR—Thank you very much, Professor Laird. I declare these proceedings closed. In doing so I want to thank everyone who came here today and the senators who attended, and the secretariat for putting together the program for the day. You did an excellent job.

Committee adjourned at 2.47 p.m.

