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## SENATE

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

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

MONDAY, 1 NOVEMBER 1999

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

**Monday, 1 November 1999**

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

**Senators in attendance:** Senators Lightfoot, McGauran, Mackay, Murray 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 9.03 a.m.**

**CHAIR**—I declare open this hearing of the Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy. The committee's terms of reference require it to inquire into and report on the national competition policy, including: (a) its socio-economic consequences, including benefits and costs, on unemployment, working conditions, social welfare, equity, social dislocation and the environment; (b) its 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.

The aim of today's hearing is to examine the operation and administration of the national competition policy, to consider the impact of the policy on the community and the environment, to receive feedback on the issues raised in the committee's interim report and in the reports from other inquiries, and to look for possible solutions. The committee is required to present its report by the last sitting day in December 1999.

All of the witnesses who appear before the committee are protected by parliamentary privilege with respect to the evidence given before the committee. This means that they are given broad protection from action arising from what they say and that the Senate has the power to protect them from any action which disadvantages them on account of the evidence given before the committee. The committee prefers to conduct its hearings in public. However, if there are any matters which you wish to discuss with the committee in private the committee will consider your request. I welcome all the participants at today's hearing.

### Participants

**DAVIS, Mr Robert Brent, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry**

**FELS, Professor Allan, Chairman, Australian Competition and Consumer Commission**

**JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission**

**KERR, Mr Robert, Head of Office, Productivity Commission**

**NETTLE, Mr Rodney Alan, Chief Executive Officer, Australian Local Government Association**

**PLUNKETT, Mr Herbert John, Assistant Commissioner, Productivity Commission**

**RITCHIE, Mr Todd, Director, Economic Policy, National Farmers Federation**

**SAMUEL, Mr Graeme, President, National Competition Council**

**SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission**

**WALLER, Mr Michael (Private capacity)**

**WILLETT, Mr Edward Campbell, Executive Director, National Competition Council**

Session 1—Administration and implementation of the national competition policy

**CHAIR**—We will begin by discussing the first item on the agenda, the public interest test. Who would like to start? Mr Samuel, you look like you are champing at the bit there.

**Mr SAMUEL**—Not at all, Chair. The views that I expressed and which you have actually elaborated on in your report would summarise the position that the Competition Council has. There has been a lot of words written and said about what should be the definition of public interest. You may recall that when I appeared before the committee a little while ago I indicated that I thought the best definition of public interest was in fact expressed in two words, public interest, because that then defies every attempt by those that wish to try and confine the public interest. It defies those attempts and essentially says that the public interest is as broad as it is long, but it endeavours to encompass what the two words suggest—that is, the public and the interests of the public.

Where we have had some difficulties with the public interest test is in two areas. The first is, if I can say, the more sinister area, and that is an attempt by those that I have previously described as having a vested interest to claim the retention of their vested interest privileges by suggesting that they are in the ‘public interest’. One of the objectives of competition policy is to subject those claims to a rigorous, independent, transparent test to see whether, in fact, vested interests are being protected or whether public interests are

genuinely being served by the restrictions on competition that are the subject of reviews under the Competition Principles Agreement.

The second area where there has been difficulty with the public interest test is generally in a lack of understanding as to how it is applied. One of the recommendations which you have made in your interim report and which the council fully endorses and has been urging governments to pursue for some time now, in various annual reports and other documents, is a proper explanation to those that are vested with the responsibility for administering national competition policy—and I am talking about various agencies within governments and layers of government, national, state and local—so they have a better understanding of the way that the public interest issue should be considered. There have been various attempts to do this, but with varying degrees of success.

As we move further away from the sophistication level of governments, as we move down to lower levels of government and particularly into regional areas where there is less direct contact with central government, whether it is at state or federal level, the degree of sophistication in understanding the public interest test tends to diminish, and that then has been reflected in the way it has been applied. One of the recommendations that you do make that we urge upon governments, and have for some time, is that governments should formulate guidelines as to the application of the public interest test and should assist those that are applying that test in its application.

**CHAIR**—Obviously you do have to handle a large number of people or organisations—maybe that should be my first question here. How many people actually do put their hands up and say that it is in the public interest that this arrangement should stay in place? We have picked up evidence around the countryside, and I must say we pick up stranger evidence—with all due respect to my friend Senator Lightfoot—when we go over to Western Australia, because over there there seem to be a few extra problems that competition policy has generated, and I will come to that in a while. But there must be a large number of organisations that come to you and say, ‘This arrangement here is in the public interest to stay in place.’ Obviously, it is in their interest as well. So, judging those two issues must be a very difficult task.

I suppose I should take the example of the Western Australian council, Jerramungup, that gave evidence to us—and I am finally saying their name properly now. They were a tiny little organisation, tiny little council, that I think from memory had a rate base that included only about 800 to 900 people. They were lamenting the loss of road funding and other things, and yet that little community, of course, contributed something like about \$15 million worth of direct exports—generally, through grain harvesting, I presume. Senator Lightfoot would probably know more about it than me. You must get a lot of these applications—do you? How do you determine one from the other?

**Mr SAMUEL**—We do not get a lot of applications because we do not conduct the reviews, but we are very conscious of the fact that governments do get a lot of applications and a lot of what I might describe as ‘ambit’ claims.

**CHAIR**—But you must give advice to government on these, don’t you?

**Mr SAMUEL**—No. The advice we give is more generic than specific. We will attempt to give advice to government as to what constitutes the public interest and how it ought to be examined, but we quite deliberately tend not to be prescriptive in that area because we think the public interest is, as I said before, as long as it is broad just by the use of the two words.

We will endeavour to ensure that where reviews are conducted of legislation—I am only looking at one particular area where the public interest is taken into account—that they are conducted independently and rigorously and transparently. The combination of those three factors will generally tend to ensure that you receive enough material from interested stakeholders that presents the genuine public interest as distinct from material being received from vested interests that are purporting to represent the public interest.

Let me not also leave the suggestion that those who might be affected by a reform should be treated with cynicism when they raise it in the interests of the public. There are many cases where those who will be affected by competition policy reform may have a vested interest but that vested interest may genuinely reflect the public interest as well. The important element, I think, is to test all the factors, without actually taking a particular case study, in each particular case and saying, ‘Is this genuinely so? Are you genuinely protecting the public here or are you protecting your own particular interests?’

We have had this issue of competition policy raised in a negative sense, particularly in the last 12 or 18 months. As we know it started around June last year coincidentally with an election that took place in Queensland. As a consequence of that, competition policy became very quickly—almost like a tidal wave—the whipping boy, and the issue of the public interest suddenly raised its head as well. Suddenly government said, ‘We are now going to start to apply the public interest.’ Our response in a non-political forum was to indicate that we thought the public interest should have been applied right throughout the process of competition policy.

More importantly, we need to remember that the public interest test has been around with us for about 24 years. Back in 1974, Attorney-General Lionel Murphy introduced the Trade Practices Act which said exactly the same thing in principle that the 1995 competition policy said. In 1974, the Trade Practices Act said that arrangements, agreements, understandings and practices that are anticompetitive are outlawed in part 4 of the Trade Practices Act unless you can demonstrate—and I am putting this in very general terms because I do not want chairman Allan Fels to pick me up on the specific wording—that there is overwhelming public interest for their attention and for their authorisation. That has been the test in the Trade Practices Act since 1974.

All that the Keating government did in 1993-95 was to say that there is a section of the Australian economy that has not been covered by the Trade Practices Act. Why is it so? Why is it that they have been exempt? There were constitutional reasons, as we know, because there were some sections that were not covered by the Trade Practices Act, which is Commonwealth legislation. These were unincorporated businesses operating within the confines of one state and they were exempted.

Another group that was exempted was government businesses. They were not covered by the Trade Practices Act. Then there was a third group of exemptions which were those specifically exempted under section 51 of the act through state regulations and legislation. For the greater part, that last section of exemptions—those exempted by state legislation and regulation—secured their exemption soon after 1974, not by going through a rigorous public interest test and the authorisation process that Professor Fels administers, but actually doing it by lobbying governments. They were specifically vested interests that lobbied state governments at the time and secured exemption. You might well ask why, and the cynics might suggest that the reason they secured exemption by that process through state governments was because they were not prepared to subject themselves to an independent, rigorous and transparent public interest assessment through Professor Fels and his predecessors in the Trade Practices Commission.

All that competition policy has done is to basically say that that section of the economy ought to be subject to the same tests, in effect, the equivalent of authorisation in broad form under the Trade Practices Act, as is every other section of the economy. In one sense, I think that if governments appreciated that this is really what competition policy is all about a lot of the angst that we are currently experiencing might disappear.

**CHAIR**—While I am generally seen as a cynic, I was going to toss out the thing and say it has gone to government, to state government and to local government—and I guess the next organisation is SOCOG but you do not have to give an answer to that. Professor Fels, would you like to add anything to that on the subject of public interest?

**Prof. FELS**—Thank you. I had just been set to pick up the latter part of Graeme's comments. If you do not mind, I will almost repeat what he said for a minute and then add a couple of points. When we introduced the Trade Practices Act in 1974 there was debate about whether we use the so-called US model or a European model. In the US, the model basically prohibits anticompetitive conduct, full stop. There is no qualification. If it is anticompetitive, it is prohibited, end of story. It was decided, however, that in Australia, in recognition of the small size of our economy, and also in recognition of the fact that there can be offsetting social factors, the act should be structured to have a public interest or public benefit test.

The underlying structure of the Trade Practices Act is that it prohibits certain sorts of anticompetitive conduct in the private sector. However, it also says that if parties are proposing to engage in anticompetitive conduct, they can seek authorisation on the grounds that the public benefit would exceed any detriment to competition. I just digress to mention that the term 'public benefit' and the term 'public interest' for these purposes are pretty much the same.

The act has a clear stance of prohibiting cartel behaviour, misuse of market power, exclusive dealing that is anticompetitive, resale price maintenance and mergers that are anticompetitive. However, parties can apply to the ACCC for authorisation on the grounds of public benefit. They have to satisfy the commission that the public benefit would exceed the detriment as a result of the behaviour being anticompetitive. They have to apply in advance of the behaviour. They cannot just do the behaviour and then, after it is detected, claim that there is a public benefit from it. And they have to satisfy the commission. So there is a bit

of an onus on them to show why we should not stick with the competition approach. They have a right of appeal on these decisions. Indeed, anyone has a right of appeal on authorisation decisions to the Australian Competition Tribunal, which is a body headed by a judge. Usually it also has a business person and some kind of economist on it. And quite often our decisions are appealed.

The process is a very open and transparent one. That is, if someone seeks authorisation we have to advertise that fact and we have a fairly public process for judging whether or not someone should be effectively exempt from the provisions of the Trade Practices Act. That is the effect of giving an authorisation. Over the years there have been a lot of cases where authorisation has been granted. They cover virtually all the forms of behaviour that I have mentioned. They are particularly prominent in mergers because firms often say that they are too small in Australia. We can have a lot of firms and so sometimes the argument carries the day. But it extends into a whole lot of other areas as well as this authorisation process.

There is quite a lot of case law on this subject. There have been several hundred reported decisions by the commission and the tribunal about what is meant by public benefit. The commission and the tribunal have that problem, which has already been discussed this morning, about sorting out the valid and the invalid types of argument for public benefits, since everyone invokes this argument always. The problem is how to distinguish.

Historically, the greatest and most contentious areas for seeking authorisation have been in relation to mergers by big business and also some other anticompetitive practices by big business—for example, oil companies tying service stations, car companies tying dealers, and so on. So a lot of the cases have been fought out in pretty much of a straightforward economic setting. In more recent times, with the act having been extended to cover some new fields—for example, areas of agriculture—we have had more authorisation cases which have raised wider issues than just the straightforward kind of issues that you can imagine coming up in a merger.

In particular, we have had quite a number of primary producers seeking authorisation for anticompetitive behaviour. The commission has tried to take account of the fact that it is a little different for them. I will give you a few examples. Perhaps I could start off with the wine growers, the suppliers of grapes to the big wine companies. For many years, in different parts of Australia, they had a degree of protection under the law for the growers getting together and agreeing on their prices and what they would do to supply the wine companies and so on. There is this fairly elaborate set of laws about the subject.

In a previous capacity, I used to have to arbitrate some of these disputes about prices and I found the law was a rather odd one, like a lot of laws, in that it did not, all that effectively, protect the wine growers as fully as they hoped, but it gave them some help in bargaining against powerful wineries. With deregulation, governments started getting rid of this form of law and the growers came to us and said, 'We would like to continue something fairly similar by agreement amongst ourselves, but we are concerned that it would be seen as price fixing behaviour by you people, so we seek authorisation.' The commission said, 'Okay, we'll give you authorisation, but it must not be just a total reproduction of the old arrangements. You have to make a bit of progress. But that doesn't mean that we would just leave you to bargain one by one, each grower bargaining with the wine company.'

Accordingly, they were given authorisation to have talks amongst themselves about price, to arrive by agreement amongst themselves as to what would be an appropriate indicative price for each class of grape when they were bargaining with the wine companies. So the commission came up with a formula which stopped short of the old price fixing but went a fair way to meet the wishes of growers. They get together and they talk about price. They can also talk with the wineries about their prices, but they have not got a binding agreement. And, in particular, they cannot do a boycott of the wine companies. If the wine companies say, 'This price is not on', the growers are not authorised to go out and have a strike.

We have had some similar arrangements. I will briefly mention a couple of others. We had the tobacco growers, mainly the ones in Queensland who sought an authorisation when they started to deregulate the tobacco growing arrangements. For some reason, the growers wanted to continue with the identical system that they had protected under the law until there was deregulation. The commission knocked that back because it thought that the purpose of the deregulation was to make the arrangements somewhat more market oriented. However, soon afterwards, the growers came back to us with another set of arrangements which do involve collective bargaining, but which were acceptable. What ended up happening was that, instead of bargaining collectively across the whole industry so that they presented a united front and an agreement to the three tobacco companies combined, they more or less have got what you might call an enterprise bargaining arrangement, where they each get together and bargain collectively one by one with the companies. The growers that supply, say, Philip Morris would get together and bargain collectively with them; the ones that deal with Wills or Rothmans, now Imperial, all get together and bargain with them and there are some elements in the arrangement.

We have had similar dealings with the chicken growers, the egg farmers and some others. The aim is to allow for collective elements in their approach, but to make it a bit more market oriented. We recognise that there are some benefits in transition in people proceeding in that way rather than having the plug pulled on them, rather than just saying, 'There has been deregulation and each farmer on his or her own has to bargain one by one with relatively powerful buyer groups.'

As the act has extended more widely, we are expecting more cases of this sort to arise. In other words, in the period 1974-95, the act was very heavily about straightforward economic questions. Big business wanted something. They might apply for an authorisation. It was looked at as an economic question. These days we are getting more authorisations in the new areas to which the act applies—for example, the health sector. With the health sector, we have also had some applications for authorisation. We have gone along with some of them, but with others we have thought that the anticompetitive effect and the damage to the public is too great to allow them to occur.

In South Australia we had a contentious matter involving the Australian Medical Association seeking an authorisation for the country doctors to collectively bargain over how much they were paid by the public hospitals. We granted a continuation of that old scheme for about only an additional year, but we were not prepared to see it go on forever. We had a fairly open mind on this matter. Obviously, there are problems about getting doctors into country areas, and if someone comes up with a system to fix that, then obviously everyone

would be very happy with it. But the scheme proposed by the AMA had the opposite effect to what was desired.

What happens with South Australian rural doctors is that, basically, there are two areas which they serve. One is the Barossa Valley and the other is the real outback. You would probably be absolutely astonished to know that there is a surplus of doctors willing to work in the Barossa Valley. Indeed, they are fairly close to the city, and most of them can pick up additional income by combining their practice in the city and in the Barossa. There is another group that serves in far more remote parts of South Australia. The AMA has always wanted to collectively bargain simultaneously for both and get identical pay rates in the two areas—essentially; there are a few complications. What was happening was that they were bargaining for rates which were too high for the people in the Barossa but not enough to get people to go out into rural parts of South Australia. Also, because they presented a united front, the South Australian government health department had no opportunity to come up with what seemed like a more sensible policy in which they related the wages and salaries and other forms of remuneration to supply and demand and shortages and so on in different parts of rural South Australia. There was just a blanket rate, and people had to sit back and accept it. Once the authorisation was rejected, they had been able to have a look at trying to bargain in a more discriminating fashion to get the right incentives at work. Having said that, we accept that there are cases in the health sector where they will get some authorisation on public benefit grounds.

Another matter is how we assess benefit and its relationship to competition. Here I would like to drop back to a slightly more familiar area which is in the core economics area—say, when a merger is presented to the ACCC for authorisation. There is a link between competition and public interest. Supposing you have two firms competing in an industry, there is no externally generated competition and they merge. In the early days of the history of the Trade Practices Act, they would typically approach the ACCC and say, ‘We admit this merger will make us a monopoly instead of a duopoly, but let us put that to one side and just consider the public benefit.’ They wanted to separate the competition story from the public benefit story. They would then say, ‘As to public benefit, if the two of us get together there will be economies of scale, we will save on costs and therefore there will be some benefit.’

To us, the two questions could not be separated like that. If they were going to be a monopoly, it would be less likely that the benefits of the cost savings would be public benefits, would be passed on or would even be realised because they would not be under any competitive pressure to deliver on the cost savings. We always think you have to assess the benefits in the light of the state of competition. Some mergers are very clear: there is hardly any anticompetitive effect, there is a big benefit and, because the industry will remain fairly competitive after, the benefits will be realised. With others, there is not much benefit but there is a big anticompetitive effect and any slight savings will not be passed on. I just mention that we see these matters as somewhat connected.

**CHAIR**—Would any other participants like to add anything at this stage? One of the key questions we are coming down to is whether or not we add everything up in terms of economics. Professor Fels has just given us some examples, particularly the South Australian

medical example, where you have a number of social outcomes that also have to be considered. Perhaps some of the other participants would like to join in.

**Senator MURRAY**—Mr Chairman, before they do, I wonder if I could put forward some ideas?

**CHAIR**—You certainly can, Senator Murray.

**Senator MURRAY**—I want to get a perspective on some other thoughts. It seems to me that the difficulty the NCC has had is, in part, because of the way in which its task differs. For instance, I have thought the primary concern of the ACCC has been private sector activity and much of the concern of the NCC has been public sector activity—switching gas, water, electricity and so on to more competitive practices. I wonder how that differentiates the public interest analysis and what the consequence of that is.

I am also drawn to the view that the Trade Practices Act has 25 years of experience, has, as Professor Fels has outlined, hundreds of cases of case law and has much international precedent to go on. It is very helpful when you are dealing with mergers and so on to evaluate those sorts of things. It always strikes me that, with the judicial system, you could, in theory, have as many opinions as you have judges, although over time they view laws in such a way as to arrive at some consistent view. I have wondered if the lack of sufficient case law for public sector competitive activity, the lack of anything but recent precedent—the whole privatisation/corporatisation competitive change for the public sector worldwide has been relatively recent, over the last couple of decades—has affected the public sector area.

The third general comment I am looking for in terms of feedback—and Professor Fels rightly picked up on it—is the collective versus the individual. It has struck me—and I have been very interested recently to compare the Industrial Relations Commission with the ACCC and ASIC in terms of philosophy and background—that, in labour relations, we have long accepted the floor concept—the safety net concept—and the collective ability to deliver a minimum set of living standards, wages and conditions. Yet somehow that same philosophy does not often intrude into the view of, say, the ACCC or the NCC as to what should be a minimum social or public return.

There is not the same perception in the labour versus capital kind of argument. We have all got the collective versus the individual in mind and all the tensions that exist, but there is not that same sort of view, it seems to me, in trade practices and competition policy activity. These different policy expectations and these different philosophical underpinnings I think result in some antagonism or confusion or aggression from society which is used to being dealt with in one way as labour components in the labour market but, when they shift into other forms of business or private sector activity or even public sector perception, there is a different philosophy and rule. I would remind you all that many small business people in fact come out of the trade union movement, not out of other areas.

I think those three things—private sector versus public sector, case law and precedent over a lack thereof and collective versus individual—are things I would like to know how the panel people reflect on in terms of the public interest test.

**CHAIR**—Did you want that directed at any particular panel member?

**Senator MURRAY**—I do not mind, but I think that is at the heart of much of the problem we are experiencing in assessing this stuff.

**CHAIR**—We will come to you in a while, Mr Davis. I understand you want to make a contribution. We will go to Mr Samuel for that response to Senator Murray.

**Mr SAMUEL**—Thank you, Chairman. Senator Murray, you have raised a number of very deep philosophical issues in, I might say, some areas where there might be some misunderstanding as to the respective roles of the ACCC and the NCC. Indeed this dichotomy between the Trade Practices Act and competition policy I think is worth discussing.

The ACCC is vested with administering some legislation which is currently in place. The legislation regulates conduct between business entities. No longer is it simply confined to private sector business entities, it also relates to public sector business entities in a range of areas, not only under the general provisions of part IV, but now also under some of the more specific provisions, for example in the areas of telecommunications.

But the ACCC is fundamentally concerned with collusive, anticompetitive behaviour or abuse of monopolistic power by those that are operating in business in one form or another, whether in the private or public sector. The NCC's dealings are primarily with governments because the NCC has been vested with the role of roping into the ambit of the principles of the Trade Practices Act of competition those sectors that were excluded before. Essentially they were excluded or exempted before by either constitutional processes or by government legislation. Therefore the NCC's role is to deal primarily with governments in working through the process of reform to remove those exemptions, whether they were exemptions because they were government businesses or exemptions that were brought about by specific government legislation, and to rope in those businesses within the broad ambit of what Professor Fels is administering under the Trade Practices Act. That is the primary difference between the private and public sector roles of the NCC and the ACCC.

The years of experience that we have had with the Trade Practices Act ought to automatically flow over into many of the considerations, particularly in the public interest area, that need to be considered in the context of the work that we do and the work that governments need to do under competition policy because, as Professor Fels and I have indicated previously today, what we are dealing with is a public interest or a public benefit test. Both of us I think have indicated that the differential in wording between benefit or interest is purely nominal and that the substance of the tests is the same. It is the same test that applies but it is a test that requires a consideration of broad community benefit, rather than narrow vested interest benefit.

It has always been of some interest to me to note that, as Professor Fels has explained, we actually have a two-tiered relief valve in this reform process. We have, first of all, government sponsored reviews. Government sponsored reviews are those reviews of anticompetitive regulations, restrictions or structures at the moment, which must be examined

on the presumption that the anticompetitive restriction should be removed unless it can be demonstrated that there is an overwhelming public benefit or public interest in its retention.

The process of those reviews is, as we have said on many occasions, to be conducted independently, transparently, objectively and rigorously. Those reviews have the capacity to examine all the options and to examine all the issues of public benefit that have been established in case law, in practice and in commission decisions through authorisation processes over the past 25 years. You have got all the capacity to do that and you should, in fact, do it. They involve considerations, not only of economic issues, but also of social issues. Indeed, the Competition Principles Agreement in clause 1(3) lists only one economic issue, that of economic efficiency, amongst the seven, eight or nine—I forget the exact number—issues that need to be considered where relevant and where appropriate in the area of public benefit assessment.

The others, as you will know, relate to employment issues, ecological issues, environmental sustainability, occupational health and safety, social welfare, equity considerations, regional employment and regional development. There are a whole lot of issues there that are listed and they are not exclusive. They are inclusive. Social issues and social relevance is very much a part of competition policy and ought to be applied with all the wealth of experience that has been developed over the past 25 years in the administration of the authorisation of public benefit and public interest tests. It is a very similar test; it is a mirror type test.

I mentioned there is a two-tiered relief valve, because the first relief valve in reform is that transparent, independent, objective assessment conducted under a government sponsored review. But interestingly, as Professor Fels has pointed out, once a review has been undertaken and has recommended, if it does, and a government has implemented, reform that leads to deregulation, as Professor Fels has described it, if that leads to removal of the anticompetitive restriction, there is still then the capacity to go to the ACCC with an application for authorisation of a voluntary collusive arrangement. Again, the same transparent, independent, objective analysis will take place considering all the public interest issues—and they ought to be the same public interest issues considered by the government sponsored review—and there is the capacity for the ACCC to issue an authorisation.

We actually have a two-tiered relief valve and, if you like, there is a third relief valve, which is that if the ACCC proceeds to deal with that authorisation process in a way that is not accepted by one of the parties, then there is a right of review before the Australian Competition Tribunal, where the same issues are considered yet again so, if you like, we have a three-tiered appeal process.

But there are common factors amongst all those processes and they are independence, transparency, objectivity and the necessity to consider fairly the public interest. You might wonder with those three-tiered appeal processes why we have got all this fuss. What is the problem? Why are people objecting? I suspect, Senator, without wanting to be too cynical about it, that they are objecting to the fact that all three processes involve independence, transparency, objectivity and a rigorous assessment. If you have got that as one means of dealing with an issue and the alternative is to go through a less transparent, a less objective and a less independent process of political lobbying, then there are many with vested

interests that will take the latter route rather than the former route with its three levels of appeal that are currently there and are as described by Professor Fels.

Part of the difficulty that we are facing at the moment is that there are a number of groups out there that are starting to feel that governments may well, under this process, go through the process of independent, rigorous and objective review of their practices to determine whether they are in the public interest. These groups do not believe that they can pass the first test of a government sponsored review, a second-tiered appeal via an authorisation application to the ACCC or a third-tiered appeal of an ACCC's decision through the Australian Competition Tribunal. They figure that to go through those processes and fail, if they believe they may, is not worth the effort when, in fact, it may be far easier to secure an exemption by some political lobbying process that is outside the independent, rigorous and transparent system that I have just described.

I think I have covered the issues that you raised about the private and public sectors and the 25 years of experience. Let me finally cover the issue of collective versus individual. The essential element of competition policy is to remove the element of compulsion. It says that no longer are you to be compelled to collude, no longer are you to be compelled to engage in anticompetitive behaviour, no longer are you to be compelled to take advantage of an anticompetitive restriction. Henceforth, if those legislative privileges are removed, it is now voluntary.

The process that Professor Fels has described is one that arises when those that have had the compulsion of legislative mandating of anticompetitive behaviour now have to proceed along the voluntary route. Do we voluntarily wish to collude and, if we do, can we justify it on public interest grounds before Professor Fels and the ACCC? The issue then is: if you remove the compulsion, why are people not proceeding along the voluntary route? There are two answers that generally arise when you put it through a cross-examination. The first is that many do not believe they can justify the voluntary collusion before the ACCC on public interest grounds. The second is that—I have to say this is the most common answer you receive—although we think the majority will want to voluntarily collude, there is a group that will break out because they can see an advantage in entering into true competition. If there is a minority that does break out and enter into its own voluntary competitive arena, we think that more may wish to break out and enter into competition. We think that the whole voluntary process that we are describing to you may break down entirely as we enter competitive markets.

If I compare it with the issue that you described, Senator Murray, or the parallel that you drew in the labour market, one of the most vigorous issues and debates that occurred in relation to the labour market was the issue of compulsory versus voluntary. Was it appropriate that there be a degree of compulsion to join a collective bargaining arrangement or a collective workplace arrangement involving a union, or should it be voluntary? One of the most vigorous debates occurred because the industrial reforms that were introduced of more recent times have moved away from compulsion, howsoever imposed, to a voluntary process. Those that opposed that reform were concerned not so much about whether compulsion or voluntariness was the appropriate process but about whether those who were faced with the choice of voluntarily belonging to a collusive process—I describe it as a collusive or collective process—wanted to join that or whether they would exercise their

right of free choice to go down a different route. We have had this in so many areas of review of anticompetitive legislation—

**CHAIR**—Mr Samuel, could you please shorten your answer a bit.

**Mr SAMUEL**—I will finish by saying this: we have had this in a number of the competition policy reviews, where vesting arrangements in terms of primary produce are removed as part of deregulation. The option still exists for producers to then proceed down the voluntary collusion route, but it is soon found that there is not an awful lot who want to proceed down the voluntary route, either because they do not believe they can justify it on public interest grounds or because they think there are greater advantages in proceeding towards a normal, free competitive market.

**Mr DAVIS**—Competition policy is something that has been of great interest to my organisation for almost a decade now, from the early Hilmer days through to today and for the foreseeable future. From our perspective, this often comes down to two issues. I will not rehearse what Professor Fels and Mr Samuel have said because they have covered much of my domain. It comes down to two issues: exemptions and exceptions, on the one hand, and transparency on the other.

Ultimately, the public interest test is an exemption or exception—it is as simple as that. We can apply the Competition Principles Agreement, the Trade Practices Act and the various other provisions around that guide us. You could go down an economics line and come to a view; you could go down a legal line and come to a view—because often competition law and policy is just that: it is the mix of economics and law. I must say they are not natural bedfellows; there are tensions between them. It is ultimately about an exemption. Under what circumstances do we allow an exemption? Under what circumstances do we allow an exception? Under what circumstances do we sustain a special treatment for someone? And an analytical approach will take us to a different view.

Ultimately, Mr Samuel, Professor Fels and their teams are being asked to say, ‘The decision, in an adequate legal framework, will take us in this direction.’ However, under what circumstances do we say no, do we qualify it and take it in the other direction entirely or bring it back? That is the nature of the argument from our perspective. Of course, as we all know and as Mr Samuel has been trying to point out, we have to be careful with exceptions because the exception can become the rule. All exemptions and exceptions are inherent threats to the integrity and rigour of any system. The broader they become, the more the exception becomes the rule.

The second component is transparency. How transparent is this whole process? Professor Fels is quite right, as is Mr Samuel: most of their processes are fairly transparent in assessing the public interest at the national level. But, of course, competition policy is not just a national level issue; it is the responsibility of the state governments, and the local governments are not unimportant players either. So how do we get transparency in this? Mr Samuel touched upon the various indicators—they are not tests, they are more indicators—which our competition authorities and others use to implement NCP processes. The indicators are very wide and they are quite good. I have got a few of them here. We did a count. There were 23 of them, but they distilled down to about nine or 10 when you take

account of overlap and similarity. They are: interest of consumers, ecologically sustainable development, consumer welfare, equity, industrial relations, OH&S, employment, investment, efficient allocation of resources, competition, economic development, business efficiency, industry rationalisation and industrial harmony.

That is an exceptionally broad space in which anybody could create almost any argument, so we have to ensure that, when we apply those, we have a very clear idea. Fortunately, in Australia we adopt a rule of reason approach in law to assess these things. We do not slug it out in the courts, as does the American model. We ask our competition authorities, Mr Samuel and Professor Fels and their teams, to adopt that rule of reason approach. That is never easy, as anyone who has studied the American jurisprudence on this will tell you, but we think they do it better than most. But, again, how transparent are they? The more the efficiency arguments are asked to be discounted, the higher that threshold of public interest has to be, because ultimately we are trading off public interest against efficiency. So, obviously, if we have a compelling argument on efficiency or competition grounds, then that public interest test has to be more persuasive. I think that is important.

To wrap up my remarks, I would say that it is never easy to implement a public interest test. We are taken by Mr Samuel's view—as we often are—that, when that is allowed, it really has to have the highest possible degree of transparency and analytical rigour. We do not want to see it as a miscellaneous escape clause. It really has to be a compelling argument, especially when the efficiency arguments—which is what competition is about—are being asked to be set aside or devalued for that purpose.

**CHAIR**—Thank you, Mr Davis. Mr Nettle, as a representative of one of the tiers of government, we should go to you next.

**Mr NETTLE**—We have 704 governments out there who define public interest in their own peculiar ways; it is generally with respect to the interests of the communities that they serve. They have not been listening to the discussions this morning. I am very much on Brent's side regarding the requirement that public interest show some benefit, with a rigorous, analytical exercise to show the benefit of the behaviour that is being undertaken.

When it comes down to 704 local government areas, it poses some interesting questions—these have been raised since the national competition policy has been in place—of how the public interest is measured. It has been doing the rounds again with the closure of banks and other activities in local government areas, not that that has anything to do with competition policy. Particularly in regional areas, as activity diminishes in a community, the services that are being provided in that community also tend to diminish. Banks will close because there are fewer people there using those banking services; you lose that, then you lose the garage and so on.

I do not think I am providing a great deal of assistance here. I think we have to define really what we want. This came out again last week at the regional summit in Canberra where 280 regional representatives had a lot to say about national competition policy and the supposed evils it had done to its own communities. Really what they were saying was that their communities were diminishing in size, in strength and in services as competitive activities took place, not all of which were to do with national competition policy.

If we go back to the question of what we are dealing with, which is the public interest test, when a public interest test says you will not undertake that activity in that community, and the result of not undertaking that activity in that community is the loss of population or loss of services in a particular community, has the public interest been served?

To finish off, I will go back to Brent's point on that rigorous analysis that needs to take place, particularly in a regional area, as to whether the public interest is being served by the fact that your telephone bill this year is \$10 cheaper than it otherwise would have been but you lost the bank as a result. It is not drawing a long bow at all. You could run a general equilibrium model over regional communities and you could see how those things in fact happen. My only urging would be, particularly in relation to the public interest test, to look very broadly at the public interest of the communities. We have not yet made a decision in Australia that would close down regional Australia. Until we make that decision we as a body have to fight to help those communities strengthen and grow as much as we can.

**CHAIR**—Thank you. There are a number of participants here who have not yet contributed. I want to give them the opportunity to do so. We also have some senators here who are eager to ask some questions. What I think I will adopt as a process is to go around the table and get the different organisations to contribute up to date. If any of the senators have any key issues then they should feel free to jump in. With that, we will go to you, Mr Ritchie, from the National Farmers Federation.

**Mr RITCHIE**—Thank you. There is not much I can add. I am glad that somebody has spelled out the public interest test for me because I have been confused and I have spent a lot of time trying to ascertain, as I understand you are here in this inquiry, why people seem to be upset about the fact that public interest is not taken into account. I have done, admittedly, a very small straw poll of our members through some of our state farm organisations. The bottom line is that none of them could ever point to one example about where they saw a public interest test applied in a national competition policy review, with the one exception of the Queensland dam. Everybody is well aware of that one. The thing that made them angry about that was that the only factor that seemed to be taken into account in the public interest test there was environmental concerns.

We can all sit around here and discuss public interest tests and how they should apply factually. What I am saying to you is that out there in regional Australia and amongst our members nobody is aware of any situation where they have had a positive result as the result of the application of a public interest test. If it is happening, there is an education program that needs to be done.

The other aspect I would like to add to any public interest test is that there should be an analysis of the marketing chain through which the variety of products that are under discussion exist. I will keep these remarks short. We only really need to look at dairy deregulation and the impact of that on the final price paid by consumers. It would seem to me that we did not have a reasonable enough analysis of the various marketing chains through which the product went from its raw form to process form.

Finally, I note that I was surprised that regional considerations were not on Brent's list. If we are going to have a public interest test we have to make sure it is done at a regional level because sometimes a national level public interest test is just not relevant.

**Mr DAVIS**—They were on my list; I just omitted to mention them. My apologies, Mr Chair.

**Mr RITCHIE**—I am sure they would have been.

**CHAIR**—Thank you, Mr Davis. Actually the dairy industry is an interesting one. Later I would not mind somebody commenting on how come, after the deregulation of that and baking, the consumer out there is paying an awful lot more for the same product.

**Mr SAMUEL**—The short form, Chairman, is because you have not got deregulation.

**CHAIR**—There has been deregulation in South Australia in the baking industry for some 15 years now, and a loaf of bread is now approximately 230 per cent more than it used to be.

**Mr SAMUEL**—We can talk about that when you think it is appropriate, Chairman.

**Mr WALLER**—I would only offer three remarks. I come from a slightly different perspective in the sense that what I am really interested in is that there are some really interesting parallels between the debate and the problems that we are facing here—some of the issues around development economics that I have to grapple with when we think about some of our developing country proposals, when we are developing mines and other facilities in less developed countries. What do I mean by that? I think the problem that the ACCC but particularly the NCC and state governments are now grappling with is moving into an area of measurement which actually we are not terribly well experienced in dealing with. What do I mean by that? What has happened as a result of the competition policy changes in Australia—which I fully support, I have to say—is that we have unbundled a whole set of tacit arrangements and agreements that hitherto had never been examined in any great detail. And bundled in those arrangements are in fact two quite separable issues: one is issues of economic rents and how they are distributed. In a sense that is the currency in the debate which is most familiar to all of us who have worked in government, the language of economics and particularly the language of allocative efficiency which rarely, over the initial period—Professor Fels will tell me if I am wrong—was the undenied foundation of the trade practices idea, the idea that what you are looking at is allocative efficiency across the whole economy, looking for the greatest debt benefit for the greatest number.

That does not actually say anything about distributive impacts of what one is trying to do, and it is partly the question of distributive impacts where you get into quite difficult issues of social choice around widely distributed benefits and more narrowly distributed penalties as a result of reform. Generally speaking, those will actually be positive and I support them, but I think what we are hearing around the table and is reflected in your report is that there is also an issue of social effects which are not actually easily measurable only in dollars. This is a relatively new field; it is one we struggle with, as I say, when we are thinking about development in our own projects overseas.

One that I can readily draw to your attention is the question of the value of a culture when you are introducing a new economic system or a new project into a remote area. It is very difficult to actually value the loss of, say, the local culture versus the economic benefit. To some extent that is the debate that is going on around rural and regional Australia at the moment, and it is a very difficult one. So the measurement and analysis of the economic benefits and costs versus this broader social issue is a real methodological problem and, if it is something that the committee could actually help with, then I think it would help improve the quality of the evaluation that is going on at state level, which I think is a fairly new area.

The other related issue there in terms of measurement is the whole question of cumulative impacts. What I think you are seeing in rural Australia is not the first-round effects of particularly competition policy; you are seeing the cumulative impacts of a whole range of changes that are taking place both in the Australian economy and globally. To try and separate out the impact of what Graeme Samuel's agreement is all about from all those other aspects is actually very, very difficult. In a sense I think it is the state and territory governments' responsibility for covering all those issues, but again I think they have got a difficult problem in the sense that the methodologies are not very sound.

Finally, I think there is a problem of incentive systems. We have a system which was deliberately put in place under the NCC arrangements where there is, if you like, a carrot and a stick associated with reform in Australia associated with the NCP, and that is the payments for structural reform. Their intent is actually to deal with some of the issues and the problems created by bringing competition and unbundling some of those arrangements. What I think is happening, however, is that it does not necessarily follow that the moneys that are allocated at the high level flow to those who are bearing the cost of adjustment. I suppose that may well be an issue that, as part of your review and part of the NCC's review, the governments might want to look at rather carefully because, again, it goes to this point about the distribution of both costs and benefits.

In summary, it is a difficult area. There are problems of methodology, there are problems about the practical application of the policy. Underlying all this, I would say that I think that, in net benefit terms, the national competition policy arrangements are of major value to Australia in meeting the problems it faces globally. Thank you.

**CHAIR**—Thanks very much. The Productivity Commission.

**Mr KERR**—I will lead for us. I am going to make two principal comments relating to the difficulties of the public interest test. One is the difficulty in understanding it and the second is the difficulty in its application. But, first, it might be helpful if I mention briefly the Productivity Commission's involvement with NCP because, unlike in the cases of the NCC and the ACCC where their involvement is relatively obvious, ours might not be quite so obvious to the committee.

Our engagement with NCP issues is in four different ways. One is when the Commonwealth government gives us a particular commission to look at aspects of NCP matters. The principal example of that is the inquiry which we have just completed on the impact of competition policy in the bush, which is now public. The second is when we are given specific reviews to undertake, of the character that Graeme Samuel has been referring

to—that is, transparent and independent reviews. Perhaps the most notable current example of that is the review we are doing of broadcasting legislation, where the draft report has just been issued.

The third role we have is as the Commonwealth's competitive neutrality complaints mechanism. That is a topic for discussion later in the day. The fourth role is as an ongoing commentator on national competition policy, both *ex ante*, in the sense that we provide some advice to agencies before reviews of particular anticompetitive legislation are undertaken with respect to terms of reference for those reviews, and *ex post*, in the sense that our general legislation asks us to comment on productivity and assistance issues in the economy. You will find in our annual reports comments on these things.

I will turn now to the two difficulties that we perceive with respect to the public interest. The first is difficulty in understanding. In a way, a lot of this is revealed by our recent inquiry, and my colleague Herb Plunkett will give a few examples, if you like, of difficulty in perceptions about the way the public interest test might work. One particular point I might make—and this is in response to Senator Murray's question about the lack of case law, for example—is that one of our suggestions is that governments provide some case studies to assist future reviews as part of a package of proposals to try to explain how the public interest test applies.

The difficulty in understanding is also revealed by some of Graeme Samuel's points, and that is producer/consumer perspectives on policy changes that might take place. It is Melbourne Cup week, so it is appropriate to say that self-interest is always pulling hard in the race and producers' interests are usually fairly easy to come forward. For example, in the broadcasting review that we are doing we have had absolutely no difficulty at all in receiving views from producer interests. Consumer interests are less easy to get hold of because, by their very nature, they are more diffuse, and consumers may not perceive how their interests are being affected by, in some cases, indirect effects through competition and price changes over time. So it is not surprising that these things are difficult for the different parties to get hold of.

With regard to the difficulty in application, there are two particular aspects of that that I might flag. One is boundary problems. There is an increasing tendency in public policy analysis to try to bring out issues of subsidiarity in analysis so that the interests of communities that are most directly affected by changes are clearly identified. The dairy example which you mentioned might be a case where the calculus of national interest and the calculus of a particular regional interest do not necessarily coincide if changes are induced by policy changes. If there are net benefits overall that is not to say that there will be net benefits in every region. I think that is a difficulty in the application of public interest.

Similarly, although this is a little bit harder to give a particular example of, you might conceive of differences over time in the calculus of benefits. People might have different preferences as to when benefits are received. Although early losses, early difficulties, may be in time overtaken by later benefits, people may quite properly have different perspectives as to how important early adjustment changes are *vis-a-vis* later benefits as they arrive. So the calculus over time is difficult.

I will finish by saying that good analysis can help but I do not think even the most rigorous analysis necessarily will simply reveal an agreed public interest outcome. Sometimes these things are simply matters of judgment, and judgments that need to be exercised by our elected representatives. The particular example I have in mind there is in the draft inquiry I mentioned, on broadcasting, where we have been grappling with the issue as to how public interest is to be thought of there. Clearly, it is not simply an economic calculus. Our draft suggestion there is that parliament itself will have to determine some suggested guidelines to be applied by the ACCC in that case. If the cross-media laws are to be removed, the ACCC will need some parliamentary guidance as to what the public interest should be in trying to weigh up future ownership changes in that area.

My point is that rigorous analysis can certainly help, but, of itself, it does not necessarily produce a definitive outcome; it does not necessarily remove the need for judgments about where public interest falls. If you like, my colleague could offer some examples of some of the difficulties we have observed about its application in our recent inquiry on competition in the bush.

**CHAIR**—Thank you. Mr Plunkett.

**Mr PLUNKETT**—I will just broaden it out a little bit before I talk about individual comments. The first thing is that the point was made that national competition policy is in there because of economic efficiency reasons and that when it was introduced it was recognised there would be conflict with social things and there were mechanisms put in place for that through the public interest provisions. Our analysis of that is that the factors that can be considered in the public interest are extensive and non-exhaustive, and we did not perceive any reason for changing the scope of what could be considered as public interest.

The second comment I would make is that clearly there is very poor perception out there. I will use local government as the example and I will also use the Shire of Jerramungup, because they gave us a submission very early in the piece and they perceived that national competition policy, in particular implementing competitive neutrality, debarred them from delivering community service obligations.

That was not just an isolated instance. That was quite typical of the sort of misunderstanding that we came across when we were holding workshops around the place: what factors could be considered to limit competition, in what circumstances and what criteria? That led to a number of our findings. We had made a finding in chapter 11. It says:

The manner by which restrictions on competition may be considered under NCP is not well understood by many people. This is consistent with a wider lack of effective communication about, and hence appreciation of, what constitutes NCP and how it is implemented.

We have seen the need for quite a lot of information about that.

What more can I say about public interest? I think the other thing is that this has been recognised by governments. I re-emphasise a point—I am not sure who made it now—about the perception of what is public interest, and national competition by the people directly

affected in various jurisdictions is quite comprehensive and complete. When you get down to the level at which it is administered, like at local government level, you find a big difference between the understanding of the executive officers of local government who are administering it and the elected representatives whose understanding is not as near as complete as those who are charged with meeting the requirements of the jurisdiction.

This has led to a lot of the angst that we perceive: this lack of information and recognition of what are legitimate constraints on competition and what are not and when do they apply. Hence, I think that is behind a lot of our recommendations for the improvement of the information and transparency of our processes and what is and what is not NCP and what are and what are not legitimate constraints on the application of NCP principles. I think I will leave it at that.

**Senator MACKAY**—I want to get the views around the table in relation to where we go with national competition policy. I think it is axiomatic these days that all major parties will be reviewing their policy in relation to NCP. The Prime Minister signalled that in his address at the opening of the rural transaction centre. The Labor Party certainly is—that is no secret. I think Mr Kerr has hit the nail on the head in relation to where we go in order to determine the nature of public interest, and I note that there is a general suggestion that MPs or the parliament should be more involved in that.

Given that is the case, and I agree with a lot of the comments and a lot of these perceptions, that is certainly evidence that this committee has got. Basically, in regional Australia, if you miss the bus, it is the result of national competition policy and position. But there are also a lot of genuine concerns out there and I think the local government area of Victoria is the most salutary example in relation to CCT.

Given that it is axiomatic that the parties will be changing their policy on national competition policy and it will go further than a simple clarification of the public interest test because it needs to because the perception out there is too strong for us to simply strengthen it up around the edges and provide an information campaign, I think this provides a pretty unique opportunity early on in the policy implementation process for people around this table to say where they think it ought to go.

At the moment, I think probably both the major parties—I do not know about the Democrats; they can speak for themselves—are in the process of reviewing their policy in relation to NCP in the lead-up to the next election. I appreciate the constraints on somebody like Mr Kerr but those constraints may not exist with others here. I would be interested in general views, given that general sort of paradigm that I have attempted to paint.

**Mr SAMUEL**—You have actually raised the last four items on the agenda for this particular session, which is a very useful way of covering those areas. Firstly, we will have completed by the end of this year two extensive reviews into national competition policy—the Productivity Commission's review which related specifically to regional and rural Australia, and then this committee's review.

There is another review to take place in April next year on NCP—the direction it should head, the role of the NCC, and the like. I suspect that those three reviews are going to come

up with some answers. If I can take note of what the Productivity Commission has already reported and at least your interim report without wanting to presume what the final report is, it is quite interesting that there is a commonality between both reports at this stage and it addresses some of the issues that are talked about here, although there is always a leaning towards change.

Indeed, most of the evidence that appears to be coming forward at the moment is directed much more towards public education. Public education is not just simply talking to the masses and saying, 'You have never had it so good and it is going to be better still next year.' It is rather a fact of educating all those involved with the administration of this policy as to how it should be administered properly and fairly, and with educating those who are the beneficiaries of the policy as to what it is all about and where it might be heading. It is not an easy task.

We are faced with an imperative that those who provide our political leadership all around the country need, first of all, to become champions of reform, if they consider it to be in the public interest. The very public interest test suggests that this reform ought to be not only in general form, but in very specific form and very much in the public interest. We need champions of this reform at political leadership level right across the country. We also need champions of the reform to counter the negative publicity. I would not say there is a tidal wave, but there is certainly some quite extensive heavy surf of negative publicity that has come from self-interest groups and from some in the political spectrum who have seen it as advantageous, at least in the election periods, to champion negativity about national competition policy with a rather simplistic message that, if we can get rid of national competition policy, all of your problems are solved. So that heavy surf of negative publicity needs to be neutralised by some extensive public education that primarily has to come from our political leaders right across the country.

There is a very real complexity in asking, for example, just the NCC or just the ACC to champion this product for two reasons. Firstly, competition policy as a product is not an easy product to sell. It is like selling economic rationalism at the moment. I would actually prefer to try to sell some bitter tasting cod liver oil than competition policy or economic rationalism as such. There is clearly the necessity to sell the whole benefits of what competition policy is producing—the benefits to date and the benefits that are yet to come.

Let me illustrate part of the problem. I was bemused and, indeed, frustrated to read an article by Ben Mitchell, the rural affairs reporter of the *Melbourne Age*, only two days ago. This followed the rural summit, during which, according to the public reports, almost to a tee, most representatives adopted the approach of the Productivity Commission in saying that a whole range of things are happening with rural Australia; that competition policy is but one element and it is not the most significant element.

Here was Ben Mitchell of the *Age* prefacing his particular article by saying that it was very surprising that the national competition policy—which had been the dominant factor in the impacts currently being felt by rural Australia—in fact did not rate a mention in the final communicate. When you have that sort of process occurring with a journalist who ought to know better, who then quoted a particular anecdote, you realise the sort of heavy surf that we have to deal with in terms of the negative implications of competition policy.

The public education role is complex. It requires governments to adopt a very significant role in educating those who are vested with the administration of the policy as to how it should be done. Attempts have been made at various levels at government level. Only very recently, in the past few days, the Queensland government has issued a booklet of guidelines on the conduct of legislation reviews. For the most part, that book is actually a very interesting and helpful coverage of a range of the issues that need to be considered—the process of conducting reviews, the methodology that should be adopted, the issues that ought to be taken into account and both the economic and social considerations that need to be dealt with.

There are some aspects of it—and we have not yet had time to study it—that the NCC will be wanting to discuss with the Queensland government. There at least is a very significant attempt to demonstrate at government level—at leadership level—how the public interest test ought to be applied, how legislation reviews ought to be undertaken. It is headed *Public benefit test guidelines: approach to undertaking public benefit test assessments for legislation reviews under national competition policy*, and if governments could do more of that sort of a process then I think we would find that the process, particularly at local government level, as has been discussed—the understanding by those that the National Farmers Federation and others have to deal with—would be greatly assisted.

Let me just briefly indicate two aspects of the forward agenda. I urge you to read pages 31 onwards of the blue section of our 1998-99 annual report, copies of which I think have been supplied to senators, because it gives a plan, if you like, that has been outlined by the National Competition Council for the way forward. It is a plan that we have actually put forward to governments which says that there needs to be a much more collaborative approach between the National Competition Council, which is given the oversight of this process, and all governments to identify where the difficult issues are, to identify ways forward in terms of the reform process, to identify who the key stakeholders are, to consult with the key stakeholders—and consultation is not something that has been happening perhaps at the optimal level in the past—and then to undertake a communication process so that people understand why it is that the reform is being undertaken, what the impacts of it will be and the flow-on benefits.

The NCC cannot do the public communication process on its own, because, one, we are seen as having a vested interest in competition policy and, two, because we do not have the resources. In fact, our total commitment this year, in terms of budget allocation for communication, is barely \$200,000. I think everyone around the table would acknowledge that \$200,000 for this agency to undertake the communication process is but a mere drop in the pond. But it is also a process that we cannot undertake on our own. Our method of communication will be dealing with political leaders, to be dealing with committees—backbench and other committees, both at federal and state level—as best we can with a resource of 16 to 18 people within the organisation. Ultimately, the resources we have would be spent fundamentally trying to coordinate a communication and understanding process at government level. But, if you do not get the cooperation from governments in doing just that, then I am afraid that \$200,000 is going to have no impact at all.

**Senator MURRAY**—I wonder whether I could just try to steer this a little with just two sentences, if I may. It seems to me that the focus that we would like to hear from you is on

the exceptions not on the rule, because the rule is, by and large, accepted. It is the exceptions where the community pressure is on—in other words, what should be retained in our society, regardless of economics, regardless of efficiencies. That is at the heart of labour policy—and I do not mean Labor Party. Labour policy says that you have a minimum wage because there is a worth in itself of giving people a living income, regardless of economics, regardless of efficiency. I think it is in that area where I would like to hear the responses—as to what things you preserve regardless of economics and regardless of efficiency.

**Mr DAVIS**—I would like to say, Mr Chairman, that I think Senator Murray has basically asked a political question, and it is the role of the parliament to answer those exceptionally high-level policy trade-offs. I think that publicly funded officials or those from the private sector who may lead such groups cannot be asked to answer those sorts of questions because it is probably beyond their remit. I think they can advise; I think they can implement legislation, but I think those big framework issues really fall into the domain of the parliament.

**Prof. FELS**—Very briefly, I think the actual lines in the sand that have been drawn, for example, between labour and other, which Senator Murray has referred to, are best explained by history, not by philosophy or logic. For the last 100 years it so happens that industrial relations policy has gone down one track, which is to encourage collective bargaining, and so on, and competition policy has gone down another track, and then there has been an area in between which has not really been touched on very much. Competition policy has been seen as big business competition and labour relations about protecting workers, and then we have all these awkward in-between cases which have now come to the surface and which are very difficult to deal with.

The broad principle probably, despite what I said about the logic of it, is that people who are workers are seen as having weak bargaining positions if they bargain individually with powerful entities and they need some protection. I am often asked by doctors why the act applies to them and not to trade unions. I have got a superficially plausible answer which is that under our law, if you are an employee, you are not covered by the act. If you choose to organise yourself as an independent business rather than someone who has an employee status then you are covered. But the fact is that certain people who are set up not as employees are not in a terrific bargaining position and there is some justification for having some collective elements to what they do.

Having said that, there is also some history of laws that protect collective behaviour—and I am not just referring to labour but to some other areas—having gone wrong. The great example in the world is the European agricultural policy where a similar philosophy has applied to the protection of farmers. That has got right out of hand in terms of the excessive costs. The rest of the community pays for it and there are all kinds of other harms, both internal and external. These in-between areas do pose some problems. All I can suggest is that one needs to have relatively transparent processes for assessing them and, to a degree, some of that is present in the national competition policy.

**Senator LIGHTFOOT**—I want to concentrate, gentlemen, on the micro aspects of national competition policy. I know that the benefits to Australia, the benefits to the Commonwealth, generally speaking, will flow from other areas—those macro aspects of

national supermarkets, airlines, oil companies, banks, et cetera—yet some of those impinge on the rural and regional areas. I will confine my remarks and questions to Western Australia, an area that I know reasonably well.

I am travelling around, not just with the national competition policy inquiry which has been there on several occasions, and I find that it is a very useful tool for me as a politician to find out and to fine-tune what I suspect is going on and not going on in the bush. It is a very good weapon.

The national competition policy, rightly or wrongly, is being blamed for closure of banks, closure of rail sidings and terminals and the amalgamation of schools. They know nothing about it in some shires, and Mr Nettle spoke about that: the 704 shires in Australia, of which about 20 per cent are represented in Western Australia, with its 10 per cent of the population, or slightly less, but 33 per cent of the national landmass. Tranche payments are either irrelevant or some shires are not even aware of them, which I find quite astounding.

We have supermarkets—national supermarket chains—that have closed stores throughout regional Western Australia; road operators have diminished in number, and national road operators, mostly listed, now dominate the industry there; abattoirs have closed throughout Western Australia; and airlines are closing airports in Western Australia. The strangest thing of all is that a government, Western Australian government, if I may be precise, seems to be using its monopolies of gas, electricity, water and rail to maintain the monopoly. I find this quite strange. If national competition policy is working, in my very humble parochial rural opinion, it is only working for the cities and in fact the evidence we have had is that it is not working in the bush at all.

It is not working in the bush for perhaps two reasons. One is that, as I have said, the bush generically either does not understand how to implement national competition policy or does not understand the benefits of it, and does not understand how to get assistance to implement national competition policy.

I do not know how you deliver a varying level of public interest, and perhaps someone can be kind enough to elucidate how that is expressed in terms of the Shire of Jerramungup—which the chair spoke about—which, I think, got a tranche payment of \$1,200. It may have been less, and the \$1,200, even in the Jerramungup shire, is rather irrelevant. But when you tell the Jerramungup shire that they are going to conform to national competition policy and, therefore, they have got to have separate tenders or a multiplicity of tenders for varying small items they do in their shire, and that by doing so they will drive away those people who have supplied those varying levels of work within that shire, they do not like it. They want to keep people in their towns.

The Shire of Sandstone has about 40 ratepayers and yet it is a relatively big shire. How on earth can national competition policy help a small shire, a small authority like the Shire of Sandstone? Others are major shires, with land masses bigger than Victoria. The shires of Dundas, East Kimberley, West Kimberley, Kalgoorlie-Boulder and so on, are bigger, and in some cases several times bigger, than Victoria. Gentlemen, if you could assist me in taking a message back to Western Australia on some of those issues—perhaps you could view them as parochial issues—I would be very pleased.

**Mr NETTLE**—I would like to go back to Senator Mackay's question and perhaps, Senator Lightfoot, I will pick up some of your stuff along the way. I think, looking at it from a local government perspective, which is our job—and I would now draw a line between the rural and regional local government and city metropolitan based local government—it has got about 460 rural and regional local governments of that 704.

I am going to flick straight back to you as senators what we really do about the future of national competition policy. I would perhaps urge you though, in doing so, to say, 'Do not throw the baby out with the bathwater.' There are problems with national competition policy, and all those problems you mentioned, Senator Lightfoot, are very real in rural and regional Australia.

There have been some advantages as well. There have been some pluses in there. What you have to do—and this is your job, you are politicians—is to weigh up those pluses and those gains against those costs and say, 'All in all, it is not a bad policy, or it needs to be modified in this way.' As a market economist myself, I know where it is going. If you stick with a hard line approach to national competition policy, then what you will get in 20, 50 years time is quite a change in the landscape of Australia. I would say that Western Australia would probably secede as an end result. Adelaide would turn into a retirement home. You would have a dozen main centres in regional Australia and a lot of very large cities. That is the ultimate economic rationalist approach. You would add up the pluses and the minuses and you would say, 'The pluses are bigger than the minuses so, therefore, that was all good.'

**Senator LIGHTFOOT**—But, with respect, I cannot sell that in rural and regional Australia, for obvious reasons.

**Mr NETTLE**—To me, there is the economic rationalist approach which is that, and there is a rational economics approach which is basically a welfare approach. You say to yourself that the pluses we want are lower infrastructure costs, lower communication costs, lower power costs, so people are better off, but we also have to look after human beings and the welfare of people and the welfare of communities for as long as those communities remain. That, Senator Mackay, is really the issue you were dealing with—how you actually go about doing that.

**Senator MACKAY**—Can I just say that it is very rare when you ask for people's views—and I appreciate what you are saying and also what Mr Davis said—that you are told, and it is correct I suppose, that it is ultimately up to you as politicians. Normally you get a plethora of advice one way or the other. I think it is a function of how difficult this issue is. We are all grappling with where we take it. All I will say is that obviously we will be beavering away in relation to our policy. It would be handy to get some direction from people who are not compromised here because of being public officials or whatever.

**Mr NETTLE**—We are here to help, Senators. We will give you all the advice you need.

**Senator MACKAY**—Otherwise, when we come up with it, do not come and complain to us.

**Mr RITCHIE**—I would like to go back to Senator Mackay's comments, too. I apologise for being so slow to do so but there are so many informed people around here that it is too easy to sit back and listen rather than come up with too many views. But, in terms of where we are going, I do have a few problems with some of the things that Graeme was saying about national competition policy, particularly if we talk about neutralising these views rather than analysing them. These are views of people who are affected by national competition policy and we have to analyse them, not neutralise them. We have to decide whether there is any merit in these views.

The review we will have next year is a one-off opportunity to have a good look at national competition policy. Let us have a look at the underlying assumptions of national competition policy, not the least of which is this underlying assumption that the user should pay for everything rather than taking external benefits into the equation. Let us have a look at the public interest test and its application and let us have a look at things like adjustment assistance and whether any of that money flows through.

I am actually glad to hear there is some adjustment assistance money flowing. I have not been able to see any, certainly at the state level. Some of these adjustment payments were predicated on the fact that the people who were impacted would get the benefits, but I cannot find anybody who has been impacted by competition policy who can get the benefits.

Also, let us think about the underlying assumption that seems to be here at the moment that national competition policy is a good thing until proven otherwise. When did we have the proof that national competition policy is a good thing? Why can't we turn it around and say national competition policy might have been a bad thing and let us prove it is a good thing? I am not saying that that is the case but I am just upset that the assumption is that it is a good thing until proven bad, and not the other way around.

**Senator LIGHTFOOT**—What is your assumption? Is it good or bad?

**Mr RITCHIE**—I do not think we have the evidence in, but I am upset that the assumption seems to be that it is a good thing. Until somebody like us can come and prove it is a bad thing, and when we have only got five years history, that is a very difficult thing to do.

**Senator LIGHTFOOT**—What is your assumption, Mr Ritchie?

**Mr RITCHIE**—My assumption is that obviously we support some of the initial gains that have been made under national competition policy, but in areas such as infrastructure, NFF is starting to have some real, serious concerns. The picture that Rod Nettle painted about what is going to happen to rural and regional Australia is not a difficult picture for us to extrapolate to, either. If you apply a strict principle of user pays to the provision of infrastructure, then you are not going to have a rural and regional Australia to worry about in 25 to 50 years because nobody out there can afford to pay.

This is the whole principle of externalities under which economic theory had been working for 100 years until we decided to throw it out in 1994. Let us go back and see if that was a sensible decision to throw out the principle of externalities and external benefits.

While we are doing that, let us have a think about whether we expend all this energy worrying about whether we should be providing infrastructure and government services. We do not apply the same rationale to social welfare spending. Why are we agonising about whether we should be assisting business when we just spend government money on social welfare without any similar analysis of the situation?

I would say we will have a chance next year, but the important thing we need is how organisations are going to get involved in next year's deliberations when they do not have the funding to do it. NFF has not got the resources to make a case for rural and regional Australia. I don't think the Local Government Association has the resources. Maybe the Business Council, who are active, might have the resources to do it, but the people who are affected by national competition policy almost by definition do not have the resources to get involved in the process.

I will just sum up on one point that Senator Lightfoot made. While we cannot blame national competition policy for the closure of bank branches, we can blame the rationale or the theoretical underpinnings of national competition policy for the closure of bank branches because the banks are a prime example of what this principle of user pays will lead to in the future. And if we can accept that bank branch closures are a fine thing in rural and regional Australia because of the economics of it, then the same thing is going to happen in regional areas in the provision of infrastructure. So bank branch closures are a reflection of accepting these theoretical underpinnings of national competition policy.

**CHAIR**—Thank you very much. Mr Davis, do you want to give a brief response?

**Mr DAVIS**—Just very quickly. I would like to pick up Mike Waller's point which I guess touches upon Senator Lightfoot's questions—that is, what is happening to all this adjustment assistance? Having known Mr Samuel for a great many years, I have never regarded him as throwing away money lightly, let alone taxpayers' money, let alone \$16 billion of it over 10 years, so it has obviously been given out to the states for performance—adequate performance, superior performance. From my recollection I think he has even slapped a few states on the wrist and been demonised for it. I am sure he is capable of dealing with that and I do not need to come to his defence.

But what is happening to that money? If I hear Senator Lightfoot saying that a shire—I won't try to pronounce the name of it—is getting about \$1.10 each—

**Senator LIGHTFOOT**—Jerramungup.

**Mr DAVIS**—There is \$16 billion less about \$1,000 going somewhere else. That money, yes, might be a reward for being good, upright or doing what is necessary, but to our mind it was meant to facilitate adjustment assistance, and that does not seem to be the case from what I am hearing around this table—and I guess we can go into a long discussion about the impact on rural Australia. But from the private sector perspective it creates opportunities. Farmers are now talking about going into opening bank kiosks, and I happen to agree—

**Senator LIGHTFOOT**—This creates the opportunities in the cities as far as we can see, Mr Davis.

**Mr DAVIS**—There is the odd pharmacist out in the bush who might see opportunities. I think it is not so much the nature of the services that are being lost, it is just the way they are being delivered. But I acknowledge Mr Ritchie's very heartfelt intervention before.

**CHAIR**—Mr Davis, it is my fault we have run on so long, but it is actually working very well right now. Senator McGauran, you have a couple of issues you want to bring up and, at the conclusion of that, we will break for probably about 20 minutes.

**Senator McGAURAN**—That was a hint to be short and sharp. Can I just slip—

**CHAIR**—I would never do that to you, Senator McGauran.

**Senator McGAURAN**—All my good questions were stolen by Senator Lightfoot. Can I just slip in here something gratuitous to Professor Fels in regard to public interest. He certainly undertook a great public interest test in regard to the ticketing affair the other day, and I congratulate him on that.

To Mr Nettle first: can I just ask you a short, sharp question. Do you think Victoria needed to be the only state to undertake compulsory competitive tendering to get the culture change needed in local government?

**Mr NETTLE**—Compulsory competitive tendering in a sense is anathema to national competition policy. National competition policy was used by the Victorian government as an excuse to implement compulsory competitive tendering. In Victoria we are still a long way off, I am sure, actually measuring the final results of that. The earlier results of the compulsory competitive tendering process showed a loss in Victorian regional communities in terms of the substance and people who hold it all together, and I think the Victorian government paid the price for that. I think that is probably how it is going to look in the end. I always prefer to treat that as a separate issue from the national competition policy. I do not think they are the same thing at all.

**Senator McGAURAN**—And to the NFF representative, I read in the *Australian* newspaper the other day, and you have reinforced the comments today, that the NFF are being seen to be shifting in regard to national competition policy. You are basically saying it is the end of the road, any advancements now have to be strictly scrutinised. You do have a lot of economists in your buildings, and I do not know why you would be concerned about putting a presentation to any review. But we are down to the minutiae, and the NFF now have had a complete second thought and are basically wishing to grind NCP to a halt. That is the new perception.

**Mr RITCHIE**—That might be the perception, but that is certainly overstating our position. Most of the concerns we have are in the area of infrastructure and national competition policy. Indeed, I have brought along the report that we supported and that was funded by the Rural Industries Research and Development Corporation, a report by Bob Lim and Terry Dwyer. They raised some of the concerns that I have already raised here.

So, yes, in the area of infrastructure we are saying that we have had a situation in Australia where we have had an overavailability of infrastructure services and we have

reaped the benefit of getting efficiencies into those areas. Although, having said that, the Productivity Commission report clearly shows that those benefits have not flowed to residential or small business users in regional Australia, and the evidence on that is clear.

Perhaps I can clarify this by giving you an example. We at NFF are pretty upset that we have not been getting involved in all the review cases, but we did get involved in a case that is still to be decided in Sydney by the Independent Pricing and Regulatory Tribunal. We discovered there that some of the asset values that were being suggested to them by the New South Wales government, for reasons which were fairly obvious to the New South Wales government, would have led to rural and regional Australia facing a \$350 million increase in electricity charges over five years.

Once you apply the 7.75 per cent real rate of return to the asset values that they deem regional distributors of electricity should earn—and that is another issue, whether anybody should be allowed to earn 7.75 per cent real rate of return—then rural and regional Australia were facing a \$350 million increase in electricity charges over five years. We made a case that that was inappropriate and the asset values were too high. We also discussed those real rates of return.

They have not made their decision yet. But it is important to keep in mind that if we had not gone to that tribunal hearing then the tribunal probably would not have had any choice but to accept the original decision that was suggested by the government because these are classed as legal proceedings as I understand them and unless somebody argues to the contrary then you must accept the evidence you have got.

That is just a short example of what we are seeing. These review processes are going on right around Australia; there is probably one on now while we are sitting here. I did a quick scan of the Internet and I came up with something like 36 inquiries or suggestions for input going on around Australia. I cannot keep up with that, and who knows how many more are on the Internet.

We are saying we have done the easy part of it but now we are getting to the pointy end of it where we are going to have less and less infrastructure. And as we get less and less infrastructure, as this oversupply of infrastructure works its way through the system, then we are going to get to the pointy end where rural and regional Australia are going to be asked to pay under the dictates of the user pays system, which totally ignores the impact of externalities, and the price is going to go up. It is as simple as that. Two things can happen: either the price will go up, or nobody will supply infrastructure to rural and regional Australia.

**Senator McGAURAN**—I think we can say it is a new NFF, after that. That is just my observation, and perhaps it is for the better.

**Mr RITCHIE**—I think so. It is rare that organisations admit their mistakes, but I think we are prepared to say that we might have missed the boat a little bit on what is happening and what is likely to happen on infrastructure provision.

**CHAIR**—I do not think you missed the boat at all, Mr Ritchie. In fact, we are starting session 2 already and we have not had morning tea yet. I thank all the participants who have contributed to this hearing this morning.

**Proceedings suspended from 10.59 a.m. to 11.18 a.m.**

### Participants

**DAVIS, Mr Robert Brent, Director, Trade and International Affairs, Australian Chamber of Commerce and Industry**

**JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission**

**KERR, Mr Robert, Head of Office, Productivity Commission**

**NETTLE, Mr Rodney Allan, Chief Executive Officer, Australian Local Government Association**

**O'CONNOR, Mr Brendan Patrick, Assistant National Secretary, Australian Services Union**

**PLUNKETT, Mr Herbert John, Assistant Commissioner, Productivity Commission**

**RITCHIE, Mr Todd, Director, Economic Policy, National Farmers Federation**

**ROLLASON, Mr Russell, Anglicare Australia**

**SAMUEL, Mr Graeme, President, National Competition Council**

**SIEMON, Mr Donald McIver, Australian Council of Social Service**

**SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission**

**TAYLOR, Mr Peter, National Policy Manager, Aboriginal and Torres Strait Islander Commission**

**WILLETT, Mr Edward Campbell, Executive Director, National Competition Council**

### Session 2—Social impacts

**CHAIR**—Session 2 is going to commence with a briefing from the Productivity Commission which I understand will last for about 15 minutes.

*Slides were then shown—*

**Mr PLUNKETT**—We saw the inquiry we completed on national competition policy reform and its impact on rural and regional Australia as addressing five concerns. What does national competition policy entail and what are its effects? There are very big misconceptions out there about that. There was only one element in the comments made before by Senator Lightfoot which comes under national competition policy, and that was the requirement for government to review the legislation which restricts trading hours. Of all the other elements mentioned, not one is a requirement in national competition policy.

Then we looked at how significant national competition policy was relative to other factors affecting country Australia. That is most important because if you stop national competition policy you are not going to stop the other factors affecting what is occurring in rural and regional Australia.

Then we looked at the question: is country Australia more affected than metropolitan areas by national competition policy? We have already heard that voiced here this morning. The situation is not that simple. Then we asked the question: are there particular problems caused by national competition policy which need to be addressed? Finally, we asked the question: are the existing policies which support country communities adequate to deal with any problems caused by national competition policy?

I will give you some demographics. The perception is that the capital cities are getting bigger and swallowing up all the people. That was true until 1971; it has not been true since then.

If you flick to the next one, there are actually three other phenomena going on and I will call them coastal drift, small towns are withering, and sponge cities. Firstly, I will deal with coastal drift. The growth in population in Australia in the last decade has been along the coastal strip of New South Wales, Queensland, and to a lesser extent across here in the south-west corner of Western Australia. That was going on well before competition policy was signed or introduced. Indeed, one in four Australians now live in the 58 local government areas that have a boundary on the Pacific Ocean in Queensland and New South Wales.

I will also use this slide to illustrate the idea that small towns are withering. What is happening is that the percentage of population living in small towns has remained static over that period. What we have seen, however, is that some small towns in the inland strip are losing population. As you can see, the hollow squares are towns which have lost more than 10 per cent over the decade. The dark squares are towns which have increased by 10 per cent or more. It is not just all inland cities. If you go along the Murray River you can see that there are plenty of black dots along there.

The phenomenon that has been occurring in inland Australia has been that of sponge cities where the regional centres have been growing and the surrounding towns have been losing population as service centres have grown bigger and people have consolidated services. This is a function of the increases in transport and communications which have made it possible for people to travel longer distances to access better services and cheaper goods and services.

What are some of the drivers of change that have been causing some of these demographic trends? The most obvious one has been the downward trend in agricultural and mineral commodity prices. That has been reflected in the terms of trade to producers of these in Australia. Allied to this has been technological advances such as increased mechanisation of farms, adoption of new mining techniques, and improved telecommunications. All these have made possible coping with downward trends and prices that are associated with it.

Also associated within Australia has been change in consumer tastes. As our incomes have increased and population has grown we have seen a decline in demand for such traditional items as woollen clothing and increased expenditure on services such as tourism. There have also been changes in lifestyles such as the increased internal migration to coastal areas.

There have also been government policy changes such as lowering trade barriers to allow Australia to become better integrated to world markets, deregulation of the financial system, and increased regulation to protect the environment. And last, but not least, I guess you could say national competition policy.

It is in that context that we have looked at national competition policy. To illustrate it in terms of agriculture, on the left we have shown the decline in terms of trade, and that is over two per cent per annum. The ratio of prices received to prices paid by farmers has declined over that period. To show the increase in productivity, the number of agricultural establishments has reduced and the average size of farms has increased. The area under agriculture has changed relatively little.

This is probably a useful slide to sum that up. This is the last decade from 1989-90. If you look at the volume, agriculture, forestry and fishery have increased by 18 per cent. The total economy has increased by 27 per cent. If you look at the value added in current prices, you can see that agriculture, forestry and fishery have only increased by eight per cent. That is showing you the decline in terms of trade for agriculture, whereas in the total economy, value added has increased by 47 per cent. If you look more closely at the agricultural production, you can see that wool production in value terms has halved. Other agricultural outputs increased by 36 per cent, giving a total of 16 per cent. If we look at realised agricultural incomes, you can see that they have declined in that period by 14 per cent. That is a major driver for the changes you are observing in rural and regional Australia.

In looking at the impacts to date, we looked at that in terms of costs and prices, service qualities and employment effects. We also specifically looked at local government. The first thing you notice when you look at costs and prices is that they have been affected by many factors unrelated to NCP. To date, as intended, the benefits have gone to large, more so than small, to businesses more so than residential. This was a conscious policy decision by governments in introducing national competition policy to open the big markets first before moving down towards the smaller markets. You can think of electricity. You can think of gas. They are major infrastructure industries. That is the way in which the deregulation was scheduled to be introduced. We are still getting down to some of the more smaller areas and the smaller size of customer. Observing this is observing policy being implemented as intended.

The service quality story is a very mixed bag. There are different outcomes in different sectors in different regions. We certainly heard evidence from people whose service quality has declined but when you look at the objective measures by the Australian communications authorities and other people charged with service qualities, they are not borne out. There is a majority situation. Other people have had increases. The change in some areas has been bad and in other areas it has been good. Overall, it is a very mixed story.

I added local government in here for two reasons. There have been significant implementation costs for some councils, particularly those with larger water businesses. Remember local governments were required to introduce competitive neutrality where they had significant business activities and we let jurisdictions define what was significant business activities for local government differently in each state. In one respect this has caused a lot of angst because there are differences between one state and others. In another element it reflects the fact that it allows jurisdictions flexibility. It is not the 'one shoe fits all sizes' that some people claim it to be.

Another element of introducing things like competitive neutrality in local governments is the costs are up front and are typically one-off, not enduring. The benefits are likely to manifest themselves in the longer term and they are likely to be ongoing, so you have the typical concentrated costs, diffused benefits story.

When you look at the jobs from existing service structures you get this picture along the bottom line. If you focus only on job losses from established businesses, that is the story you will tell. If you take a sectoral look at the story or if you look at private sector employment, you will tell only the black story. The net story is the difference between the two as new entrants have come into the service industries with the productivity that was sought from the reforms.

Overall, the increase in jobs in rural and regional Australia has been equally as strong as in the cities and they have been mainly in the service industries. I have just added those more general factors there.

We looked at the long-term impacts of full implementation of national competition policy and looked at this regional distribution as best we could from the modelling that was available to us. The story we got was that all, bar one, of the 57 regions we could model were shown to benefit in terms of output from the implementation of national competition policy. The other thing that we noticed with our modelling was that metropolitan areas tend to be in the middle of the pack. Nearly all metropolitan areas are in here. So, if you want to tell a good news story, you go to rural and regional areas which have the highest gains; if you want to tell a bad news story, you pick rural and regional areas which have less than average gains. But, overall, Australia as a whole gains from it and, overall, rural and regional Australia gains from it, but not everybody gains the same amount.

By bringing together information from the effects to date, by trying to isolate out national competition policy effects from more general things, like technology—which is occurring—and also by looking at some of the model results to see whether they were consistent with the short-term impacts and the speculation of what might be longer-term impacts, the overall conclusion we reached was that Australia as a whole is likely to benefit from NCP, although there is more variation in the incidence of benefits and costs amongst the regions. To date, the reforms implemented have provided greater benefits to large businesses and people in metropolitan areas, as intended, because that is where the markets were opened up first—in the infrastructure service areas.

The effects of most reforms on most, but not all, regions are likely to be less significant than those resulting from the long-term drivers. Indeed, in only 14 regions could we find that

the effects of the changes which have occurred over the last decade were likely to be adverse in more than one year. The other sting in the tail, though, is that the failure to continue to implement reforms will not stop the operation of the longer-term forces, but it would deny a community the benefits of the reforms.

I just want to summarise some of our recommendations into four main points. The details are spelt out in the commission's report. The commission recommended that governments review and publicise their NC policies, especially the guidelines on the purpose and the scope of the national interest provisions. We have seen and discussed earlier this morning how poorly understood they are by a lot of people charged with implementing them. We also strongly endorsed the idea of legislative review panels operating transparently, seeking public input and explaining reasons for the recommendations.

We also recommended that the NCC no longer be asked to conduct legislation reviews. We think its role as an umpire, which the jurisdiction has asked it to be, and to ensure the integrity of the process, is fundamental to the implementation of NCP and, if this was seen to be detracting from that goal, it should focus on its primary goal. Where results result in reasonably concentrated adjustment problems, specific adjustments should be considered, but relying principally on the generally available assistance measures of the existing safety net first.

Finally, I just have some thoughts on the talk we had this morning. The first one, which I mentioned earlier, is that the factors to be considered under the public interest provisions should be an extensive and non-exhaustive list. Jurisdictions have a high degree of flexibility and local governments have used the public interest provisions to retain local employment. The question is: when you deny people the benefits of reform, who pays? If the local community is willing to pay, that seems to be okay; but, if it is shifting the costs, then it may be a different answer.

Reforms invariably involve winners and typically, in competition reforms, are often diffuse, but the benefits are enduring. The losers typically are the changes from the status quo. They are typically concentrated and there are often short-term or transitional costs involved.

Better community outcomes are achievable by implementing a reform and using more specific policies to address social concerns. National competition policy is not a review of the social welfare system. I think that is all I wish to say.

**CHAIR**—To follow that presentation, we will ask some short questions of the Productivity Commission concentrating on matters that people do not understand or want further explained, then we will go into the general session.

**Senator McGAURAN**—Has there been a net population increase or decrease in rural and regional areas?

**Mr PLUNKETT**—A net increase. What you have seen is a decline in population in the remote areas and some of the rural areas in the wheat-sheep zone, the pastoral zone, in particular.

**Senator McGAURAN**—So your analysis is very much weighted by the net population increase and probably the net standard of living increase along the North Coast of New South Wales, if not Queensland.

**Mr PLUNKETT**—I do not know whether the analysis has been affected by that. What we have observed is that that has been the trend for over 20 years. We also allude there to the socioeconomic effects such as the differences in income between regions, and we also report there on the Bureau of Rural Science's attempt at the socioeconomic differences between regions.

**Senator McGAURAN**—Can I take that as a yes—that, really, the population increase and the plus effects of national competition policy are, on your analysis, heavily weighted by the shifts in the North Coast—

**Mr PLUNKETT**—No, the analysis is not affected by that. If you remember the map, the biggest areas that have benefited from the NCP tended to be rural and remote areas more so than the more heavily populated areas.

**Senator McGAURAN**—That is what I was trying to get at. It is just surprising.

**Mr PLUNKETT**—It is not too surprising because the reforms are focused on infrastructure areas. People further away from major population centres depend more heavily on infrastructure as part of the cost of production to get goods to market and for them to get goods and services for the rest of the community.

**Senator MURRAY**—My question is to the participants in the panel. It is to ask them what they make of this analysis by the Productivity Commission—whether they think it has touched the problem of community, particularly country community, reaction against national competition policy and whether it provides an answer. I think both Mr Davis and Mr Nettle quite correctly said that the ball, in terms of where competition policy is to go, is now in political hands because of the reaction we are seeing, politically—voting patterns and support for different kinds of political organisations with different philosophies. If we have to deal with that in terms of our self-interest, if you like, what contribution do you think the Productivity Commission's review makes to that? Right at the heart of the criticism of competition policy are social values, not economic values and yet most of the language used is economic. I would just like to hear your reaction.

**Senator MACKAY**—Chair, can I ask the Productivity Commission a direct question before we open it up, as what Andrew is proposing would open it up now?

**CHAIR**—I am going to go around all the senators for questions.

**Senator MACKAY**—Okay, but Andrew wants responses from participants and I wonder if I can go direct to the Productivity Commission first. Is that all right?

**CHAIR**—That is probably much better.

**Senator MACKAY**—I am curious as to the notion of flexibility that you talked about. You used the example of local government. That may well be the case in terms of the macro policy, but in terms of the actual implementation it is not, because state jurisdictions are determining how NCP will operate in individual states. For example, if you take Queensland's interpretation, Terry Mackenroth's interpretation, of NCP and what it does not involve and what it does involve, and compare it with, say, Jeff Kennett's interpretation of NCP and what it does not involve and what it does involve, they are worlds apart. So the flexibility may be inherently there at a macro level, but the actual jurisdictional application of that is disparate, to say the least. I am just wondering whether you looked at that and what comments you have got on it.

**Mr PLUNKETT**—What you say is true in that different jurisdictions have interpreted differently how they will meet what they undertook to do. The example was used earlier of compulsive competitive tendering which was seen by the Victorian government as a way of ensuring that significant business activities at local government level operated in a competitively neutral manner. That was not a requirement. The alternative way of meeting that was that the other states identified what they defined as significant business activities and asked the local governments to then go through exercises to see that, when they competed with private sectors, they operated in a competitively neutral manner.

Another difference you could point to is in roads. The Queensland government and the Northern Territory government have specifically required tendering for roads to be done in small contract lots to facilitate small contractors. The Western Australian government chose to virtually outsource the whole state's road maintenance operation.

**Senator MACKAY**—Isn't this a problem? You have got wild disparities in the interpretation of NCP at the state level. This is what this committee has been hearing everywhere we have gone.

**Mr PLUNKETT**—The question is: do jurisdictions want to tie themselves down to the one shoe fits all, or do they want the flexibility to meet their criteria in the way they want to? I do not have an answer for that. We heard exactly what you are saying. Sometimes the differences are small and do not matter, other times they are large and quite significant, particularly as it applies to local governments.

**Mr SAMUEL**—Chairman, could I respond to that because it is a very important element?

**CHAIR**—There will be an opportunity in a while, Mr Samuel. Senator Mackay, have you finished?

**Senator MACKAY**—I have finished. I would like to hear—

**CHAIR**—Okay. Senator Lightfoot.

**Senator LIGHTFOOT**—I am interested in the demographics, but, gentlemen, when you speak to senators you are speaking to politicians, undoubtedly, but politicians that represent their states. Some have a less parochial view than I do and more of a national view. I have a

view that probably is more biased towards Western Australia but, nonetheless, I have a national view when it comes to defence and subjects of that nature. So I want to get back to Western Australia again.

Western Australia, with 9.8 per cent of the population, produces about 30 per cent of national export income. We feel fairly aggrieved. But if you take the Tropic of Capricorn, as a line that most of us know roughly where it is, only about 6½ per cent of the population lives above that. Yet about 40 per cent of that export income comes from there.

How can we address the imbalance between the relative minuscule number of people and the national wealth they produce which is significant? And is national competition policy going to assist in redressing that, given that the evidence we have had is the reverse, that there is a drift, notwithstanding your demographics, from the bush and the wheat belt, although I must say there is not much wheat—in fact there is none—above the Tropic of Capricorn? Is it going to assist in that or is there going to be more of a drift, specifically in Western Australia, to a city that already has 76 per cent of the population in it?

**Mr KERR**—Perhaps I could have the first go at that, Senator, and make three points. Firstly, from our perspective, exports and wealth are not synonymous. From the national welfare perspective, what we are interested in is production and income. It is income and the capacity to command consumption that is the proper measure of wealth from an economist's point of view. There is nothing wrong with exports per se, but exporting, from our perspective, should take place on the basis of efficient and competitive production. It is only to be expected within an economy with mixed outputs that you will not find the proportion of production devoted to export uniform either by industry or by region. So you would expect some variation.

Secondly, the fate of exporters would be much more largely affected by these other forces which Herb Plunkett was mentioning and, in particular, changes in terms of trade over time than by national competition policy effects so far. Changes in the incomes faced by exporters, farmers and resource producers have been very largely affected by the long-term decline in prices for their products for much longer than we have been debating national competition policy.

Thirdly, to the extent that exporters face the most competitive of markets, they are particularly sensitive to the cost of their production and to input costs. To the extent that national competition policy reforms help to produce lower than otherwise prices for infrastructure inputs, then one would expect exporters in general to be benefiting from national competition policy changes.

One measure of that, although it is only a modelling estimate, is that you will find in our report on competition in the bush an estimate of the impact of national competition policy reforms according to different economic aggregates. One of the economic aggregates is the effect on export volumes, for example, which go up more quickly than GDP as a whole. So that is one indication of the relative effect for exporters.

**Senator LIGHTFOOT**—Perhaps I could just extend what I said. Let us look at the national competition policy with respect to, say, grain producers—the three main grain

producers of wheat, oats and barley. Where the EC provides what they term an export enhancement subsidy and the Americans, that is the United States and Canada, follow suit, we do not have that here. So we seem to be conforming to what we believe is true competition, to the detriment of our farmers who are continuing to get lower and lower prices for their commodities—the ones I spoke about—while the Northern Hemisphere, particularly the EC, Canada and the US, are offering something that is completely outside national competition policy. Why should farmers, why should grain growers, conform to competition when there are unfair enhancement schemes? The World Trade Organisation does not seem to take any note of it. How does national competition policy combat that?

**Mr PLUNKETT**—The short answer is that you are talking trade negotiations, and you might remember that all they agreed to do at the Uruguay Round was to remove a third of the pre-existing amount of assistance provided in agriculture. We have yet to achieve agriculture being treated the same as manufacturing goods in international forums.

**Senator LIGHTFOOT**—Why should we have a national competition policy for farmers when there is an uneven international competition policy?

**Mr PLUNKETT**—National competition policy is not about international trade. National competition policy is about bringing competition into our infrastructure to the extent that it allows our producers to access more efficiently produced and usually cheaper infrastructure that will enhance their ability to compete on world markets.

**Senator LIGHTFOOT**—Let me give another example. If we conform to what the Europeans are doing—and the Americans say that they are following suit—and subsidise our wheat growers for exports, does that then breach national competition policy because we are not doing it for our sorghum, sugar, oats or barley producers?

**Mr KERR**—Before I answer that question directly, I would like to make a couple of points on your prior question which predicates that question. One is the consequence for domestic industries of assistance. In a resource sense, the bulk of the costs of that assistance fall on other domestic industries because of the way resources were attracted into the assisted industries. The classic example of that is in the tariff area, where for many years Australia maintained or attracted more resources than would otherwise have been employed in manufacturing. It was the very industries of Western Australia that would have suffered more from that because, on the whole, manufacturing was taking place in the eastern states and the users, the people who were paying for those manufactured goods, were located in places like the west.

**Senator LIGHTFOOT**—You are exactly right.

**Mr KERR**—That leads to my second point. In looking at national competition policy, it has always been the Productivity Commission's belief that there are benefits to be had from proceeding on a fairly broad front in terms of policy changes, because people who may lose on the swings, so to speak, might make up on the roundabouts. To take your case of grain producers, certainly if there were policy changes affecting the degree of assistance they were receiving through price support mechanisms or whatever and they were to lose that assistance, those producers would feel they were being disadvantaged. But if, at the same

time, their capacity to compete were enhanced by the fact that their transport costs were reduced because of reforms elsewhere, then you would get some counterbalancing of those processes. I was going to come to your other point, but I am afraid my memory is too poor to recall it.

**Senator LIGHTFOOT**—The point was that if you give an export subsidy, or an export enhancement of some form or another, to one particular commodity such as wheat, of which Western Australia has 50 per cent of the national wheat export, does that then impinge upon national competition policy—if you want to reduce it to national rather than international—to other grains such as oats, barley and other primary commodities that do not get an export incentive?

**Mr KERR**—I stand to be corrected, and the person to correct me is probably Graeme Samuel, but my understanding is that if that policy decision were made as a result of a transparent review process, it would be within the capacity of governments to so decide. But if that policy were maintained, for example, through particular regulatory arrangements that currently prevail, without a proper examination of it and a public weighing up of the costs and benefits, then that would fall foul of the competition policy framework.

**CHAIR**—Thank you very much, Mr Kerr. Before we open up this session, could you please take me through this lovely slide again, Mr Plunkett? You are telling me that my state is either green or red. I presume red is where there is no impact or little impact. Is that right?

**Mr PLUNKETT**—There are 57 regions represented on that map of Australia. That is as detailed as that modelling would allow. If you rank those regions in terms of benefits from the NCP, from the ones that got the most to the least, as I mentioned, there was one region—Gippsland in Victoria—where the impact of the NCP reforms are likely to be adverse. All the rest have a net gain. On the point that Robert was making, some gain more in net value than they lose.

**CHAIR**—The reds are where the gains are?

**Mr PLUNKETT**—The reds are the ones in the bottom third.

**Mr KERR**—With the least gains.

**Mr PLUNKETT**—Yes. The greens have the most gains.

**Mr KERR**—Western Australia looks relatively good—at least on that chart.

**Mr PLUNKETT**—One of the reasons for it is that mining industries help because they are a heavy user of infrastructure—above what would otherwise occur.

**CHAIR**—If I went out to those communities—where you have it painted green up there and where, as I understand it, they are going to get the biggest benefits from this—and I asked them about national competition policy, I suggest to you that it is just as well they do

not have trees there because I would be dangling from one. That is the perception problem, is it?

**Mr PLUNKETT**—Yes.

**CHAIR**—In fact, that is almost the exact mirror of what we are being told. Isn't that right?

**Mr PLUNKETT**—Yes, I would agree with that. When we held workshops, that is the perception. If I put up a map of demographic change, then I would get your story of where regions have lost over the last 10, 15 or 20 years. If I had brought along the map of demographic change on the slide, then I think you would have found a lot stronger concordance with people's perceptions.

**CHAIR**—I do not want to take up time in the session here with this, but I would suggest that the map of Victoria up there may explain a bit of the election result. That looks like it correlates roughly with the sort of political stuff you hear.

**Mr PLUNKETT**—No comment.

**CHAIR**—No, I can see that. I must say that the next time I go to the bush in South Australia, I probably will not take your map with me—not for a while yet anyway.

**Senator LIGHTFOOT**—I will be telling them about Mr Plunkett and Mr Kerr, about how well they are there and that they should stop complaining.

**Mr PLUNKETT**—I can assure you that we certainly heard those views at the workshops.

**CHAIR**—Senator Murray, you threw out a challenge to the various guests here today to come in on this particular issue. Would you like to throw your challenge out again? This might be an opportunity for Mr Samuel to give a quick response with what he wanted to say.

**Senator MURRAY**—It is less of a challenge than looking for a reaction. The commentary we get, as politicians, on national competition policy is much more social than economic. Yet the language of those who deal with the issue from a policy point of view is much more economic than social. The Productivity Commission have tried to look at the reality of what is going on and have provided some answers to deal with the perceptions we have to deal with. At its most precise, the social commentary expresses itself in political voting patterns. There has been a very significant reaction over the last six years, I would say, to the policies broadly framed as economic rationalism, within which national competition policy has achieved a kind of anti-icon status—whatever the reverse of icon is.

My question to you is really framed against the points that Mr Nettle and Mr Davis made prior to the additional people joining us, and that is that the direction of competition policy is now very much in the hands of politicians rather than in the hands of those required to carry out the law on the trade practices side and on the National Competition Council's side. If that is so, and we have to answer to our constituencies in the broad Australian people

sense, my question to you is: has the work of the Productivity Commission helped in interpreting the very different perceptions thrown up by both the language and the philosophies and values which are being expressed socially and economically, particularly between country and metropolitan Australia?

I think behind Mr Nettle's and Mr Davis's remarks was an instinct or an understanding that, in many respects, Australia is now at a policy crossroads which has to be dealt with on an ideological basis. I really do think it is a turning point, and that is why I am particularly interested in your views, because you have an intimate relationship with what is going on. I hope that is a helpful summary for you of what I am after.

**Mr NETTLE**—I think you might be better off going around to the newcomers who can add more of a social perspective to that. I completely agree with everything you have said, and I think we are very much at that policy crossroads. I suppose all of us are waiting for whatever policy comes out of it. I will mention again last week's Regional Australia Summit, which was, again, a crossroad for policies—and not just the national competition policy. The Productivity Commission have been very good at explaining—apart from that map there—what has happened. From this group here, I would like to get more of a social perspective on it and their interpretation of what is happening out there in the bush.

**Mr DAVIS**—Having been named, I guess I will go second, if I may. I will touch on a number of points. Senator McGauran, you talked about intrastate migration—for your information and if you need some guidance, I can commend to you Dr Martin Bell from the University of Adelaide, who has done some brilliant work on this. It would be most informative for this committee if they want to look at that sort of thing. He also has slides, but they are easy to digest. It is about internal migration as much as anything else.

I have seen Dr Bell's work, and it points out it is the low socioeconomic deciles that are leaving the capital cities. Those people, basically in Sydney and to a degree in Melbourne, are capitalising on their houses and moving out into the bush. Far be it for me to speak to politicians about what that means, but as a lot of people who depend on social welfare—the aged, young people and the unemployed—pour into rural Australia, it can have profound effects on voting patterns. I will leave that to others better capable than me to draw that out.

But, as we touched on in the first session, the question is: what is happening to this structural adjustment assistance? It is meant to handle a lot of these changes. It is meant to be assisting those who are worse off or less well off to restructure. This money is meant to be invested in helping them. Without putting words into the mouths of those on the committee or creating work for Mr Kerr and his colleagues, there could be some valuable work in saying, 'How is this money being used? Has it been used well? Has it been used at all? How well could it be used to facilitate the structural change?'

The essence of Senator Murray's question is that we are seeing the forces for change but we are not seeing the structural adjustment that follows it in a policy intervention sense. The market will always find opportunities and fill gaps. In the private sector we are seeing that: people go in to create small post offices, and pharmacists have been very aggressive in seeing niches in the marketplace with new banking opportunities and filling some of those gaps created. But the essence of Senator Murray's question is: what is the role of policy in

its wider sense, because the private sector will always create that wealth, it will always distribute it. It may not distribute it the way some others may wish it to, or the political actors may wish it to, but it will always recognise those gaps and get in there and fill them. But the role-of-government question that was behind Senator Murray's question is a different one again.

**CHAIR**—Thank you, Mr Davis. Before we do go right into the meat of this particular session here, I did say to Mr Samuel I would give him a chance for a quick response to this.

**Mr SAMUEL**—I will cover three very quick issues first. Senator Lightfoot, there is nothing in the competition policy to prohibit export subsidies. In fact, just to correct Mr Kerr, you do not even need to go through a public benefit test or a review; that is a matter for government. There may be some international trade implications, but they are not a matter of national competition policy. Indeed, under the Trade Practices Act, there is a specific exemption that is provided there for collusive export arrangements between participants in an industry, so there is nothing inconsistent with that, but it is a matter for government. You might have a disagreement there, Mr Kerr, but we can talk about that later.

A quick commentary on Victoria: it is worth noting that each of the political leaders in Victoria—that is the leaders of the various political parties—indicated to me after the election that the national competition policy, with the exception of one press release relating to dairy deregulation, did not rate a mention in the whole of the campaign but there were some significant social issues relating to rural Victoria that according to them—I am not a political judge in these issues—did have an impact on the outcome of the campaign.

As to the issues raised by Senator Mackay, let me say compulsory competitive tendering is not, and never has been, part of national competition policy. We have said this in our successive annual reports since 1995 through to 1999 but there are still some in the political spectrum who want to claim that it is part of competition policy and that they are required to compulsorily, competitively, tender services. There is no requirement that that be the case. Some governments choose to do it. They do it for public policy reasons. It has nothing to do with national competition policy but it is a very interesting perception issue that competition policy is blamed for compulsory competitive tendering. It has never been a part of the policy and we have said so repeatedly. Whether we are listened to is another issue.

That brings me to the most significant issue that we now need to be addressing and it is something the Competition Council has been talking about, again since 1995, and in successive annual reports, public papers, public speeches and commentaries, and that is the social aspects of what is seen as being primarily an economic measure. Let me take you, if I may, very briefly—and it might be the quickest way of answering this, Mr Chairman—to our 1996-97 annual report. We said there, on page 17, that:

Competition policy can play a major role in enhancing the performance of the economy. Its strength lies in improving productivity and economic efficiency. This can directly improve people's material living standards and, in conjunction with other measures, enable the attainment of the community's social and environmental goals.

However, implementing competition policy alone does not guarantee these outcomes. Competition necessarily entails losers as well as winners, particularly in the short term. And whether the potential benefits of competition

reform are realised in full, shared equitably, and put to the best use will depend on other government policies and economic conditions.

If these other areas are not adequately addressed, there is a chance that people will simply equate competition policy and micro-economic reform with job losses, breakdown in communities, reduced government accountability and impaired environmental quality.

Then we move on with four implications for governments. I will not address all of them because it will take up too much time, but let me address the first. We said:

First, there is a need for specific, ongoing action to address these other issues—such as social justice, the environment, tax reform, education and labour market reform—so that the impetus for broadly-based competition reform is not lost and so that the benefits can be fully realised and put to the best use.

We have said this in successive annual reports; I have said it in successive speeches, but it is convenient for those who do not want to take up that message and deal with those issues to simply say, ‘The problems you have got, whether they are in rural Australia as identified by the Productivity Commission, whether they are in urban areas, whether they are in specific sections of the community, are all the result of competition policy. If you get rid of that it will solve your problems.’ I said the other day on radio, and I will repeat it to this committee: I think that those that convey that message to their constituents are being unfair. They are ignoring the plight of those constituents and they are ignoring the issues that the Productivity Commission has addressed and attempted to address in its report.

The Productivity Commission has said quite clearly that there are massive social changes occurring in Australia. The rural summit identified those massive social, demographic and economic changes. If governments continue to ignore them, continue not to assist communities through the process of change and simply say, ‘We can fix your problems by getting rid of national competition policy,’ they are being unfair to their constituents. That, I guess, is the big message that perhaps can come out of this committee.

**CHAIR**—I want to comment very quickly on one point. What you said about Victoria was very interesting. We have not got the map up there anymore but, basically, what you said was that the leaders confirmed that national competition policy was not an issue. ‘There were no press releases’ I think was the comment you made. But, in my political life, I have rarely seen the bush change as much as it did in Victoria, and the first skerrick of evidence I have seen of what did happen there is this map.

I think Mr Bracks was as surprised as I was on the Saturday night—but that might be doing him an injustice—and I was probably not quite as surprised as Jeff Kennett. But some process took place out there in the bush that I have not seen in my life—and this is the first evidence that I have seen of it. It is interesting. I make no more comment than that, other than the fact that just because the leaders have not picked it up does not necessarily mean that—

**Mr SAMUEL**—What I did say, Chairman, was that significant social, demographic and economic changes have been occurring in rural Victoria, as indeed they have been occurring throughout rural Australia. The Productivity Commission has picked these up. The rural summit last week addressed them very significantly, but the issue was: was this caused by

national competition policy or was there a whole range of other social and government policy issues? And I think that is the factor.

**CHAIR**—I agree with you, Mr Samuel.

**Senator MACKAY**—Jeff Kennett said that CCT is part of national competition policy. At the point that he made those comments, and consistently made those comments, did you come out and say that he was wrong?

**Mr SAMUEL**—First of all, I am not aware whether Jeff Kennett said that CCT was part of competition policy, but I can draw your attention to successive annual reports, to successive speeches and to the text that we provided to you in our submission that said what competition policy is not.

**Senator MACKAY**—I appreciate that.

**Mr SAMUEL**—It is not about compulsory competitive tendering.

**Senator MACKAY**—I understand that, but you can understand why there is a problem of perception in the community when you have got a state premier running saying, ‘We are doing this because of national competition policy,’ with respect.

**Mr SAMUEL**—As I have indicated before, there is a whole range of difficulties that we have in this area because there are a lot of political parties and political leaders that are attributing a range of social, demographic and economic changes to one particular issue—competition policy. As I said before, I mean it absolutely sincerely because I have an intense sense of social frustration at the fact that all these issues are being attributed to competition policy, and that is being unfair to the constituency that purportedly it is seen to represent.

**Mr O’CONNOR**—For those who may not know, we represent a large proportion of local government employees amongst other occupational groups and industries. In fact, we would have members in every municipality in the country. Therefore, I will confine my comments at the moment to local government and the effects that we believe NCP has had upon that industry, and, in particular, the adverse effects it has had upon employment levels in regional and rural Victoria in that industry, and as people are becoming increasingly aware, the compounding effects of state government legislation in Victoria known as compulsory competitive tendering.

I wanted to make some observations, firstly, with respect to the Productivity Commission’s address, more so by way of questions that could be answered at a later time. Under the heading ‘Losers’, there was the subpoint that ‘losers were short term or traditional’ and I was not sure what that meant. I was wondering whether or not losers included people who had permanent jobs and no longer had them.

In relation to the graph that illustrated a decrease in public sector employment and a corresponding increase in private sector employment, in some cases illustrating a net gain of employment overall, did the statistics provide for classifications? In other words, was there any attempt to compare permanent full-time employment with casual, temporary, part-time

employment? The observation of the Australian Services Union is that of course there is some creation of jobs as a result of work being lost in the public sector across Australia, but certainly across rural and regional Australia. However, it is not normally the case that those permanent jobs are replaced by the same amount of private sector permanent employment.

For the committee's benefit, I want to indicate that, from our observations and from the data we have received amongst our members, thousands of whom have been retrenched—sometimes voluntarily, too often forcibly—the employed are now working in permanent part-time or temporary and casual arrangements either for other industries or for contractors who are employing them under inferior conditions. Their status of employment is inferior in that it is either casual, temporary, part time or fixed term.

I know we have raised these things before by way of submissions and I just make the point that these are concerns. If the chair was looking for an answer for Victoria, I would suggest that a contributing factor for the result on 18 September, in our view, was the abandonment or the perception of the abandonment of workers in rural areas and they decided to inflict as much anger as they could muster upon the current state government.

I respect what Mr Samuel has to say in relation to what national competition policy is. Our view is that the community believes that CCT in Victoria is synonymous with NCP. Notwithstanding what has been expressed in the reports, the community do not see any difference. If Mr Bracks were asked whether he referred to CCT in the election, the reply would be that it had been referred to across Victoria a thousand times. People read CCT as NCP. They do not distinguish a difference, even though there might be one.

With respect to specific ongoing actions, as referred to by Mr Samuel, or structural adjustment assistance, as referred to by Mr Davis, it seems to us that those things have not been properly implemented when NCP has been implemented—certainly in certain areas and certainly not in Victoria. We would hope that the committee could look to those issues, whether it be looking at issues that go to the rural community, employment losses or broadening the public interest test so that the so-called losers that I do not believe are short term can actually be assisted in the process of change.

**CHAIR**—Mr O'Connor, you have made your point there. I will go quickly to Mr Kerr and then I would like to hear from some of the other witnesses that have come to the table. I will let you sort it out amongst yourselves. A couple of the issues that we really need to raise particularly are social welfare programs as a result of this and the Aboriginal and Torres Strait Islander perspective would also be very useful. I go to you, Mr Kerr, first of all.

**Mr KERR**—We will try to respond to two of the questions that Mr O'Connor asked. I will have a go at this issue of what we mean by losers in the short term. Yes, that may well be people who lose their jobs. I do not think that is the wish of any government or indeed any economic analyst.

The distinction to be made is that if policy causes changes in employment, clearly those who lose their jobs are losers in that respect, and that is likely to occur relatively quickly in

the short term. The question is: are there long-term benefits in terms of employment elsewhere in other activities that will lead to gains for the community?

Unemployment is higher in the bush than in the cities but, nonetheless, there has been employment growth in the bush overall. It may well be that the overall picture disguises a lot of change within it. Clearly, people are losing and gaining employment. If I were one of the ones who lost their job, I would certainly feel like a loser.

Mr Plunkett will try to comment on your point about part-time and casual as it is represented in the employment data.

**Mr PLUNKETT**—The phenomenon you are talking about is a well-known feature of Australian labour market development over the last two decades. There are three developments you could talk about in the labour market over the last two decades. One is the increase in the number of unemployed, and of those unemployed, the increase in the number of long-term unemployed.

The next element of the Australian labour market has been the increase in the number of part-time employed. I do not have the figures in front of me but that is a well-known feature of the Australian labour market. It is to do with developments in the labour market, and very little of that would be contributed to by NCP particularly.

**Mr KERR**—There was a specific question as to whether this graph captured the part-time and casuals—

**Mr PLUNKETT**—That is based on ABS labour force survey data, the industry employment of people at census time. It would catch people transferring from permanent to part-time work.

**CHAIR**—Thank you.

**Mr ROLLASON**—I would like to begin with the map because I found it fairly intriguing too. I want to come back to a point that Senator Murray raised earlier. It seems to me that the map indicates that the evaluation, as I have just heard it, from the Productivity Commission in terms of its impact on the economic infrastructure is exactly the opposite to the social infrastructure. Where the benefits lie are where there are relatively few people, and yet where you have picked the red areas is where many of the social problems are highest. It seems to me there is almost the opposite correlation between where the benefits lie and where the perceptions are of social problems in this country. I would have thought that in many of those vast areas of green, people would not have seen their social services improve over the period of national competition policy, although clearly that says—

**Senator LIGHTFOOT**—I think—

**Mr ROLLASON**—I am not sure Aboriginal and Islander people have seen their services dramatically improve as a result of the benefits that have flowed to those areas from national competition policy.

It seems to me there is a clash going on, a clash between the marketplace ideology and the issue of cooperation between people. In a sense it is the anti-icon because it represents the marketplace ideology. I am not so much arguing one case or the other, but there is a perception in the community that the marketplace ideology, as it is reflected in the icon of national competition policy, works against people cooperating with each other.

We certainly see that in our social welfare organisations where, because of competition policy and tendering in social welfare fields across Australia, we find agencies are not cooperating with each other like they used to. There is much more competition. It tends to lead to the larger city based agencies being better placed to win tenders than small rural based agencies. Small agencies in the city will lose to big agencies. Rural agencies will lose to larger agencies in regional centres, and regional centre agencies may well lose to city based agencies. It is partly just the sheer size question, and it is partly the capacity. It is also access to information, access to decision makers, and the capacity to put together what often are fairly expensive tender processes.

So what I would like to see is the impact on social infrastructure and social capital in our community because whilst our nation will benefit if we improve our productivity and economic efficiencies, it has to be done in relationship to the social capital and the social impact. How do we ensure that our communities remain cooperative, help each other rather than worry about competition, and seek to respond to community needs?

The trouble with the social impact is that it is always someone else's responsibility. We heard it said here again this morning that it is always some other element of policy which should deal with the social impact of these things. We have had similar positions put to us in the whole tax reform debate. There it was said the tax reform debate was about getting the taxes right and getting the amount of revenue necessary to provide social services. It was said there also that the social services issue was another area of government that was not in the limelight at present, that they were looking at the generation of revenue. So, in my mind, the social impact stuff is always somebody else's responsibility.

I certainly take Mr O'Connor's point that in Victoria, compulsory competitive tendering and national competition policy are synonymous. It may not be true and it may be a very inaccurate representation, but in our minds they are synonymous.

The other interesting association is that most of those electorates that changed in rural Victoria at the last state election all feed into Citylink. Of course, in Melbourne itself, and in all Victoria to some extent, Citylink is the icon of the marketplace. It is a public road, the Tullamarine Freeway, expanded to become a private road where you will now pay tolls. And all the electorates that feed into that road, up those corridors to Ballarat and Bendigo, changed the government. They all voted against the government.

Many people feel that this marketplace stuff has got out of hand. To some extent, in my mind, national competition policy is seen as this marketplace ideology writ large. We want to see a benefit that has more social value for people in their lives.

**CHAIR**—Thank you, Mr Rollason. I think there are a couple of other contributors who wish to speak.

**Mr SIEMON**—Thank you, Mr Chairman. I am representing ACOSS here today. I should say that I have actually testified before this committee on behalf of the Brotherhood of St Laurence earlier, but ACOSS has asked me if I would come today so they did not have to fly someone to Melbourne.

I will make a couple of quick observations. I share some of the frustration of the Productivity Commission in terms of the gulf of understanding about what national competition policy is, strictly defined, and the public reaction to it. It seems to me that there are two reasons which I would point to: one is that national competition policy has been sold as a very important policy which is going to deliver a lot of benefits to a lot of people. In a sense it has been sold as the place where the action is. Therefore, it is not surprising, as that has been given a great deal of prominence, that people who find their changed circumstances and their community's changed circumstances appear to be going in the opposite direction, blame national competition policy, even though that may not be, strictly speaking, accurate.

It does seem to me that one of the problems that is fed into this is that national competition policy could well have been over-sold in lots of ways. My own view is that, as we saw with the variety of estimates of economic benefits associated with the new tax reform measures, there is a pretty wide variety of estimates of economic benefits flowing from national competition policy no matter where you draw the boundaries.

It is certainly true that some of the changes that have been brought about under the name of national competition policy tend to have fairly defined losers and perhaps more diverse or disbursed benefits. In a couple of areas of change which have been run through national competition policy, I have observed that some of the benefits are less clear and less certain than some advocates would have, and some of the downsides are quite negative and often tend to be quite inequitable. We have seen that in Victoria in some things like water pricing.

One of the additional observations I make there is that there is a great unwillingness to take the issues of compensation for those changes seriously. I sat on a ministerial advisory committee looking at changes to the water concession system associated with changes to water pricing. We produced a very detailed report on that which produced absolutely no action whatsoever on the part of the government, even though that report was entirely in keeping with and accepting of the philosophies of water pricing that the government had run with. So I think Graeme Samuel is quite right to say at one level that national competition policy is getting blamed for things that it should not be blamed for, and he is quite right to point to the need for other forms of government action.

ACOSS's general observation would be that national competition policy is certainly not the major thing producing bad outcomes for particular groups of low income Australians. It is quite clear that there are particular government policies which have produced very bad outcomes for Australians which are not terribly much to do with national competition policy—for example, changes to the social security system and so on. However, you do find, looking at some of those policies, that they fit together with an economic philosophy or economic decision making threads which are contiguous with some of what is called national competition policy. For example, in changes to public housing rents in Victoria we have seen the rent paid by public tenants increased, in the case of a new tenant coming in, from 20 per

cent of income to 25 per cent of income. That represents a very massive change in the living standards of a low income public tenant.

That was not done through national competition policy, but it was part of a broad suite of changes which had been talked about from 1994 onwards, which were to do with a restructuring of public housing and housing assistance, and which certainly had some sympathy with some of the underlying thinking of national competition policy. So, again, it is not surprising that people will fail to understand the rigid boundaries of what is formally national competition policy and what is not national competition policy.

My response to the question from Senator Murray about what governments should be doing now would be that we probably need to be looking much more consciously at where we need to be actually improving living standards, where we need to be improving opportunities for people, where we need to be providing infrastructure. We need to be looking at those concrete problems, rather than continuing, as we have tended to do over the last few years, to put some sort of faith in market mechanisms as somehow solving those things downstream.

In Victoria, for example, in changes to human services, my belief is that, rather than having an assumption that if we could get the correct mix of market mechanisms for the delivery of health and aged care services everything would flow neatly, we should be looking at what the real gaps and coordination problems are and not be assuming that there are these coordination problems that market mechanisms will solve. It is not at all clear that, no matter how well you structure an arrangement under the rubric of competition policy in human services, you are really going to get those outcomes in terms of quality and sophistication of purpose which some of the current service structures are delivering now.

**Senator LIGHTFOOT**—Mr Siemon, I have a couple of questions. Do you have an opinion on whether it is better for governments to retain those utilities that have been sold off or are being prepared to be sold off, or are there exceptions in which the private sector can better handle some of those utilities and deliver a better service to the public? My second question is: is it the government's responsibility, if it chooses to sell off those utilities—electricity, gas, water—not only to sell them off if they think they can be better handled in the private sector but to get the best possible price for those utilities? Leading from that is the question: doesn't that mean, if the government's position is to obtain the best possible price, that the unit cost in the event of a high sale price is bound to go up? Where does the government draw the line?

**Mr SIEMON**—I do not think ACOSS has a view on infrastructure assets as to whether they should or should not be sold or which strategy is preferable in terms of asset price maximisation. I would have thought that, in reality, governments have always had competing objectives in that regard. I think the aim to have prices sustainably low, when you are talking about electricity, gas, telecommunications and water, is a reasonable goal. The reality is that governments have always, when it has suited them and they have felt it appropriate, been prepared to levy surcharges on those things, as they do on petrol when opportunities arise, as they used to do with electricity supply in Victoria, as they certainly used to do with gas supply in Victoria. I do not think ACOSS would have a view that under all

circumstances that is inappropriate. There are always judgments that are going to be made there.

My personal observation would be that some of the assertions that restructuring is necessarily going to produce a lower price or markedly greater efficiencies in the medium to long term may turn out to be a little less certain than they appeared to be. The reality about electricity restructuring and purchasing in Victoria is probably a little different from what would be the Australian norm if everybody did it because Victoria had the advantage of being the first cab off the rank in selling stuff off. I do not know if any of that is helpful.

**Senator LIGHTFOOT**—Does Anglicare have an opinion on that?

**Mr ROLLASON**—We have not had that much debate on it. The issue for us would fundamentally be the one of what is the social impact. Inasmuch as there has been quite a bit of experience at state and federal level of privatising public utilities, it might be good to actually take a stocktake on what have been the economic and social benefits, gains or losses from that process. I have read the media speculation recently in the *Financial Review* about the first sell-off of Telstra costing the Australian community \$16 billion by being underpriced, so there are issues like that.

I would want to see, and we would argue that there ought to be, a more clear assessment of the benefits before such policies continue unabated. We need to know what really has been the benefit to the community, both economic and social.

**CHAIR**—Could we go to the ATSIIC representatives to give us a perspective.

**Mr TAYLOR**—The kind of impact of NCP on indigenous people varies depending on whether they are urban, rural or remote—and the population splits on those lines into about a third, a third, a third. Coincidentally, I think the indigenous experience of that map is probably the inverse, in that urban dwelling indigenous people may have had some small price and service benefits from some of the competition processes so far. Certainly their experience in rural and regional centres is pretty similar to that of the mainstream—the loss of human capital, of services and financial services has been fairly pronounced.

In remote communities, it is a fairly complex picture. It might be useful to look at the WA situation as a bit of an example. The benefits flowing to the large swathe of green in that state certainly appear to have come from the water and power industries and those kinds of reforms, but for the remote communities which dot that large green area there has been no perceptible change in water and power services. Clearly, much of that green is taken up in benefits to the mining industry. I would be interested to get some Productivity Commission comment on the breakdown of residential versus non-residential benefits in that map. I think it is fair to say that, in a sense, the concerns that have been flagged about the impact of the competition policy in terms of low income earners and people in rural and remote towns are shared by ATSIIC, certainly, and by most indigenous communities.

The issue in terms of the water and power industries is a particularly interesting one. In an early stage of the competition process, we actually got Deloitte to do a survey of state agencies involved in setting up competition frameworks to see how they were dealing with

issues of community service obligation, particularly indigenous communities. Perhaps it is surprising—or not surprising—but there was absolutely very little attention paid to the more complex issues about public interest that this committee has been concerned about. I am happy to provide a copy of the report. It might be an interesting historical document about how narrowly public interest was taken up in the process of setting up the regulatory regimes.

I should also say that, I think from an indigenous perspective and certainly from an ATSI point of view, there have been some small and limited benefits. I will talk you through a few examples. In those states where local governments have started to outsource or tender some work, Aboriginal organisations are actually starting to get some of the work that was previously conducted in-house by local governments. Generally, that has not come about solely through a kind of clinical tendering process but more from a burgeoning partnership—a sense of partnership between indigenous communities in local shires around Australia. Certainly, the involvement of local Aboriginal organisations in municipal services has come about partly by the desire of shire councils to actually keep resources local as well, so it is certainly not an outcome directly driven by competitive tendering.

One major example of our driving a tendering process relates to water and power services for a lot of those remote communities in WA. Until about three years ago, we channelled about \$8 million through government utilities in power and water in WA to encourage them to provide water and power services to remote communities. We did a review back in 1995 which led us to tender out those services in Western Australia and to set up three service regions. We saved ourselves about 75 per cent in service delivery costs through working around the state utilities rather than through them, and in the few years since then we have actually achieved quite significant improvements in service delivery.

In terms of the financial sector, experience has been that bank closures have been proceeding apace, and that has had a pretty significant impact on indigenous communities. In terms of remote Australia, particularly, there are still 10,000 or 12,000 welfare beneficiaries, indigenous people, who still do not have the benefit of having bank accounts. They still rely on manual cheques generated through Centrelink, and by the way that bank closures are going in remote Australia at the moment it is unlikely that they ever will have that wonderful experience of having a bank account.

The withdrawal of financial services from the bush has—as other people have mentioned—created a vacuum that indigenous people have tried to fill themselves. Up to date, there are two indigenous-controlled credit unions that have sprung up to try to fill the vacuum, as it were. I think that is a trend for the future.

The general issue, which I think you flagged in your draft report, of whether or not public interest tests could solve problems for some remote indigenous communities is a difficult one. The problem I can see with it is that basically it is a political question for state governments to determine how those things are shaped up. The massive benefits through deregulation of gas in Western Australia, for example, did not lead the WA government to say, 'We'd like to actually spend more money on water and power for indigenous communities in those same regions.' We have been having that fight with the WA government for several years now. It is simply a straightforward political matter, and I find it

difficult to see how the Commonwealth would be able to solve those kinds of issues through a neatly worded definition of public interest.

**CHAIR**—Thank you. Are there comments? I will go to the NFF, then to Mr Kerr and then to Mr Samuel.

**Mr RITCHIE**—Just a few quick comments. They are probably obvious points, but I think it should be put on the record that that modelling is long-term input/output analysis. It should not be confused with an estimate by the Productivity Commission of what has happened to date. It is very much the future of what might happen if all of the national competition policy reforms they modelled, which was largely infrastructure, are implemented. Having made that point, I would have to say that the NFF would disagree with some of the assumptions, particularly some of the pricing averages that were put into the model for infrastructure.

I know there was some discussion at the modelling workshop I was at about some of the closure assumptions, but Herb can go through them without boring you with econometric details. Econometric models will spit out different results depending on which closure assumptions you make. I know that some people who know a lot more about it than I do had some problems with it. The other obvious point to make is that those modelling results do not take into account things such as income levels, wealth levels or the disparity of adjustment costs. In other words, if somebody loses a job in the country then the cost of their adjustment is not the same as for somebody who loses a job in the city. Of course, they do not take into account transitional effects.

The final point is that a lot of the green areas on that map, as Herb and Robert have already pointed out, are based on improved rail productivity which mainly impacted on the mining sector in those large Western Australian areas, and a lot of that shows up as increased profit levels on bottom lines of companies that do not have much interest in rural and regional Australia.

**Mr KERR**—I would like to just make three points. The first is to confirm Mr Ritchie's comment about what modelling lies behind this map. We are very pleased that people are taking such an interest in this, but it is very important that it is not asked to carry a greater analytic burden than it was designed to carry. This is an estimate of output changes over and above what would otherwise have occurred. It is an overlay on top of the swings and fortunes of what otherwise is occurring in the economy. Also it is an estimate of prospective gains rather than a description of what has happened. That is my first point.

My second point, just to pick up an element of what was earlier commented on, is structural adjustment issues that arise from national competition policy changes. This is something that we have been worrying about and thinking about for some little while in the commission and, indeed, we are now starting to publish a separate series of research papers on structural adjustment issues. When you have time to read our *Impact of competition policy reforms on rural and regional Australia: inquiry report*—report No. 8 of 8 September—in detail, you will find there is a chapter devoted to structural adjustment matters. One of the things that bothers us is that we are inclined to think that governments should respond to people because of their misfortune, rather than because of the source of

their misfortune. That is, if people are disadvantaged, we would think that that should drive government's policies rather than just confining government reaction and assistance to people who suffer misfortune for a particular reason.

The former is a much wider group than the latter. We are not wholly convinced that the cases for compensation per se are all that strong, although the case for adjustment assistance to assist people to cope with the changes that are going on around them—only some of which we have been discussing in the national competition policy—needs more serious consideration.

Our starting point, and you will find this reflected in our report, is that the general safety net provisions of social welfare systems should be the first point of call, although we do recognise that cases can be made both regionally or sectionally if people are particularly disadvantaged and where general safety net provisions may not be adequate. That is an open question and I do not know that we were able to offer any material conclusions on that, but it is part of this story that needs further addressing.

My third point is in relation to Aboriginal communities, and this is just by way of illustration. As to the public inquiry which I mentioned earlier into broadcasting industries, which we are halfway through, which is being held under the auspices of national competition policy, in our draft report we have made some recommendations about a separate allocation of broadcasting spectrum for Aboriginal and Torres Strait Islander communities because we feel that under the current system they do not necessarily share all the characteristics of general community broadcasters which is the group with which they are gathered at the moment.

My reason for mentioning that example is that the national competition policy process should allow the needs of particular communities to be expressed and considered as part of the reviews that are under way. A more general example of that would lead to those parts of the community which needed community service obligations to fulfil particular social objectives. Thank you.

**Senator MACKAY**—Chair, before you go to Mr Samuel, can I ask him a question that he might be able to pick up in—

**CHAIR**—Sure.

**Senator MACKAY**—It concerns the issue that Mr Davis raised about the tranche payments. I have just had a quick flick through the annual report. I do not know if I have missed something, but is there an analysis in terms of the transparency of the tranche payments that is probably not available here, and where would we find that? Can you just explain it to us? I understand it goes to state governments. I understand three state governments do pass some on to local government. Can you (a) explain the process and (b) explain where we can go to find out transparently what the state governments then do with the money?

**Mr SAMUEL**—Yes. Thank you, Senator. It is part of what I wanted to address so I will address it in the course of the comments I want to make.

Chairman, I find myself in very comfortable agreement with much of what has been said in this session, particularly by Messrs Taylor, Rollason, Siemon and O'Connor. They have addressed a number of issues which in part, but only a very small part, reflect a misapplication of national competition policy. I do not want to continue to address that issue; I think it has been addressed in our annual reports, it is addressed in your own interim report and I think that, with a bit of luck, after people read the many thousands of pages that are set out there in that pile they will begin to understand what is in national competition policy and what is not, what is a proper application of the policy and what is not a proper application of the policy and what is a misapplication.

But in fact the substantial part of what has been put forward by those gentlemen today is reflecting a failure or dereliction on the part of governments in what I will call national social policy—the issue that Senator Murray has raised. The issues that have been discussed today by each of the individuals that I have just referred to are issues that relate to fairness in society, that relate to community service obligations, that relate to universal service obligations, that relate to issues of structural adjustment assistance—not to deal with change brought about by national competition policy but to deal with change that is occurring in society generally as reflected by a number of studies that have been produced, and particularly by the Productivity Commission inquiry.

National competition policy, where it has been properly applied, is now producing an efficient Australia by any analysis. But I have to question whether a dereliction or a failure on the part of governments is producing a fair Australia. That is the issue that perhaps we now ought to be addressing at government levels with some very serious concern and consideration.

It is all too easy to simply say that national competition policy is causing a whole lot of dislocation in society and that if we get rid of it we will solve all the problems. As I have said over and over again both today and on previous occasions, that is being unfair—unfair to the constituencies to which it is being addressed and unfair to Australia generally in terms of national social policy.

National competition policy does not prohibit community service obligations. Indeed, in our various annual reports and documents we have encouraged, urged and exhorted governments to address issues of community service obligations. It does not prohibit universal service obligations. It does not prohibit the provision of proper services of health, education, telecommunications, water, power, transport or housing to all sections of the community such as they may be entitled to in a properly constructed, fair Australia. The failure of governments to address those issues is not an issue of national competition policy; it is a failure or dereliction of national social policy.

Structural adjustment assistance should not be focused in a narrow, spotlighted form on adjustment assistance relating to adjustment or change caused by national competition policy. It should be focused and directed towards changes in this society that are occurring through the vast range of issues and impacts that have been identified by the Productivity Commission in its report and by ACOSS and others in various analyses they have undertaken. Structural adjustment assistance ought to be provided to produce a fair Australia. It ought to be provided to ease people through the changes that are occurring for a whole

range of reasons of which one, in a small way, is national competition policy. Structural adjustment assistance does not just involve payments. It involves phasing of reform, it involves dealing with social change generally and it involves providing targeted assistance to transition rather than long-term compensation to adjust for the removal of privileges and protections that have been there in the past.

In that context, the competition payments made by the Commonwealth to the states can be an important factor. They total, as it turns out, Senator Mackay, not \$16 billion, because the impacts of reduced inflation and some other factors—not the least of which are the GST changes—will reduce the total elements of the competition payments. The competition payments to the states each year are now between \$600 million and \$700 million. An enormous amount of assistance to change can flow on from those payments of \$600 million to \$700 million.

Are they being applied that way? We have no idea. We have no idea because those payments are made by the Commonwealth to the states, they are incorporated into state general budgets and they are dealt with in accordance with state and territory government policies in such a manner as they wish to deal with them. We have suggested and then urged and exhorted states to start using some of these funds not as part of their general budget but in the context of providing targeted, sunsetted, transitional assistance to change.

Whether it is assistance to change caused by competition policy or whether it is assistance to change caused by other factors, they are dividends that are being paid by the Commonwealth to states in return for the investment in reform. If the dividends are paid in return for investment in reform, then those that are part of the reform process ought to receive part of the dividends in terms of assistance to change.

Part of the difficulty, as you will be aware, goes to the issue of perception. Indeed, I think you suggested in your interim report that those payments ought not to be reflected as penalties where they are not paid but ought to be put in the converse fashion of being dividends or, if you like, bonuses for the undertaking of reform. We have said this for as long as I can remember, certainly for as long as I have been part of the National Competition Council. These are dividends in return for investment in reform and should be paid through to those who are participating in the reform process. But that still will not stop state treasurers incorporating these payments in their forward estimates of what they believe will be their revenue for budgets and then, when the investment in reform does not take place and it is necessary for us to recommend to the federal Treasurer that there be a reduction in the dividends, for the cry to go out that penalties are being imposed.

If governments start to realise that these payments are part of the dividend for reform, part of the dividend for bringing about change, and start applying them to assist in that change, if governments start to recognise that they have a substantial social duty to produce a fair Australia as well as an efficient Australia, I think a lot of the problems that we have been discussing today and that you have had to deal with in this report will very quickly disappear.

**Senator MACKAY**—Could I ask Mr Samuel a question?

**CHAIR**—Very quickly, because I think that is a pretty good note to finish on.

**Senator MACKAY**—I want to clarify that, essentially, tranche payments are handed over. What is the quantum including GST? You said it was not \$16 billion.

**Mr SAMUEL**—Yes, it was originally estimated by the Commonwealth back in 1994-95 that the total projected through to the year 2006 would be \$16 billion. It will turn out to be less than that.

**Senator MACKAY**—You are not sure. It does not matter because it is not apposite to the point.

**Mr SAMUEL**—I can say to you that each year it is of the order of \$600 million to \$700 million, depending on inflation.

**Senator MACKAY**—It is about \$800 million. Senator Murray, who is very well versed in these things, says it is about \$8 billion. This money is handed over to the states in turn for a dividend, and we do not know whether it is being used to achieve the dividend or to achieve the structural change that is required.

**Mr SAMUEL**—Correct.

**Senator MACKAY**—What role does the NCC have in determining whether this money is appropriately spent or not? This is extraordinary, I think.

**Mr SAMUEL**—Senator, you must appreciate that the NCC's role is to advise governments. We have no mandate at all to direct governments. We can encourage, we can exhort and we have been doing that for as long as you and I have been talking about national competition policy but, in the end, it is ultimately a matter of government policy as to how they deal with their social responsibilities.

**Senator MACKAY**—But you do have the power to withhold the tranche payments.

**Mr SAMUEL**—Yes, we have the power to withhold tranche payments if investment in reform is not undertaken. We have no mandate under the agreements that were entered into by COAG to require that those payments be used to assist in or to facilitate the reform process. I might say, by the way, before we suddenly jump on that as a solution and say, 'What we ought to do then is to have an agreement that those payments should be made to assist in the reform process,' that it is a very complex process to allocate payments to specific reforms, into the range of reforms that are occurring. We should also not be too quick to come to the conclusion, as I think Robert Kerr has pointed out, that the only method of dealing with adjustment is to make payments because there is a range of adjustment factors that we are having to deal with that can be dealt with by means other than payments.

**Senator MACKAY**—No, I agree. I just think there is a public policy issue here in terms of transparency, that is all.

**CHAIR**—Thank you.

**Proceedings suspended from 1.03 p.m. to 2.16 p.m.**

### Participants

**COHEN, Mr Simon Justin, Project Manager, National Competition Council**

**FISHER, Mr Timothy Gordon, Land and Water Coordinator, Australian Conservation Foundation**

**JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission**

**KERR, Mr Robert, Head of Office, Productivity Commission**

**McKAY, Associate Professor Jennifer, Water Law and Policy Group, University of South Australia**

**OFFICER, Professor Robert, University of Melbourne**

### Session 3—Environmental impacts

**CHAIR**—This afternoon's session, which should finish somewhere around 2.55, is on environmental impacts of national competition policy. There are a number of issues that I think we would like to see covered this afternoon, particularly agriculture and water industry issues, although I am somewhat worried every time I see water because I think of Western Australia. As soon as I go over there everyone from the water industry wants to mug us from one side to the other. They are very important issues. I am not sure where we start out with this. Mr Fisher, would you like to start us off?

**Mr FISHER**—Yes. You just want to cover water first?

**CHAIR**—Feel free to let it flow. These are the issues that we need to have covered.

**Mr FISHER**—In the Australian Conservation Foundation we are very concerned about a number of aspects of natural resource management in so far as they relate to economic policy and competition policy in particular. But, in managing Australia's natural resources, I think state and to a certain extent Commonwealth governments have been guilty of a number of crimes, if you like, where our natural resources sector is heavily supported by hidden, undisclosed or otherwise unaccounted for subsidies and cross-subsidies, and these cover land, water, fish, forests, minerals and energy. Our particular concerns have been water and to a lesser extent forests as we follow the water reform debate since about 1990, and poorly designed natural resource access and use rights which fail to account for the principles of adaptive natural resource management. Where they do exist, all of the emphasis is on providing security to users of those resources without balancing the need for the same sort of security and flexibility and adaptability in terms of the rights of the environment.

Those two combined mean that we have a situation of overexploitation of natural resources and, in the process, we get degradation of ecosystems associated with unsustainable levels of natural resource and land use. In dealing with this, our institutional legal arrangements are probably outdated and inadequate, and there are considerable issues of competitive neutrality that arise—for example, with timber production. It is very difficult if

you are a private land-holder to contemplate investment in your own timber production if you are faced with anticompetitive behaviour from state controlled monopolies.

We are mindful that, under the Competition Principles Agreement, ecologically sustainable development policy and principles are to be taken into account as well as issues of social welfare and economic and regional development. But, in terms of economic and regional development, there has been a tendency to confuse regional development with the provision of subsidised natural resources to a few. In particular, we have been concerned about subsidised irrigation developments. Of course, our history is littered with examples from the Snowy scheme to the Ord and the whole of the Murray-Darling, but since the signing of the Council of Australian Governments water resources policy in 1994, we have continued to see examples of this, particularly in Queensland, where subsidised developments continue—sometimes with the assistance of Commonwealth funds, such as the sugar package. In some instances, these subsidies amount to \$1 million per irrigator.

We are concerned about a whole range of environmental impacts that result from this. In terms of water resources, I suppose you would only have to go as far as the Murray-Darling to see what damage you can do when you reduce the average natural flows to the sea by 80 per cent and hold most of the natural flows in the southern basin—that is, winter-spring flows—up in dams and release them at the wrong time of the year and put 3½-odd thousand concrete barriers to fish passage and migration and so forth. We have an enormous ecological time bomb there, not to mention salinity—but that is perhaps another story. A lot of our work has been trying to redress that, particularly via environmental flows. But there are a whole range of environmental problems, particularly ecological problems, that result. As well as that, we have some problems arising from subsidising infrastructure and water, such as irrigation induced salinity and acid sulfate soils in the north and high levels of pollutants from irrigation run-off which result in more public expenditure.

We believe that full cost pricing is a fundamental tenet of ecologically sustainable development, and we think that the use of these funds to support so-called regional development is a bad investment. Firstly, it means less investment in private water infrastructure and private water efficient technology. It also distorts agricultural markets, where some products, such as cotton, in subsidised districts are in a better position to compete with cotton, say, in unsubsidised districts or with competition fibres such as wool. Even real estate markets, such as the good rain-fed soils, collapse as people go to subsidised schemes with guaranteed supplies of water. So we see a lot of farm land sacrificed to hobby farm subdivisions. There are lots of hidden financial costs and imposts on state governments, such as very low real rates of return, no dividend payments, costs of compulsorily acquiring land for a new scheme, bridging finance, interest rates and so forth and a whole range of other distortions.

In summary, I will use a quote which relates to forestry. It is from KPMG, a consulting firm that reviewed Victoria's forest legislation under the competition policy review program. The report says:

We consider that the likely under-pricing of logs by DNRE—

the Department of Natural Resources and Environment in Victoria—

constitutes a restriction on potential and actual competition to existing sawmillers from:

- \* alternative suppliers of hardwood (such as private plantations), who find their competitive position worse than it otherwise would be if DNRE priced commercially, and
- \* suppliers of substitutes for hardwood, such as softwood and other materials . . .

Underpricing of hardwood timber distorts the choice between the alternate uses of forest. It encourages the use of forest resources for the supply of timber, whereas [if] the true costs of supply were charged the resources may well have been allocated to an alternative use, such as recreation, water catchment or conservation. . . . Environmental groups argued in their submissions that log prices are too low and effectively undercut private suppliers of timber and substitute materials. We are inclined to agree.

**CHAIR**—Thank you very much, Mr Fisher. We will now hear from Professor McKay.

**Prof. McKAY**—I am looking at the four points on page 45 of the summary document, and the one I want to talk about is: . . . for state governments to implement a comprehensive system of water allocation and to facilitate trade in those entitlements.

I have done a lot of research on this area with a student under some LWRDCC funding. Generally government bodies and water managers expect that under TWE—tradeable water entitlements—which is in almost every state now, water will move out of areas affected by salinity problems into more suitable areas and water will move to farmers using more efficient irrigation technology. So you have two environmental goals that are expected to be achieved. Plus, water will move to irrigators applying water to higher value crops, thereby increasing economic efficiency. The example is out of broad acre into viticulture, horticulture and vegetables in South Australia and Victoria.

To cut a long story short—and we have written about eight articles on this—the TWE has increased the demand for water in the Murray-Darling system. Water that was going down the river unused and called sleeper and dozer water—as in, sleeper, it had never been used; dozer, it was used occasionally—has now been mobilised because it suddenly has a value. The long-term outcome of that is that the Murray-Darling has had to be capped because of the increased use. The water trade has certainly enabled the farmers in Kerang and some other terribly salt affected areas to stay in Kerang but sell their water to somebody else upstream along the Murray somewhere or somewhere else further down in South Australia.

In some areas there are the very distinct advantages of tradeable water, but whether or not you are encouraging everybody by TWE to move into more efficient irrigation technologies is debatable. There has certainly been a lot of push in each of the states to encourage that anyway. It seems to be that furrow irrigation and overhead sprinklers are being abandoned in favour of drip irrigation, microsprinklers and so on because less water costs the people less. There are some positive impacts but, like all things and like all of Australia with its patchwork of legislation and jurisdictions, you have a whole lot of local factors impinging on it.

So the point that I really want to make is that the environmental effects of TWE have not always been positive, but they have been really successful in some areas. People might tend to look at the big successes and undervalue some of the negatives. There seems to have been

a general trend that irrigators are supplying water to crops that are worth more when they are sold. We have had TWE in South Australia only since 1983. That happens to be the longest time. Victoria is a lot less—an eight or nine year period. I think it is still a bit early to say that there are uninhibited economic benefits, although there is certainly a change of land use. They are the main things that I want to say about TWE.

Regarding the adoption of consumption based pricing principles in the urban area, again you would find that local jurisdictional differences and the public perception are at odds with that. Many people in the public think that all it has done is increase their water bill. The removal of looking at the value of your property for determining how much water you get allocated has been only a partial thing, at least in my state—you are still charged for the sewer on the basis of the value of your property, but how much water you get charged for depends on how much you allegedly use, which people tend to complain has just increased the price. There is a lot of angst out in the community about rural irrigation and the increase in costs. There are quite a few victims of the system.

**Prof. OFFICER**—I am not sure whether I am not here under false pretences, to some extent. I was originally scheduled for this morning, but I teach on a Monday morning and could not appear. My interest generally in competition policy goes to resource use and the efficiency of resource use. I have been involved with the previous state government here on the setting up of a pro forma for infrastructure valuation. As part of that process it became necessary to recognise the inherent value of community service obligations—CSOs. With a lot of government type activities, a lot of the services provided to the community do not pass through secondary markets so we have some trouble capturing the value of such services.

Dams are a good example because probably 50, 60, maybe up to 80 per cent can be captured through water sales, but you still have a balance and the community service benefits from that often flow from some of the environmental issues, native flora and fauna, et cetera. These are important commodities. The mere fact that we have difficulty measuring them does not mean that they do not have value. Yet too often we proceed as though they are without value. One of the tasks we set upon ourselves is to try to work out some methodologies for getting some values in this context.

In the same context, it is often true—and we have just heard from both the previous speakers—that there are issues here where there is not an assignment of property rights; that is, the jurisdictional issues that Professor McKay was talking about. If you cannot recognise and assign property rights, you cannot measure the benefits flowing from such property rights, and if you cannot measure them you cannot manage them. A lot of the problems we have flow from what really amounts to some fairly fundamental premises about who is responsible—that is, who has the property right or the jurisdiction over particular assets and services. Until the Commonwealth clearly lays that down in the context of some of these states rights, we will continually have conflict.

In the context of the competition policy, there are a lot of better ways, I think, to look after the disadvantaged than through cross-subsidies of services and activities. Inevitably when you do start cross-subsidising by way of cheaper water or cheaper timber, you get the sorts of problems that have already been referred to. You get overproduction in some areas and underproduction in others.

There is no question that the rural sector has major problems at the moment. I have a farming background; I still have a property. We will not solve those problems of the rural sector by clamping down and trying to wrap them in some sort of time warp and not allow change to proceed. They clearly need compassion; they need looking after in some instances. But you will not look after them effectively or efficiently by providing cross-subsidies for their factors of production or indeed their production. The best thing that can be done in many circumstances is to train them so that they can leave the land as it is restructuring.

We may be talking generational things here. It is not going to be instantaneous; it is not going to be painless. Clearly, what pace of change you allow to proceed is going to be very much determined by community standards. The thing that I would impress upon you is that we will not be helping these people by trying to lock them in some form of time warp and increasingly subsidise them. What happens is that those subsidies become captured in the value of the land and the next generation have to be resubsidised.

Having come off a dairy farm and having looked at the restructuring of the dairy industry over the last 40 or 50 years, I can see we are slowly making progress—inch by inch. I spent quite a few years overseas; when I came back there were some dramatic changes there. We are getting there; it is slow progress. Some of us are more impatient than others about the pace of change because we do seem to take a step backwards every now and again for the couple of paces forwards. But that is a good example of change and the requirement for change. The benefits of such change are very clear to the ultimate success of the industry. It is that sort of progressive change—slowly removing the impediments—that is the way to help farmers, not to raise the barriers. Thank you.

**Senator MURRAY**—My question is to those who have not spoken so far in this session—those from ACCC, NCC and the Productivity Commission. The question really refers to the real cost proposition. For me, real cost is the flip side of user pays. User pays says that whoever uses a facility or gets a benefit should pay for it. Real cost says that the same thing applies: the cost of a particular activity or usage should be complete and should not be transferred or switched to others. Environmentalists used to object—and still do—that the real cost of dirty fuels or of cheap water or of subsidised forests are borne by society at large and that that form of cost switching has to end.

In the early years of development in WA people were paid to chop down trees and to clear the land. That was a government subsidised activity. Now they are paying them to plant trees—things go in full cycles. I would like the response of those I mentioned to see how far you think national competition policy has contributed to the proper evaluation of costs—the addition of externalities, if you like, to the real cost analysis—and whether that in itself is contributing to a more realistic, practical and long-term ecologically sustainable economy which is efficient and competitive. It is a fairly broad question.

**Mr KERR**—I will go first because I am probably going to say least. From my perspective, the National Competition Policy provides a framework for those sorts of things to be brought into play; it does not of itself guarantee that they will be effectively brought into play. You would have picked up from Tim Fisher's comments that the environmental problems that we are increasingly beginning to perceive go back many decades and they are not solely connected with the process of national competition policy decisions.

The national competition framework, including the public interest aspects of the environmental values, can provide an opportunity for some of these things to be addressed, but it does not of itself make it easy to ascribe these sorts of values to negative externalities, which is part of what you are talking about, nor the positive environmental values where there are not ready market values. This is Bob Officer's point. It does not of itself make it easy to do those things. I am not aware of many examples where those things have been done well.

In our own work, not specifically on national competition policy but in the work we have done on environmental land management, for example, an inquiry which was released a year or so ago, we spent a good deal of time discussing property rights and duty of care towards the environment which tried to address, through a better treatment of property rights, some of the things you are talking about. So I think there is a framework there for starting to address these things, but that does not of itself make it easy to weigh up the sorts of issues you are pointing to.

**Mr COHEN**—I suppose the water resources policy agreed to by COAG and the subsequent developments on pricing provide some flexibility to governments and regulators in what is the appropriate price to charge for water. In terms of urban water use, with the implementation of user pays there is now some evidence to suggest that that is actually having an effect on reducing water consumption and leading to the deferment of the construction of new water infrastructure. In rural sectors, one of the issues is the balance between decisions that have been made previously and those concerning new investments. The framework does provide a very rigorous analysis of new investments to ensure that they are both economically viable and ecologically sustainable. The types of cost-benefit analysis that we have been seeing have included in some of them an analysis of the environmental costs in the whole financial analysis of the project.

The property rights from our review are still at a very early stage but, given that they will provide an ability for new enterprises to commence through purchasing water rather than through additional allocations of water from systems that have not got the water, they should provide some potential both for additional assistance to people wanting to leave the land and the ability for new enterprises to start without having an adverse ecological effect. I agree that there is a framework there and there is some evidence that the provisions are beginning to have a positive impact for the environment.

**Mr JONES**—The ACCC has had no real involvement with water issues at this stage. I guess there is a potential for a little bit of involvement later on with regard to access issues, most likely with regard to distribution, say, water pipelines, but we have had no requests for access so far. In terms of types of cost analysis, typically most of the costing analysis that we have done is involved with access to telcos, and in those cases we tend to work with incremental costs and looking at the additional cost of supply. That has been our involvement with a couple of industries. As I said, we have had no real involvement with water.

**Senator MURRAY**—I was interested to hear those responses to see if any would pick up an observation which, to me, is quite fundamental. That is that, for most of us, competition policy results in lower prices and more efficient allocation of resources. It is the

implicit understanding of environmentalists that real costing of, say, forest resources or water resources and indeed of the petrol industry will result in higher prices not lower prices. It is a constant refrain that competition policy is a lower price oriented mechanism. But I think in certain instances it can and will be and quite properly should be a higher price deliverer resulting from a proper assessment of hidden subsidies, of real costs and of a scarcity value. Water in this country is typically a scarce resource and, as we all know from basic economics, if things are scarce the price is higher. I was looking to see if anyone would make that point. I would like to know if you agree with me, Mr Ritchie.

**Mr RITCHIE**—I guess ‘yes and no’ is the answer. But first let me state that user pays is the area that NFF is now studying and the more we look at it the more we are prepared to accept what was accepted economic theory: that price should equal marginal cost. If you charge less than average cost or anything less than user pays, some people call it a subsidy. There are a lot of respectable economists who have argued for as long as you want that any price in excess of marginal cost is a tax, not a subsidy.

But, having said that, the issue of water is where the difference is, isn’t it? Where you try to price water equal to marginal cost, the difference with water as opposed to the other one is that the marginal cost of water has to take into account the marginal damage done to the environment. We are prepared to accept that. The marginal cost of water should take into account environmental damage. Where that leads you I do not know.

To give you an example of that, the Hunter District Water Board have been saying that they have been very ‘efficient’—they use that word—in terms of increasing the price of water in the Hunter Valley and that has put off the need to build another dam for 30 years. Now who is taking into account the damage that policy has done to the Hunter Valley? To put it into context, why not take it to the extreme: if they really want to get rid of the problem of having to build another dam, why do they not put water prices up to infinity? Then they will not have to build another dam forever, but there will be a lot of thirsty people in the Hunter Valley and there will not be any industry left in the Hunter Valley.

I use that example by way of saying: once you start interfering with the principle of price equals marginal cost, where is the right answer in between that? Our theory is that you have to stick to ‘price equals marginal cost’ and that to talk about user pays as efficient is just the wrong approach.

**Prof. OFFICER**—I was going to comment on that dictum. Yes, economists want you to price at marginal cost unless it is a downward sloping marginal cost curve, namely a natural monopoly, in which circumstance you have what is called two-part pricing: you charge at marginal cost but then there is an access charge. That is the only way you will recover the total cost. Certainly, in my appearances before the ACCC or any of the other state regulatory bodies, I do not think people have moved away from that principle of pricing at marginal cost.

There is a major issue in these access hearings that have been referred to, and it is certainly true in the context of water resources, that someone has to pay for the infrastructure. It is at that stage that we get some debate. But there is no question that that

infrastructure has to be paid for. The preferred economic way of doing it is an access charge and then charge at marginal cost. Then in principle everyone is happy, if not in practice.

**Senator MURRAY**—Can I keep this line of questioning going? The real cost notion is different from the traditional economists' view of pricing at marginal cost, because real cost implies that traditionally additional costs were not taken into account. Let me give the example of alcohol so that we can get away from the water issue. We all know that alcohol results in a cost to the community. I think it is priced at \$2 million per year with excess morbidity, industrial accidents and all those sorts of things. Therefore, you can assume that the real price of alcohol is adjusted by governments through the excise mechanism to produce an income flow which, roughly speaking, equates to the social expenditure required because of the detrimental costs of alcohol.

I think that is the real cost proposition with water and, indeed, with the petroleum industry. You cannot just measure it in terms of the infrastructural costs and operating costs of a normal return on investment. You have to measure it with regard to a wider social evaluation. My understanding is that it is the ability of people like the NCC to value in some way what that additional real cost or price should be. That is why I asked whether they were doing that or were capable of doing that in order to arrive at a price for a scarce resource which does the best it can both for the productive sector, which is farming, and for the long-term ecology of the environment of our country.

**Mr RITCHIE**—What we are saying is, try to do that but try to do it in terms of the marginal cost; do not try to do it in terms of a regulated return on assets, so that government infrastructure returns to the owners of that asset—which, after all, are us anyway—what is called a commercial rate of return, because that distorts the principle of allocation of resources. The reason governments supply infrastructure is that the private sector cannot do it, and the economics of the markets for the provision of infrastructure will prevent the private sector from doing it. No private sector investor can efficiently—or will in fact ever in some circumstances—supply infrastructure, notwithstanding some exceptions to that rule.

What we are saying is, keep it all in the marginal cost part of the equation; do not try to build into the equation some extra return that these private sector providers will then use to provide the infrastructure. Because, as far as I can work out, not one single one of them has a sinking fund set aside to rebuild that infrastructure when it is over. Let me make one other point. We do have that two-part pricing. We accept that as a principle of pricing. The government used to be able to apply that two-part pricing through the taxation mechanism.

**Senator MURRAY**—The reason why I left the analogy of alcohol with you was that, in theory, the way governments recover the social cost of products like tobacco and alcohol is through the sin tax mechanism, which is the excise. Is it best if you have a social cost or environmental cost, such as through bad water use, to apply a taxation component—a water excise, if you like—to the pricing of water, or is it best to attempt to artificially value the extra return you need to get to manage the resource better through a pricing review, a permits mechanism or something of that sort?

**Mr RITCHIE**—Effectively, you are trying to do the same thing; one is by a quota or volume arrangement and one is by trying to measure the marginal cost and put it onto the price.

**Senator LIGHTFOOT**—I have a question generally for some of the witnesses this afternoon. It obviously pertains to water. State governments who want to privatise their water corporations have already reduced them from a utility to a corporation, which is very easy to privatise. They seem to be committed to doing it and maximising the price to the taxpayer. In other words, they are going to get as much as they can in a float, vis-a-vis Telstra mark II.

That leaves the quandary: should the government maximise the price it can get so that the unit cost of the water is high relative to privatising the assets—paid for many times—at a more reasonable cost, and then making the unit price less than what it would be had you maximise the price? Where is the duty of the government? That is my first question. My second question is: where the government has written off in a commercial sense those assets that have reticulated and stored water over the last 100 years in Western Australia, how is it reasonable to expect the private sector to compete with the government when those assets have been paid for by the taxpayer over many years? Doesn't that in itself fly in the face of national competition policy?

**Mr FISHER**—I will respond to that, if I may. Firstly, in relation to the first question, I am not terribly familiar with the privatisation of SA water, but I am reasonably familiar with the privatisation of irrigation districts in New South Wales. The converse is actually true there. Those assets were literally given away with a dowry, the dowry being a guaranteed continuation of funding for so many years to finance land and water management plans and infrastructure refurbishment.

**Senator LIGHTFOOT**—When you say 'given away', do you mean it was literally given away?

**Mr FISHER**—Literally given away.

**Senator LIGHTFOOT**—There was no cost to the consumer and then they gave the consumer money to take the water. That is what you are inferring?

**Mr FISHER**—That is exactly the case.

**Senator LIGHTFOOT**—Can you be more explicit for the committee?

**Mr FISHER**—The assets were transferred at no cost.

**Senator LIGHTFOOT**—To whom?

**Mr FISHER**—To the buyers, the buyers being the irrigation corporations controlled by irrigation interests who acquired them at no cost. Hence, it may be argued that they got a windfall in the process. I suppose that it does not always hold true. I would have actually liked to have seen as an academic exercise how much the market might have valued those

assets at, because certainly the price would tend to reflect what the marginal cost of the water is, or at least its value on the market.

In terms of writing off assets and whether or not that represents a distortion in the market, vis-a-vis new investments where private schemes have to be privately funded, I have no doubt that you are right. I do, however, think that it would be a mistake to totally require those assets to pay their way. The investment decisions were made at a time when commercial assessment of those projects just was not conducted. For example, the Snowy scheme was a classic case of overcapitalisation which has actually cost the Commonwealth in particular money both in terms of real costs, financial costs and opportunity costs.

It would be hard enough just to try and maintain that infrastructure and recover the cost for that, but the users require some justice in a sense. They should not have to pay for bad investment decisions and they are basically lumbered with that infrastructure whether they like it or not. There is a monopoly in each river valley on what infrastructure can provide what water, essentially.

But it is an issue that is confronted across a whole range of industries. There is a whole stack of industries at various times in our history—for example, agriculture—where a lot of early entrants benefited from windfall gains in the squatting era when people were given grants of land rather than having to acquire it. That has no doubt created some distortions in the market, but, for the most part, for the current participants the value of that has been capitalised. People have bought in, whether it is farms with water or water trades themselves. So it is probably fair to say that, to a large extent, that distortion has been minimised.

I would like to pick up one point about whether or not new infrastructure should be subsidised over and above the marginal value of the water. I do take issue with an earlier point that I believe was made that there are some community service benefits from, say, dam construction, particularly environmental benefits. I am yet to see a dam which has produced environmental benefits anywhere for flora, fauna or anything. I think the freshwater ecology on this in particular is quite clear.

Where private infrastructure is an option—where people can finance it fully—I think that needs to be made explicit in the planning process. To try to top up the remainder of the investment is distorting investment decisions. It is possible—particularly with off river storages, and there are a lot of examples of this in cotton country—for schemes to be totally privately funded and to make a profit.

If we were to have a subsidy scheme, we will just see the proliferation of dams as we did in the fifties and sixties with consequent environmental costs. One example here is the Gippsland Lakes, where we are on the verge of an environmental catastrophe. The Gippsland Lakes are nearly flipped over into anaerobic mode—that is, algal dominated ecology—where you will see existing tourism, recreational, fishing and property values reduced to pretty well nought. That is worth \$160 million a year to the regional economy. The key reasons why the lakes are in such a parlous state are that we have had an over exploitation of water resources via subsidised schemes, both for Melbourne's water supply and for irrigation, and an excess of off site costs, if you like, in the form of nutrient exports, where the nutrient exports from

the Macalister irrigation districts are over 10 times higher than the EPA target for those reasons.

**Senator LIGHTFOOT**—That is probably going beyond the questions that I asked. There may be another witness this afternoon who may like to contribute an answer to the questions that I asked.

**Prof. McKAY**—Governments have only corporatised in any state, although there are some private ones in irrigation areas in New South Wales. The duty of government is to provide a regulatory framework to stop the excesses that are likely to happen. South Australia have never, as Senator Quirke will know, produced the contract in parliament. They were meant to be selling shares to finance future infrastructure development of the urban area. That has never been done.

So the duty of government in my view in both the urban and the rural sector is to provide a very tight constraining framework in which, if you are going to give away these assets or put them on long-term leases and not require people to maintain them, you should have some checks and balances on that system. We had a big stink in Adelaide because of the sewerage system. Adelaide's water was in a very good condition and it was just let to run down. The duty of government is to provide a framework in all sectors to make sure that balance is maintained between long-term environmental management of the resource and short-term gains.

**Senator LIGHTFOOT**—The duty of the government is not with equity necessarily; the duty of the government is to give legal framework to the successful function of that as a private enterprise. Is that what you are saying?

**Prof. McKAY**—Most laws have equitable considerations in them. You do not get a law that says anybody—

**Senator LIGHTFOOT**—I am talking about government equity.

**Prof. McKAY**—Australia signed all sorts of treaties on intergenerational equity and sustainable development. There is a longer term than the short-term approach. So I think the duty of both the state and the federal government—the federal has not much power here, we know that; but it can influence it by this money—is to provide a system where you are getting a proper weighting of issues when decisions are being made and the people who are managing it have to consider the long-term environmental management plus their own short-term profits. They have to be weighed up, and there might be a diminishing here for something for the future.

**Senator LIGHTFOOT**—And at some stage someone may consider supplying water to the population through that.

**Prof. McKAY**—The water is being supplied successfully to the population, but at what price? The costs are going up. The main problem in this area is that there is very little empirical data on what consumers, farmers or irrigators think about the issue. There is very

little empirical data, so we are all working fairly much in the dark. We have people here who represent different groups, but it would be nice to have a more consistent view.

**CHAIR**—Thank you very much. That is the end of this particular session. We will now move on to the next session, which is the impact on industry.

[3.06 p.m.]

**XXXXX**

**FITZPATRICK, Mr Michael Clifford, Director, Australian Council for Infrastructure Development**

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

**JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission**

**KERR, Mr Robert, Head of Office, Productivity Commission**

**O'CONNOR, Mr Brendan Patrick, Assistant National Secretary, Australian Services Union**

**PLUNKETT, Mr Herbert John, Assistant Commissioner, Productivity Commission**

**RITCHIE, Mr Todd, Director, Economic Policy, National Farmers Federation**

**SAMUEL, Mr Graeme, President, National Competition Council**

**SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission**

**STARRS, Miss Margaret Mary (Private capacity)**

**TYERS, Ms Judith, General Manager, Business Council of Australia**

**WILLETT, Mr Edward Campbell, Executive Director, National Competition Council**

#### **Session 4—The impact on industry**

**CHAIR**—Welcome. In this particular session, we want to have a look at the impact of competition policy on commerce, manufacturing, employment and retailing and the conduct of reviews. The first item here is agriculture. We have had a fair bit of agriculture already in the previous sessions. I would like to start things by asking about retailing. I am not sure which of the witnesses want to pick this up. As a result of national competition policy, what changes have we seen in retailing over the last five years, and where is this stuff going? Mr Samuel, that might be a good introduction for you to come in on this.

**Mr SAMUEL**—Competition policy has actually had very little impact on retailing except in two areas. The first relates to deregulation of shop trading hours. That has occurred in one or two states. I might say that, in some states, it occurred long before the current national competition policy regime was introduced—in New South Wales, in particular—but in other states it has been taking place over recent times. Reviews of that particular issue are still to take place, particularly in Tasmania, Queensland, Western Australia and South

Australia. The other area is that of liquor licensing and liquor licensing laws. Reviews have already taken place there and will continue to take place over the next 18 months.

There has been a fair degree of discussion, as you would be aware, with another committee of parliament on the issue of shop trading hours or, more importantly, on the issue of retailers and that of the major retailers, particularly in the grocery area of retailing. There has been a suggestion that national competition policy has brought about a major change in retailing with a reduction, if not a disappearance, of small retailers and the growth of the major retailers to a substantial market share. If national competition policy has caused this, it is one of the more miraculous changes that could occur in any economic structure, I think, anywhere in the world in a very short period of time.

What is being attributed to national competition policy and, in effect, to the deregulation of shop trading hours is a massive growth in the market share of major retailers, which in fact has been occurring over many years and indeed many decades. It is interesting to note that, while national competition policy is blamed for the position of the major retailers in Queensland, one of the big issues in Queensland that has to be dealt with by that state over the next little while is a review of shop trading hours. They have not carried out the review yet in the context of the national competition policy. Certainly there has been very little deregulation of shop trading hours, yet national competition policy is attributed as the cause for the disappearance of small retailers and the growth of major retailers. I stand to be corrected on whether the Productivity Commission addressed this issue in their report.

Retailing is undergoing significant change. This change is part and parcel of the substantial change that is occurring in society generally, where consumers are demanding more service, more convenience and more access to their shops. In fact, they are demanding that business suits their requirements rather than consumers having to adjust to the requirements of business. That is fairly difficult for some businesses to have to adjust to, particularly those that have been protected by anticompetitive restrictions for some period of time. As a result, we are seeing a major structural change in retailing. We are seeing larger stores develop which, with economies of buying power, are able to offer lower prices and, where state regulations permit it, are offering more convenient hours for shopping.

We are also now starting to see encroach upon the whole area a major change in retailing which has nothing to do with the size or the location of the store but actually has to do with the capacity of the consumer to use a keyboard and move into online shopping. Indeed, I commented to one of the staunch opponents of deregulated shop trading hours only the other day that I suspected that NCP reviews of shop trading hours will soon become irrelevant unless we are going to start putting in home inspectors who will be there to actually find out when you are using the Internet to conduct your online shopping. So we are facing a major change. It is a change that is driven by consumers. NCP in this case is providing a very clear case example of what I will call consumer empowerment, where shopkeepers are having to provide services that consumers want when they want it, and provide information to enable consumers to determine the sorts of services that can be provided and the prices that consumers are prepared to pay.

Having put all that in very cold, economic terms—because that is what it is—it has some very significant social repercussions. It means that we are moving away from the smaller

retailer in favour of the larger retailer. We saw that example only recently in Victoria following the election with the establishment of a major supermarket and some shops in Healesville and the dislocation that that has the potential to cause to smaller retailers in the main street of Healesville—a regional town of Victoria. Ultimately, that is not being caused by the major retailers or the small retailers; it is actually being caused by the consumer. I guess one of the significant social issues that we have to address is that that change in consumer preference is going to have its impact upon those who provide the service, as it does in a whole range of areas. It has little to do with national competition policy.

In the area of liquor licensing, we have some rather interesting dynamics occurring there. Liquor control laws throughout Australia have had a twofold process. The most important and, I think, on any analysis by anyone in society, the most relevant and necessary purpose is that of dealing with the social issues of alcohol—underage drinking and a range of social issues that relate to alcohol consumption. But then there is another purpose that they have had, which has been to provide protection for certain vendors of liquor; mainly, the hoteliers.

These are not my words, but the liquor control legislation in New South Wales was described a little while ago as a legislative protection racket. As I say, they are not my words—they are some other commentator's words—but that is what we are having to deal with there. And that is being subjected to rigorous review to see whether the important social issues relating to alcohol consumption can be dealt with without the necessity of some of the anticompetitive restrictions or, indeed, whether those anticompetitive restrictions have anything to do with dealing with those social issues or are there for another purpose.

I should just mention one other aspect of retailing deregulation generally. There has been a lot of analysis provided by particular groups about the impact of deregulation. Perhaps the best example and the best analysis of deregulation is that which occurred in Victoria. In 1996, Victoria went through an overnight, total deregulation of shop trading hours. It was very interesting that, in the year that followed, total employment in retailing in Victoria increased by between 5,000 and 11,000 employees. In addition, while the number of small businesses fell, the number of total businesses in retailing, according to ABS statistics, in fact increased. Although we do not have the exact analysis of this, there is a strong suggestion that the reason they increased is that a number of small businesses grew to become medium-sized businesses as they increased the number of employees—which was the designating factor as to the size of business—to cover the extra trading hours.

**CHAIR**—Thank you. Do any of the other witnesses want to contribute to that?

**Mr PLUNKETT**—I just want to draw your attention to the fact that we do cover this in quite a bit of detail in our report. I would like to endorse some of the comments that Mr Samuel made, in that we see this being driven by social change in the community and governments have been responding to that social change by making shopping hours more flexible for people. In particular, the increase in the number of women in the work force and in single-parent households has helped to contribute to the decision by governments to allow shopping hours to be more 'user friendly', if I can use that term. While this has weakened the competitiveness of some retailers, it has been to the advantage of consumers overall.

We have evidence that we quote in our report from the shire of Yalgoo in WA where they endorse their liberalisation of shopping hours because their customers who travel long distances can now shop without having to stay overnight, as they had to previously when restricted shopping hours prevailed. We see that some of the developments which are occurring in rural and regional Australia are mirroring developments which occurred earlier in suburban Australia. The other point I should mention, which we have not touched on, is the reservation of retailing to certain groups like chemists and liquor suppliers and the issue of regulation for what you might call health and safety reasons versus the issue of restriction to assist established businesses. I think there is a clear distinction between those two.

**CHAIR**—Does anybody else want to contribute to this debate?

**Senator LIGHTFOOT**—Could I make a comment and then ask a question?

**CHAIR**—Certainly.

**Senator LIGHTFOOT**—I think it is true to say that, overwhelmingly—if not exclusively—deregulation of trading hours has been to the benefit of the consumer. However, in rural and regional Western Australia it has not always worked for the benefit of the state. For instance, when there were a number of pioneering stores in the iron ore fields, which opened up in the early sixties—not the port fields that take the iron ore away, but in the hinterland—there was nothing there. There was very little infrastructure there, apart from some roads and station homesteads, et cetera. They had pioneering stores and then, when the stores themselves grew, the bigger stores, the Coles-Myer and the Woolworths, came in. These stores dropped their prices, which of course had the effect of pleasing the consumer, but it put the other stores out of business. When they went out of business, the prices crept up.

When these prices crept up, it was cheaper for the outlying stores, the outlying little pubs and so on as opposed to the stores in the town, to buy their Coca-Cola products—to take a brand name by way of example—from Coles Myer and Woolworths—I think they are the only two represented there—than from Coca-Cola Amatil or their agents there. In my view, that is not good for the nation. It is not good for Western Australia and for the maintenance of stores. If they are going to be put in the double jeopardy of having to compete seven days a week, 24 hours a day in some cases, then the corner store will vanish altogether, and that is when the prices go up. The evidence that we have been given—and I have visited these areas and seen for myself—is that, where there is one major store monopoly, the prices are very expensive. There is up to 600 per cent profit, for instance, in some of the perishable goods that they buy, for vegetables in particular, and that was not the case before.

**CHAIR**—Can someone comment on that?

**Senator MURRAY**—I want to add something to that and get the general response, if I may. Before I do so, I would encourage those of you who have an interest in this area to read the Joint House committee report into the retail sector. I wonder why deregulation is so selective. Why isn't there office deregulation? Why isn't there 24-hour, seven-day-a-week operation of the Productivity Commission or the National Competition Council or all the government offices, state and federal? Why is it only retail? Why isn't it the case that this

deregulation in the interests of competition and consumer demand does not extend to everything: factories, offices, government operations, the public sector and the non-profit sector? Why is it only retail?

Consumers would be delighted if they could go into all the government offices over the weekend when they have time free. Frankly, I find this whole thing very selective, and I am very widely read on both restrictive licensing practices worldwide and on the trading hours issue. I think I have heard a lot of assumptions expressed around here which are not necessarily supported by all the evidence. But if you are in the business of deregulation, if you are in the business of making a life purely driven by economic rather than social values and by maximising productivity out of factories and buildings and so on, why is all this directed only at the retail sector? Why isn't it directed at every sector of the economy?

**Mr SAMUEL**—It is very simple. It is the only section of the economy, to the best of my knowledge, that has legislative restrictions on it at the moment. All of the sectors that you have mentioned are totally deregulated. I can assure you that the NCC is there many more than eight hours a day and five days a week, but we have no restriction. If we want to operate for seven days a week and 24 hours a day, we have the ability to do so, as does the Productivity Commission and your lawyer, accountant, doctor, dentist or anyone else. They are totally free to operate whatever hours they want, whenever they want, however they want to do it, subject only to restrictions on doctors and dentists on the services that they provide, which are there for public health.

**Senator MURRAY**—Can I just stop you there. The retail sector is made to.

**Mr SAMUEL**—No.

**Senator MURRAY**—Yes, it is. If you look at how shopping centre leases work, if you look at the entire structure and the way in which retailers have to respond, they are made to by competition. What is the competition to the National Competition Council or the Productivity Commission? There is nobody who can make you stay late and work late.

**Mr SAMUEL**—There is, and it is the most powerful force of all—the consumer. If the consumer wants it, then you remain open. I remember there was a doctor who had several claims to fame: one was his pink helicopter, another was his model wife, the third was his Sydney Swans football club and the fourth was that he ran 24-hour medical clinics. They were run only because the consumer wanted them. If the consumer did not want them, they would go broke. They ultimately did go broke, by the way, but there was no restriction at all. Indeed, there were many in the medical profession who complained about the fact that these 24-hour medical clinics were allowed to operate. They complained for a number of reasons: some were related to bulk billing, some to the white pianos in the waiting rooms and some were directed towards governments to say, 'You should stop them operating 24 hours a day because (we will not put this in our submission) frankly they are providing a competitive advantage which we do not want to have to meet.'

That is exactly what has happened in the area of shop trading hours. A group within the sector of retailing has been saying, 'Prohibit our competitors from providing what the consumer clearly has indicated it wants'—that is, 24-hour trading, seven days a week—

‘because that will provide them with a competitive element that we do not want to meet.’ That is the only issue we are dealing with here. It is the only sector in the economy that has the government saying, ‘You shall not compete in accordance with consumer preference.’

**Senator MACKAY**—I want to come back to the Productivity Commission and the question that was raised by Brendan O’Connor about the issue of public-private employment replacement—for want of a better term. I think your response was that it included part-time, temporary, contract and whatever, but you did not make—perhaps you cannot, I do not know—any attempt at disaggregation of the employment replacement. Has there been a trend towards the replacement of full-time employment with part-time or casual? The graph that you put up looked like there was a straight replacement from public to private. I am interested in the methodology.

**Mr PLUNKETT**—Our methodology is based on ABS labour force survey data—people identifying their industry of employment. The other way to look at it is this: if you remember your census form they ask you the nature of your job—whether it is part time or full time.

**Senator MACKAY**—Have you disaggregated that? Have you looked at whether there has been any loss in full-time positions compared with the creation and uptake of part-time positions?

**Mr PLUNKETT**—That is clearly a feature of the Australian labour market overall.

**Senator MACKAY**—I understand that.

**Mr PLUNKETT**—We did not go that further step in the graph that I put up.

**Senator MACKAY**—Why? That would seem to be quite basic.

**Mr PLUNKETT**—It was not an issue we were tracking at that stage. Nobody had raised that issue. We have already spelt out that that is the nature of the Australian labour market, and it is well known by all labour economists where the new jobs in Australia have come from. It is nothing new or surprising. It is associated with developments in the labour market, not exclusively or particularly with the implementation of national competition policy.

**Senator MACKAY**—It is sufficiently important for you to put up a graph for the committee that shows exactly the same number of jobs created in the private sector as have been lost in the public sector. I do not understand why you have not gone that further step. You cannot simply go from a full-time position to a part-time or casual position and count it as the same position. You can talk about trends in the workplace, and I understand that, but what I am interested in is the breakdown.

**Mr PLUNKETT**—We were trying to put in context the employment losses by previous employers in the service industries. We said that, if you look exclusively at the previous employer’s employment history through time, you do not get the full employment story in the service industries. They were previously exclusively government provided services; the

result of national competition policy has been the introduction of the private sector, outsourcing and contracting out. If you want to look at the net employment you need to look at the industries overall, not at the previously government or recently corporatised parts of those. We wanted to put the employment declines in places like the railways and Telstra in context.

**Senator MACKAY**—Did you disaggregate it sectorally?

**Mr KERR**—Let me try a slightly different tack on this question. Senator, I interpret that what you are getting at is the analytic issue rather than just the measurement issue. Your concern is this: with these changes going on, what is the net effect on employment? Our analysis suggests that you are not going to find in a sector where there are employment changes—suppose there is a decline in public sector employment—all those employees who lose their jobs in one area subsequently employed by the private sector in that same area. What you would expect if national competition policy is producing some productivity gains, including labour productivity gains, is that there might well be some labour cost savings and a reduction in employment. Then the question becomes: if that is the direct effect, what are the subsequent indirect effects? If those productivity gains produce lower prices and those lower input prices assist other industries to increase their activity then there may well be a shift in employment. Our economic analysis tries to add up both the direct effects, which may well see a reduction in employment, and the indirect effects which we think will see an increase in employment.

This goes back to my response to Mr O'Connor's comment this morning about the short and the long term. In many cases the short-term effect may well be a visible decline in employment in a particular sector, but we would expect the long-term effect to be an increase in employment overall in the economy, but it may be in a different sector. Issues of measurement between full time and part time contained within a sector will not necessarily give you the answer to your analytic question as to what is the total net effect on employment across the community as a whole.

**Senator MACKAY**—This is an interesting issue. Is it possible for you to provide the committee with the methodology you used to make the assertions that have been made about employment on that graph and that are contained in the report?

**Mr KERR**—It is in the report and its attachment. If any of that is not clear, we would be happy to follow up on that.

**Senator MACKAY**—It isn't. For example, the other question I was going to ask you relates to the projection of the increase in real GDP due to NCP of 2.5 per cent. How did you arrive at that? I see you have used the Monash model, but how do you know it is going to be 2.5 per cent?

**Mr KERR**—We do not know; it is an estimate. The estimate is pretty fully explained in the appendix to the report. The basic methodology is that you take a description of the economy—how all the different bits fit together—and then you make a presumption of a productivity gain, since increased competition may increase efficiency and produce a productivity gain, and then you wash that productivity gain through the economy and see

what the total result is. You take account of not only the direct effects but also the indirect effects.

**Senator MACKAY**—The measurement of productivity is a pretty inexact science.

**Mr PLUNKETT**—Can I attack that another way: that modelling was subject to a separate workshop; it was externally refereed by three referees; their reports are all publicly available in a separate supplement to the report. We believe that the professional scrutiny of it has been as much as you can get or reasonably expect.

**Senator MACKAY**—I am not pointing the finger at the Productivity Commission. I am just trying to make the point that it is, like all economics, inexact. We do not know ultimately what the increase in GDP as a result of the national competition policy is going to be, because of a series of exigencies. It is not a scientific projection.

**Mr PLUNKETT**—No, and it is subject to well-known criticisms from those who think it is too large and from those who think we have not even started to count.

**Senator MACKAY**—That's fine. I also want to talk about the public interest test—not to the Productivity Commission, but to Mr Samuel. Mr Samuel, can you take us through the process for performing a public interest test analysis in the legislative reviews? How are they conducted?

**Mr SAMUEL**—There is a long answer needed to that, and it might be more helpful if I were to arrange for us to submit to the committee some material we have on this, in particular a document that was prepared with the assistance of the Centre for International Economics, which is entitled *Guidelines for NCP legislation reviews* prepared for the National Competition Council. You will see that that outlines a range of issues that need to be dealt with and the method of actually conducting the reviews. Any attempt that I could make to actually provide that answer to you now would be inadequate and would take up too much time of the committee.

**Senator MACKAY**—Who actually conducts the reviews?

**Mr SAMUEL**—They are conducted under the sponsorship of individual governments. The NCC does not conduct any reviews, with the exception of two that it has conducted to date. One is into the operation of Australia Post and the other is into the application of section 51 of the Trade Practices Act. You will recall that the Productivity Commission has recommended in its report that the NCC should not be asked in future to conduct reviews, and we do not have any disagreement with that. We can see that there could be a perception of a conflict of interest if we are both oversighting the performance by governments of their obligations under NCP, and at the same time we are there conducting reviews. We have no disagreement with the Productivity Commission on that.

The reviews are actually conducted by governments either internally or by independent panels which are established, depending upon the size of the review. The only requirements of the National Competition Council—which have been conveyed very clearly to governments for several years now, are—to use the words that I used this morning—that the

review should be conducted independently, objectively, rigorously and transparently. Transparency is a very important factor in that it involves the receiving of submissions and material from all stakeholders that have an interest, and at the very least giving all stakeholders an opportunity to present material to those reviews.

**Senator MACKAY**—The issue of public interest test is seminal in relation to this discussion.

**Mr SAMUEL**—Absolutely.

**Senator MACKAY**—For example, if I were to ask you to provide me with copies of the reviews that are conducted by governments, would you be able to do that?

**Mr SAMUEL**—No, because we are not provided with all the reviews ourselves. Indeed, in one case at the moment one government has indicated that it is not prepared to provide us with a copy of the review because the review was submitted to cabinet and they are claiming cabinet confidentiality on that particular review.

**Senator MACKAY**—That is not very transparent, is it?

**Mr SAMUEL**—No. In fact, one of the few public comments that I have made in response to a minister of that government suggesting that I personally was attempting to overthrow Westminster tradition by insisting on cabinet documents being made public was to suggest that, as the public interest test was a pretty fundamental factor, I was a bit bewildered to understand why issues of the public interest could not be made available to the public whose interest it is that is being analysed and assessed. I simply have challenged the government to produce the review.

**Senator MACKAY**—Indeed, that is the import of my line of questioning. Other than this recalcitrant government, do you have a list of reviews that have been undertaken? Do you have a copy of all those reviews and who has undertaken those reviews?

**Mr SAMUEL**—Yes. The annual reports presented to us by governments as at 31 March each year detail the reviews that have taken place. If you have a look at page 54 of our 1998-99 annual report—that is the NCC's annual report—it actually details in table B2.1 the progress of reviews scheduled by each of the jurisdictions as at 31 March 1999. You will notice that across all jurisdictions to date the number of reviews scheduled is something of the order of 1,116, and then it details the number of reviews that are completed, reform implemented, et cetera. It covers a number of factors there.

**Senator MACKAY**—In terms of the total reviews completed and reform implemented, there are 373 under that.

**Mr SAMUEL**—Correct.

**Senator MACKAY**—Do you have copies of all those?

**Mr SAMUEL**—I do not think we have copies of all the reviews, no. We operate on the basis of the annual reports by governments. If I can just forecast the next question which is going to be, ‘How do you know that the reviews have been conducted properly?’

**Senator MACKAY**—Yes.

**Mr SAMUEL**—I think we rely upon three factors there. The first is the reports provided by governments to us. The second is that, if a review has been conducted that is inadequate, then stakeholders will indicate quite loudly to us directly that they are concerned about the outcome of the review or the way in which the review was conducted. The third is that, if they do not indicate it to us directly, then they will indicate it to us through the media and we will pick it up in that fashion.

**Senator MACKAY**—Can I put one final question to you? I am not having a go at you, but we have a situation whereby tranche payments are given to states with virtually no transparency. The application of public interest test is on the basis of ‘trust me’ from state governments to you. Here again, we do not have appropriate sanctions in terms of the legislation. From the outside, this is all looking a bit murky.

**Mr SAMUEL**—If I have given that impression, then I apologise.

**Senator MACKAY**—No, you have not given that impression.

**Mr SAMUEL**—Let me detail the extent of the transparency that we are involved in. I have indicated that we insist upon reviews being transparent. Where a reform does or does not take place as a consequence of a non-transparent review, then we are almost certainly assured that an interested stakeholder will be drawing that matter to our attention. We then follow it up with the governments concerned. A range of communications and consultations occurs between the NCC and the government concerned to understand why the reviews have not been done transparently and why stakeholders have not had a chance to present material to the review. Has the review been conducted independently or otherwise? They are the sorts of issues that filter out.

**Senator MACKAY**—You rely on the stakeholders to do this?

**Mr SAMUEL**—I think we rely upon a total process of public information. It ultimately relates to the transparency of government. If government has a capacity to be non-transparent and non-accountable in a whole range of areas, there is very little we can do about that.

**Senator MACKAY**—They do?

**Mr SAMUEL**—It has certainly been indicated in media commentary more recently in Victoria that, where there is a perception that there is lack of transparency or accountability, electors certainly pick up the message. I should mention that our own processes are extremely transparent in this respect.

**Senator MACKAY**—Yes, I appreciate that.

**Mr SAMUEL**—Not only do we have our annual reports which I have referred to, but you would be aware of the second tranche assessment which is an 800-page document containing the detailed analysis of the second tranche payments, and a detailed analysis of performance or non-performance by states and territories and the Commonwealth of their obligations under the Competition Principles Agreement. The importance of that document is that it is a very detailed document. It is freely available publicly. In fact, we disseminate it as widely as we can. Then it often acts as a catalyst, or as a lightning rod, for concerns to be expressed about non-compliance by governments with their obligations.

I must say that I am relieved—and I will not say pleased—that in response to that 800-page second tranche assessment we have received very little critical comment indicating that we have not been picking up some of the problems that might be occurring.

**Senator McGAURAN**—Directly following on from what Senator Mackay said, do you believe that the public interest test undertaken by the previous Victorian government in regard to the dairy industry was transparent?

**Mr SAMUEL**—We have not yet conducted our detailed assessment of the dairy industry reviews that took place. You will recall that in our second tranche assessment we indicated that at least two of those reviews had a question mark over process, that is, over the independence of the review panel. But we actually had not conducted an assessment of the review itself. I would also have to say to you that we have not conducted a detailed assessment of the Victorian dairy industry review, although I did indicate to you in another place that our initial reading of it suggested that the party that had conducted the review—which was the Centre for International Economics—appeared to have considered not only the statewide public interest considerations, but in fact had done as we have strongly urged governments to do—and, indeed, have insisted with governments that they should do—and that is to consider the national implications of a particular reform implementation that might be conducted at state level.

**Senator McGAURAN**—Can dairy deregulation go ahead if you have not ticked off on the public interest test?

**Mr SAMUEL**—Reform or non-reform can proceed as governments so choose. The only implication that that has is that, when it comes to the National Competition Council making recommendations to the federal Treasurer on tranche payments, it will take into account what reform may or may not have occurred, the implications of reviews and the quality of reviews.

Again, as I think I have made clear, both at the previous hearing that we had with this committee and this morning, the National Competition Council is not in a position to analyse each and every review. I think there were on that table 1,693 reviews that have taken place throughout Australia. We do not have the resources or the skill and expertise to actually analyse every single review. Nor in fact is it our role to do so; it is not our right to do so. We cannot impose our view on a state or territory or the Commonwealth government in relation to a review. What we can do is say that governments must apply proper processes— independence, rigorousness, objectivity and transparency. Provided that they do that and provided that the review outcome bears at least a reasonable relationship to the material put

before the review panel—the reviewer—it is not appropriate then for us to say, ‘Look, we do not agree with that. We actually think that reforms should—or should not—have taken place.’ We have neither the resources nor the skills to do that, and we certainly do not impose our own philosophy upon governments in any of those areas.

**CHAIR**—There are a number of witnesses here who have joined us for the session that have not had a chance to contribute yet. I wonder if you would like to do so?

**Ms TYERS**—The Business Council is particularly interested in the employment generation effects of reforms of this nature. Whilst we have not done the sort of detailed work that the Productivity Commission has done in this area, we have done some work, which has been made public, which demonstrates that reforms, like national competition policy and the introduction of a range of reforms related to that, have improved the efficiency and flexibility of the Australian economy and made it more able to withstand the kinds of shocks that we saw in the Asian situation recently.

The result of that is that we avoid the downside to employment that occurs when there is a recession. This means that unemployment which is generated during a recession does not get ratcheted up to the extent that it would otherwise have been. Secondly, company profits are more even and companies are therefore in a position to invest and make decisions about investment and employment that they would otherwise not have been able to do.

So, particularly in relation to the employment aspects of national competition policy, that would be the kind of view that the council would take, together with a view about a reduction in costs to business which has been generated and has had the same kind of impact as flattening out the changes in company profits.

**Mr FROST**—As the infrastructure council, we are very interested in the issue of competitive neutrality. One of the issues that we are interested in is the conduct of reviews. The question that was asked by Senator Mackay on the lack of transparency or transparency and how that affects tranche payments was the line of discussion we were interested in. I think it has been conducted very well. I think we will leave it there.

**Senator MACKAY**—Do you have any comments?

**Mr FROST**—I was very pleased that you asked the question.

**Mr FITZPATRICK**—Our comment is that we need to read the 800-page submission and then make up our minds, because we were not aware that that was there.

**CHAIR**—You people would come at this from a different angle, wouldn't you? In terms of infrastructure development, you would prefer to see government move out of the infrastructure area—that is the information that I have been picking up around the countryside—and for government to see itself as a regulator in respect of this, with the provision of infrastructure being largely in private hands. Is that your position?

**Mr FROST**—I do not think that fully covers the position. I do not think we are necessarily looking to see government move out of the provision of infrastructure. What we

are looking to do is to see the ground cleared so that it can be effective public-private partnerships for the provision of infrastructure. I suppose our view would be that, where infrastructure can be provided by private investors—the private sector either solely or in a partnership with government—then there should be no reason why that should not occur. We would see the public benefit flowing from that as being a reduction in the demands on the public purse and perhaps the ability of government to then use those resources in other areas for the provision of services or infrastructure which cannot be funded by the private sector.

What we can see is a means by which we can perhaps accelerate the provision of infrastructure, perhaps to regional, rural and remote areas of Australia, through freeing up the amount of funds that can be used, through the private provision of infrastructure. So we are looking at ensuring that we have a competitively neutral regime in which the private sector can engage, compete and deliver services effectively and economically without fighting against, perhaps, issues in the cost of capital that has not been properly priced in some of the private infrastructure areas. That is where we see the public benefit coming from what we are doing. Rather than looking to push government out—we are not—we are looking to work in conjunction with government.

**CHAIR**—But you obviously want a level playing field, too.

**Mr FROST**—Well, absolutely.

**Mr FITZPATRICK**—Yes, we do. One of our concerns that we will put in the next session is that our feeling is that, overall, the model has not worked. When you add up the NCC, ACCC and so on, in many of the industries where the private sector is playing we are finding we are competing against government or being unfairly dealt with by government. So we want to take those issues up.

**CHAIR**—That is right. Ms Starrs, would you like to contribute?

**Ms STARRS**—I think I will wait until the next session, thank you.

**CHAIR**—Okay.

**Senator MURRAY**—I was also going to ask in passing whether either the NCC, the ACCC or the Productivity Commission made recommendations to the Ralph review of business taxation. As an example, I recently had a look at the club mutuality principle, which has been rorted by super clubs. What is happening as a result of that is that a tax preference or tax concession granted to the club sector under the mutuality principle is being abused at the top end, with the result that those clubs getting that tax advantage are competing unfairly with the private sector—hotels or other private sector operations which provide similar facilities.

When I talk about those super clubs, I am talking of clubs which are investing in 120-room hotels and have marketing operatives in America. The point I make is that public and private sector competitive neutrality is a consequence not only of government versus private but also of certain private sector sectors being given advantage over other private sectors. It

is something I would like a response to. That is in the ether, if any of you want to remark on it.

The second question I have—and I would really like to hear from the ACCC, the National Competition Council and the Productivity Commission—is whether any sectors have been left out in the pursuance of good competition policy. In making that remark I have a sector in mind. It strikes me, whether I agree with you or not, that you are quite properly having a look at things like trading hours, restrictive licensing practices, public and private sector monopolies—the private sector being for instance the casino industry, which are regional monopolies, and the public sector being gas and water and all those things. You are looking at professions—doctors and lawyers and so on. I would like to ask you if there are any still to be attacked. In my own mind is the property industry, particularly the commercial retail leasing sector—but there may be other property sectors.

In other European and OECD countries there is a far more transparent and open market in terms of leasing practices. Leases in the UK, for instance, are registered, so you know exactly what people are paying. Effectively, there is a secret market here. Here you get regional shopping centres, which are often effectively geographical monopolies because of planning considerations, and their pricing practices are secret. It is not a transparent market at all. In my view, it is an anticompetitive activity and a restricted practice. I have done some research on that, which is why I have that view. If any of you would like a booklet on it, I will give it to you. I have that perspective about the property sector, which has not yet been addressed. I am wondering whether, on the list of people on, if you like, the hit list which you are going through in trying to make our society more efficient, there are sectors that you think are worthy of attack and have not yet been attacked. So the first is tax and the second is sectors.

**Mr WILLETT**—We did not make a submission to the Ralph review by and large because we did not see that there were particular national competition policy issues arising in that review. I should start my response by saying that national competition policy does not cover the full aegis of what might constitute good economic policy in dealing with some of the possible market value issues that you have just identified. In particular, while there are obligations on governments in relation to competitive neutrality—and each government has set up competitive neutrality complaints units—the focus of those mechanisms is on ensuring fair competition between public and private agencies rather than ensuring that all the rules are in place to ensure that there are no distortions between the way that private sector entities compete against one another. That is going beyond the aegis of national competition policy. That is not to say that there are not some good economic policy issues there, but it is beyond our brief.

I think the same probably applies to the other issue you raised which was information failures in commercial, retail and leasing arrangements. I am not aware of any particular legislative restrictions on competition policy that go to the points you raise. There may be issues that might be worth addressing from an economic policy point of view going to information failures or lack of transparency in those sorts of arrangements, but they do not go to the sorts of obligations that governments have entered into in part of the package of national competition policy reforms.

In terms of things that have been missed out by national competition policy, one area that the council has identified as having been inadequately addressed in terms of NCP is the rail sector. The council has noted that, in other major infrastructure areas—electricity, gas, water and road transport—governments have entered into specific reform agreements that encompass the full range of economic policy measures that they have considered desirable. Governments have not entered into a comprehensive rail reform agreement.

Recently, governments entered into an agreement on national access arrangements for the standard gauge rail network, but that has not addressed all the sorts of issues that you might want to address in a comprehensive national rail reform agreement. That has meant that part IIIA—the access arrangements in the Trade Practices Act—has carried a lot of the load of rail reform and carried a lot of the expectations of players in that industry. But part IIIA is not a full answer to all those issues. It cannot address all the issues that should be addressed in terms of rail reform.

**Mr SPIER**—To answer Senator Murray's queries, like the NCC we did not make a submission to the Ralph inquiry. We were not aware of any particular issue, and at times it is not appropriate for an agency like us to get involved in those types of reviews, at least at that stage. Of course, if it comes to a parliamentary committee, we may—that is a different issue. With respect to your point about certain private sector benefits, we have looked at those from time to time in other areas—cooperatives often have tax advantages over others, as do friendly society pharmacies.

We tend to take the marketplace as we find it and, if governments have given those types of bodies some advantage, there is little we can do about it. In some cases, we have written to the relevant government pointing out the anticompetitive effects of some special tax arrangements. In terms of areas that competition policy or the Trade Practices Act may have missed, we would concur with the NCC's comments about rail. There are no obvious other areas except there are still a number of exemptions, although they are fairly piecemeal and there is not one particular area.

Senator Murray's point about property is an interesting one. That is one of the sleepers, I suppose, and not just in terms of the issues he raised. They may be picked up by unconscionability laws and other laws. The whole planning area, in property, in land development, in town planning and in trade practices are sleepers which will be activated, probably more by private action than by the commission.

Prior to 1977 when there was a change in the law, the commission's predecessor, the Trade Practices Commission, cleared all shopping centre leases. We are not volunteering that job again because it was an onerous job, but the law was slightly different then and any shopping centre, any collective arrangement where there were a group of tenants, had to come to us for clearance. That was felt to be onerous and with little result and the law was altered in 1977.

**Mr KERR**—We did not make a submission to the Ralph review. On the mutuality question, there is a treatment of that in our draft report on gambling.

**Senator MURRAY**—Which I have quoted at length.

**Mr KERR**—Those issues will be addressed in a final report on gambling which will be finished at the end of November and will subsequently be released by the Commonwealth government. It is an issue that has been raised with us in other inquiries—for example, in the inquiry we did into tourism three or four years ago, the Industry Commission inquiry. It was also raised there by the Australian Hotels Association, as I recall. I do not recall our precise conclusions in the draft report, but I do recollect that it is quite a complex issue and that there is not an obvious answer.

On the property issues, we have not done any work of the sort that you have been pointing to with respect to leases. My colleague Herb Plunkett tells me it is not covered in our report on competition policy in rural and regional Australia. We have done a couple of pieces of work, which we have been asked to do, on property issues—one relates to work arrangements in building and construction, which is public, and the other relates to the environmental consequences of building regulations, which is a research study which is halfway through, and there will be a work in progress report on that.

We could do the sort of work you are talking about, if government chose to ask us, or, within our resources, we could pick it up as a possible research project, if it was sufficiently important, and certainly the interest of a Senate committee would be an indication of that.

**Senator MURRAY**—If you do not mind, I will send you a copy of my paper and you can see whether you are interested.

**Mr KERR**—As to the still-to-do issues, the Commonwealth has a fairly long list of legislative reviews. With respect to all of the ones we are engaged in, all of the reports are public and, indeed, are sent to all members of parliament. The rail report was mentioned; we have completed a study on rail and that is currently with the Commonwealth government. We would expect that to be released reasonably soon.

**CHAIR**—Normally, we would have a break for afternoon tea but we have run out of time so we will move to the next session.

[4.10 p.m.]

### **Participants**

**CAMPBELL, Mr Ross William, Director, National Competition Council**

**FITZPATRICK, Mr Michael Clifford, Director, Australian Council for Infrastructure Development**

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

**GROVES, Ms Michelle Anne, Director, National Competition Council**

**JONES, Mr Ross, Commissioner, Australian Competition and Consumer Commission**

**KERR, Mr Robert, Head of Office, Productivity Commission**

**NETTLE, Mr Rodney Alan, Chief Executive Officer, Australian Local Government Association**

**PLUNKETT, Mr Herbert John, Assistant Commissioner, Productivity Commission**

**RITCHIE, Mr Todd, Director, Economic Policy, National Farmers Federation**

**SPIER, Mr Hank, Chief Executive Officer, Australian Competition and Consumer Commission**

**STARRS, Miss Margaret Mary (Private capacity)**

**WILLETT, Mr Edward Campbell, Executive Director, National Competition Council**

### **Session 5—NCP Impact on infrastructure (other than water)**

**CHAIR**—Miss Starrs, perhaps you would like to make an opening contribution.

**Miss STARRS**—Firstly, I would comment on what was said in the earlier session. There is no comprehensive agreement on road transport reform in Australia. There was an agreement signed by governments in 1991 and a subsequent agreement in 1992. That agreement covered only road transport, and it covered only safety and operations. It specifically excluded economic regulation of road transport and it had nothing to do with roads. It was only to do with road transport; that is, vehicle operations and driving.

Also, that agreement predates the national competition policy, although it is called a 'related reform' for the benefit of the tranche payments. It tends to be included in the benefits that are calculated with competition policy reforms, although there is an argument about whether or not it is a competition policy reform. Also, pre-dating the national

competition policy there was an agreement on rail transport as well. That also was signed in 1991 and it was overturned completely by the national competition policy.

That brings me to my comments. I suppose my view is that, for railways, the 1991 agreement was probably a lot better than the national competition policy. It was a specific sectoral approach to fixing a problem, that problem being interstate rail transport. The problems with interstate rail transport were that there was no single management of interstate freight, there was insufficient funding to fix the infrastructure and there were several owners and operators.

The 1991 agreement established National Rail and allowed it to be the single operator, the single manager of all interstate freight; it also allowed National Rail to take control of the infrastructure from the governments who had signed the agreement—and those governments included New South Wales, Victoria and the Commonwealth. All the costings and studies done prior to that agreement being signed stated that there should be only one operator. The costs were worked out and many studies were done and they all said that, to have efficient cost levels, there must be only one operator of interstate trains—that is, the volumes of freight were very low and long trains were needed to get the costs down. Also, you needed to have one operator controlling the infrastructure; they then would know where the infrastructure was poor and could invest in those places.

Of course, that all fell apart when the national competition policy came in and open access was allowed on the interstate freight system. Despite many reviews that have been done in the recent past about how wonderful the competitive situation is for railways, I might say that we do not really know that to be the case because there is no data. Until last year, National Rail used to publish in its annual report how much traffic it carried, but in 1998 it discontinued doing so because no other interstate operator was doing likewise.

Anecdotal evidence is that there has been absolutely no increase in the freight carried since competition commenced. There is evidence that freight rates have gone down, particularly on the east-west. But also a lot of that is only claimed, just as it is in your report on page 80, for example, where you reproduce the table from the draft report of the Productivity Commission. There it is claimed that freight rates have gone down by 40 per cent since 1991-92 on the east-west corridor.

**CHAIR**—Which corridor?

**Miss STARRS**—Basically, the corridor that goes across to Perth. The competition policy came in in 1995, and one would have thought the relevant piece of information would be what impact the competition policy had had on freight rates. Looking at the Industry Commission's draft report on rail, we find out that most of the rate decrease occurred prior to 1995. I think my main point is that it is very difficult for people to assess these things because there is no data. That must make your task very difficult as well. But perhaps, when introducing competition policy, we did not take into account what was already going on in the way of micro-economic reform, which is also a point that you make in your report. Some of those reforms were dismantled, and perhaps that was not the right thing to do. Maybe we do need to go back and have a look at them.

The position we are in at the moment is that we have underfunded interstate rail infrastructure—and that was meant to be fixed by the 1991 agreement—and also that there are continuing subsidies to interstate freight railways so that they can continue to operate. The New South Wales government provides what these days is called a ‘CSO’ to the Rail Access Corporation for access charges for interstate and intrastate freight operations in New South Wales. That amount is significant—\$177 million. So we do not have a profitable interstate freight railway; it is fragmented and, anyway, access to it is very difficult for new operators. So I am not sure whether it is any better than it was in 1991, when the agreement was originally signed.

**CHAIR**—Is there a profitable train service anywhere in this country?

**Senator MURRAY**—In Tasmania.

**Miss STARRS**—Is there a profitable one? Yes.

**CHAIR**—I was actually going to ask you ‘since Stephenson’s Rocket’, but just in recent times.

**Miss STARRS**—Yes, I think there is. Although New South Wales and Queensland would never publish this information separately, there is absolutely no doubt that for many years they have been earning a lot of money from coal and mineral railways. The Pilbara railways must be profitable, otherwise they would not be there. There are probably some profitable individual lines also, such as those that carry bulk traffic—perhaps some of the lines that carry grain. But no, I do not think there has ever been an overall railway in profit, except perhaps for QR.

**CHAIR**—We were always told that AN was a profitable railway line. Then, when it was crystallised down, from memory I think it was found to have lost only \$1,800 million over a 20-year period.

**Miss STARRS**—When it was formed in about the mid to late seventies, I think its target was to achieve profitability within 10 years, and I believe it did that.

**CHAIR**—It went downhill in the next 10 years though, didn’t it?

**Miss STARRS**—Yes, it had all of its traffic taken away from it when National Rail was formed, so what would you expect?

**Senator MURRAY**—Attached to this discussion is my earlier remark: sometimes to make an industry or a particular economic function competitive or profitable, the price might have to go up. I wonder whether rail is underpriced.

**Miss STARRS**—Relative to its costs, interstate rail prior to 1991 certainly was underpriced. The plan was for the freight rates to go up slightly and the costs to come down quite a lot, but there were to be increases in freight rates—and that was acknowledged at the time. In the 1980s, some of the rates that freight forwarders were charged for container trains were below the marginal costs of operating the trains. They did not cover the extra track

maintenance costs and the drivers' wages. So the rates had to go up, yes, and initially they did.

**CHAIR**—I am trying to find a nice way to formulate this question. There is a railway that I have made some comments on, and I am a bit careful about it because I think I am the only one in South Australia who holds this view. Pretty shortly there has to be some private infrastructure in the form of a railway line from about the middle of this country to the top end. In fact, the capital cost of construction of this particular part of the railway will be subsidised by the taxpayer to the tune of, I think, about \$500 million, plus any cost overruns. Do you much about this one? Is it likely to come home to roost?

**Miss STARRS**—Being an ex-South Australian myself, the only thing I know about it is that it was promised by the Commonwealth in 1907, and it is about time they built it.

**CHAIR**—I think everyone has promised this one, except me.

**Senator MURRAY**—There is an important question behind this remark, and I am really glad that you have opened it up like that. The question I would add to yours is: does competition policy add a social perspective, a policy perspective to the actual economic need for such a thing? In other words, if this were regarded as a good strategic thing to do, say, in the sense of defence, does competition policy take that into account and say, 'Well, this doesn't add up economically, it doesn't give a proper return, it's not profitable and it unfairly competes with road; but hey, if you add in strategic or regional policy or social views, it becomes valid'? I have not understood from all the responses whether that is built into competition policy evaluation of an industry sector like rail.

**Mr WILLETT**—I think it is a demonstration of the case that the competition policy reform framework facilitates governments addressing those sorts of externalities, and they address those sorts of externalities by making the sort of capital contribution that governments have made. If governments feel that there are benefits that will not be captured by the people who are responsible for building this infrastructure, then it is open to governments to compensate for those externalities by that sort of capital injection. The fact that governments are doing that is just such a demonstration. Certainly, in terms of competition policy, we have no problems with it. It does not run against any competition policy obligations of governments. The fact that they are doing that is a demonstration that those sorts of benefits can be addressed in a way that is consistent with national competition policy.

Perhaps I could pick up on a couple of points that were made earlier. It is true to say that road transport reform is focused on the road transport industry and not on roads and road funding. But I am not so sure that it just goes to safety and standards issues; there are obligations in relation to heavy vehicle charges, for example. Also, the road transport agreement is evolving over time as governments identify new needs in terms of moving towards a national road transport market, which is the ultimate objective of the road transport agreements.

In terms of the 1991 rail agreement, I must admit that I did not see the national competition policy as overturning that agreement. I rather thought that what governments had

agreed in 1991 in terms of rail reform had essentially run its course prior to governments entering the national competition policy reform agreement in 1995. The failure identified earlier was that, in entering the NCP agreements in 1995, governments did not call up or enter into any new commitments in terms of a rail reform agreement. I think that is the main failure we are seeing here. I do not know that governments have abandoned the notion of a single national operator of the interstate standard gauge system, certainly not the Commonwealth; but I do not think governments have been able to agree on how that sort of objective should be achieved.

**Mr FROST**—I would just add a few comments here. Firstly, on a couple of the issues on profitability of rail, I think the federal Minister for Finance has been saying—at least he has in two speeches I have listened to—that the railway in Tasmania, which was sold off by the federal government, is now operating profitably. Indeed, another railway which is anticipated to operate profitably is the old V/Line freight operation here in Victoria, which earlier this year was purchased by a Rail America owned entity called Freight Victoria. They paid serious money—from recollection, \$120 million or thereabouts—to purchase the operations of that railway. They have the obligation to maintain the track in Victoria, and they are looking at having a profitable operation going there. So it is fair to say that there are profitable railways or anticipated-to-be-profitable railways because people are prepared to pay serious money to buy them.

Another question goes to the issue of there being insufficient funding to fix the infrastructure on some of these things. If people have the ability to manage the operation of the business and they have the obligation to maintain the infrastructure to do that, then the infrastructure will be fixed.

Take the example of the recent privatisation of the suburban railway and tram system here in Victoria. I think all the parties involved in that have obligations to maintain and upgrade the track, to upgrade the transport infrastructure in terms of rolling stock and signalling and to maintain those facilities for the term of their franchise. Whilst they have not paid money to do so, they are investing real money and they do get a subsidy from the Victorian government. But that subsidy is also against a set of standards and criteria to improve the quality of the service. There are measurable benefits that will be provided to the travelling public in Victoria, and that is being done at a reduced cost to the government in terms of budget outlays each year.

I suppose I am trying to make the point that one of the benefits of getting the private sector involved in these transactions is that there is a bit more freedom in terms of an incentive to make profit rather than an incentive to simply control costs. The incentive to make profit is against, in the Victorian railways case, fixed and prescribed ticket fares which have not risen and an obligation to maintain service. So the only way that you can improve profit is to improve the ridership and the whole of the rail and tram sector so that it becomes a more efficient way of travelling and provides more people paying more fares.

**CHAIR**—Mr Fitzpatrick, do you want to make any comments on this?

**Mr FITZPATRICK**—Not on rail, no.

**CHAIR**—Mr Ritchie?

**Mr RITCHIE**—I would make just a couple of points. This is the problem that NFF has with this: how can we accept as a reasonable proposition that it is okay for governments to invest money in something like the South Australia to Darwin railway on the grounds it has social benefits and at the same time accept as a pricing principle user pays? It is totally illogical to think that the two things can exist at the one time. One implicitly recognises external benefits; and the other says that there is no such thing as an external benefit and that users, and only users, must pay.

There is also this proposition that, if the private sector has control of these assets, there will be provision. I think the early evidence suggests that those in the private sector in charge of infrastructure will cherry pick. They will cherry pick the most profitable areas of the country, and that is the city and the coastal strip where the population is.

We have already had an example of that in the Gippsland area of Victoria where some farmers wanted some augmentation to their electricity wires in order to increase production as part of the dairy deregulation, and they were told they had to pay for it. Everybody else in that town is going to benefit from that augmentation but they are not going to pay. The way the system is set up at the moment means that, if the dairy farmers will not pay for it themselves, they do not get it. Yet all the benefits that will spin from that increased production in that area will accrue to the other people in the area, but there is no mechanism in place under national competition policy and user pays for the beneficiaries to pay for it, and the infrastructure will be underprovided.

**Senator MURRAY**—What did you mean by augmentation?

**Mr RITCHIE**—Basically increase the size of the wires so you can get better and more reliant electricity.

**Senator MURRAY**—So a greater load carrying capacity?

**Mr RITCHIE**—Yes, simply put. It also implies increased reliability so you get fewer outages as well.

**CHAIR**—I am just trying to work out the implications of what you are saying. You are saying that decisions on augmentation, as you were talking about there, should not necessarily be on the basis of immediate return or in fact on a full 100 per cent return at all. Is that what you are saying to us?

**Mr RITCHIE**—I am saying that they should not be user pays because other people benefit from this decision. Let me give you another example. If you build a 100-kilometre highway, do you ask only the people on that 100 kilometres to pay when it is clear that everybody else who is an extra 20 and 30 kilometres down the road is going to benefit because they just got 100 kilometres of paved road? Under the current system, only anybody who is covered directly by the road would pay.

**CHAIR**—This is the toll road you are talking about?

**Mr RITCHIE**—Yes, a publicly funded road, or even a privately constructed road. We at NFF are saying: why are we throwing out the principle of beneficiary pays and making it user pays? Another example is what is going to happen to the cost of electricity distribution to any inland town at the moment. The new system dictates that they pay the full cost of the transmission of electricity along those wires. So almost immediately we are going to add a new cost onto rural and regional Australia that will not be apparent for anybody in metropolitan Australia. These are the dangers we see in user pays pricing principles. Only two consequences can come from it: underprovision of infrastructure or an increase in the price of infrastructure. Logically, nothing else can happen.

**Senator MURRAY**—But, Mr Ritchie, the question that the chair put earlier, which I expanded on, which I thought was a very good question, in effect went much further than you have outlined. With the example of the Adelaide-Darwin rail, the whole of Australia is going to pay for that strategic line because the governments believe that is a good thing to do. It is not just a question of Adelaide and Darwin or the people up and down that line benefiting; the view is that the whole of Australia must pay for something which is strategically important.

The reason I put that to you is that we should view infrastructure expenditure in all cases with that broad view in mind. So long roads up north to Western Australia which have no chance of paying for themselves, or major infrastructural developments, always should have a social or strategic component put to them, but the question is how do you value that, and that was the chair's question. How do you say that in fact it is worth \$500 million or rather it should be worth \$300 million, which I presume is the kind of job that the National Competition Council or the Productivity Commission should be trying to help us with—in other words, putting some kind of value to intangibles because that is what is at the heart of the questioning of national competition policy?

You can put an economic value to it—rates of return, pricing and so on—but how do you value the intangibles, which are the strategic benefit, the social benefit or whatever the particular issue is? In your case it is maintaining an industry, maintaining a regional operation. That is where we look for guidance. If you just hang onto the economics of it, you can never go beyond that. The result is it never pays you to invest in infrastructure; it never pays you to say, 'We should keep that country town, even though it is not a profitable country town in economic terms'.

**CHAIR**—Mr Willett, you have been trying to have this debate since I made derogatory remarks about trains.

**Mr WILLETT**—I would like to start by saying that it is not the council's role to make judgments about estimating appropriate CSO payments or government public capital contributions to infrastructure projects such as the Tarcoola-Darwin rail project. I should clarify that in my earlier comments I was not suggesting any verification of that as the appropriate payment that the government should make. I was merely suggesting that the fact that governments had made that capital contribution was evidence of the fact that competition policy did not impede the ability of governments to make those sorts of payments.

In terms of rail pricing, there are a couple of points I would like to make based on our work in looking at the state rail access regime—

**Senator MURRAY**—Can I interrupt you? You have really got us confused here. The role of the Competition Council when examining the public interest test is to evaluate matters on a range of criteria which include social, environmental, presumably strategic, et cetera. When you evaluate or review the rail industry, surely you have to give some kind of value or assessment to all those different components. You say it is not your role. We say it is in terms of our understanding of what your legislation says you must do.

**Mr WILLETT**—In terms of rail issues, our roles are very narrow. They relate to two functions under part IIIA of the Trade Practices Act. The first is looking at state and territory access regimes to make a recommendation on whether those access regimes are effective. The second is to consider applications for declaration of rail infrastructure and whether that is appropriate. So we do not address the question about funding arrangements for rail infrastructure. That is not part of our job. Because of that, we do not consider whether governments should make contributions to rail infrastructure projects.

In terms of the more general issues that arise in cost-benefit analysis under NCP, for example, a review of anticompetitive legislation, our role is to assess whether governments have addressed their obligations in those reviews correctly and whether they have met those obligations for the purpose of the Commonwealth transfers to governments for meeting their obligations under NCP. With two exceptions, we do not conduct those reviews ourselves, so generally we do not delve into questions that go to appropriate weightings or estimations of the different benefits of costs associated with a particular restriction on competition. What we do is look at whether governments have gone through the right sort of process in looking at that restriction on competition and whether it has met all the sorts of things that we see as desirable in those reviews such as transparency and assessing all the evidence in an objective way.

**CHAIR**—I have an interest in some of these areas. The Alice to Darwin railway is going to be probably one of the examples of the partnership that I think Mr Frost was talking about earlier. I think the taxpayers, particularly the taxpayers of South Australia, are expecting that this railway line will be profitable and that there will not necessarily be a return to the taxpayer in search of an ongoing subsidy for this particular project. I have some doubts as to whether that is going to happen or not. I expressed them publicly. Do you know much about this particular project? This is a case study, isn't it, in the idea of a public-private joint venture.

**Mr FROST**—It is indeed. I knew something of this project some years ago. I have not followed it in a lot of detail recently. Certainly I think the expectation is that, based on the private sector investment that is required, it should run at a profit and should not be seeking further subsidy. That was the structure on which I think all of these projects are put together. I could not comment on the position of this particular project because I am not familiar with where it is at this stage.

But it is indeed an example of a public-private partnership and how that could work. I think it is also fair to say that there is a return—and I know this is not the context in which

you used a return—to the public sector. But there is a return to the public sector that is coming out of it. It is the externalities that are being received for the injection of that public money, whether they be strategic, long-term development or whatever they are. One area where I did have some dealings with this was in trying to value those externalities. It is a very difficult project to do that. It is very difficult to determine, first of all, what time period you use to value those externalities and what discount rate is applicable, and to try and see into the future as to what development may take place.

Getting back to the fundamentals, the Darwin-Alice rail project is a model of some of the issues. Mr Ritchie, I think, raised an example about extending power lines or increasing capacity of power lines. That is another example of where a public-private partnership could be developed. For example, the private sector investors may be refusing to increase the capacity of lines or to make further investment—which is reasonable because that may not be the basis on which they have invested in a project; this is further capital investment which is required. If the further capital investment cannot be warranted on the basis of the business case that they can see yet there are social or other benefits being demanded that warrant that expenditure, government can rightfully become involved in that area. They may see those additional benefits, which can be valued, that the private sector will not actually reap.

The private sector cannot bank external benefits. It can only bank financial returns, and if it cannot bank the benefits it cannot invest the capital. That is where the problem arises. If government can see further benefits coming and can bridge effectively the term—and I will go into that in a second—then government can invest.

The problem comes about in the time period during which that investment has to be amortised. Typically, the private sector will have a shorter term over which it will amortise that investment. Government can take a much longer term to amortise a benefit and to receive that benefit. I think that is where government should appropriately be.

**Senator MACKAY**—I want to put a question on notice to the NCC. Mr Samuel was saying earlier that the tranche payments were likely to be less than \$16 billion all up because of various things. I think he mentioned GST and inflationary impact and whatever. Could you take on notice as to how much it will be and the pecuniary impact of the various initiatives.

**Mr CAMPBELL**—We can take it on notice. One of the difficulties in giving you an answer over the totality of the period is that it changes a bit with differences in population growth and rates of inflation. We can give you a fairly approximate figure, though.

**Senator MACKAY**—Thank you. Perhaps you could include the caveats in terms of those variables.

**CHAIR**—The only other issue I have is the question of gas reticulation and a number of things like that. I am not sure who would be best to deal with this. I have some understanding of how telecommunications works in the sense that you have multiple users of the same infrastructure, but how does gas reticulation work with respect to competition policy?

**Mr WILLETT**—In what respect? Could you clarify that?

**CHAIR**—Take gas that comes out of the Cooper Basin and finds its way down to Adelaide, Sydney or another destination. The pipelines used to be public property. Now, as I understand it, they are private infrastructure—certainly the ones out of the Cooper Basin are; they were sold off to a pipeline company. The users at the other end of the gas are sometimes electricity utilities that will soon be private, if they are not private now. Some of the other users of the gas are, from memory, Boral and a number of people like that and also all the various households that use reticulated gas as it goes down through there. How does the ACCC protect the consumer in that situation where you have effectively only one pipeline coming from one gas producer and going into one reticulation system? Can you take me through that? How is the consumer protected in that sort of environment?

**Mr WILLETT**—The ACCC might want to add to this, but gas access is regulated in Australia now. All governments have enacted the gas pipelines access code that applies to major gas transmission and distribution systems. That means that open access arrangements apply to that infrastructure. There is a schedule to the gas access code that identifies the major gas transmission pipes and distribution systems and regulates those particular systems.

The gas access code also has a coverage and revocation process whereby anybody can apply to the NCC to have new pipelines added to that schedule or pipelines taken off that schedule if regulation is no longer appropriate. The gas access code obliges all transmission pipeline systems and distribution pipeline systems to present an access arrangement to the ACCC that meets all the criteria in the gas access code, including appropriate reference prices for particular services provided by those pipelines.

**CHAIR**—The reason I have an interest is that this was perceived by governments 30 years ago as a natural monopoly. It is rather interesting that governments do not perceive it that way anymore.

**Mr WILLETT**—They do; that is why they are regulating it.

**Mr SPIER**—They still do and, as Mr Willett said, it is because they are a natural monopoly or essential facility that the access arrangements operate. To take it a bit further, from the South Australian point of view we do not have any role at all in gas to the house. We do not set the price of gas for retail usage—to your home—but we do upstream on access to the pipeline.

**Ms GROVES**—National competition policy and gas reform is one of the areas where we have a staged introduction of contestability—staged competition. At the moment large users like the electricity generators that you have been talking about and other big companies have got access and have been freed up to purchase the gas from whatever producers they are able to purchase it from, and then to purchase a transport service from a gas pipeline owner. Traditionally in Australia you used to buy one bundled service: you bought the gas from whoever was selling it and they sold you the gas and transport together.

What competition will mean is you will be able to buy those separately, and that is what the big players will do. When that gets opened up and introduced, perhaps down to the

household level, obviously none of us as individual consumers are going to ring up a producer such as Santos and negotiate a price for gas. What it does mean is that there will be retailers out there who are able to purchase gas from producers around the country—and hopefully with the construction of more gas pipelines it will be from around the country. They will then negotiate transport along the pipelines, using the third party access regime as their way of getting a reasonable price for access to what is a natural monopoly, and then move it down at a better price to consumers. That is what the overall aim is.

At the moment, as we have said, that is being opened up to the big end of the market—and in some jurisdictions we are probably at least somewhere around the middle part of the market—with the view that there will be full contestability by I think about September 2001. The latest date currently for when full retail contestability will be introduced in the gas market is about 2002.

**CHAIR**—This is how Telstra is being treated as well. Is that right? Is that how it is going to work? You have got a series of companies out there today who will sell me cheaper phone services. They are presumably still using the same Telstra network. I exclude the mobile phone services from that who, under the digital arrangements, in fact are putting up their own facilities. But at least they have to go to the hard copper services or the optic fibre services of Telstra. That is how it works as well, is it?

**Mr WILLETT**—It is broadly similar. I think before too long we will see multi-utilities providing retailing services so that someone will come to you, saying, ‘I will give you the best deal not only on your telecommunications but on your gas, electricity and water and just about everything.’

**Mr FITZPATRICK**—One of the concerns we have in that is that the difficulty on the private investor side is that, in general because the privatisations have been incomplete, what you find is that the private sector is more than often competing with public sector entrants in the same market. One of our questions to the NCC is: how are they going to deal with that? In terms of looking at the electricity industry we think it has been a monumental failure. In broad terms, the New South Wales experience has been subsidised production. In Queensland we are seeing subsidised development. It seems to be something the NCC is not prepared to tackle in terms of looking at the tranche payments.

When people got involved at the start, they expected somewhat more activity from the NCC in terms of the way in which those tranches would be allocated. To date we have not seen it. We are concerned that, as gas evolves, again we will have limitations. That is something we simply wanted to put on the record.

**CHAIR**—Sure.

**Mr WILLETT**—We are happy to respond. We have had some discussions with Victorian electricity generators, in particular. What we have said to them is, ‘Well, we hear your concerns and we understand that you think there are some competitive neutrality issues between the private Victorian generators and the New South Wales publicly owned generators. But what we have done as part of national competition policy is ensure that each

government has an effective competitive neutrality complaints mechanism that is set up to deal with exactly these issues.'

What needs to happen is that, if a particular generator has a concern about competition between private and publicly owned utilities, then a complaint should be lodged with the appropriate complaints authority and dealt with through the process. We will certainly take an interest in that complaint, in particular to ensure that the complaint is addressed appropriately. We will have a look at that in the context of the assessment process.

**CHAIR**—I know it is getting late in the day, but there are some key issues there. In terms of Telstra, Telstra is constantly having arguments, over the cost of CSOs, with other people who are using various bits of the network. In terms of electricity, you are going to have another problem. You are going to have a problem of Mr Ritchie's farmers out there who are at the end of a very long wire. They are going to be getting electricity at, I suppose, considerably reduced, subsidised rates, through the system in the same way that there are CSOs within Telstra. Is that wrong or is that how it works?

**Mr WILLETT**—Certainly there may be CSO issues there. I do not see any impediment to CSO funding to address those particular issues.

**CHAIR**—The point is that out there in the bush you either are not going to have the infrastructure or you are going to pay more for the infrastructure or somebody is going to subsidise the infrastructure. In this brave new world of competition and all the rest of it, which one of those options is it going to be? That is the key, to me. As I understand it, Telstra has a blue with the various other users of their network. They have put enormous bills to government and they have said they want the government to get the money out of the other users of the lines. I understand that there are mechanisms in place for that. What happens with electricity and those sorts of things, and gas, for that matter, too? Or will we just not see the cross-subsidisation that we have always been used to in these sorts of industries, where a country town is not charged any more for the delivery of these sorts of basic necessities than in metropolitan Melbourne, Sydney, Adelaide or wherever the relevant market is?

**Mr FITZPATRICK**—I could speak to that briefly, having been at the national regional conference on infrastructure last week. The way it is evolving, I think the likelihood is you will see more Alice to Darwin type projects, where the subsidy is displayed. I am not sure that is a bad thing. I think everybody understands. Certainly, on the private side it is understood, after quite a lot of research that AusCID has done, that with much regional infrastructure it is quite difficult to make it economic. Roads are difficult. You could not do it on a toll basis because it would not be economic. Clearly, there is a need to have an organised way of evaluating your CSOs and then deciding, on a government basis or potentially on an NCC basis, as to how you are going to evaluate those and then decide which projects you are going to go ahead with and which ones you are not. That is probably a better outcome in terms of allocation of resources than the previous system, which was simply that those that shouted loudest got paid and got the subsidy. That is certainly the way it is evolving at the moment.

**Mr SPIER**—I think the point you just made is a very strong one. In areas such as telecommunications, the government mandates the CSOs. There is a debate between Telstra and the government as to what the exact figure is, but the government mandates the CSOs. In terms of electricity and gas, various state governments do the same thing, and we factor that into our access determinations. They are part of the environment and they are part of government regulation. It is certainly there, but it has to be effectively mandated by government.

**CHAIR**—I can understand a lot of country people worrying about where this stuff is going. I remember reading a book, more than 20 years ago, about the economics of Botany Bay in the 1780s. There was a debate in England about the fact that it cost £3 to hang a criminal and £100 to send him to Botany Bay. The economic rationalists lost that argument.

Thank you very much, everyone who has given us evidence here today. I think it has been a very useful exercise. I take no position on that Botany Bay decision, by the way.

**Committee adjourned at 4.59 p.m.**

