



HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON FAMILY AND COMMUNITY AFFAIRS

Reference: Competitive tendering of welfare service delivery

CANBERRA

Friday, 3 April 1998

OFFICIAL HANSARD REPORT

CANBERRA

HOUSE OF REPRESENTATIVES STANDING COMMITTEE
ON FAMILY AND COMMUNITY AFFAIRS

Members:

Mr Forrest (Chair)
Mr Quick (Deputy Chair)

Mr Ross Cameron	Mrs De-Anne Kelly
Ms Ellis	Mr Lieberman
Mrs Elson	Ms Macklin
Mrs Elizabeth Grace	Mr Allan Morris
Mr Jenkins	Dr Nelson
Mrs Johnston	Mrs West

Matters referred for inquiry into and report on:

The desirability and feasibility of increased contracting out of welfare service delivery by all service providers, with specific reference to:

the current levels of welfare service provision by the non-government welfare sector;

the adequacy of current monitoring of performance standards for services delivered by the non-government welfare sector;

the costs and benefits provided by increased contracting out of government services;

the role of government in standards setting and monitoring of accountability standards; and

the role of government in measuring the efficiency and effectiveness of new service delivery arrangements.

WITNESSES

AMIES, Dr Marion, Director, Policy Development, Budget and Performance Strategies Branch, Portfolio Strategies Group, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory	918
BARTOS, Mr Stephen Anthony, General Manager, Resource Management Framework Group, Department of Finance and Administration, 111 Alinga Street, Civic, Australian Capital Territory 2600	973
BASHFORD, Mr Graham, General Manager, Business Development, Centrelink, Tuggeranong Office Park, Athllon Drive, Tuggeranong, Australian Capital Territory 2900	958
DAVIES, Ms Elizabeth Maria, National Director, Uniting Community Services Australia, PO Box 519, Mawson, Australian Capital Territory 2637	942
GOLDSTEIN, Mr Michael, General Manager, Contestability and Contracts, Centrelink, Tuggeranong Office Park, Athllon Drive, Tuggeranong, Australian Capital Territory 2900	958
MacDONALD, Mr Les, National Chair, Aged Care Advisory Committee, Uniting Community Services Australia, PO Box 519, Mawson, Australian Capital Territory 2607	942
ROSE, Mr Alan Douglas, President, Australian Law Reform Commission, GPO Box 3708, Sydney, New South Wales 2001	993
WOODING, Dr Robert, Assistant Secretary, Budget and Performance Strategies Branch, Portfolio Strategies Group, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory	918

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Present

Mr Forrest (Chair)

Mr Ross Cameron

Mrs Johnston

Ms Ellis

Mr Allan Morris

Mr Jenkins

Committee met at 9.05 a.m.

Mr Forrest took the chair.

CHAIR—I am pleased to open this 10th and last day of public hearings on the committee's inquiry into competitive tendering of welfare service delivery, a reference provided by the Minister for Health and Family Services, the Hon. Dr Michael Wooldridge, in April last year. The committee has been investigating the desirability and feasibility of increased contracting out of welfare service delivery by alternative service providers. We have examined service provision from a Commonwealth and state perspective.

The main issues to be resolved by the inquiry are to establish the current levels of welfare service provision by the non-government welfare sector, the adequacy of current monitoring and performance standards, the services delivered and the costs and benefits provided by increased contracting out.

An important component of the committee's investigation is to examine the role of government in standards setting and monitoring of accountability standards, as well as measuring the efficiency and effectiveness of new service delivery arrangements. It should be stressed that the inquiry is being conducted against the background of continued government responsibility for such services.

The hearing today in Canberra marks the last occasion when formal evidence will be taken and follows an extensive round of public hearings and inspections all around the nation over the last 12 months. The hearing today provides an opportunity to explore in greater detail the issues raised and which the committee has become aware of during its inspections and hearings and resolve matters which will provide directions for future actions.

For this reason the federal departments and agencies appearing today have an opportunity to guide the committee in its consideration of future policy in this area to enable committee members to arrive at reasoned conclusions and recommendations as part of its formulation of a final report, which hopefully will be tabled before the parliamentary recess in July.

As the committee has toured around and heard its evidence, it has become aware of some real concerns amongst the agencies providing service delivery. In the early stages we came to realise quite quickly the terms of reference which we were addressing were not quite accurately describing what is. The concept of contracting out has been occurring for decades and there is a reasonably general acceptance of that procedure provided governments retain their responsibility for the provision of services. There has been a subsequent stage of that allocation on a submission based process which to some extent is not unlike a tendering process in its procedure.

When there is a new service established, there seems to be an acceptance that: 'All right, let's do a tender to get a credible agency to deliver it' when a need has been highly identified, but there is a very strong resistance to the concept of a commercially competitive tender when the decision will be made on a price basis.

We have not discovered too much of that. What we have discovered is a tendering

process on a block grant basis: 'Here's an allocation of money. Please tender and show us that, as an organisation, you have the credibility and expertise to deliver the service, and please submit some unit rates for different aspects of delivery of the service.' To some extent, we have discovered that that particularly has not been done well. Agencies complain of a lack of consultation in preparation of the document. There is a lack of confidence in government departments that they have the capacity to prepare the document in the first place.

We have heard very strongly the need for proper consultation, and also the concept of partnership and the need for it to continue. The latter ingredient is something that we as committee members have been strongly reminded of, that is, the very potent concept of voluntarism, which is the Australian ethos. We have heard that everywhere. Many organisations deliver their service based on a volunteer ethos, especially Meals on Wheels. We have heard the views of Meals on Wheels in every state. There is a plethora, an enormous number, of organisations that rely on voluntarism.

That concept could be destroyed if there is to be a fully-fledged competitive tender basis with the for profit providers moving in and destroying something which, as Australians, we all treasure. To that extent, the value of voluntarism across the nation is enormous and not just in terms of the labour provided but in terms of the benefit to the people who are delivering. To them, it is part of their life: it keeps them young and keeps them involved, and there is probably an intangible, unmeasurable benefit from that, as well.

That is the background. Members will have a number of questions. There are still a number of gaps in the evidence we would like to see collected. We are hoping the departments and agencies today will be able to fill in those gaps.

[9.12 a.m.]

AMIES, Dr Marion, Director, Policy Development, Budget and Performance Strategies Branch, Portfolio Strategies Group, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory

WOODING, Dr Robert, Assistant Secretary, Budget and Performance Strategies Branch, Portfolio Strategies Group, Department of Health and Family Services, GPO Box 9848, Canberra, Australian Capital Territory

CHAIR—Welcome. Before we proceed, I wish to point out that, whilst this committee does not swear its witnesses, the proceedings today are formal proceedings of the parliament and warrant the same respect as the proceedings of the House of Representatives itself—a concept I am sure you are well aware of. Any deliberate misleading of the committee will be regarded as a contempt of the parliament.

The committee has already authorised the submission from the department in its publication of volumes of submissions in connection with the inquiry. Dr Wooding, you might be prepared to make an opening statement, condensing your submission—which we have had for quite a while—and perhaps to make some additional comments before we proceed to questions.

Dr Wooding—I do not have anything to add to the opening statement that was made by Ms Lynelle Briggs to the hearing of 24 October summarising our submission. All I would like to add is that we received a lot of questions which we took on notice at that inquiry and undertook to provide responses on. Late last year, we provided a full response to all those questions and you now have that. Other than that, I have nothing to say by way of opening remarks today.

Dr Amies—And I do not have anything to add at the moment.

CHAIR—Perhaps I could lead off with an inquiry in regard to a new concept that we have recently heard about and that I understand emanates from Victoria. It is the concept of continuum of contestability with the establishment of some criteria. Certainly, we heard at our hearing in Victoria—and, as a Victorian, I hope I have the credibility to say this—that an overly enthusiastic approach to this new idea probably resulted in some unfortunate outcomes which have subsequently been adjusted—thankfully—particularly in respect of Meals on Wheels.

Continuum of contestability is a term that I am struggling to understand. As I understand it, it is the establishment of some criteria on which to base a tender and, more particularly, the selection process. It may provide a solution to the problem we are hearing about, which is that some agencies are concerned that, if on the regular basis of a 12-month or a three-year period they are required to retender their credibility or their commercial arrangements for tender, that destroys their own continuity and the ongoing benefits—for example, their relationships with clients, and all those things that they provide. Perhaps we could start by hearing your understanding of it and whether you are

watching closely the development of that idea.

Dr Wooding—We are aware of that idea. From our understanding, it would appear that probably the starting point of that idea is a situation in which the government itself is providing a range of services and is thinking of making them contestable or outsourcing those services, through a tendering process or some other sort of outsourcing process. In those cases, obviously, you need a range of criteria to work out which ones are more suitable for outsourcing first, or at all.

It is harder for us to have a view on this subject from where we sit because, as we told you in our previous evidence, most of our services are already in a sense outsourced. That is not necessarily done through competitive tendering or on a contracting basis or a strict purchaser/provider basis, but they are provided by non-government for profit or not for profit providers or through the states. In that sense, the services are already contracted out with varying degrees of contestability.

In that sense also, our services are much more heterogeneous and much more varied in their nature, and we do not know that we could really use a tool like a continuum to help us in this area. We operate over a very broad range of areas and we adopt a sort of ‘horses for courses’ approach. We use a different approach in our aged care or our home and community care activities from what we use in child care or the disabilities area. They are really very varied areas. With the exception of the rehabilitation service and the hearing service arrangements, we are not starting from a situation in which government was ever a provider of these services in the first instance.

While it may be a useful concept in the Victorian state government context, for us it does not seem to have any particularly great attraction at this time. We would be concerned that, if we tried to impose it on a situation where we already have very heterogeneous arrangements that were well tailored to individual circumstances, we would end up with an inflexible approach that would possibly inappropriately quarantine some people from contestability or, in other cases, might impose some sort of idea of contestability on something that is working reasonably well as it is. But we are interested in it and we are observing the concept and we will continue to monitor it as it emerges and develops.

CHAIR—Your submission did make reference quite strongly to the benefits that can flow from a competitive tendering approach, but I am sorry to say that we have not heard that anywhere we have been; we have not had anybody say that there are benefits. Can you perhaps revisit, for our benefit, in your own words what the benefits are and what drives this process in the first place?

Dr Wooding—The idea of competitive tendering is, in particular, I think, to improve the efficiency and the value for money of the service that is being provided. This can occur either pretty much through improved quality for the same cost or through the same quality at a lower cost, or something like that. A truly competitive tender on a commercial basis works most effectively where you have a very clear idea of the precise nature of the services you want to have delivered. Where there needs to be more thinking

about those services and more local input into the nature of the services, it is a bit harder to run a strictly competitive tendering process, or it may be that you have to think more carefully about it. The other thing is that we also see competitive tendering in a broader sense, beyond mere commercial tendering.

On the points you alluded to in your opening statement, we have always—or for a long time—in our department tendered, in a sense, for quality. In other words, where we are setting up new services and so forth and we have a block amount of money that we are looking to use to subsidise or grant to an area, a lot of the planning obviously involves looking at the potential service providers and trying to ascertain which ones are going to provide the highest quality. So that is another form of competitive tendering.

CHAIR—But let us say it is a new service. Let us say there is a need for a service in a small rural town somewhere, and it is a Commonwealth responsibility. It is a brand new idea. How would you approach it? Would you set up the criteria for continuum of contestability and would you say, ‘Every year, we are going to review you and subject you again to the same process’?

Dr Wooding—It depends. We do not have very many, if any, services where we do a sort of annual tendering process. Many of our services classically have been more of the type that you are alluding to where, when we are initially setting something up, we will go through not a strict commercial tender, usually, but a sort of tendering for quality, once we have established a need for services in an area. That is classically the case with, say, nursing home facilities or child-care facilities. We then go through a process of monitoring, reviewing and performance assessment to make sure that we are getting efficient services and that they are actually effectively delivering and achieving the outcomes we want. But we certainly do not go through a sort of annual tendering or contestability process in many areas of our department. I am not aware of any in particular—unless Dr Amies can think of one.

Dr Amies—No. At the same time, we do have a framework of criteria and, in all of these processes, a specific set of criteria. The overall framework is derived from the good practice advice distributed by the Department of Finance and Administration and the Industry Commission, where we are looking at the quality of the service and also the effect that such processes would have on the whole of the industry. In the additional information that we provided to you, we refer to this.

The framework spans such things as the nature and the quality of the services to be provided; the financial stability, competence and experience of potential providers; the potential to provide affordable public access to services; the potential risks, both financial and/or to clients; and the impact of competitive tendering on the overall market. We would draw on that sort of framework in assessing the most appropriate way to go, whether it be tender or whether it be asking for proposals, and then assessing against those types of criteria. In some ways, it covers the same sorts of issues that are being proposed in the continuum, but in a more flexible and more holistic way than by saying, ‘If you are at one end of the continuum you are in but if you are at the other end of the continuum you are out.’ We would be looking to apply those criteria on a case-by-case basis.

CHAIR—One other concern that I did not mention in my opening statement and summary of concerns was that, where organisations, especially in the not for profit church sector, cooperate a lot by cross-referencing and networking, in a competitive tendering approach that very valuable resource sharing gets destroyed: suddenly, the sharing stops as people play their cards much closer to their chest, because they know they are going to be in a competitive environment. It is very unfortunate that that outcome is a result and that we actually indirectly destroy what is a benefit. How do you answer that?

Dr Wooding—I would like to draw a distinction there between an intensively competitive commercial environment and what the Department of Finance and Administration means when they talk about a contestable environment. From where we sit, I can see that you can establish an environment that would have some of the disadvantages that you describe—as that would be a possible environment to establish—but I also do not think there are necessarily going to be any particular benefits in some areas from establishing such an environment.

What we would not want to lose sight of is the need for contestability, which is to make sure that people providing services are always aware that there is a prospect that, if they are not providing them in an efficient or an effective manner and are not achieving the outcomes in a way that the government funding them would like them to do, there is a possibility that we would look at other options—but not in an intensively competitive environment, such as the one you describe—and that we might find other ways of doing things, over time, that will deliver a better outcome and a more effective service.

To my mind, contestability is something that people should not be frightened of in these environments, but I can see why they would be frightened of competitive tendering of the type you are describing. I also hasten to add that there are no environments operating within our portfolio that in any way resemble the scenario that you described.

CHAIR—Members of the committee are concerned that the Commonwealth funds the states with an enormous amount of money to deliver their own welfare services. In that sense, we would not be encouraged by an outcome that was not as favourable as it should have been; and so we feel we would like to have some say in what the process is by the time it gets to the coalface. In that sense, we cannot abdicate and say that it is not a Commonwealth responsibility—because it is, indirectly, by virtue of the fact that we fund welfare services to such an enormous degree.

Dr Wooding—It certainly is not just a state responsibility, if we are providing funds in a particular format. If what you are describing has any specific relationship to programs that you are aware of, we could possibly come back to you with information about how tendering is operated by states in some areas. That would be an option. But we ourselves do not promote or encourage in any way a tendering arrangement that would result in a loss of benefits in the way that your scenario described. If you are interested, if you have specific examples, we would be happy to take them up.

CHAIR—All right. I know that Mrs Johnston has got a question in regard to that. Then we will hear from Ms Ellis and Mr Morris, in that order.

Mrs JOHNSTON—How do you determine what new services are suitable for CTC, the competitive tendering?

Dr Wooding—Once again, it is the answer that Dr Amies gave previously. We have a set of criteria based on such issues as quality, competency, financial stability of the providers, affordability, risks, and also the impact of tendering in a particular area. Once again, I stress that our tendering processes are well established. They are tendering only in a very broad sense. They are not commercial tendering, for the most part. We look at the needs of a particular area, we assess what sorts of services are required to meet those needs and then we look at the potential suppliers. Generally, we are not looking for a lowest cost tender. We are looking for a tender with a fairly fixed cost in mind, where a tender will be of a higher quality, taking into account the factors that I have already mentioned, such as the stability of the provider, and that sort of issue.

Mrs JOHNSTON—But, with a new player in the field, if you were to get a new service in there, it is really very difficult for you to assess the quality of the outcome, the performance that they will be able to deliver, and—most importantly, in my opinion—the benefit that it has to the wider community, which is what we really should be all about. It is fine to have criteria and to lay down rules, but we all know that in practice the theories do not hold up.

Dr Amies—With most of the services that we provide, if there is a new service, it is rarely radically different in the broad nature of services from the ones that are already provided. In effect, we can assess whether there is a pool of potential providers out there who are already providing quality services in that broad area of service provision. If we were coming up with a type of program which was radically different from the services that we already provide, then we would have to look more carefully, as you are indicating, at whether there is that potential pool of providers. In that, we would draw upon the experience of other departments and, if necessary, do some sort of needs analysis.

CHAIR—I will ask that question in a different way. Dr Wooding, you mentioned that you had subcriteria. It might be useful to the committee—if they are documented—to have access to them. My earlier question was about a continuum—if you had a process, there may well be services that clearly ought to be quarantined from any contestability at all. To put that question in a different way, what services would you consider currently ought to be quarantined?

Dr Wooding—I do not think we could actually say, in a blanket sense, that there would be any services, or actually predict any particular type of service in any sort of specific way, that would be quarantined. I accept the broad point: where there is a lot of volunteer effort in a service; where you have got benefits; where there is a local situation; where the service is part of a local network and it is working well—these are the types of things where you might say that some sort of competitive tender, especially for cost, might actually damage what is already there. But I do not think there can be any hard and fast inflexible rules set like a continuum that say that if a service meets these four or five criteria we definitely would not be able to, subject to contestability, look at putting it up for competitive tender. I do not think, from the experience of the sorts of services that we

fund, that such an approach is possible.

Mrs JOHNSTON—Following on from what I was saying before, the criticism has often been mounted—and it has certainly been expressed to me—that the hierarchy or, if you like, the bureaucracy or the top level of any service provider gets the majority of the money from any source of funding but that, for the end user—that is, the person in the community who is actually expecting the service—there are fewer dollars available.

I guess one of the areas that I could mention as an example is if you are looking at providing various services through the HACC program into homes. I may be incorrect here, but I perceive that the hours are being cut back. But the numbers of the people who run the agencies, if you like, seem to be getting larger and larger. So if you are talking about a criterion here for competitive tendering that is perhaps more suitable for both the government and for the providers and, most importantly, for the customers or the clients, how do you answer that? Do you see that there will be a change in this or are we going to see more top heaviness in the organisations and less money available to the people who need it?

Dr Wooding—I do not know about specific circumstances of the type that you describe. Once again, if you want to give us some examples of any specific issues that have come up, we would be happy to look into them. In general terms, I would have said that sort of scenario is probably more likely to happen in a situation in which an organisation is protected from competition or contestability than it is in a situation in which there is some contestability.

An important point, which I should have mentioned earlier, is that people in the Department of Finance and Administration and the Industry Commission, who are promoting the idea of contestability and competition in these areas, would be saying that one of the great potential benefits of it is that it makes sure that the customers of the services are actually getting value for money and getting the services, and that the money is not being caught up in hierarchy and administration and those sorts of inefficiencies, because people are protected from competition or from proper accountability for what they are doing. I am not saying that I know of specific examples of this, but this is the type of situation that we were hoping that competition and the possibility of contestability, if used properly, would help to alleviate.

Mrs JOHNSTON—I am not quite happy with that answer, but I will leave it and let someone else ask a question.

CHAIR—You might think of a different way to ask it.

Ms ELLIS—I want to go back, if I can, to the point that was made a bit earlier by Dr Wooding in relation to contestability and competitiveness. I preface my comments by saying that the overwhelming evidence that I have heard in almost every capital city, and everywhere else we have gone, suggests to me that there is absolutely no doubt in the mind of community based organisations, at the least, that they really do understand contestability and do not shy away from it as such. In other words, I want to take to task

the inference that I think I got from your comments, Dr Wooding, that in some way they should not fear or shy away from contestability. I think in fact they acknowledge it and accept it quite fairly and do not expect to be granted money to carry out service delivery just automatically. They need to contest it, they need to meet criteria and they need to meet equity and access and fair expenditure of the dollar.

What they do fear, particularly the smaller organisations, is the crude competitiveness that comes from competitive tendering. The overwhelming evidence that I have heard is that their resources, which they do not get additional money to handle, tend to then be spent inordinately on attempting to receive contract through a competitive tendering process. The fear, in some cases already evidenced from other states, is that the smaller organisations really are pushing it uphill in terms of preparing tendering documents and accessing the information required when they are competing against larger organisations. In Victoria particularly, where this has already begun to happen, there has been the demise of a number of small organisations as a result.

The other comment coming from the community is as a result of that. A lot of the inventiveness that comes from a range of those community organisations is then lost. With the greatest of regard to the bureaucracy, the bureaucracy does not have a patent on inventiveness and neither do large organisations. Small ones do just as well, but they are, seemingly, run over in the process of attempting to continue to exist through a competitive process. Do you want to comment on that?

Dr Wooding—Firstly, in no way was I attempting to suggest that organisations that we deal with in our department are not aware of the benefits of contestability and the need to make sure that services are delivered as efficiently as possible. I certainly would like to put it on the record that I was not attempting to say that.

I do not know the specific examples you are talking about and I do not have the people from those areas here today to answer those sorts of questions. Once again, if you want to put specific cases to us, we can provide the information.

Ms ELLIS—We have got volumes of it on public record.

Dr Wooding—Okay, we will certainly be looking through that with great interest and seeing what we can learn from it. Any sort of crude competitiveness or tendering which does not take account of all the matters that I mentioned before—issues of quality; the impact of tendering on the environment where you are doing it; that sort of thing—and that is undertaken without a great deal of thought and with a sort of glib assumption that you should just impose some sort of model willy-nilly without regard for conditions, is not something that we favour or an approach that we have ever adopted in our portfolio. I certainly agree that it is true that small organisations can often develop innovative approaches which large organisations may be less well placed to do. Certainly, we want to encourage that in our portfolio and would not favour any application of any approach that would, in any way, lose those benefits. I would certainly agree about that as well.

Ms ELLIS—To comment a bit further, it may be a help to your department and to

the receivers of services if people within the Industry Commission got out and spoke to some of these people before they started to espouse their views in relation to the benefits of competitive tendering and welfare services. I would suggest that is just my side comment—not at you, but at the Industry Commission.

Coming back to the competitiveness and the problem that collaborativeness within organisations then faces, there was also, I believe overwhelmingly, comment from community organisations, again, that they are forced by the pure competition, in order to continue to exist, to have a more closed door approach with their colleagues than they had in the previous arrangements in which they operated. There is a political and a competition commercial reality that they find themselves facing. They do not enjoy that at all because they believe that, under the current or older processes that they have been using, they can be in the position of delivering service A and they can be doing that in collaboration formally or informally with colleagues from other services.

They can in that process discover other things that can be done. They can be delivering service A and say, 'Listen, while we have been doing this, it has illustrated to us that we could be doing B and C.' They have a flexibility at the moment that within the constraints of the commercial contract they would be missing. They have made very loud comments to us on that particular aspect. I apologise that I cannot recall the exact examples but there have been people saying to us that they had a contract to deliver service A; they have gone back and said, 'Can we do B and C as well?' with the reply, 'No, you can't. It's not within your contract. Continue to do what you're doing.' They either lose a commercial gain from the idea of B and C or the whole process is slowed down and stultified to some extent. They cannot continue to move and develop as they go because of the constraints of strictly commercial contracts.

Dr Wooding—I think they are interesting comments which once again emphasise the importance of adopting a flexible approach to introducing these things. It is a balancing act. There is a danger, obviously, if you set up a scenario such as you have described where people are put through very rigid contractual arrangements and are not able to do something that they can see would actually achieve the outcomes better. That is obviously a problem and you need to have a system where the service providers can, if not actually make decisions to go in pursuit of a different approach themselves, at least provide feedback to the funder that there are these options out there for a different approach.

On the other hand, if you do not subject people to any sort of contestability or competition, the danger is that you may have the disadvantage, as I mentioned before, of inefficiencies and not getting value for money. It is always a balancing act. It is always a question of looking at the individual circumstances. I think we have in our portfolio submissions to you been stressing very much our horses for courses approach, looking at a range of factors and taking a very flexible approach to try to maximise the benefits of either using competitiveness or choosing not to use it in whatever situation you are in.

CHAIR—One of the other criticisms that we have heard throughout the inquiry is that decisions about what to purchase and what are appropriate services are often taken by

public servants who are remote from the reality of the coalface; and that, even when that is done, there has been no strategic approach to consulting with the community sectors, from whom we have discovered most of the inventiveness comes. They have figured out very clever ways to integrate whatever voluntary agencies they have got around them. It has been a very strong criticism: that they find themselves tendering for something that they know is not quite right, but they have got no flexibility to tender for anything else. In fact, if they did make a submission outside the tender, their tender would be rejected. I have got enormous faith in those community based people; I see them everywhere in the world that I come from. They ought to be heard.

I was wondering if you have any comments on how your department takes advantage of what is an enormous resource at the coalface: the people who know their community well and are aware of its problems and say something like, 'You can't have a suicide consultation program unless you address this issue here of male aggression.' I think you have got the idea.

Dr Wooding—Yes. It is that point again that we have to have a system in which, even if we have not got a totally open tender process and where the tender is still for fairly specific sorts of outputs, you certainly want to have good arrangements whereby the views of people providing the services and the knowledge they have of what sorts of approaches actually meet the needs best have to be built into the whole approach. Certainly, I do not think it is a true statement that the decisions taken on what to purchase are taken by public servants. That is certainly not the approach within our department.

In our portfolio, on the whole the decisions are taken by government, who identify outcomes, obviously with assistance and advice from public servants. The outputs are then produced by the service providers to achieve those outcomes. Obviously there is an identification of the types of outputs that we want in general terms. But, as most of our funding is through grants or subsidies, we are not getting into the level of commercial contracting where we are specifying that we want particular units of material or units of services at particular defined prices. The approach we adopt is a more flexible approach.

Not only do we have that flexible approach, where sometimes through the tendering process we do receive feedback from providers on the ground; we also have a very extensive system of consultation within our portfolio, where consumers and funded service providers and other interested people with relevant expertise can advise government on the policies needed, on the types of outcomes that we should be looking for and of the types of outputs that we might produce to achieve those. That includes the needs based planning processes which we adopt which have a lot of involvement from consumers and service providers.

We fund 18 national secretariats through the community sector support scheme which are community organisations which provide advice to us on issues. We also talk extensively to other peak organisations and we also make input to government inquiries such as this one and other evaluations. We have a very keen interest in the types of findings that will come out of this inquiry and other inquiries.

As a portfolio we are extremely consultative and we have a lot of input into what we actually determine that we are going to do and what we advise our ministers and government to do in terms of outcomes and the sorts of outputs that might achieve them. Because we do not deliver services ourselves, nor are we normally in a commercial contracting arrangement, a classic purchaser-provider arrangement, in most instances we are not that specific about the services that we are purchasing. We have a bit of flexibility and scope for tailoring them to individual circumstances and local conditions.

Dr Amies—The multipurpose services, a model developed originally under aged care but which certainly has the possibility of being extended a lot further, particularly in rural areas, is the type of thing which we are trying to encourage which very much invites the holistic approach from the community to their identification of needs and then the funding in an integrated way of the bundle of services which meets their needs. That multipurpose service concept is not a competitive one and it meets the types of criticisms that Ms Ellis has heard of the other types of arrangements. That holistic approach is one that we very much are trying to encourage, particularly as that is the type of approach which we see as involving the community, maximising the potential for generating social capital and drawing on those strengths in the community through volunteers, et cetera.

CHAIR—I have two MPSs operating in my part of the world. I congratulate you on that approach.

Mr ALLAN MORRIS—On page 39, you seem to be implying, in the first dot point, that competitive neutrality means that you actually take into account the benefit to an organisation of using volunteers, which would seem to imply that you somehow adjust the tender prices for a for profit provider compared to a not for profit provider where their use of volunteers is actually factored in as a cost factor.

Dr Wooding—It is an issue that we need to take account of, if that is the inference you have drawn from what we wrote. I do not think that we would say that that was necessarily something we did in any sort of—

Mr ALLAN MORRIS—Let me read it to you for the record, so it is very clear. It says:

. . . what is the appropriate methodology for assessment of competitive neutrality: how to handle government funded buildings, taxation, profit margins, value of volunteers?

Two of those in particular—the fact that the not for profit sector does not pay taxation and, secondly, the fact that they both use volunteers—imply that you would adjust the tenders to take that into account so you would get competitive neutrality.

Dr Wooding—We raised them as issues that we thought needed to be thought through further. The quote there actually begins by saying:

It is clear there are issues still to be resolved.

What we are trying to say there is that these are some of the problems that you are going to have in an area where you have not for profit providers and for profit providers, if you want to move to the very rigid commercial tendering for purchasing particularly defined products type of approach and then tendering on the basis of the lowest cost in a very rigidly defined sense. That is why we raised those questions there; we think they are questions that will need to be explored further as we move ahead.

Mr ALLAN MORRIS—Okay. Throughout your submission the issue of quality waxes and wanes, if you like: it comes up on almost every page and goes away again on the next page. It is quite clear that we do not really have an adequate process. You talk about outcomes and you talk about a range of other ways, and it is very clear that in the welfare sector—whatever you want to call it: the welfare sector or the community support sector or whatever—there is not much of a process to ensure that quality is there. Firstly, is that a fair comment?

Dr Wooding—We are intensively concerned with quality in our portfolio and we have many processes that look at quality. I think we set out in our submission at least six or seven major quality assurance processes—

Mr ALLAN MORRIS—They are not solved, though. Your submission still, one way or another, puts up quality as a problem still to be resolved.

Dr Wooding—Standards are always changing. Community standards are changing. Quality is not fixed or easily defined. Quality is obviously in itself a contestable concept. It depends on a range of things like different views and that sort of thing. But we are always striving, through looking at issues—

Mr ALLAN MORRIS—I am not suggesting that you are not mindful of it. I am just suggesting that we have not actually solved it yet, that it is still problematic.

Dr Wooding—All I can say is that in our portfolio all our major programs, particularly in the family services areas of child care—

Mr ALLAN MORRIS—Let me give you an example. Right now, with the new assessment rating system for, say, nursing homes—existing nursing homes and the level of staffing and professional staffing—there is a very real concern that what is going to happen is that whilst you accredit them in one sense by shifting the internal ratios of levels of care needs, you actually diminish the level of care capacity. So the quality of the service may well go down, yet they are still accredited because within that system you are actually changing some of the other factors. Is that a fair outline?

Dr Wooding—That is a very specific example and I would need to get back to you after talking to my colleagues in the aged care area about it. If you are saying that we do not have a rigidly defined concept of quality and a fixed approach to quality, then I do not quite see how we could, really, given the wide range of services that we have and the changing community standards. It is a fluid area. But I am happy to investigate that specific area.

Mr ALLAN MORRIS—Let me go slightly further then and say what I was trying to underpin. The concept of competitive tendering in an area where apples are competing with apples is quite reasonable—for example, a building contractor can actually get someone to assess what it will cost to build a building of a particular nature with particular materials and all the rest of it. They can be pretty accurate in terms of what that will cost and it would be most unwise to take a tender that would cost less than that because they know that to do that they would not be getting what they know it would cost.

But it seems to me that what is happening in the welfare sector, and what the very great fear is, is that you will end up with affordable quality or flexible quality whereby, given the competitive neutrality problems and the flexibility of quality, by posing the very notion of competitive tendering with inflexible criteria, the impact of the savings will be to shift the quality agenda.

Dr Amies—Mr Morris, the issue of quality is not covered simply by the competitive tender or the tendering process but also by a general assessment of the capacity of the service provider to provide quality at that point. Much greater emphasis is laid on ensuring and assisting service providers to deliver a quality product, through our various accreditation and quality standards and ongoing monitoring processes. I perhaps heard you saying that it is simply through the tendering process; but, for our services, we depend a lot more on these other processes whereby one can continually review what constitutes quality and one can assist service providers in various ways to reach levels of quality.

Mr ALLAN MORRIS—If we take building as an example, one could say that, technically, the departmental staff could actually work out what it would cost to provide a quality service, whether it be a community aged care package or residential care or any other service, and be precise within a few per cent of what that would cost. Therefore, the whole point of competition is lost. It serves no purpose, if that is the case.

CHAIR—That must be what happens now, though.

Mr ALLAN MORRIS—It is what used to happen.

CHAIR—I do not think we have actually, as a committee, come across a truly competitive tender. There has been a block amount of money, and so someone has actually made an assessment of the dollars involved in that block, anyway.

Mr ALLAN MORRIS—That is the way it used to be, but you appear to be moving. I am hearing from the aged care sector, for example, that the department is now looking at other competitive suppliers for residential aged care services. Is that correct?

Dr Wooding—Whenever we move into a new area or provide new beds, we are always interested in seeing who is around and who wishes to supply them.

Mr ALLAN MORRIS—Let us talk very closely then about the CACP. Are you

seeking competition amongst suppliers of community aged care package programs?

Dr Wooding—I would have to take that question on notice. I will talk to my colleagues in that area and give you a definite answer on that. But, in general terms, we are not in any of our areas engaged in the building type of contracting. As the chairman said, we are not engaged in that sort of building industry type of arrangement that you described where we would just look at the price and nothing more.

I hasten to add that, even in private sector transactions of a business nature, I do not think that the very simplistic model that I know people sometimes subscribe to for how competitive tendering for cost works would even apply in the private sector in business. There is always more taken into consideration than just the pure cost. Relationships with suppliers and other issues are also there, and that is something that we take into consideration in our approach as well—in fact, intensively so, as we have been saying in all our evidence to date.

Mr ALLAN MORRIS—It is just that we were taken aback at a hearing in Townsville when we were told about Centacare tendering for employment services and getting a service they did not bid for and one they cannot afford. We were saying, ‘How on earth could that have been done?’ We do not quite know, to be honest.

Dr Wooding—I think they are coming along to talk to you a bit later on.

Mr ALLAN MORRIS—No—Centacare, the Catholic employment group. We are hearing what you are saying. On the surface, what you are saying all sounds fine. You are saying, ‘Quality is really important. We understand volunteering. We understand all those things.’ But, in amongst all that, you are also saying there is competitive bidding, competitive tendering.

Dr Wooding—No.

CHAIR—No; contestability.

Dr Wooding—Contestability is what we are saying.

Mr ALLAN MORRIS—No; in the submission, it has got competition, and then it has got competitive neutrality—

CHAIR—I must say that one of the things that we will have to address very early in our report is to get some terminology down. Some of this is not well understood, not even the terms of reference we first addressed. Today is the first time I have really focused on the concept that you have described of contestability. I am comfortable with that and I think agencies that we have spoken to would be happy. It is just that the competitive tender thing in this particular delivery sector—

Dr Wooding—It is competitive tendering on cost: I think that is what I am hearing from your question.

CHAIR—Yes: at the end of day, it is lowest price at the expense of flexibility, partnerships and all of those things. If we throw the baby out with the bathwater, driven by lowest price, I believe that will be a mistake.

Mrs JOHNSTON—I want to add to that, if I may. Even knowing where to go to get such a tender document or how to enter the process is, for some of those organisations that Mr Forrest was talking about, just impossible to absorb. They do not have the time and they do not have the skill. That would suggest that they would never really be given an opportunity to be seriously considered for any tendering process, because they might not even be in the running for it. That is something that really needs to be looked at: we can lose quality of services at the coalface that Mr Forrest talks about, because we are concerned with getting a better price.

I think all of us would agree that any tender process does not necessarily accept the lowest price. That is not part of the tendering process. You have to look at what you get in the process that is tendered for. Sometimes the middle tender is more acceptable than the bottom one. I agree with Mr Forrest: the organisations that he was talking about have absolutely no idea and are horrified that they will have to enter into this when they do not even know where to go to. I can give you countless such examples.

Dr Wooding—That is a good point.

Mr ALLAN MORRIS—To finish that point, on pages 35 and 36 you actually talk about competitive tendering being inappropriate. You are actually making the point pretty clearly that, in some areas—and when Mr Forrest asked you to quarantine some areas, you chose not to—it may be inappropriate. You also suggest, on page 36, specific implications of any shift from your current outsourcing arrangements to competitive tendering. Clearly, the department is under some substantial pressure to move to competitive tendering models and it is trying to grapple with that. I think I understand that.

But let me go a little bit further, because you do highlight the problems of small organisations in remote rural areas and the like. The example I mentioned was Centacare, which is a large national body that has bid nationally, and which is being made to lose money in Mount Isa. In other words, it has got a non-profit service in one area. What seems to be happening in the large marketplaces, such as Sydney and Melbourne, where the for profit providers can in fact provide highly organised and large volume services that can be competitive, is that they will bid into those areas but they will ignore the Mount Isas and the tiny areas, and you will rely on the charity groups to actually lose money in providing services in those kinds of locations. There is a real problem with this. I understand the department's sensitivity and I think the department rightly identifies some of the problems that are there, but it also seems to highlight that the department is under some substantial pressure to move to a competitive tendering model.

Dr Wooding—No. I would like to clarify that. That is not the impression we are intending to give. What we are trying to say, when we do not want to rule it out in all cases, is that we do not feel we can a priori rule out contestability in any of our activities, and nor should we be able to do that. Contestability always includes within it as a broad

concept the possibility of using competitive tendering where appropriate. We are under pressure to deliver services as effectively as possible and with the best value, and we find different ways of doing that in different circumstances.

Once again, I am not aware of the specifics of the case you raised, but I think we would certainly be interested in looking into that and seeing what we could learn from that particular situation. Once again, if it is true, then obviously, if you are trying to operate on a commercial basis and you are being asked to maintain loss-making services, that is not really a truly contestable or competitive basis anyway. So that is an issue.

Mr ALLAN MORRIS—Let me refer to the *Hansard* from Townsville. I am sure we can actually supply that to the department. It was not your department: do not get me wrong. I sympathise with your problem, or I am trying to; I am just suggesting what one of the outcomes was.

Ms ELLIS—Dr Wooding, can I take you back to a comment you made in an answer a little earlier? I am not going to try to quote you verbatim, but it was in relation to a comment about your department providing the funds but not having to deliver the services and then dispensing the money accordingly. I want you to clarify for me how the federal department, administering the services in this area that you are responsible for, knows and measures the method of, and the acceptability of, the delivery of services around the country as a result of that?

What are the connections you have? We hear in different places different methods adopted by different states. Some, like in Victoria, go madly down the competitive tendering track. Others do it to a lesser degree. With some, I do not know whether they have done it at all, but they are playing with it. There seems to me to be a distance between the federal department carrying out federal policy in the area of the delivery of the services to which you are responsible and dispensing the money, and Joe Blow in the electorate who is a client who receives the services. Could you please tell me how you evaluate the delivery of the services you are responsible for?

Dr Wooding—We have a very varied range of services. This is the point I keep coming back to. Also, depending on the nature of the service, we have more or less specific guidelines. Obviously, because they are guidelines, we are not in a contracting out arrangement where we actually are in a purchaser-provider arrangement where we, for example, withdraw the money if our conditions are not met on a contracting basis or commercial basis. We have guidelines in which our services operate and that provides flexibility to both the states and our service providers to adopt different approaches—which of course, as we have been saying, is a good thing and it is what we want. We want people to adopt different approaches. So it is always possible that different states will have different approaches within the framework of our overall guidelines for different services to try different things. Once again, I am not aware of the specifics, as you have been talking about, with regard to services.

Ms ELLIS—Do you have a core set of standards?

Dr Wooding—We have different standards for different areas of our activities. We obviously have overall standards about probity, ethics and financial accountability. We have varying approaches to evaluation and performance information across our different programs. In general terms, we are particularly concerned about the outcomes rather than the outputs. Therefore what we are most concerned about is that the outcomes are achieved.

Ms ELLIS—How do you establish that?

Dr Wooding—Once again it depends on our different programs. There is obviously a lot of population based data in some of our programs where you are looking at the overall populations and seeing what is happening to them. In other instances we are looking at more surveys or different sorts of approaches. We have a lot of different data strategies and performance information strategies within the department, and it does vary. Once again that is good, because I think they are all different programs and we do not want to have a rigidly defined approach to these things.

We also have various approaches towards how we look at the outputs and the efficiency of the outputs. That varies as well. But we are always aiming to first and foremost make sure that the outcomes are achieved. That is our No. 1 priority in our portfolio and in most of our programs. Often our agreements with the states or with the organisations that provide services include performance information as part of—

Ms ELLIS—Often or always?

Dr Wooding—I think always there is something, although it varies again, depending on the nature of the agreement. So different agreements have different types of performance information built into them.

Dr Amies—But you will understand that the extent you can define performance information in a high-level agreement is relatively limited. So that is concentrating on a relatively small set of outcome measures. But they are backed up by a lot of work that we do with the states in working parties in consultation with industry sectors to further develop below that much more detailed performance information and to enable national collection of comparable data across states. So it is both working in those partnerships to ensure that there is adequate performance information and moving towards being able to publish comparable statistics across states of the types that the Industry Commission is doing with service provision. We are moving towards those types of arrangements. There is a lot of effort put into ensuring that we work with the states to cut across the possibilities that you were referring to earlier.

Ms ELLIS—Thank you for that. I have to confess a huge concern. I have this habit—and it is probably an annoying one to some people—of saying, ‘Here is the policy, here is the money. I want to know how it affects Mrs Smith down the road,’ because that is the purpose for the policy being in place in the first instance. I take your comments on board wholeheartedly, but I have to say that I am concerned to see an indication sometimes of a lengthening of the distance between money at a federal level and delivery

at a state or local level. I just want to make that point, because I just think that it is something that we all need to be continually concerned about.

Can I just ask one more very quick question. In the move towards considering or implementing competitive tendering in the welfare area, what work has been done to evaluate similar processes overseas in the international community? In answering that, can you tell us—both from the bureaucratic or government end over there, wherever, as well as from the community recipient end of the service—what their assessment is?

Dr Wooding—Obviously, the system that we operate in, the federal system, and the way our department operates are just as you have described: quite often, we are not responsible for what services are delivered to Mrs Smith but we have this federal system and we are often operating removed from that. There are not too many other jurisdictions that match that, so it is harder for us to find comparative data. Where you have very extensive purchaser-provider contracting out types of arrangements, which have been established, for example, in New Zealand or, as I understand, in Britain—

CHAIR—They do not have states in New Zealand.

Dr Wooding—They do not have states. They were providing many of the services, which goes back to my very opening point, which is that often they were contracting out services that they were providing previously themselves, which is obviously more suitable to the purchaser-provider model, because you are pretty much handing over an already existing approach and buying it off somebody else. Therefore, I do not think we can give you extensive information. There are some reports which we can provide to you—for example, by Monash University—if you do not already have them, and we will talk to the secretariat about that.

Such evidence as we have seen shows us that we cannot adopt the New Zealand model in our department because of the fact that we are in a federal system. The New Zealand model in its purest form involves saying that the government determines the outcomes and the department just provides its own outputs, and any money that is actually given to somebody else to deliver the outcomes in the grants arrangement is actually provided directly by the minister. That is the type of New Zealand model which we would not want to introduce—or we cannot introduce—here because of the different federal circumstances.

Some evidence we have seen suggests that there is a bit of a danger in some jurisdictions of the type that was discussed earlier about compartmentalisation and people not working with each other and tending to protect their own patch and their own business interests. There is some international evidence of that once again from places like New Zealand.

But as I say, we will talk to the secretariat and see if there is anything we have that we can provide to you that you might find interesting. From our department's point of view—and it might be different for other departments that are more directly involved in service provision—there is nowhere else much that we can compare ourselves to in an

apples and apples way.

CHAIR—I hope you are not telling us that we are at the vanguard.

Dr Amies—What a terrifying thought.

CHAIR—It would not surprise me. Mr Jenkins, you have a question on accreditation. This is a key, I think.

Mr JENKINS—Just before going to that: if ever the new federalism of health comes around and the department has responsibility for public hospitals you might be looking at different approaches.

Dr Wooding—That would indeed be interesting.

Mr JENKINS—That is right, something for contemplation.

Dr Wooding—Very much so.

Mr JENKINS—From your discussion with Ms Ellis during the last set of questioning where we were looking at how you go about defining outcomes and also then looking at performance, there are a couple of elements to that: there are elements of quantity; there are elements of quality. I understand what you are saying—that when you are operating at a national level and you have national policies, and it is appropriate that the responsibility for delivery is at the local level, how do you get that to match? One of the things that has been put to us is that if services were accredited to provide particular things that would be an element that would help to a great degree, because there would be consistency of performance. There would be, we would hope, therefore, some consistency in the way that we could have credibility in the outcomes. Would you like to comment on those?

Dr Wooding—As you would see from the information we provided to you previously, accreditation is an important part of our portfolio's activities, particularly in the welfare, the family services side, of aged care and child care. We have accreditation systems which we support. We are moving to try to bring those towards independent industry bodies which manage the accreditation process and work in consultation with providers and consumers, which we would then support. And they are specific to the types, so you have a specific accreditation system for child care or a specific accreditation system for certain types of aged care.

The idea of a single accreditation system, which has been proposed in some areas, has some appeal to it. If it was to say that you would accredit an organisation as being as a fit and proper organisation to deliver services, that might be an interesting approach in some contexts. It would not really, once again, help us tremendously, because we actually have our accreditation systems where we are already assessing that, among other things, for the delivery of services. That is an interesting idea, I suppose, which I think has probably been put to you in the course of your discussions.

We are not quite sure what the benefits or disadvantages of an all-purpose one would be—say, for our portfolio or across government generally. It would cause upheaval undoubtedly for our arrangements. I suppose we would have to have a clear idea that there would be benefits from it before we would actually move to that sort of approach.

Mr JENKINS—We have been looking at examples around the place, and we kept coming back to Victoria—and I suppose I have got a fixation because I am from Victoria. The next step in community services in Victoria appears to be to go to bundling—I think that is the terminology—and all these sorts of things, where there is a wide breadth of services being brought in. You might have accredited organisations that do A but, when you grab them all together, what is the use of the single accreditations? I do not know how we get around that.

Dr Wooding—We do not have anything like that at the moment. If we do provide more than one type of funding to an organisation, they are accredited and assessed separately, and accountability systems are separate. If what you are describing is one where organisations do a sort of bundled accountability and accreditation, it is not something we are involved with, except possibly, again, as we move towards the multipurpose service model. That is about the only model I can think of where we may be looking at that.

In cases like the multipurpose service model, there could be a cost of having to go through a lot of different accreditation processes, which is a disadvantage of having separate ones. Once again, with a single all-purpose one—the point you raised has some validity—there is a danger that you lose any specificity of what you are accrediting for and it becomes rather all purpose and lacking in focus, I guess.

Mr JENKINS—You have raised the question of cost, and that is especially of great significance, even under the moves towards accreditation that are ongoing for small organisations: how does the department come to a decision on a proper accreditation system that is going to have a cost that is not prohibitive to organisations such as those in rural or remote areas or in a constituency like mine where there are high levels of migrant population—where there is an appropriateness to have smaller organisations as part of the delivery process?

Dr Wooding—Once again, it is a bit of a broken record from us, but we like to adopt a flexible horses for courses approach to these things and, obviously, the more flexible we are about our approaches, the better we will be able to address those sorts of problems. One piece of information we have already provided to the committee about disability standards shows that we have levels of accreditation, so you could achieve different levels, depending on the nature of assistance you wanted to receive from the government.

There might be some way of having different levels or different accreditation standards for different types of organisations. Obviously, that is the sort of thing we want to get around, which is the cost of accreditation to small organisations, so we will always be continuing to endeavour to come up with flexible approaches that we could use to do

that.

Mr JENKINS—Mr Chair, I have one final question but it is at the edge of everything. We have been given examples which are from another department—it is really the Job Network. Forget about differences of ideology. I think that, in the way it was developed administratively, everybody would have to have queries whether at the end of it the outcomes that the government wished to achieve were achieved. I might have a different view but that is not the point I am wishing to make. During that process there were refinements of tender documents and there was great confusion. Then we get to the problem that was exemplified for us by evidence in Townsville where, because organisations made broad brush bids, they were not too sure which part of it they were going to get.

My question to you is not about that but, as a whole of government sort of process, are there discussions between you and other departments that are going through this process to see what should be world's best practice rather than what is not?

Dr Wooding—The key role in our government for that sort of work is played by the Department of Finance and Administration who look at competitive tendering standards, quality, approaches and guidelines. Where we would be embarking on a process of that type, they would be one source of advice we certainly would be looking for. We talk all the time to other departments and agencies about what they are doing and try to draw lessons from what they do. That is something we will continue to do.

Certainly in our disability area where we are involved in employment work, there is a natural interest in talking to the Department of Employment, Education, Training and Youth Affairs about their experiences. We would be endeavouring to learn from wherever we can whatever would help us achieve what we are trying to do.

Mr JENKINS—How much interest does DoFA take in what you are doing and what you are developing? Do they come to you or do you ask them?

Dr Wooding—They set the philosophical and best practice framework. They produce documents from time to time and we talk to them from time to time. They are not adopting any sort of policeman role or anything like that, if that is what you are trying to ask. They are a source of advice when we need it and they are also always themselves looking at ways of helping us and putting out useful information that we can draw on in these sorts of circumstances.

Mr JENKINS—No carrots or sticks?

Dr Wooding—The only other issue there is the general DoFA move towards outcomes or outputs approach to expenditure. That is at a very broad level—nothing specific.

CHAIR—In summing up, here we are at the vanguard of establishing an

international benchmark. It is going to be us. That is the impression I have and I am very nervous. I think you are saying to us that you currently do not have any criteria in a structured way for a process that establishes which services should be quarantined or even a process where something is assessed. I am worried about that. I perceive that there is not a nationally based strategic framework to proceed down this track. I can probably accept that the department is embracing it responsibly but, as chairman of this committee, I will be recommending we write a report that recommends that we hasten steady on some of this because there is a lack of confidence that we can get it right.

I think I am hearing you saying this. I am going to give you an opportunity to respond. But, having said all that, I think there is a balance to achieve and I am warming to this concept of contestability but I would still like to have some confidence that there is a process that says that some services are just not suitable at all for a competitive tendering approach. Some may well be and I can accept that. I will give you one more opportunity to respond to that summary because this is the last opportunity we will have to talk to you.

Dr Amies—I think part of our hesitation in saying that there are services which you can quarantine totally comes back to the issues that have been discussed before, in as much as you need to look at it on a location by location basis where you might say this service could be contestable or competitive in an urban context but you could not possibly put it out to competitive tender in another context. I think that is one of the strong things behind our saying you need to look at not only the total of this whole program but the context in which you want it delivered. That is one of our reasons for not saying we would quarantine this service or another service.

Dr Wooding—That also means it is difficult to come up with an advance, a priori way of saying if a service fulfils these five criteria you quarantine it. We are not aware of anything we could develop for all the services that we are involved in that would work in that sort of way. I appreciate your concern as to why you would like to investigate that sort of approach.

CHAIR—I understand that Victoria has realised it has blundered and it has pulled back. It is a concept that is currently being considered and it is obviously something that should be monitored more.

Dr Wooding—I think one danger, if I could just conclude, is that any sort of hard and fast rules or any sort of pabulum that says this is the way everything should be done could result in the situation of having taken something too far. Therefore, to try to quarantine something is similarly taking very much a hard and fast rule. A flexible approach, we find, works more effectively.

Mr ALLAN MORRIS—As a footnote, the Queensland state government submission suggested that the competition policy in the welfare sector could be seen to be driven more by ideology than by practicality. Would that be a fair comment?

Dr Wooding—There are certainly some people who are motivated by ideology

who might be promoting all sorts of things, I suppose, including competition policy.

Mr ALLAN MORRIS—Coming from a state government point of view, it is an interesting approach.

CHAIR—We were impressed that the Queensland government were following us around on our inquiry which means they have taken a responsible approach up there. Maybe the committee has been of some use to somebody so far.

Mr ALLAN MORRIS—It was a very late submission so I suggest you might find it useful to read because much of the subject you raised in here was covered by them.

CHAIR—Thank you very much for coming along today and for your cooperation through the inquiry. We will be labouring away from here on about what conclusions we might make. Thank you very much for giving your evidence.

Dr Amies—We have brought a couple of copies of the publication which we put out after the previous hearing and your concern about getting the terminology established. You may find them helpful.

CHAIR—Could you read the titles of those into the *Hansard*?

Dr Amies—It is simply *Family and community services: when is competition the answer?*

CHAIR—Thank you.

Proceedings suspended from 10.28 a.m. to 10.38 a.m.

DAVIES, Ms Elizabeth Maria, National Director, Uniting Community Services Australia, PO Box 519, Mawson, Australian Capital Territory 2607

MacDONALD, Mr Les, National Chair, Aged Care Advisory Committee, Uniting Community Services Australia, PO Box 519, Mawson, Australian Capital Territory 2607

CHAIR—I am pleased to welcome the representatives from the Uniting Community Services Australia. Before we proceed, I need to point out that, whilst this committee does not formally swear its witnesses, the proceedings today are proceedings of the parliament and warrant the same respect as the House of Representatives proceedings. Any deliberate misleading of the committee would therefore be regarded as a contempt of the parliament. It also offers witnesses the protection of privilege, so you can be fearless in the contributions you would like to make before us.

The committee has already authorised your submission in its publication of volumes. Members have perused it, and it is already a formal part of the inquiry. You do not need to restate all of that for the *Hansard* record, but you may wish to make an opening statement about your submission, given that things have moved on a bit since you made it to us. We will then proceed to questions from the committee.

Mr MacDonald—Thank you, Mr Chairman. There are a few preliminary comments we would like to make before being examined on our submission.

The Uniting Church is one of the largest providers of community services in Australia. Our commitment to community service comes from our belief that there are three parts to Christian commitment: worship, witness and service. It is our belief that the love of God for humankind can only find full expression when all of those three elements are in balance in the way we work in the world.

The community services activities of the church are an attempt to live out our responsibility to witness to the binding love of God by speaking and acting on behalf of the poor, the marginalised and the weak. It also lies within our belief that the servant king counsels us that to serve the needs of our fellow humans is to serve him.

Our motives for serving, therefore, have nothing to do with any desire to compete with others to make money. This would be a common understanding across all of the churches and, perhaps with different emphases, most not for profit organisations engaged in providing welfare services to our community.

The motives which underlie the action of most of these organisations are qualitatively different from those which underlie the activities of organisations set up to make a profit. Most of these organisations are driven by a belief in their mission to serve their communities. This is in contrast with private for profit organisations, primarily a motive that flows out of communitarian values, as opposed to individualistic values.

The belief is that the community as a whole will benefit from citizens freely

banding together to provide services to people that would not be provided to them by profit seeking organisations. That is the fundamental reason that our community decided many years ago to accord those organisations a different status within our legal and cultural framework.

Our community is now experiencing a trend towards the promotion of individualism as the universal cure to all of our social ills. As part of that trend, we confront every day the notion that, just as Einstein spent the better part of his life looking for a unifying theory of everything in physics, we must now find a unifying and preferably very simple economic theory of everything.

The candidate for that theory which appears to have made the greatest impression on the minds of some in our political and business elites is competition. The problem with the theory, apart from the fact that it rarely matches reality, is that it has been misused to justify many things which the theory itself would never claim to justify.

In the field of social welfare services, the theory almost completely collapses because of its utter inability to comprehend the motives that largely underlie actions in the not for profit sector. Where it posits intense rivalry between parties, there is the annoying persistence of cooperation. Where it suggests a universal motivation aimed at maximising a personal financial utility of participants, we see the regular sacrificing of personal interest to the larger and common good.

Thus, for the theory to work within the not for profit sector, it must assume that everything which drives the sector can be overturned by the simple expedient of introducing competition. Cooperative ways of working, personal self-sacrifice and genuine care for our fellows will be substituted overnight with an aggressive desire to beat the competition. But at what will we be expected to beat the competition? To produce a better quality of care? To enhance the lives of those for whom we have accepted responsibility? Or to drive down to unconscionable levels the price of the labour we employ in order to hold the contract, or to maximise the numbers to whom a service is provided, without concern for the quality of the human service, or of the personal interaction involved in delivering that human service?

And what would be the result of such a policy? Will the state get better value for the dollar? Try as I might, I cannot imagine the willingness of the hundreds of thousands of volunteers who regularly provide a significant part of the services in our sector surviving such an environment. What of the present willingness of those in the sector to share ideas, experiences and knowledge about how best to meet the needs of our clients? Will that survive in an era of intense and brutal competition?

We believe that the long-term result of the introduction of such policies would be the gradual withdrawal of much of the not for profit sector from the provision of services, as the increasingly shoddy services that result from a race to the bottom in price become ever more obvious. There would be an increasing unwillingness on the part of the sector to participate in such an ethically questionable exercise, and there would be a growing gulf between the not for profit sector and government which would fuel social division and

instability at a time when social cohesion is so badly needed.

The broader result of such a policy of competition on the basis of price will be the destruction, or at least the partial destruction, of a system of welfare delivery that is amongst the most effective and efficient in the world, in the pursuit of a system that has unexplained and unproven benefits but clearly observable costs. Secondly, it will lead to the further destruction of our vital social capital that has already suffered so grievously from the current economic theology. Thirdly, it will involve the betrayal of our most vulnerable and most needy citizens. However we may choose to describe such a policy—lean and mean, cost competitive, ambitious—it is difficult to describe it as civilised.

I should add as a final note that the Uniting Church—and I think it would be true of virtually all the other churches as well—is not opposed to accountability, nor is it opposed to transparency, if you like. We believe very strongly in those values, but we think there are better ways to achieve it than competitive price tendering in welfare services.

CHAIR—Could I tease you a little bit on that? What about the term ‘contestability’? Is that less offensive than ‘competitive’? That is the idea that if you cannot perform to these criteria, there is somebody over here who wants to.

Mr MacDonald—We are very comfortable with that idea.

CHAIR—Comfortable with that?

Mr MacDonald—Yes, very comfortable with it. In fact, if you look at many of the areas of social welfare service delivery now—aged care is a good example—that is already a highly contestable field. We already have both public and private participants in that. Amongst the private participants we are split up between the for profit operators and the not for profit operators.

We think that provides a good range of providers who can compete with each other, not in terms of a race to the bottom in price but in terms of the innovation and the service delivery that they provide. It is one of the reasons that there is such a high level of satisfaction generally in the community with the delivery of aged care services, because there is that contestability there.

CHAIR—I might just say, Mr MacDonald, in respect to your introductory remarks, perhaps the reason you got into so much strife in the Senate last week was that that approach is somewhat strident, and your submission is the same. I hope you can accept my credibility on this as a fairly serious church person myself. I know where I am coming from, which helps me understand where you are coming from.

Everywhere the committee has been, we have not had a really good example. We have had a lot of fear presented to us about what might be, but we have not had a practical, tangible example of a really bad outcome as a result of the process that has occurred. We are somewhere down the track of approaching this concept of competitive

neutrality in welfare services, but what we are really worried about as a committee is that we do not see comprehensive documentation or a proper strategy. We do not have departments with established criteria on how it could be managed. One of the things we have discovered very early is the whole idea of the terminology. We did not even get it right in the terms of reference, to be frank with you. There are varying stages in all of this.

As for the idea of contracting out, the government contracts out in some way to an agency to deliver its services. People seem to be comfortable with that provided governments maintain the overriding responsibility for the service. There has been an approach on a submission based process where agencies say, 'There is a service needed here and we are making a submission to have it funded' that is not unlike a kind of tender in itself. That has been happening for a period and people have been comfortable with it.

With the aim now to make sure that there is transparency and accountability and a focus on good standard outcomes, the new ways of trying to deliver that have been experimented with. On top of that, driving that, is the whole Hilmer competition thing, and I concede that. There are a lot of members around this place from all sides of politics who do not accept everything that the Industry Commission advocates.

The challenge that the committee has—because this is the last formal day of hearings, we will go away from here and try to prepare a report—is to set down some recommendations that set out the precautions. If there are some benefits to be gained, yes, let us have them documented, but let us also make sure that we do not throw the baby out with the bathwater. Everywhere we go we see the not for profit sector, the church agencies and the huge voluntaryism which we do not see undermined in any way.

Having said all that, there is still a lot of fear about what might be and a lot of it comes from terminology. When I put to you that idea, 'What about the concept of contestability?', that is completely different from the idea of competitive tendering.

Mr MacDonald—Yes, it is.

CHAIR—It only just dawned on me today, to be honest with you, it only dawned on me in earlier evidence.

Mr MacDonald—We do not have a problem, and most of the churches would not have a problem, with competitive tendering for government work. It is price competitive tendering that is of concern to us. In fact, if you look at the way churches and other not for profit organisations provide aged care services now, we are in effect competing against each other all the time because government now advertises a certain number of beds in a particular area. They might advertise the availability of 40 hostel beds in a particular area and anybody can put in a competitive bid on that. It is then awarded not on the basis of the lowest price but rather on the basis of the one that comes in with the best quality of care and the most innovative service provision. That kind of competition we are very comfortable with, and we believe it delivers a very good result for the Australian community.

Our concern is that on the evidence that we have seen from overseas, when you introduce the element of price competition into that kind of equation then you end up with a race to the bottom. It is very difficult for government organisations, which are always under financial constraints from their treasuries and finance departments, to justify going for anything but the lowest tender when they are assessing tenders. That is because they are always going to be asked by parliamentary committees, ‘Why have you gone for this organisation that did not quote the lowest price?’

So, you end up with this psychology developing where the automatic selection is going to be that organisation that tenders the lowest price. Our concern in the human services area is that that will almost inevitably lead to a diminution in the quality of the care that is provided.

Again, I do not think the churches would have any difficulty with the idea of local government services such as garbage collection and those sorts of things being subject to competitive prices tendering, but we have a concern when you extend that process to the human service sector which is really about the nature of the relationship between a service provider and a service recipient. It is an area which does not have great capacity for technological improvement. I have rung organisations in a range of other areas—ports, railways, and hospitals—and in many of those areas you actually have the capacity to reduce your level of costs by introducing better technology and organising yourself in a different way.

The difficulty in the human services area, particularly in a lot of the areas that we are involved in, is that these are essentially about two people relating to each other. It is not just about the nurse bathing that older person, it is about the relationship that develops between that nurse and that older person, and whether that person believes that they are truly cared for in that environment. You cannot technologise those relationships. If you try to reduce the costs of those, the only way you can do that is by giving less care. That is our concern.

CHAIR—Do you have any examples of a process with you, or any of the members of your association, where a decision has been made on price?

My understanding of what we are seeing is that the tender basis is this: ‘Here is a block of money we are going to allocate for the delivery of this particular service. Please submit to us some documentation justifying your credibility, your capacity to deliver a service and your willingness to meet certain quality standards.’ There may be some other scheduled items in there that assist progress payments of money.

That is not strictly a competitive tender in the normal sense. Do you have an example where there was an open-ended tender and you had to finally put the bottom line in—‘We will deliver service for X amount of dollars’?

Mr MacDonald—Can I say, just initially, in aged care, no, I am not aware of any instances, but Libby may know some from other parts of our activities.

Ms Davies—If I can refer back to contestability, I think the issue around contestability has to be that you are contesting on predetermined and prearranged and set parameters in regard to the contract or the tendering arrangements. There has been a lack of consultation, quite often, as to what it is you are actually tendering for, as to what are the parameters around that tendering arrangement.

Part of the problem with introducing competitive price tendering into the welfare sector—and the labour market programs, I think, are probably one of the largest examples of what we are seeing happening—is that, where you are not aware of what are the predetermined arrangements according to that contractual or tendering process, it creates a degree of fear and misapprehension among competing bidders as to how best to put in that tender which reflects the process.

What we are trying to eliminate, through contestability, is being aware of what we are actually tendering for—what are the predetermined requisites of that tender that we are all going in to bat on equally. Without that, you risk undermining the quality that results from that tendering process. I think our submission refers to that issue quite well. The labour market programs are the biggest example of where we are likely to see outcomes where the bottom line is going to undermine the efficacy of the programs.

CHAIR—You do not have any example of a genuine, competitive tender other than the labour market, which has happened since your submission?

Ms Davies—That is right. Home and community care programs would definitely be the one that comes first to my mind. For example, a parish in Newcastle was a provider of community services to a home visitation type program to support elderly people in their homes. It was like a visitor setting up a peer relationship within their home. It was a very successful program, and it had been evaluated as such. In the next round of HACC funding they had to go in to bid for the dollars required to maintain that program. But a whole lot of other programs had sprung up in the area emulating their model, the result being that they were competing against people who put in a lower bottom line. They did not win the tender.

In the end, they decided, in the next round of HACC funding—so this was on two successive bids—not to even enter the bid at all, that it was not worth their time, because there was so much aggravation involved between competing providers as to this small pot of money. What small resources they did have were better spent on maintaining that service through their own independent means. They have been able to do that by setting up a particular facility within their parish to provide resources, but they are getting to a critical point yet again where there has been an expansion of their service and they can no longer fund it totally from within their parish means.

They are at the critical point of saying, ‘Do we go in to tender again? We know we cannot continue to deliver the quality of the service, that is, the half hour of time or the hour of time that we slot into an elderly person’s home, when we know that there are other agencies who are doing 15 minutes and who price it completely differently.’ That is the contestability. The parameters of the tendering process are not predetermined and you

are getting an undermining of the quality of the service that is coming as a result of that through this competitive tendering environment.

CHAIR—Which state is that parish in?

Ms Davies—It is one of our parishes in Newcastle. It has been very successful.

Mr MacDonald—One of the things which I think it is important to recognise—and I am not sure that it is true in many of the other human service areas in Australia, but certainly it is true in aged care and has been for some years, and I think it will be even further improved now that the government has brought in the accreditation process for aged care—if the purpose of the whole exercise is to ensure that outcomes are produced, then we need the kind of process that does exist now in aged care where organisations are measured against specific outcome standards. In other words, in exchange for the money that is provided to those organisations, they have to meet certain outcome standards.

As I said, I think that process will be improved even further with the new accreditation process that has now been introduced. That accreditation process is very specifically aimed, not at inputs and not at outputs but at outcomes, which is really what it is all about, it seems to me. If it is a question of making sure that you have accountability for an expenditure of a certain sum of government money, that is the way of achieving the results for that because you are actually setting a whole range of outcome standards and you are saying, ‘Unless you meet those you do not get funding.’ That is working, it seems to me, very well in aged care.

CHAIR—The committee has heard a lot about that idea, but how do you measure it and what is the outcome? The outcome is not that you will spend an hour with this person after showering them so that in that hour you might just pick up some information about the state of the home or you might collect their mail. The outcome is that that person’s quality of life is enhanced. The result of that hour is that the person feels better about themselves or they are less likely to want to commit suicide. The process has a lot of weaknesses because it can really only say that you will spend an hour with the person.

Mr MacDonald—No. At the moment, if you look at the way the outcome standards are measured in aged care hostels and nursing homes, you actually have outcome standards inspectors who go out to the homes and talk directly to the residents. In fact, most of the outcome standards are measures of the level of satisfaction expressed by residents about particular outcomes for them. So it is a direct measure of how they feel about the care they are getting within that particular organisation.

I had nothing to do with the formulating of those, but I happen to think that they have had an enormous impact on lifting the quality of the game within both the not for profit and the for profit sector in aged care because it actually goes to the people receiving the services and says, ‘How do you feel about what you are getting?’ It measures a whole range of their responses in different areas—about the quality of the food, the quality of the accommodation and all of those sorts of things. If you do not pass those, you are under some sort of restraint by government which says, ‘Unless you come up to standard within

a certain period of time, we are going to be looking at withdrawing funding from you.' We have no difficulty with that.

CHAIR—You are comfortable with that. That is your approach to transparency and accountability.

Mr MacDonald—Yes, very comfortable with that.

Ms Davies—Yes.

Mr JENKINS—Firstly, I have to make a statement. I was not sure why you were critical of the opening remarks and their stridency, but I can take that up with you at some later stage. I believe that, in context, it helped me understand where you were coming from. I suppose we all bring with us different faith and value systems when we are approaching things. I suppose I thought they were in that context.

CHAIR—I was aware that last week Ms Davies and Mr MacDonald had a bit of a hard time in a Senate committee, and I did not want it to happen here.

Ms Davies—It was in reference to the Aged Care Amendment Bill 1998.

Mr JENKINS—I can understand now why there might be some tensions. That is all right: more strength to you. Having said that, my difficulty now is that my questions were so obvious that you have already answered them, and I thank you for that.

When we were talking about contestability, I noted in your submission the highlighted statement where you say, 'Contestability will heighten uncertainty and undermine medium-term planning.' To a certain extent you have explained that in a more full way, so I can understand that, but some of the things that you raised about a form of non-price competitive tendering still concern me. As you said, the word 'competitive' is there, and that means that for, say, NGOs there will be organisation against organisation. My experience, and also the evidence before us, has suggested that what happens then is that there is a lessening of cooperation through agencies, which I do not think is a very positive thing. We then talked about a definition of parameters and levels of quality. There needs to be information sharing to achieve those things.

Can we have a comment about balancing between being comfortable with going out there and 'competing' with others to get funding, as against being on the ground, where you are going to have to face your competitors and it would be better for the community that you are serving to have the cooperation.

Mr MacDonald—It is an issue; there is no doubt about that. I have only been in aged care service provision for about seven years. Prior to that, as I said, I ran a number of organisations that had nothing to do with the church; they were essentially government and non-government organisations, private sector organisations. One of the things that has struck me so strongly over the last seven years in my involvement with the not for profit sector is the extraordinary level of cooperation that exists. I have never seen it anywhere

else, in any other sector that I have been in. People are incredibly willing to share their successes. In most of the other organisations that I have run or worked in, it has been in this competitive environment where, when you develop something new, it is your competitive advantage over somebody else and you never share it, or you very rarely do.

That is simply not true in the not for profit sector. The level of sharing is quite extraordinary. In fact, if you ever tried to keep something secret, you would fail completely because the informal communications are so good that if you develop something, two days later the whole industry in Australia knows about it. I happen to think that is a very positive thing because it means that if somebody comes up with a good idea about improving service delivery, it is very rapidly spread right across Australia.

There is no question that the more you introduce competition, the more pressure will come onto that cooperative aspect of the not for profit sector. It must, because if you are keen to win the next tender from government and you have got a particularly terrific idea that you think will win you that, you are not going to share it with anybody else.

Having said that, we have been in a semi-competitive process in the aged care sector for a long time and there is still in that sector a very large degree of cooperation. I have tried to analyse this and I think it is largely because we are not out there competing to make money; we are out there competing to provide a service. In saying that, I am not rubbishing making money. That is fine in its place; I think it is a very positive force in our community. All I am saying is that, because none of us are out there competing to make a lot of money out of this, we still to a large extent share information between us, simply because we still believe that that improves the sector and it does not detract from our capacity to deliver that service. There has to be a very fine balance struck to make sure that competition does not start to outweigh the cooperative instincts of the sector, because if it does, there will be a real reduction in the quality of care that is provided.

Ms Davies—And in the capacity to meet identified need. It is the sharing of the information that actually identifies where you have gaps in service delivery and gaps in the process of that service delivery. It is that informing that enriches the sector. I think our submission makes that quite clear—that it is one of the consequences of the application of national competition policy to our sector that it risks undermining that totally. In the absence, too, of an overarching community services strategy in Australia, that capacity of the sector to respond to need has been critical to meeting need.

Mr JENKINS—Can we take it one step further. If I were to paraphrase my view of what has happened in Victoria, we went through a cycle where, because of the way contracts were being offered and then competitive tendering was being developed, there was a stepping back and people were not communicating. They then got over that and they saw that they could still talk and not destroy each other.

Now, in Victoria—and certainly we took evidence in South Australia—I gained the impression that, in a top-down manner, organisations are being forced to make joint submissions. If it were a bottom-up thing, I would have no problem, because obviously they would be doing it to meet a service need, to do something better, to get a greater

efficiency and therefore be able to do more. But there seems to be a tendency to say, 'You will go and speak to organisations A, B and C and that is the only way any of you are going to get any funding.' I have a problem with that. I am not sure how you as an organisation would reflect upon that.

Mr MacDonald—I have given a lot of thought to this over recent times. At what point would the church say that what we are now doing is simply not meeting the missional need that we have identified in the community? In other words, it is always going to be an issue between churches and governments where churches are, in a sense, contracting to do things on behalf of government, to undertake social welfare activities. The church undertakes those because it believes it has a particular mission to do that and it develops that out of its theological understanding.

If government becomes too prescriptive about the kinds of services it wants delivered, at what point does an organisation like the church say, 'That is no longer meeting our view of the needs in the community and therefore we can't participate in that any more'? My concern is that that is likely to become much more of an issue for the churches than it is now under a competitive price tendering system, particularly where it becomes a buyer and a provider of services rather than a partnership arrangement between government and us where we sit down together and say, 'These are the groups of people that need to be serviced', and the government says to us, 'This is the amount of money that we are prepared to provide and these are the accountability criteria that we are going to apply to you.' We can assess that against our missional objectives and our theological understandings and say, 'That's fine. That still meets those.' My concern is that that could come under very severe threat. My real concern is that the churches will say, 'We've got to withdraw from this because it's simply no longer meeting our theological and ethical understandings of what we should be doing.'

Ms ELLIS—I want to make a comment rather than ask a question. I think, from anecdotal evidence around the traps, that in the employment contracting processes we have seen some organisations make the very definite decision not to participate because they could not see that merge. That has been the comment made to me by a couple of them in that sense. That is really what you are saying, isn't it?

Mr MacDonald—Yes.

Ms ELLIS—That may be an example of where that is already starting to happen. Given the role they had in the previous arrangements and the role that was being dictated in the current arrangements, they said, 'We're not going to participate; we don't see that we match this.' Is that what—

Mr MacDonald—Very much so. It ends up in a sense becoming a conflict of values. You need to remember that the churches particularly—but also lots of other not for profit organisations; I would not confine it to churches—enter these things because they have a particular value set and a particular set of beliefs about how they can live out those beliefs. If that starts to come into conflict with what government is saying it wants to achieve or do, then those organisations, because they operate very much out of values,

say, 'We can no longer participate in this.' Then who does it leave it to? Who is going to provide the services?

Ms Davies—There is also a potential for a mismatch of recognised need. With regard to the deliverers of services at the grassroots level, their perception of how best to deliver that service is often excluded from the top-down process of contract determination and bidding.

We would see that in any industry, whether it be the community services industry or a commercial industry of another nature. There need to be well established parameters which guide the whole process, both within the context of the church and the broader welfare sector. We have been watching this reform agenda for some years to see that it has been basically put on top of the sector without working with the sector to determine best how that can happen. The church is very much caught up in that process as well. It has not been consulted in the broader community consultation that should have taken place before NCP was actually applied to our sector.

Ms ELLIS—I will finish by saying that, again, in relation to the employment process, the decision that was taken by some of the organisations I can think of was on the basis that they were very good and had proven to be very good at servicing a particular clientele. In the new process, they were either excluded from servicing that clientele or had to include others that they were not particularly mindful of needing to service. For example, the FLEX 1, FLEX 3 contrast is the thing that I am pointing at. That is where you get this outside influence and maybe parameters of the wrong kind and a lack of recognition of what they were in fact superior in performing at.

Ms Davies—The capacity of those contracts—for example, in FLEX 3 to meet the desired outcomes—is really very much in question. Even those services that have received FLEX 3 contracts are very worried about the capacity of them to deliver according to the agreement.

Mr MacDonald—I have a brief final comment. It comes out of one of the things that I said in those introductory comments. It is about recognising or about us trying to get over, I suppose, that we do not have a problem with competition. We think it is a very positive force in many aspects of the life of our society. In some respects, in terms of our own organisations, we think it is as well. There is a need to recognise that the other great motivating force in our society is cooperation. It is about people working together to achieve jointly agreed ends. We believe that is the fundamental motivating force of the welfare sector and that, if you try to inject into that what is in a sense a foreign objective, it will simply distort the whole process of that welfare service provision. It will, in our view, destroy a large component of the quality of that service provision that exists now.

To some extent, we could be seen as the providers, as simply arguing that we should not have any financial constraints imposed on us. I suppose that you would have to interpret at least a part of our arguments to that effect. And that is fine. We would naturally be out there defending our interests. But I think one of the things that we want to get over is that the fundamental reason that we have problems with this has nothing to

do with our own financial interests. It has to do with that belief that, if you inject that foreign motivating influence into this sector, you will destroy what I believe—and what many other people believe—is one of the best cooperative ventures between government and the community that exists anywhere in the developed world.

I have been to a number of other countries. I have seen what happens in those countries, particularly the Scandinavian countries where much more of it is actually done by government and much less by the community. They are actually looking at our model to say, ‘This is a much better way of providing these services because it is actually growing out of the community itself.’ I would hate us to move away from that model. I think we would lose something very important to our community if we moved away from that model and I think competitive price tendering would start to take us down that track.

Mr ALLAN MORRIS—Mr MacDonald, I do not know how much discussion you had with the department in terms of what these things mean, but one of the things that floats around is this competitive neutrality which effectively says that you have got to take into account, for a not for profit sector, the fact that they do not pay income tax and the fact that they use volunteers. Therefore, notionally, you have to adjust their tender upwards in terms of a for profit provider, who has no volunteers and who has to pay tax. In your discussions with the department or department officials has that been visible, as to how they would actually manage this competitive neutrality and what the implications would be?

Mr MacDonald—No, there have not been discussions about it at a departmental level, but there is always that tension. And that has happened particularly in the aged care sector, where the for profit providers have argued for the level playing field. They have said, ‘Well, if the not for profit organisations have these tax exemptions, we should have them as well.’

What we have always said is that you have to do a true levelling of the playing field. And if you are going to do that, what you also need to do is to prevent any of the for profit providers taking any of their profits or surpluses out of the sector, and paying it to their owners, because we are not permitted to do that, nor would we want to. All of that money goes back into the provision of services.

You would also have to ensure that, on the winding up of that enterprise, the owner was not able to take that money away and invest it in stocks and shares, but had to put it back into the provision of like services, because there are offsetting responsibilities imposed on the not for profit sector for those benefits—that is, that none of the money can be taken out and paid back to the owners; it has to go into the provision of services. For instance, any money that is taken out of our sector in profits by private for profit providers goes out of the sector. Any surpluses that we make go straight back into the provision of additional services, so there is no loss to the system. What we have said is, if we are going to talk about competitive neutrality, we need to talk about true competitive neutrality, which imposes the whole range of conditions that apply to one, to the other.

CHAIR—Thank you. That is a good document. We are a little over time, but I

would like to just tease out of you your assistance on this idea of specifying outcomes. That is the focus—that we get that right sort of benchmark. As a committee, I think we may well be able to recommend a way to get through the competing interests that are going on here.

We have heard criticism everywhere we have been, and even what you are saying to us today we have heard in every state right around the country. We are not in trying to close off your contribution. I know it is difficult in trying to document how one human being deals with another human being. In that kind of altruistic human relationship arrangement, you cannot specify it in the same way that you specify that china cup. But it is not impossible, provided the focus is always on the quality of the outcome. In your experience, what suggestions can you make to us that will help our recommendations, so that we will get this right.

Mr MacDonald—It seems to me that, if we are going to get the kinds of outcomes that all of us would want as a community, there has to be a process set in place by government, when it is developing those outcomes, that is as participatory and as involving as possible of all groups in the community, particularly those who are likely to be the receivers of these services. It is one of the reasons why, for instance, we had a meeting a week or so ago in Orange of a whole group of providers who wanted to work through the issues, the concerns that we still had about the new aged care legislation.

One of the things we had to do consciously in that was to say, ‘But we are also going to invite representatives of the Pensioners and Superannuants Federation’, because otherwise we ran the risk of identifying problems only from the point of view of the provider. They would say, ‘If only government would make it easier for us, it would be easier for us to do our job.’ In the end, what we had to be saying is: how will these things impact on the consumer of those services—the person that you are actually providing the service to?

It seems to me that whatever process is put in place to arrive at those outcome standards must involve the people who will ultimately be the recipients of those services. There has been a tendency in the past for both the providers—that is, the churches and governments—to assume that they know best. They say, ‘We will develop these standards in splendid isolation’ and we will say, ‘That is what you have got to do.’

In the end, when you actually go to the consumer and you ask them about those, you generally find that they are concerned about completely different issues. You have to have a consultative process that involves the people who will ultimately be the recipients of the services in developing those outcome standards.

If you do that, I honestly do not think you can go all that far wrong in the end. It may well be that that is an iterative process. It may take you a number of years in particular areas to refine those standards. If you have gone to those consumers in the first place and developed a set that look as though they are going to do what you need, you can then monitor how well they are achieving that and keep adjusting them in consultation with those consumers, so that after a period of three or four years you have a set of

outcome standards that do a very good job in measuring how those human interactions are working between the provider and the consumer.

CHAIR—Are you aware of a new concept being developed out of Victoria that they refer to with a new bureaucratic term as a ‘continuum of contestability’? At least it gets some criteria down. There is the objective even to say, ‘There is no way this service here will be quarantined from the process’—not that that is able to be defined yet. That is certainly an objective that I understand that they hope to achieve. Does that make sense to you?

Mr MacDonald—Where you would quarantine a service—

CHAIR—No, you firstly set down some criteria about what the expectations are. I think the first thing you ought to do is to get the terminology right—make an explanation about what contestability is as against competitive tendering. After 12 months, we have discovered that there is a lot of fear about a thing that might happen that may not necessarily happen, when really it is about terminology.

Mr MacDonald—Yes.

CHAIR—That is one thing that we need. We need a document like that so every state around the nation is operating on the same coordinated document.

Mr MacDonald—I agree. But, you see, again it is very much not just the outcome that you are looking for. It is the process of arriving at that outcome. We have been talking to people in government at the moment about their intention, which we think is a great thing, to develop a national strategy for an ageing Australia. What we have been saying to them, as late as this morning, is that what you have to do is not just develop a strategy for an ageing Australia, but do it in a way that involves the community, so at the end of that process we can get as great a degree of involvement and participation and ownership in that as we possibly can.

You have probably heard about a good example of that. The Oregon benchmarks were developed by the State of Oregon. They were benchmarks of performance in a whole range of areas that the State of Oregon developed. The truly innovative thing about that was the process they went through to arrive at them, not the fact that they set benchmarks, because anybody can do that. Every business does that by and large with its performance. They went through an extraordinarily consultative process whereby virtually the entire community of Oregon now owns those benchmarks. In a sense, it does not matter what government is in power; those benchmarks are the things that Oregon people expect their government to perform against. To me, it is that participative approach that is the key to making these work.

CHAIR—The secretary has made a note of that. Do we have some supportive documentation to have a look at that model?

Mr MacDonald—You can download them from the Internet. They are readily

available on the Internet; there is some very good stuff.

Ms Davies—We would recommend you refer to it.

CHAIR—That model sounds very much like the Mallee to me.

Mr ALLAN MORRIS—The Mallee model.

Ms Davies—Can I just add to that?

CHAIR—Could we make this your last contribution?

Ms Davies—Yes. I have one very small comment. When the Prime Minister yesterday gave the announcement of the new package to the aged care services, he indicated that he was able to do so as a result of shared endeavours across the industry bringing to the attention of this government some of the concerns that have come as a result of structural reform.

He mentioned the word ‘social bonus’. I think the continuum of contestability is about social achievement and social indicators that are mutually parallel to economic indicators. I do not think that, in a competitive tendering environment, we are wishing to risk putting at stake what we see as basic social indicators in Australia. We have done very little in this country to identify the benchmarks of that social wellbeing that is so important to Australia. I would ask that the committee give some very serious thought to the way in which it does relate the benchmarking of our social wellbeing to the delivery of community services.

CHAIR—Thank you very much for that. We certainly have a challenge in front of us after today’s evidence and hearing.

Mr MacDonald—Our prayers go with you.

[11.30 a.m.]

BASHFORD, Mr Graham, General Manager, Business Development, Centrelink, Tuggeranong Office Park, Athllon Drive, Tuggeranong, Australian Capital Territory 2900

GOLDSTEIN, Mr Michael, General Manager, Contestability and Contracts, Centrelink, Tuggeranong Office Park, Athllon Drive, Tuggeranong, Australian Capital Territory 2900

CHAIR—Welcome. Whilst this committee does not formally swear its witnesses, you need to be aware the proceedings are a formal part of the parliament and warrant the same respect as proceedings of the House of Representatives itself. Any deliberate misleading of the committee will be regarded as a contempt of the parliament. This also offers you the protection of privilege so you can be fearless in your contributions to us.

The committee has received your submission and authorised it for publication in the volume of submissions in connection with the inquiry. Members have perused it. It is some time since we received the submission and things have moved on in respect to your department since August. Would you like to make a brief opening statement before we proceed to questions?

Mr Bashford—I guess the only thing we would like to say is that we obviously see ourselves as a provider now, rather than as a purchaser. We are providing services to a number of human service clients. The organisation has now been in existence for nine months.

CHAIR—Has there been a fairly dramatic cultural shift?

Mr Bashford—Yes, there has.

CHAIR—I know my colleagues will have some questions to pursue with you. Could you briefly describe how the department has felt about whether the process has been satisfactory or whether, in hindsight, it might have been undertaken in a different way or whether you are entirely satisfied with the outcomes we now have?

Mr Bashford—I think, by and large, we are pretty satisfied with the way things have gone. We are now into our second round of negotiating with our clients for business for future years. We have certainly learned some things over the last nine months which will help us put together a better understanding in the agreement.

Mr JENKINS—Quite rightly, you describe yourselves as providers. You also say you are having discussions with client agencies for which you are a provider. One of the suspicions that the opposition had was that the agency now operating as Centrelink was set up to have to compete itself to provide in the long term. I wonder if the organisation has a weather eye to that possibility—that you are doing things in the way that you operate that have that as a consideration. You might be in a similar situation to a lot of

other organisations we have had before us who have been the people competing for things.

Mr Bashford—Yes. I think we moved from a transaction based cash accounting organisation. We are certainly very cognisant of the fact that we need to become a customer focused and more commercially oriented organisation. There are lots of initiatives going on right now that take us down that track. We certainly have contestability in our mind. No decisions have been made on contestability, but we think that we will be opened up to contestability in the future. We are planning that way.

Mr JENKINS—And that is likely to be—these expressions have a different meaning these days—core and non-core activities as well. I envisage that what you have got a weather eye for is that you have a core set of responsibilities that have been passed on to you and that you are doing, but that there are other activities of government that you, as a central agency, might be able to deliver on the ground. Do you seek the business or are you waiting for decisions by others?

Mr Bashford—We started off with DEETYA business and DSS business and some Department of Health and Family Services business. Other organisations have come to us to ask us to provide services. Some of that is in completely open tender type situations and some of that is single provider type situations. We are actually trying to put the emphasis on doing better what we have got to do at the moment, rather than going out there and seeking a lot more work. However, there are organisations who are coming to us, and when they come to us we give them due consideration.

Mr JENKINS—Is it clear who has responsibility for the accountability aspects of what you are involved in?

Mr Bashford—I think so.

Mr JENKINS—But is that something that can be contracted on or taken over?

Mr Bashford—Our position is that, certainly in the social area, an organisation providing the service ought to be accountable to the parliament. That is our view.

Mr JENKINS—So you would have the direct responsibility for the task that you undertake?

Mr Bashford—We report, of course, to our clients. Our clients have the responsibility essentially to the government. By and large we are accountable for implementation types of tasks but generally accountable to our client. But we are always up with our client in parliamentary committees, et cetera. We do not leave that entirely to our client; we are always there together. But for the policy aspects, of course, our clients are totally responsible for that.

Mr JENKINS—But your accountability in this manner only continues as long as you are a public agency?

Mr Bashford—That is correct.

Mr JENKINS—Then it would be a different relationship—

Mr Bashford—I think so.

Mr JENKINS—Which is probably where most of the other people who have come before us have their accountability.

Mr Bashford—Yes.

Mr JENKINS—There was one example in the original submission of a service that you had contracted out that I wanted to go to, though it may not still be relevant. It was the community agent program, which was to provide the information to remote indigenous communities. How did that actually operate? Were agencies offered it or were expressions of interest sought? What sort of model was used or was this something you took over?

Mr Goldstein—It is something that we took over in relation to DEETYA, but we also had some community agent operations with Social Security. Generally what happens in a remote area where we find that we would benefit by having someone provide information for us is that we will go around and seek expressions of interest about who would be interested in that. We would carefully check someone and then, once we awarded them the community agency, we would train them very thoroughly. It is really only an information provision service. But as a general rule you would not go directly to an individual and offer it to them. Having said that, you could get into a remote agency where there might be a very small number of either individuals or organisations which you could go to. So it would vary on a case-by-case basis.

Mr JENKINS—It is not a full-blown tendering process.

Mr Goldstein—No.

Mr JENKINS—It is an expression of interest where at least you have the ability to sit down and work through—

Mr Goldstein—Yes.

Mr JENKINS—If in the way that you were handling customers, even in non-remote places, you were led to wanting to subcontract that sort of interface work, would your organisation tend to want to go to contract tender or do it on a more informal basis?

Mr Goldstein—It would depend on the circumstances. Generally, if we actually made a decision that we wanted to subcontract some work, we would go to the market. It is possible you could get other government organisations who might wish to have some representation of Centrelink's activities in its offices. In those situations, we might look at providing some material and training to another government organisation if it suited us,

particularly if we could not provide a service as well as we wanted to. But, as a general rule, we have not really branched out into that area. That is something that may happen more extensively in the future, but it really depends on need.

Mr JENKINS—Thank you.

Mr ALLAN MORRIS—I am curious about your mercantile agents. I suppose this is part of the question about accountability and so on. You say you have procedures in place to ensure that privacy matters are respected. You then go on to say that there are clauses which indemnify the Commonwealth. You also say you have processes to investigate complaints of that nature. Who can do the investigation? Who can investigate Dun and Bradstreet?

Mr Goldstein—If we had a complaint, we would investigate what the complaint was.

Mr ALLAN MORRIS—How much access can you have to Dun and Bradstreet's internal corporate things, and is that in breach of the Stock Exchange requirements?

Mr Goldstein—It depends on the type of complaint you are talking about. The mercantile agents, of which there are only two, are quite restricted in what they can do. We give them some accounts to chase up. They are very restricted in how they can go about chasing those accounts up and there is quite an extensive reporting back to us. We could not go in—nor could I see any reason that we would want to go in—and investigate the internal workings and finances of Dun and Bradstreet over a complaint. I cannot imagine why we would.

Mr ALLAN MORRIS—Just think of some examples why you might. If, say, you were told that Dun and Bradstreet have more returns than they have handed on to you, you would want to go in and look at the files and go through their records to see whether or not there was internal fraud or embezzlement, wouldn't you?

Mr Goldstein—They have a reporting system; they have an audit system that we have access to. I guess there is always—

Mr ALLAN MORRIS—I am just curious about how far you can intrude, if you have got grounds for concern, and whether or not that would in turn be in breach of the reporting requirement that they have—in other words, that you would know things about their internal business which could be detrimental to them commercially in terms of their share values or their other market values. So how far can the governments interfere, if you like, in private organisations?

Mr Goldstein—It would really depend on the terms of the contract. I do not have the contract here in front of me, nor am I familiar with it in a detailed way to be able to tell you that answer. If it got to that point, I suspect it would become a legal case.

Mr ALLAN MORRIS—Did you watch the New South Wales ICAC hearings on

internal privacy matters and information being sold between agents, mercantile agents and all kinds of other people?

Mr Goldstein—I saw press reports of it.

Mr ALLAN MORRIS—The media reports over a long period of time indicated some quite sophisticated and comprehensive arrangements taking place that would have been very detrimental to the organisations if they had been known. I am just concerned that if a federal public servant was aware that that was happening, they would not necessarily be able to report it to the police because they would have to do their own investigation first. I can just see some real dangers—

Mr Goldstein—It is in the contract that they are bound by the Privacy Act as well. If they could be in suspected breach of that, then that would become a police investigation.

Mr ALLAN MORRIS—Only if you had enough evidence to put it forward. To do that, you have got to do your own investigation, which in turn means you have got to dig into their files and into their internal affairs.

To do that, it seems to me, the mixing of government and private sector gets to be very, very awkward and I am wondering then what rules control that?

Mr Goldstein—Is your concern about payments or privacy? I am just not clear.

Mr ALLAN MORRIS—Both. What I am concerned about is that there are functions of government which can be passed on quite easily and are quite transparent. There are other functions of government which in fact involve money and involve privacy as well. I guess I want to ask you another question and it will become clear then why. I am curious as to where the boundaries are, how far you can intrude into an organisation in terms of your agreements and your contract and your indemnification. You have carefully got all those words there that make it all look kosher. Who sets the boundaries? How far can you go before you breach other provisions, like, as I said, the Securities Commission requirements?

Mr Bashford—I have not seen the contract myself, but I would imagine that certainly with all our agreements with our clients, our clients have it spelt out what information they want from us to ensure that they are getting a fair deal and value for money.

Mr ALLAN MORRIS—I have had two cases in the last week from Centrelink—not from your mercantile agent—one in which a person with the same name in a different state has suddenly had their money taken off them. We have actually tracked down the other person. They were in the phone book in the other state and we rang them up and talked to them. My constituents had the money taken off them for ages and had been complaining for ages and had got told that they were wrong. The second case concerns offers being made. ‘If you pay a bill all up with the next month, will give you a 25 per

cent discount'—on a debt. Both of those seem to me to be the kind of measures adopted. In the past I have found that I have protected my constituents from mercantile agents. How much are you being influenced by those kind of mercantile agent habits?

Mr Goldstein—Our use of mercantile agents, as I said earlier, is very restricted. They are very restricted and—

Mr ALLAN MORRIS—But you appear to be acting like one yourself. The point I was trying to make was that those two cases in one week appear very similar to what I protect my constituents from in terms of mercantile agents.

Mr Goldstein—I would have to look at those cases, and afterwards I would be happy to, if you want to give me them.

Mr ALLAN MORRIS—I will not disclose them to you.

Mr Goldstein—Okay.

Mr ALLAN MORRIS—But you can believe me they are two cases in the last week and they are absolutely precise.

Mr Goldstein—I cannot really comment unless I know the case.

Mr ALLAN MORRIS—No, you can. Firstly, are your staff now giving discounts on payment of debts?

Mr Goldstein—Not that I am aware of.

Mr Bashford—I would not have thought that that was a legal thing. I think if there is money owing to the Commonwealth, they would be leading a band to go after that.

Mr ALLAN MORRIS—Okay, good. Secondly, what about the onus of proof when a beneficiary has their deductions taken from their payments on the basis of the claim that they owe when they protest and say that it is not them. The onus of proof appears to be on them to prove that they not rather than on the department to prove they are. The debt was incurred in a different state and I said we had found the person who actually incurred the debt with the same name still in that state.

Mr Bashford—I do not know the circumstances, but I would say that—

Mr ALLAN MORRIS—That would sound to you like a breach.

Mr Bashford—It sounds as if we have not done enough investigation to clarify that this is the particular person involved but I really cannot comment more than that without knowing the circumstances of the case.

Mr ALLAN MORRIS—So, when I express a concern about the use of mercantile agents, when the department itself is using those kind of processes anyhow—and I am just one parliamentarian; there are 148 of us—if I have got two a week—

Mr Bashford—I am not sure what you are saying by ‘uses those sort of processes’.

Mr Goldstein—Could I just give you a figure. I actually checked the other day to see what has happened with the mercantile agents. We have referred nearly 100,000 debts out to them and we have had four complaints.

Mr ALLAN MORRIS—What does that mean?

Mr Goldstein—I am just saying that the level of complaint and problems seems to have been quite low and my understanding is that those four complaints were very early in the piece when we started doing this and that the system does seem to go reasonably well now. I am just a bit surprised that these cases are popping up because we have had such a—

Mr ALLAN MORRIS—No. Those two cases were with your own department; they were not with agents—and they were two in a week.

Mr Bashford—Have the individuals raised complaints with Centrelink?

Mr ALLAN MORRIS—Both of those cases came to us after extensive argument with the department, yes.

Mr Bashford—So we know about them?

Mr ALLAN MORRIS—Yes, absolutely. We are the last point of call. I would think normally we would get one in five or one in 10 of the kinds of issues that are out there. A very small number actually get to us eventually. Most of them give up in the face of the might of government.

I was curious as to how much cross-fertilisation there was between mercantile agents and yourselves. That is not necessarily about competitive tendering for welfare services, but it does raise the kinds of problems that we have with probity and privacy and the other issues that get involved.

Ms ELLIS—I want to refer to your submission and, in doing so, make the point that it is some months since it was made. It was made very early in your existence, and some of the comments that are made in it reflect that—and that is quite reasonable.

I want to go to a couple of sections. As to the relationships between the agency and policy departments and the services provided by the agency, in one of those paragraphs you mention that the departments and the CSDA have outcomes for consumers as their key goal, which we would obviously applaud; that departments will contribute to

this outcome by the policies they develop and design; and that CSDA will contribute through the quality of service it delivers. Then you go on to say, 'Although policy will remain the responsibility of the departments and the CSDA will be responsible for implementing that policy, the process of translating that will basically be a joint responsibility.'

My real interest is in asking you how that is developing. How is that now progressing, some months later? My obvious concern, and a concern that we on our side of the political debate tend to have, is the severance between policy development and service delivery. I want to know what sorts of relationships are now beginning to develop in that partnership—and I am hoping from that comment that they are—as you have indicated they were going to?

Mr Bashford—Certainly, in the early days, it was a bit unclear but, as we have gone down the track and as we are now developing a new strategic agreement, we are putting in place protocols for that to happen. The link is generally between the program area of the department and our customer segment teams, who are the people responsible for providing all the assistance to the network for the delivery side of things.

In fact, what happens is that they consult each other extensively about the link between the policy itself and the delivery side. That is working particularly well now. It is still early days, but there is no doubt in my mind that we have established that link. The protocols are saying things that enhance that link and, as a provider, we are very keen to maintain the partnership agreement, if you like, rather than contract, so it is in our interests, as well as in our clients' interests, to continue that dialogue.

Ms ELLIS—Further to that, when you, as a service delivery agent, then decide in some cases to subcontract out, and you do not actually deliver the service but you subcontract someone else to do that, what then happens in relation to the two ends, because they then become a little bit more distant?

Mr Bashford—It does not happen very often. It is only in those very remote areas where it has happened to date. We have a clause in the agreement that says that, on any significant changes that we are going to make to the way we deliver those services, we will consult with the client department before we do it.

Ms ELLIS—Do you have protocols in place as to accountability in that sense?

Mr Bashford—We are currently writing them.

Ms ELLIS—So they are not in existence yet?

Mr Bashford—No, but there has been an understanding, and that understanding has grown as we have grown. But we are writing those as protocols to put in the agreements now.

Ms ELLIS—Without being critical—and I am not trying to be; I want to find this

out—is an understanding good enough? At the moment, I know that you are writing them, but what is happening in the meantime in terms of strict accountability?

Mr Bashford—I do not believe just a simple understanding is appropriate and that is why we are writing them as protocols.

Ms ELLIS—What is the time frame on those?

Mr Bashford—Particularly with the Department of Social Security, we are hoping to sign that agreement in mid-May.

Ms ELLIS—I take it from what you are saying that, in all of your department connections, there are going to be separate sets of accountability?

Mr Bashford—There are going to be some documents which clearly enunciate the roles of both sides and who is accountable for what.

Ms ELLIS—And will they all be done by May for all of the departments?

Mr Bashford—One or two will be later, but they will all be in place by June.

Ms ELLIS—You mentioned services that you contract out and you said that your agency contracts for a range of services that support its core income support and registration services and so on but it generally contracts out where it cannot as effectively provide the service or there is a business case which supports the contracting out. Can you describe to me what you mean by a business case?

Mr Goldstein—It would be a situation where it would not be effective from a cost point of view or a delivery point of view for us to try to provide that service. It would just be more cost-effective to get someone that had the necessary skills and expertise in the area to do it.

Ms ELLIS—What sort of examples do you have?

CHAIR—Is disability one of those?

Mr Goldstein—It would not be cost-effective for us to employ umpteen hundred doctors around the country to do some of the disability assessments so we pay a fee to have disability assessments done. That would be one example.

CHAIR—I am sorry to butt in on Ms Ellis, but I do have some concerns about the concept of especially people who are mentally disabled going through a process comparable with mainstream unemployed people. There are going to be some problems expecting some mentally disabled people to go through the same rigorous process. They have been used to their first point of contact being with their advocacy service. Now they are expected to go to your organisation. My request to you would be to please take a close look very quickly as to whether that is appropriate. I am hearing some concerns from the

disabled people themselves. This is a process—seven assessments to go through, get their own doctor—they are just not up to it. Take that one on notice please.

Ms ELLIS—Can you give us another example?

Mr Goldstein—Okay.

Ms ELLIS—Other examples of where you decide that it is more cost-effective?

Mr Goldstein—There are very few actually. We do it for instance with valuations for pensioners—

Ms ELLIS—Valuations of what?

Mr Goldstein—Valuations of property and assets. We do not do that ourselves. We contract that out to the Australian Valuation Office. They do things where we do not really necessarily have the expertise nor probably should we have the expertise and it just does not make sense for us to do that.

Mr ALLAN MORRIS—Let us go slightly further which brings us to the probity question there. If one of your staff commits a breach of confidentiality or privacy are they subjected to the Crimes Act or the secrets act?

Mr Goldstein—Crimes Act.

Mr ALLAN MORRIS—If such a breach is committed by somebody else acting as a contractor, are they also subject to the Crimes Act?

Mr Goldstein—Our contracts actually cover the issue of privacy and they are subjected to the same provisions generally.

Mr ALLAN MORRIS—Of the Crimes Act?

Mr Goldstein—They come under both. They can come under the Crimes Act but they also come under the Privacy Act as we do too. They can be prosecuted if in fact they have breached confidentiality.

Mr ALLAN MORRIS—Under identical provisions to a public service act?

Mr Goldstein—I cannot tell you if they are the identical provisions.

Mr ALLAN MORRIS—I have some concerns referred to me by some public servants who have told me they have seen next to them in their office people working in private organisations going through their files. They had great difficulty; they were not aware whether they were in fact breaching the act themselves by allowing the access. The borderlines were very vague as to what they could tell and what they could not tell but they felt absolutely certain that the person who was getting the information was not bound

by the same provisions they were. Rather than respond now, I would like to see something in writing that actually spells that out. I can assure you there were some people who were extremely anxious and they could not talk about it openly because of their position anyhow. But we have too many people anxious about the fact that they may be committing an offence and with a genuine concern about their professional status in what they are doing.

Mr Goldstein—I am happy to give you that.

Ms ELLIS—At the previous hearing last October when we were here, it was very early days for you. I asked a question at the time reflecting some comments that had been made by the then Commonwealth Ombudsman in relation to ministerial responsibility in the current process, given that we are starting to have these longer lines of connection. I remember at the time that, whilst you answered the question, you were not as definite as you may have wished to have been. I am happy about that because it was very early days. But I want to know how you feel about that position now. Mr Jenkins referred to it a little bit earlier on. You are becoming, or have become, the agency acting on behalf of other government departments and therefore have other lines of responsibility. I really want to know in very fine detail where that responsibility starts and finishes. The care of people with intellectual disability is probably the starkest example. But I do not wish to particularly use that.

I am happy to use any example but I want to know: if you are delivering services to the DSS, DEETYA or any of the others that are mentioned and there is a problem with the delivery of the service, where is the final line of accountability as it currently stands? Is it you and the minister that you respond to? Where does it start and finish? There really is some confusion, I believe, in the community about where it all ends given this multiplicity of service delivery.

Mr Goldstein—Ministers are always ultimately responsible for—

Ms ELLIS—Yes, but which one and when? I realise that.

Mr Goldstein—Yes. It is the portfolio that is associated with a service we are providing. For instance, if it is a problem with DSS, it is the Minister for Social Security. If it is a DEETYA problem, it is the minister responsible for DEETYA. There is no change in that responsibility from being a department of state in that sense.

Ms ELLIS—Fine. Thank you.

CHAIR—I think members have been going a little bit beyond our terms of reference but I am happy that that has happened because we are very interested to watch the progress and what has occurred with your organisation. I suppose thinking about it all very positively, at least we have got some sort of model that has a commercial focus to it. That ought to be some lead. There is probably a distinction between the provision of employability support services, which is, as I understand it now, all about getting people more qualified to find a place in the workplace, and other social security support processes. I would like you to take on notice my earlier concern about disability services,

especially those that relate to employment of disabled people. For my part of the world I have seen some really wonderful programs with the employability options that are undertaken. I am just a bit nervous about putting those kinds of people in the same environment as mainstream. You may be able to respond now but perhaps you should put it on notice.

Mr Goldstein—I could make one comment on that. In one sense it is partially a policy issue which goes back to the department responsible for that policy because they do make the policy—Graham will correct me here if I start to go off the line. They do lay down the guidelines in which we have to operate that policy. It is true to say that, once we meet those guidelines, if there was still a problem in terms of an operational sense, we would have to work out with that department what the best way would be to deal with that. What I am saying is that it is something we may be able to fix ourselves but more often than not it is going to be a joint effort between the policy and the operational guidelines—or the expectations of that policy department and how we actually run the thing.

CHAIR—I would be hoping that that flexibility exists, because you are now in the position of many of the agencies we have been talking to for the last 12 months, in a broad sense—being involved in a partnership. If it does not have the flexibility to change, either with the times or to a different situation, then it is going to fall off the rails. I am hoping that flexibility exists. If it doesn't, you had better tell us.

Mr Bashford—It certainly exists at the moment. The question is: will it remain as flexible as we move towards a more commercial approach? At the moment, we are able to discuss with our clients the CSO component of what we deliver. They are quite happy to pay for that; they recognise that it is work that we ought to do. There is certainly a degree of flexibility in all that. I would hope that it would continue that way. I think that is why the model that we have got at the moment is not a bad compromise over the totally outsourced type model.

CHAIR—Is that documented in the memorandum of understanding?

Mr Bashford—We document all the services that we provide. We do not actually tie down buckets of money to specific initiatives, so that we can have the flexibility to spend some money in areas where we feel that is necessary, but we always consult them about that.

Ms ELLIS—What you are saying, with regard to the example that the chair gave, is that you currently have the ability so that if you believe the way in which a particular service has been asked to be delivered does not work, you can go back to your client department and say, 'Look, with the greatest respect, we think that we should do it this way instead of that way. It might cost \$100,000 more to do that, but we believe that that should happen.'

Mr Bashford—Our responsibility is for the implementation, but we also have the responsibility to feed back to the client departments how their policies are working out

there, because they are almost cut off. What we try to do is allow them to get out there and actually be with the customers, so that they can see how their policies are going. We also have a responsibility to feed back to the client departments how we think their policies are going.

Ms ELLIS—And you do that?

Mr Bashford—We do that.

Ms ELLIS—How is that received?

Mr Bashford—That is welcomed, because they recognise the same issues that we recognise.

Ms ELLIS—That is what you are saying: you are cognisant of the fact that we need to keep an eye on this, as you go down further paths?

Mr Bashford—Yes.

CHAIR—That has got to be a reverberating thing. You send it up; it has got to come back. That is what I want to see—the reverberation as a two-way process.

Ms ELLIS—Yes, a two-way process.

Mr Bashford—Yes, and it is a two-way process. We work very much in partnership on that issue. The old agreement had a big grey area in it. There is a much smaller grey area now, but we are very much concentrating on dialogue between our clients and ourselves over this grey area.

We recognise that there needs to be an awful lot of discussion over these grey areas, and there will continue to be, because it cannot be black and white. There will always be this grey area, and we recognise that. That is why we have put a lot of effort into making sure that the protocols say that there needs to be discussion in these particular areas all the time.

CHAIR—I am a bit frightened by the response you might give to this, but where do we sit in terms of our cousins and relatives internationally, in terms of this whole environment? I think you are going to tell me we are right at the vanguard and hundreds of miles ahead of everybody else.

Mr Bashford—I am not saying we are miles ahead, but we are getting an awful lot of interest from other countries. Whenever we are abroad and we talk about Centrelink, they certainly always want to know more details about the process and how it is working.

CHAIR—So the world is watching?

Mr Bashford—Yes, and asking.

CHAIR—As long as we have got that flexibility there to make adjustments and finetune as we go along, I think I can be comfortable with that.

Ms ELLIS—Yes, as long as Centrelink is not put on the commercial market.

Mr Bashford—There is an expectation that we—

CHAIR—I hate being in the vanguard. I do not know why we always have to be the first, to be innovative. It probably says a lot about the Australian ethos.

Ms ELLIS—As long as we don't flog you off. Then we will really lose contact.

Mr Bashford—We would be a bit concerned about that, too.

Ms ELLIS—It is so exciting, it might almost be possible.

CHAIR—I need to wrap it up there. Is there anything else you would like to contribute before we close?

Mr Bashford—No.

CHAIR—Thank you very much for giving up some of your valuable time; you must be very busy.

Proceedings suspended from 12.10 p.m. to 1.39 p.m.

BARTOS, Mr Stephen Anthony, General Manager, Resource Management Framework Group, Department of Finance and Administration, 111 Alinga Street, Civic, Australian Capital Territory 2600

CHAIR—Welcome. Before we proceed, I need to point out that, whilst this committee does not formally swear its witnesses, the proceedings today are formal proceedings of the parliament and therefore warrant the same legal respect as the proceedings of the House of Representatives itself. I am sure you are aware of all of this. Any deliberate misleading of the committee would therefore be regarded as a contempt of the parliament but, as you understand, it offers the full protection of privilege, so you can be as robust and frank as you feel you need to be in your evidence.

The committee has already received a submission from the department and it is part of the volumes of submissions in connection with the inquiry. You might wish to make a brief opening statement in respect of the submission. It is some time since it was received. I would like you to understand that, in the meantime, the committee has been all over the nation. We have heard from a plethora of agency providers out there on a mixture of concerns. If you have had an opportunity to review any of the evidence that is now on the record, you would understand that.

This is the last day of receiving formal evidence, after which the committee will labour over what recommendations we will be making to the parliament. It is probably a timely opportunity for us to talk to the Department of Finance and Administration. We are interested to understand a little more about what drives this whole process. There are some concerns about the application of a competitive environment in the welfare sector. It is recognised there may be some benefits in other sectors where it is an easier process to define things, but in the welfare sector there are some real concerns out there. You probably have anticipated some of our questions. You may wish to make some comments and then we will proceed to questions from the committee.

Mr Bartos—Thank you, Mr Chairman. I welcome the opportunity to provide evidence to the committee. I will make my opening statement very brief. The role of the Department of Finance and Administration in relation to competitive tendering and contracting is to support the activities of departments and agencies and to assist them to pursue the government's agenda. We do not see ourselves as having a directive role so much as a facilitative role in providing guidance and assistance to agencies. In that light, we have provided the committee with two documents—*The performance improvement cycle; guidance for managers* and *Competitive tendering and contracting; guidance for managers*—which have been widely distributed around the Australian Public Service to try to assist managers in undertaking in particular competitive tendering and contracting.

CHAIR—There are two documents dated March 1998.

Mr Bartos—These have just recently been released by the Minister for Finance and Administration. One of the important points to bear in mind arising out of both of those documents is that competitive tendering and contracting really is not seen as an end in itself; it is part of a performance improvement cycle which is aiming to improve the

performance of all government activities. In relation to any government activity, the government has sought a rigorous process of review of those activities to determine why the Commonwealth is involved in them, assess whether that involvement should continue and, if so, what role it should play to add the most value for clients in the community.

The decision on whether or not to expose an activity to competitive tendering and contracting is just one element of that overall review process that may or may not be appropriate. There are some prior questions that agencies are asked to determine, including whether or not it is appropriate to retain Commonwealth involvement at all, whether an activity might be done better at a different level of government—devolved to the states—or whether it could be done better in another sector of the economy. It is important to put competitive tendering and contracting in that broader context of performance improvement generally in the Commonwealth public sector.

Rather than spend much time going through detail of the guidance on competitive tendering and contracting, I think it might be best if I respond to questions from the committee arising out of the evidence you have had so far. I know you have had a huge amount of evidence and a great deal of paper, to which we have added a little bit. Probably the best approach is if I can answer any questions that the committee has as a result of its inquiries today.

CHAIR—The issue that we have spent a lot of time struggling with is the whole definition of terms. Mention competitive tendering to the agencies that deliver welfare services and instantly hackles and all sorts of perceptions of concerns are raised. We have certainly heard about them. Just latterly, we have discovered some more acceptance of a concept of contestability where agencies are more comfortable with that. They want to be accountable and they want to be delivering a service that is transparent, so that government agencies can measure outcomes and be satisfied that taxpayers' dollars are being well spent.

In Victoria this is a new term developed about the need for a continuum in this process of contestability which establishes some criteria. Personally, I think that it has a lot of merit because I am sure it will allay a lot of the concerns that are out there about this whole Hilmer process and its appropriateness in the delivery of some welfare services. Quite clearly the process is just not amenable to exposing, say, child protection agency support. You have all the security of privacy and so forth involved.

One of the things that I am trying to establish is the rationale that drives the process and who, in fact, is driving it. I am wondering what the department's position is in all of this. I am very pleased to see somebody, at least, establishing some guidelines. I think that is very timely. It will go a long way towards allaying some of the fears that are out there. The absence of some criteria at the front of all of this has left a lot of people out there very nervous. How do you react to that comment, Mr Bartos?

Mr Bartos—In terms of who is driving adoption of greater competition, it is fair to say that it is a process that has been in place for very many years. The previous government, as well as the current government, introduced greater competition in a variety

of areas. To take an example outside the welfare field, the introduction of the commercial support program into the Department of Defence under the previous government is something that was seen as a very important and useful model that has been continued under the current government.

I do not see that the whole issue of exposing activities to competition is necessarily driven by partisan agendas in a political sense. The evidence is very clearly there that competition can, by and large, improve performance. Contestability really is exposing an activity to the prospect of an alternative provider and, regardless of whether or not there actually are a number of different providers or whether it is just one provider with a threat of outside entrants, the threat of potential competition simply can, in many cases, drive greatly improved performance. The evidence in the public sector, both in Australia and overseas, is overwhelming that increased competition can drive better performance.

One of the things that we do emphasise though is that, for competitive tendering and contracting to be effective, it has to be managed properly. I refer to the Industry Commission report: *Competitive tendering and contracting by public sector agencies*. That report No. 48 of 24 January 1996 found that, when done well, competitive tendering and contracting can lead to significant improvements in accountability, quality and cost effectiveness and provide benefits to clients, taxpayers and the broader community.

One of the key phrases there is 'when done well'. There are examples where competitive tendering and contracting have not been done well. I think one of the aims of the Department of Finance and Administration is to help provide the tools, guidance and best practice examples to agencies to allow them to do it well. We have put in place a mechanism to assist agencies to achieve the aims that we hope that greater competition will bring about in running their agencies.

On the issue of whether contestability is a better term than competitive tendering and contracting, I am aware of the views to that effect that have been expressed. One caution that I would suggest to the committee is that it is important, if we are genuine about contestability, that there be a mechanism to ensure that there is contestability. It is all very well to say that an activity is contestable, and that it will drive better performance, but if there is no actual mechanism in place to expose an activity to competition then those are just words.

One of the things that taking an activity out to competitive tendering does is ensure that there is contestability. You know, because you have gone out to the market deliberately, that the activity is contestable. Otherwise, it is quite possible that an activity might be contestable. It could well be the case that there is a mechanism in place to ensure that. Sometimes I think those are not very transparent or obvious.

CHAIR—As I understand it, in Victoria there is a move to develop a whole continuum of definitional guidance. Is that something that you are aware of and monitoring and watching carefully, looking for some good ideas?

Mr Bartos—We are aware of what Victoria is doing in general in relation to

competitive tendering. We have close relations with their unit in the equivalent of our department that is responsible for that. As I understand it, the continuum of contestability model is one that has come to this committee via the Victorian Department of Human Services. It is one that we are less familiar with. As a result of having had it drawn to our attention, in preparation for this committee, we are intending to find out more about it. On the basis of the information that we have had to date, I do not know enough about that model to be able to comment on it.

I can say that there is some affinity between the idea that you should only expose an activity to competitive tendering in certain circumstances and the framework that we have indicated to agencies, that is, that competitive tendering will work better if there is a well-established market. If there are very few providers, monopoly provision, or a lack of information in the market, then competitive tendering is less likely to work effectively. In those circumstances, if an agency does wish to expose an activity to competitive tendering or contracting, it is incumbent on it to take active steps to develop that market. That is a bit of guidance that seems to me to have affinity to the continuum of contestability. That is about as far as I can go in drawing links.

CHAIR—It is something that we would like a bit more information on too. There could be some clues there. In Victoria, we did discover an overzealous approach initially that subsequently backed off a little. It is good to see them rethinking. We are very encouraged by the Queensland state department, which followed our inquiry around and used the evidence we were receiving to make sure that they did not throw the baby out with the bath water too. It might be worth your while to have a look at their submission to us. It came in fairly late, but they were able to take advantage of a lot of the information we had gathered.

On the question that I was pursuing there, there may well be at the end of the day some services that we would quarantine from this approach. Does that fit with the ethos of your department? We need to know what they are and no-one can tell us as yet.

Mr Bartos—We would not want to be prescriptive about what services should and should not be contracted out. The environment in which the public sector, or in fact all of Australia, is operating changes so quickly.

CHAIR—I do not want to interrupt you, but the idea of contracting out is not so much the issue—our terms of reference got that a little bit wrong. There seems to be an acceptance that for decades governments have been contracting agencies to deliver a service on government's behalf. As long as governments continue to maintain the responsibility for it, there seems to be acceptance of that concept. It is the process by which we establish the contract that is worrying people.

My question is about exempting or quarantining some services from that subsequent process—in other words, from a commercially competitive tender where you have got for profit providers in there with not for profit church groups with a huge amount of voluntary contribution. I suppose it is the next step beyond the idea of contracting out that my question was directed to. I am not asking about which ones we would exempt

from contracting out, but which ones we would exempt from a competitive tender process.

Mr ROSS CAMERON—On that same question, in your view is there anything about welfare service provision which would require it to be treated in a different way from provision of other services by government in terms of the role of contracting out?

Mr Bartos—I think it is important that different types of service provision be treated differently. So the way in which you contract out for provision, for example, of information technology services will be very different from the way in which you might contract out for provision of policy advice which, in turn, may be very different from the way in which you contract for areas such as welfare services.

Nothing in the guidance that we have given prescribes one fixed model for all situations of competitive tendering and contracting. That is very important. If this tool is to work, it has to be flexible to the circumstances. The guidance we give suggests a large number of different, alternative ways in which competitive tendering and contracting can be pursued. I think the whole point of not being prescriptive in our guidance is to allow agencies to adapt to the circumstances of the sector that they are dealing with.

In response to the chairman's question of whether you would exempt certain organisations from competitive tendering and contracting, I suppose our response would be that it would be something that the agency concerned would want to decide in each instance in the light of the performance improvement that it was trying to achieve. So, if it is going to get a better result by conducting its tenders in one particular way, it should.

Mr ROSS CAMERON—In terms of the chairman's question about whether some areas should be quarantined altogether from the contestability process, is there anything about provision of welfare services which in your mind would recommend it, or some aspect of its provision, to be altogether quarantined from contestability?

Mr Bartos—In my mind, no, the reason being that judgments taken by government as to what is appropriate to make contestable and what is not change quite dramatically over time. What might be thought now to be not appropriate for opening up to competition may well be regarded as highly appropriate 10 or 15 years down the track—and vice versa: decisions have been made to bring activities back in house as well as to contract them out.

Over time, Australian governments have conducted activities, either in house or on an outsourced basis, depending on what the circumstances are that face them. So I think it would be impossible to say that there is something inherent in welfare services that makes it impossible to put them out to a competitive tendering model.

It is a different question as to whether it is desirable. That question, of whether you should or should not, has to depend on a mix of judgments about what is going to get you the most effective service provision and what is going to be acceptable to the community at the time. One of the examples I like to use is that it is quite conceivable that provision of actual armed forces in the defence service can be put out to tender because we know

that mercenaries have been in existence for thousands of years. But whether or not the community would find that acceptable and whether the government would want to do it is a completely different question. So whether you can and whether you should are things that need to be separated.

Mr ROSS CAMERON—You talk about this issue of community acceptability. The biggest contracting out effort since this government came to power would be the employment services market. It seems to me that one of the challenges we are experiencing is that you inevitably get winners and losers in a competitive situation where you go from an uncompetitive situation with a group of people who are effectively assured providers not subject to competition, who represent the status quo, to a situation where you are inviting a whole group of new players to come in because of a hoped for set of benefits to efficiency, service, quality or whatever.

The problem you have from a community or political standpoint is that the losers are always much more vocal, much better organised and much more visible than the winners who, at some future point, will be awarded the contract. So, in terms of community reaction, you get a powerful vested interest response, which tends to colour the understanding of how this thing is going to be received by the community as a whole. Has it been the experience of the department that that dynamic presents a real obstacle to contracting out?

Mr Bartos—It is a little early to say in relation to employment services. In general, this actually is a problem in relation to a large number of activities of government. It relates to things like grants programs as well. It is the problem of vocal losers outweighing the broader general interest. One of the things that is important to do is to make sure that the net benefits of any activity are very clearly brought to the fore. It is very difficult to get an optimal outcome, where you make everybody better off and no-one worse off, when you make any change to government policy. It is a traditional difficulty that all governments have faced. It gets brought into sharp focus, I agree, in relation to particular high profile initiatives, such as you have had recently with the employment changes.

From the perspective of community acceptance, the main thing is that the arrangements be subject to scrutiny, that measures of performance and whether or not the exercise has led to better performance be made public and open, and that the improvements, if there are improvements, be demonstrated. I do know that the Department of Employment, Education and Training and Youth Affairs is keen to do that. I believe the committee has had evidence from that organisation.

Ms ELLIS—I would like to say, as a footnote to that, that I think when you say that scrutiny and open accountability are fair enough, it should also be involved in the tendering process as well. Just to put my view on the record, for what it is worth, I think that in the employment example that a lot of people are using in talking to us that was part of the problem some of them have had and that is why they are disagreeing, because of the way the process was conducted.

I would like to refer very quickly to the orange book, the competitive tendering and contracting book that you have made available. I preface my question by saying that I have not read it—I have only flicked it open—so I am asking the question on the basis that the answer might be on another page. I look forward to getting hold of a copy and reading it more thoroughly.

When we as a committee look into this whole question, we are looking at it in a very precise area of government policy, and that is the delivery of human services in the welfare sector. It seems to me fair enough to say that this guide has been written for a whole of government approach and that it would be as open to use by a department contracting out the production of cement as it would be anything else. Therefore, when I read this, being the devil's advocate, I may be a teeny bit critical when I am looking at it with the glasses of welfare services on.

Having said that, under the heading 'Key CTC principles: value for money', there are two phrases that jump out at me and worry me a little when we think about applying them to the area to which this committee is devoting its time. The guide says that the primary aim of CTC is to obtain 'value for money' in achieving government and agency goals and that agencies should ensure that the implementation of CSE is based on 'achieving the best outcome for government' in the given circumstances.

If I wanted to be super critical, I would say that, when applying that to welfare services, the human element of the client is missing in those guidelines. Could you elaborate for me how you believe an agency in the welfare area could then try and apply the two ends to the process: that is, not only government satisfaction in delivering a policy but also client satisfaction in receiving a service? I am basing that question on a lot of evidence that we have had and queries that we have had put to us by agencies dealing in that area.

Mr Bartos—'Value for money' in this area does have to relate to performance of the contract, and one of the elements of performance of the contract has to include the treatment of the clients. One of the things that is important in value for money that is emphasised in those CTC principles is that the best value for money bid may not necessarily be the lowest priced bid. A whole range of issues have to be assessed in determining value for money. There is rather more detailed treatment of the value for money test in the Commonwealth procurement guidelines that have been issued to all departments and agencies. I will speak briefly to them but I will draw the attention of the committee secretary to them later.

The guidelines look at a whole range of issues to do with value for money and start off by indicating that, while value for money should be assessed as objectively as practicable, it is not possible or desirable to eliminate subjective judgment. Deciding which alternative offers best value in particular circumstances will often depend on professional judgments about a range of criteria relating to performance. I think that that is really an important aspect of applying a value for money test. It is not simply a test based on price.

Ms ELLIS—We have had a very high number of people giving evidence who have had very severe questions about how, in some areas of welfare service delivery, you can actually clearly define, yet flexibly allow certain conditions within, contract arrangements. Even though the chairman will groan when I say this, the starkest example we have had is Meals on Wheels, inasmuch as how you define within a commercially-driven contract that a person is to deliver a service where there may be things that are indefinable within a contract but that are very intrinsic in a voluntary arrangement, not a commercial one. A commercial contract may set a five-minute call to check each person, but a volunteer arrangement may take half an hour or two minutes, depending upon the client. A lot of people have said to us, ‘The difficulty we have is in understanding how on earth you can contract the human element in to the delivery of those sorts of services.’ What is your view on that?

CHAIR—If I groan, I groan in agreement.

Ms ELLIS—He does. It is at the core of what we are talking about, and that is the starkest example, but we have had many others.

Mr Bartos—I agree that specifying the service output, service standards and desired outcomes can be difficult when it comes to welfare services, but it is not impossible. I think this is an area where there is some merit in consulting with client groups who can assist with performance measures—for example, including not just time taken to respond to a service but service standards to do with being friendly, helpful or respectful which can be built into the performance feedback and the service standards. In fact, in some of our guidance to agencies, we have suggested that client feedback can be used as a useful performance indicator, with periodic client surveys, for example, as an indicator of provider performance, and keeping agencies who are your providers up to the mark against those standards can be an important part of your contract.

Ms ELLIS—With the greatest respect—and I agree with what you have just said—the evidence to us is that, because we are dealing with sectors of our community who are the most vulnerable and the most disadvantaged in a range of ways, in a lot of cases they are the last people that could be surveyed. The point that those people make to us is that very point: some of them would not have an ability to give that feedback. Therefore, you come back to the base point: how do you ensure that a commercially driven arrangement is going to do what we would all want to see done to the level that we expect when you cannot in fact impose the client driven review? I think I am putting it in a fair fashion, reflective of cases put to us.

CHAIR—In fact, in some sectors, especially the aged, they would never complain in a million years.

Ms ELLIS—People with mental or intellectual disability, people with dementia, people in an aged capacity, people with a disability of some kind, social or real, that make it almost impossible to have that feedback. You come back to the reliance of the contract, the commercial viability of that contract and the demands in which you place that contract. I am not making it hard for you on purpose; this is what people have said to us.

Mr Bartos—It is a very real issue.

Ms ELLIS—It is.

Mr Bartos—And I think it is an issue where it is also incumbent on whatever agency is entering into a contract to be quite diligent in trying to work out how best to get some decent service standards into that contract. This is not an issue that is unique to contracting for the provision of those services. If they are done in house it is also important that there be feedback obtained as to whether the in-house provider is doing a decent job.

Ms ELLIS—Certainly.

Mr Bartos—In fact, this illustrates what I see as one of the possible advantages of a contracting model for welfare services in that it does force attention to be paid to the issue of what our service standards are, rather than leaving them unspecified, unsaid. The agency that is engaging in the contracting has to be quite rigorous about specifying the standards of performance that it wants to see achieved. There is nothing in any guidance that we have put out, and in the approach of the people who are good at competitive tendering and contracting, to say that you should not revise standards in the light of the feedback you get if it turns out that in your initial contract they were got wrong. It is not only possible but quite appropriate to then go out and renegotiate and have different standards put in place.

Ms ELLIS—In answer to that and in a further question to you, I do not think I am talking about the setting of standards, because the setting of standards and accountability is already there in the services to which I refer. What we are talking about is the ability to define them in a commercially driven sense. Listening to evidence from witnesses earlier today, one of the gravest queries being put to the committee is the commerciality of services entering an area where motive for delivery of service is quite different now from the making of money in a commercial sense. That is the basis upon which I am putting these questions: that there is no doubt in my mind that people in the majority of cases—99.99 per cent—who are delivering the services now are doing it to a level of standard and accountability that has already been set and accepted by all tiers involved. The problem begins when you have another motive inserted, and the motive being inserted, in a commercially driven sense, of course, is commerciality or profit. It has been put to us quite consistently that that is where it starts to become difficult.

Mr Bartos—I agree that it is difficult but I think it is important to assess issues to do with the quality of the relationship with the client as part of the contract, and I do not believe that that is impossible. That is a part of contract management. I do not see the fact that a service is being provided by a contractor who is making a profit, or a contractor who is not making a profit, will necessarily make a difference. I think it is important to look at the fact that, for many years, both the private and non-government organisation sectors have been funded by government to provide welfare services, in many instances in what has been, in essence, an outsourcing relationship by provision of grants.

The ways in which grants are administered can be very, very similar to the ways in which contracts have been administered, with the advantage that it is possible, with a contractual arrangement, to be more definitive about issues to do with the quality of the service they are expecting and also have some sort of follow-up with the agencies if they are not meeting those standards, which often is more difficult to achieve with the grants regime.

Ms ELLIS—But I do not think the running of a process through grants is making money like a commercial tender would make. The example given to us this morning by one of our witnesses was a visiting program—I will ask the chair to correct me if I get any of this wrong—being run by a church organisation for the elderly within their homes which they were making a great success of. Eventually, they needed to compete again to renew the contract. They did, with great difficulty to their resources, and found that they were outbid in the outcome, because they were judging their program on a visit of about an hour and they were undercut because they got another contractor in who bid on the basis of a 15-minute visit.

Then you have this judgment to make: who is going to determine which is the most successful outcome for the clients involved? That is where a commercial result probably eventuated with a possible change to the delivery of a service. In the end, they withdrew and maintained their own service from their own resources. That is the sort of judgment that is needing to be made within an area of delivery of services to people where profit need not necessarily be a part.

Mr Bartos—I am not familiar with that example or what the program is.

Ms ELLIS—It was given to us this morning as a real example.

CHAIR—It is a good example of what can happen when the focus of the outcome is not specific. The outcome is the quality of care to the individual in their home. That could embrace a whole stack of interhuman relationship things going on. The document could have said, ‘Show us your credentials,’ but it did not say, ‘Thou shalt spend an hour with this person.’ Somehow there was a weakness in the document. It is as clear as a bell that that process undermined a good result.

Mr Bartos—Yes. I think you have put your finger on what seems to be the problem in this particular example—that is, a weakness in the tendering process.

Ms ELLIS—We can only assume that.

Mr Bartos—From the sound of it, if what is important for the clients is the length of the visit and that people spend time with them, if that is a quality dimension which is important to the clients of the service, I find it difficult to understand why that was not actually built into the tendering process.

In terms of tendering, it is important that quality be determined not from the perspective simply of price or turning up on a doorstep, but that those other quality

dimensions that are important to the clients be built into it.

Ms ELLIS—Yes, but that is the very problem: how do you determine whether 15 minutes, an hour, 45 minutes or two hours is appropriate when you need to define to that point within a contract? If you make it flexible, then you somehow become criticised for not drawing the parameters for people to tender within. If you do not make it flexible, then you are running the risk of removing the flexibility that they require to operate. I think that is the very problem with the delivery of human services.

CHAIR—For example, to shower the person on one particular day might require an hour and a half but, on the next day, only half an hour, because actions were taken the day before. This is very difficult to document in any specification of performance, because it needs to be flexible. That is the nature of human beings.

Mr Bartos—It does need to be flexible. Getting back to one of the questions that you asked earlier in this discussion—and that is about measuring the quality of the service—even though it can be difficult with particular community groups, it is important to actively go out and find out what is important to them in terms of quality and to build that into the processes.

Ms ELLIS—Yes, that is fair.

CHAIR—I will just take Annette Ellis's questions a bit further, and your last comment about what role a government has in this and what would be a process to do that. It was said that this could involve the engagement of the community sector in some sort of working party environment. One of the things that they have expressed to us is that they feel left out of a process and unconsulted about the nature of this document that they are spending hours tendering on, knowing that it is wrong. Whenever they have made any approach and said, 'Look, this is not quite right. It needs to be a bit flexible' they are just told, 'Take it or leave it. That is the document. Tender on it', and this is not a good environment.

Is the department considering some sort of environment where it would set up some interactive working party arrangements to get a better focus on outcomes—not outputs? The outcome is that a person, the client at the coalface, gets a quality service that has got some flexibility in it. In the example of Meals on Wheels—I am sorry to use this example again, but it is a good one and I have made the deliveries myself—it is simply collecting the person's mail and bringing it in rather than just leaving a meal. It is spending a bit of human relationship time with the people. How do you document all of that? I think it needs some engagement with the people who are out there, to get the human elements right.

Mr Bartos—The idea of involving either the community sector or client organisations early on in the process may be a good idea. It would not necessarily be a good idea for every competitive tendering and contracting process but, again, this gets down to the issue of wanting to make sure that we are not prescriptive and say that it has to be done. If we were to prescribe that, then almost certainly, within a few weeks of us

prescribing that as a rule, we would find an instance where it led to some dreadful conflict of interest that was unsustainable. Prescriptive rules are not the solution here, but allowing agencies to undertake consultative tendering processes is something that is quite available.

One element that is worth drawing to the attention of the committee is that tendering processes need not be conducted as one big hit process. Quite frequent in Commonwealth competitive tendering and contracting is the idea of a two-stage tendering process, where the initial stage seeks broad expressions of interest, often against not particularly tightly defined criteria, and seeks innovative proposals for how best to go about delivering the service.

Only after that expression of interest stage does the agency then go on to the next stage of putting together the formal request for tender. In many cases, a two-stage process like that does allow for input of interesting different novel ideas that the people involved in the tendering may not have come up with themselves. There are models around that allow for earlier engagement.

CHAIR—We did hear about one of those in Adelaide, where that process was conducted. At the end of the day, when the tender was processed, the agency that provided all this intellectual property in advice did not get the tender. They were a bit chafed by that. So there are weaknesses in that model, as well.

Mr Bartos—There are weaknesses in that model as well, I agree. One of the options that are open to agencies is, if they are taking advantage of a great deal of intellectual property for free, to make some sort of payment for that. The range of options here is quite wide. That is an important point to make to the committee—that there is not a detailed, one size fits all model. It is almost the case that, because each type of service is meeting a specific community need and is a different type of service, the tendering process has to be tailored to that particular type of service.

Ms ELLIS—We also heard the case in Tasmania of where Meals on Wheels were compelled to test the market, and they did so.

CHAIR—For the cost of the meal preparation.

Ms ELLIS—For the cost of the meal preparation. In doing so, the meal preparation cost went up, because there was only one provider. It is an interesting thing to test the market sometimes. It is also interesting not to.

Mr Bartos—I mentioned earlier that one of the areas where competitive tendering is not as effective is where there is a monopoly supplier.

Ms ELLIS—Exactly; but they were forced to do it.

Mr JENKINS—One of the proposals that have been put to us is accreditation of the organisations that are active in this field. The model involves an accreditation body that would have government, non-government and consumer representatives. I think it has

some attraction to members of the committee if it is not a costly exercise, because that would then impinge upon the ability of smaller organisations. I was wondering whether you have a comment about the general issue of accreditation.

Mr Bartos—I have an open mind on that whole issue of accreditation. Were it to be introduced, it would have to be on the basis of a very clear demonstration of its value. You have indicated some of the possible advantages of accreditation, but there are disadvantages as well. You did mention that accreditation systems can be expensive. Even the most streamlined do involve considerable costs to keep up to date. The other thing that accreditation systems can do is actually create barriers to entry. The problem is that those people who get accredited then have an interest in making sure no-one else gets accredited. They are in the club and no-one else is allowed in. That can create a market that is more restricted and get you a worse result than a system where no accreditation is in place.

Where quality is an issue, and where the quality of the providers and requirements that they meet certain standards is very important to the tender, those can be written into the tender specification in each instance, as opposed to having set up an accreditation system in advance. I do not have a problem with performance benchmarks being set—including, where appropriate, by government, non-government or consumer bodies. But whether all tenderers need to meet those benchmarks has to depend on the nature of the tendering process that you are going into. You would not want to see a situation where, by setting up an accreditation system, only a few providers were able to be accredited and therefore had the full market restricted to themselves. I am not suggesting that is an idea that should be ruled out, but that the pros and cons have to be carefully balanced.

Mr JENKINS—What if it were in some way flexible in that an accreditation system would be the big tick for elements of the way in which people become eligible or at least have the look-in as against the other measures being placed in agreements or whatever?

Mr Bartos—Yes; and there are ways in which accreditation systems can be used in that sort of way. I will give you some examples from my own recent experience with tenders that we have put out where we expect that, for actuarial services tenders, people should meet the standards set by the Institute of Actuaries or, if we put out a tender for provision of accounting services, that people meet professional standards as set by the appropriate professional body for those. If it is a situation where setting of standards is a necessary part of delivering the service, then an accreditation system that assures you that your providers meet those standards can be really quite useful.

Mr JENKINS—Does the department have a general view about the nature of subcontracting, once things have been tendered out? I personally have a concern that, after winning a tender it then becomes a form of tradeable item. How can the checks and balances be assured, when there is this on-contracting of services?

Mr Bartos—We do not have a view on subcontracting per se. We have a strong view in relation to accountability: that is, it is important that an accountability relationship

be maintained and that the organisation doing the competitive tendering and contracting remain accountable and put in place with its contractors sufficient requirements for provision of information and whatever else is needed in order to ensure that its accountability obligations are met.

Mr JENKINS—It is unfair to raise the infamous examples that have come about because of the job network stuff, but there it is a worry where it appears that the decision makers are comfortable in once giving somebody the tender but that that tender can then be passed on. I know it is difficult, because that is an example that can have all sorts of political connotations. But, on the surface, you would hope that the skills of the people that achieve the tender are greater than simply their ability to then go out and pass on the business.

Mr Bartos—That one is an example of where the Department of Employment, Education, Training and Youth Affairs is actually much better qualified than I am to go into the details.

Mr JENKINS—But, as a principle, I would think that the types of benchmarks and everything that you are talking about would make it clear that, if we are going to have this rigorous investigation of the background of these people, there is an onus—rather than there being enough grey for people like myself on the opposition to raise it as a question.

CHAIR—Mr Bartos, one of the other things that, wherever we have been, we have heard consistently from the coalface service providers is how much time they have to spend in reconciling all of their monitoring requirements and statistics and data. At the opposite end of that, our committee often finds, when it is searching for information in respect of other inquiries we have conducted, that information never gets processed into any form that governments can take advantage of. So I have a concern that we are imposing all of this monitoring performance database on agencies. They spend hours on it. They send it in, and nothing happens to it. Is that a reality?

Is that a concern of your department? We want them to spend time delivering the welfare service and to spend time with the people out there, not sit in an office compiling data that nobody ever uses. That is an onerous task we are imposing on them. They would not mind so much if they were confident that it was being used in a valuable way to assess the model that they are involved in. That is a real concern we have heard everywhere we have been. Do you have any comment on that? It probably is a bit beyond your jurisdiction and relates more to the Department of Health and Family Services.

Mr Bartos—I can agree wholeheartedly that collection of information that is never used is time wasting and should not be a feature of competitive tendering and contracting. But we go back to the point that has just been raised in relation to Mr Jenkins's question, and that is that accountability is very important to be maintained. So a balance has to be struck. Enough information has to be gathered from the organisation providing the service to allow the organisation that is ultimately accountable to discharge its accountability responsibilities to its minister and to the parliament.

Again, this is a situation of horses for courses, where managers have to make a well-informed trade-off between the value of having lots of detailed performance information as against the costs to the provider of providing that. Probably the best approach is for agencies to take a risk management approach and to look at what information is most important in relation to managing their accountability. The ideal is to gather the minimum of performance information that completely fulfils accountability requirements.

Striking that balance is almost impossible, and agencies will err a little on the side of gathering a little more information than is needed strictly to meet minimum accountability requirements but, hopefully, not too much. Where risks and costs are low in relation to the operations of the provider, where it is quite clear that the service is being provided to a satisfactory standard over time and that the risks are minimal, then agencies should be looking—and I am aware that most Commonwealth agencies are looking—to minimise the reporting burden.

CHAIR—Would it be of some advantage to get some technology in there? If someone spends a lot of time entering attendances and health outcomes on an electronic base, then it avoids the amount of double-keying and paperwork and it facilitates the process to get good feedback through much more quickly.

Mr Bartos—The use of technology can help with that reporting and information gathering task, definitely. I do not know enough to comment on the health statistics specifically. The committee will probably be aware, from evidence from DEETYA, that the use of information technology has been an important part of their recent tendering processes. Where information technology can be used to get rid of paper form filling in and, as far as possible, to allow things to be transmitted electronically, that is obviously good for efficiency and also for timeliness in gathering information.

CHAIR—One of the other complaints we have heard consistently but which other members have not raised is about the cost of the preparation of the tender. There are on-costs there that favour large organisations, and many of the small organisations, who are invariably associated with regional and rural areas, have no facility to recover that cost. Is there a process that takes account of that peculiarity with this sector? Otherwise, we stay right away from imposing this process on them. Is there any suggestion you could make that could overcome that problem for small agencies?

Mr Bartos—That is actually an issue that applies to competitive tendering and contracting generally. Where the transaction costs involved in the competitive tendering process outweigh the gains that might be achieved through better service provision or lower cost—or, often, both—from the competitive process, in such circumstances an agency may well decide that competitive tendering is not the appropriate route to drive performance improvement. That could well be—and, in fact, is—one of the issues that needs to be considered before an agency embarks on competitive tendering. What are the costs of the tendering process, both for that agency and for the economy as a whole?

CHAIR—We have observed a whole range of things, but the predominant model

tends to be an allocation of a block amount of funding. People get told, 'We are going to establish a \$150,000 program to deliver these particular services. Here is a document. Please tell us how good you are and demonstrate to us that you have got the expertise to deliver the services. Please also supply some other information about how you would deliver the services. Tell us whether you will spend an hour, half an hour or whatever with individuals.' Somebody has to initially establish that \$150,000 block.

That is not a major departure from the old submission based funding approach. Who sets that price? Somebody must sit down and do an assessment of the monetary value of the package. Does that include some time assessment or some allocation of cost to the process for somebody to sit there for four or five days to make sure you fill out every aspect of the tender? Could you advise us how that cost or dollar value is established?

Mr Bartos—At the broadest level, the decision on the appropriate amount of money to spend on any particular service has to be taken by government in the budget processes. The actual specification of what the full costs of provision of that output are going to be well and truly strengthened and made much more apparent as the Commonwealth moves to the introduction of full accrual budgeting. Specifying outcomes and outputs that agencies wish to achieve and the price at which the government wants those outputs and outcomes to be delivered is going to actually help much better define the full and total costs involved in actually getting any particular output or outcome for the community.

Mr JENKINS—Is that a cost to government or a cost to the community?

Mr Bartos—In the accrual budgeting framework, it will include just the cost to government. In terms of taking into account the costs to the community, though, I think that that is always in the minds of policy makers. Where the costs to the community are large, we get back to this issue of whether there is going to be community acceptance of the whole process. That has to be taken into account as part of the decision making process.

Mr JENKINS—When we get to the cost of the tendering process itself, it is not only the cost to the agency or the department but also the cost to those who are willing to put their toe in the water and compete. I am not sure whether we take that into account in pushing towards the notion of competitive tendering.

Mr Bartos—I agree that those costs have to be taken into account. Whether we do or not it is hard to make a judgment on. But, certainly, the overall cost to the Australian community as a whole ought to be taken into account as part of the decision making process. One of the aims of Finance and Administration is to help agencies find ways to make their competitive tendering and contracting more streamlined and easier to administer and reduce costs, not just for them but also for the organisations they deal with.

Ms ELLIS—The problem is that, in the majority of these cases, we are talking about people in a sector with no profit. They exist on the money they get from

governments or other agencies to operate particular programs. In Victoria, representatives from some agencies could sit in front of us and say, 'Look, we tendered for contract No. 1, we missed out; No. 2, we missed out; No. 3, we missed out; No. 4, we got it; No. 5, we missed out; and No. 6, we missed out.'

That is a cost to the agency or the organisation involved which they simply cannot continue to absorb. In some cases, it has been put to us that a particular agency or organisation was performing a service—there was no problem with it, they were holding their levels of accountability and standard of delivery—but all of a sudden it had been decided by the government agency concerned that they would just test the water and they would now offer it as a \$50,000 fixed contract.

That organisation would then 'tender' for this fixed cost delivery service and would insert into that arrangement as much as they could the standard they used to be delivering and be outdone by someone else who could promise to do more with less and, therefore, deliver an inferior service to the one that had been getting delivered and, in that process, cost money to the agency or the organisation in getting done over. This is the reality of the commercial side of tendering for the non-government sector that is relying on no excess funds. The greatest concern is how they continue to absorb those costs, no matter how streamlined the operation might be.

Mr Bartos—I do know and I acknowledge that those comments have been made to this committee. It is worth recalling that similar comments are made from time to time, or have been made in the past, in relation to grants processes. As to community organisations or non-government organisations that rely on moneys from government, there have been similar comments raised in relation to complexity and detail of grants processes and wasted effort if they do not get the grant at the end of the day and so on.

While a competitive tendering and contracting framework may be different, one of the things that needs to be borne in mind is that it is qualitatively not so very different, and, while these concerns may well be being raised at this point in time because it is a new and different system, they in fact do not sound very different from the ones that have been made in the past.

Ms ELLIS—With the greatest of respect, I would suggest that they are, in the sense that now there is a commercial aspect to their survival. In lots of cases they are now acting in a whole new field of activity against for profit, when they are not for profit; that larger have economy of scale that smaller do not, and I would suggest that in the grants process in lots of cases they were acting in a collaborative way, which is almost precluded given the competitiveness of a commercial process. There are differences.

CHAIR—In the grants process there was some consultation. They would ring up the department and say, 'I've a query about this.' But now, in a competitive process, there is, 'I am sorry, that is the document tenet.' If you give one tenderer some information and forget to tell the other, you have created a non-level playing field. That actually happens. I have done lots of tenders in the past. If you give any advice to one of the tenderers, you have to make sure you give it to everybody. You are better off not to give it to any and

just say, 'That is the document; even if it has imperfections in it, accept it.' That actually happens. We have had evidence of it. It is a very real difference in the environment you create.

I can accept your suggestion, and I have often put the point myself through the inquiry, 'What has really changed?' But, in reality, once you have introduced that ingredient, things have changed. It destroys what has to be a healthy thing with a good collaborative partnership arrangement, rather than master-servant. It shifts the emphasis a little when you create a competitive tender.

Mr Bartos—But there is no reason why a contractual relationship should not also be that sort of collaborative relationship. Although sometimes the easy solution is to provide no additional information, it is often in an agency's best interest to in fact provide a lot of information to all prospective bidders in order to actually get a better tender out of the process. So the provision of information in that way is not precluded by a competitive tendering process.

Ms ELLIS—But it does not seem to be compulsory, either, because it is not happening like that.

Mr Bartos—It is not compulsory.

Ms ELLIS—But, in giving the information, I would rather see it as compulsory than not happening. The point is that it is not happening. The point is that agencies are complaining that they just do not have that collaborative ability any longer. They also say, as I said a moment ago—at the risk of repeating myself—that once you have a not for profit and for profit in the same field of play, the rules change dramatically. Once you have a large, multifaceted organisation competing against a small one which has done nothing wrong except remain small—and in some cases there is a huge benefit for the community when they have done that—they then get out-competed in that bigger ball game.

Mr Bartos—At the end of the day I think what really matters is the quality of the service that the client gets out of all of this. Some of the for profits on the other side of the coin have been known to say that it is unfair that they are competing with not for profits.

Ms ELLIS—Maybe we should leave them in the commercial world.

Mr Bartos—There are issues either side there. I think the thing that really has to count is whether you have set up a process that is going to get you a better result or a cheaper result of the same quality for the Australian taxpayer. Those are the things that have to be borne in mind.

CHAIR—I propose to break but I would like to ask a question concerning strategy. You have probably taken the first step in the documents you tabled for us today.

There seems to be an absence of a national strategic approach to this and the absence of that strategy is making everybody very nervous—probably unnecessarily. I do not know. Do you see these documents as the first stage in the establishment of a framework? This committee is being asked to consider where we go with this in the future. At this stage, we are very reluctant to sign off on it—I can give you that advice—unless there is a national strategy which defines the roles and responsibilities and gives the people out there in those agencies some confidence that someone has thought this through. We have seen examples of absolute blundering into this ideologically different process and then steps taken backwards, which has really made people extremely nervous, especially in Victoria. Could I ask you if there are proposals to take this kind of documentation further to establish some clear guidelines?

Mr Bartos—States and territories, I suspect, are traditionally reluctant to accept frameworks that are laid down by the Commonwealth but there is a great deal of collaboration going on in this whole field. For example, we are making our guidance available to other jurisdictions. There is a lot of sharing of information through a range of bodies. The heads of treasuries regularly meet and I attended a recent meeting at which this whole issue of guidance and frameworks for competitive tendering was an important part of the discussions. There is also a body called the Australian Procurement and Construction Council which oversees broadly procurement of which competitive tendering and contracting is a part. There is increasingly sharing of information by electronic means through interlinking of web pages and those sorts of routes and, increasingly, a lot of sharing of good practice between the states and the Commonwealth.

Within the Department of Finance and Administration, our competitive tendering and contracting group has as one of its specific tasks to find examples of good practice and make sure that they are shared. Again, I do not want to be prescriptive for the reasons, first, that I do not think it would be necessarily suitable for all of the states, territories and Commonwealth to adopt exactly the one set of guidelines and, second, I doubt very much that there would be agreement to it. Nonetheless, there is a very great deal of sharing of information and ideas about good practice between the various jurisdictions and I think that is a very good sign.

CHAIR—Okay. Thank you very much, Mr Bartos, for your willingness to come along and help us. We will have to leave this big pile of information that you and others have left us for the next little while and try to come up with some recommendations. Thank you for your time.

Proceedings suspended from 2.54 p.m. to 3.09 p.m.

ROSE, Mr Alan Douglas, President, Australian Law Reform Commission, GPO Box 3708, Sydney, New South Wales 2001

CHAIR—I welcome the representative from the Australian Law Reform Commission. Before proceeding, I need to point out that, whilst this committee does not formally swear its witnesses, the proceedings today are legal proceedings of the parliament

and warrant the same respect as proceedings of the House of Representatives itself. I am sure this is something you are well aware of, being a regular witness at different inquiries around the parliament. Any deliberate misleading of the committee would be regarded as a contempt.

The committee has received your submission and authorised its publication in the volumes of submissions in connection with the inquiry. We do apologise to you for the mess-up in Sydney some time ago, but we are grateful that you have been able to make the time to talk to us today. You have the honour of being our last formal witness in this inquiry. Perhaps it is good we have left you until last because there are a number of legal implications we are interested in which your submission draws attention to. Given the time since your formal submission you might want to amplify any comments you have already made before we proceed to questions from members of the committee, or would you like to make an opening statement?

Mr Rose—I think it might be easier if we go straight to your questions.

CHAIR—I would like to start by saying that the concern I have, coming from a background of years of organising contracts and tenders, is that you open a new framework of legal implications and we are dealing with a very sensitive sector of the community's interests when it comes to welfare. I would be interested in your comments in that regard, as to what special precautions ought to be taken. I know that the whole idea of contracting out is not new, but when you are exposing people to some sort of competitive process in establishing the actual contract you have to have a document that specifically stipulates the expectations and any document with words in it is always subject to interpretation. Some day someone might say, 'But you did not ask us to do that.' If the end result has been a very bad outcome, and we are talking about people's lives in some circumstances, that is an environment that worries the life out of me. Could you offer us any advice in that kind of environment?

Mr Rose—One of the difficulties is that we start at Commonwealth level with a very uneven background of both knowledge and experience across the whole of federal administration. Some areas have been very used to achieving particular results through contracting processes over very many years but much of the administration has not, or has not been as aware of the requirements for ensuring fairness and equity amongst potential tenderers and potential contractors, and also, particularly if it is a process of contracting out administration that is currently done in house, in many cases have not themselves performed that task against very clear specification. That is, they have had so much control of the total game that they have not themselves broken it down into either logical or accountability or administrative packages, so that when it comes to a contracting out process too many are left with simply saying, 'Here, in the most general sense, is the task we want done. Please tell us how to do it and how much you are going to charge us for the privilege.'

The recent history in the service has been one of progressively raising a knowledge of the impact of the law on so much of this basic administration, firstly, with respect to public administration and the administrative law that has been built particularly in the last 20 years and now in an area where most departments have very little knowledge—that is, the way much of the private law operates. Our perception at this stage is that we are still, if one can make a general statement, coming from two main deficits.

One is a deficit from a perspective of knowing precisely what it is that one wants to do and therefore what it is that you are really contracting out and who is likely to be the potential respondents to that tendering process. Second, at the level of daily practice supervision—that is, at the middle level of the federal administration—there is too little understanding of what the fundamental legal requirements are for carrying out those processes and what sorts of legal obligations are likely to be imposed both on the administration as well as on the contractor. In that context, there is almost no experience in the majority of cases of ever having gone through a litigation process or any full accountability process where the government, through that agency, is likely to be exposed to quite hefty damages suits.

If I can backtrack one point, at the second level, of knowing how to specify and what the specifications are, there is very little idea of what and how a private for profit organisation will actually understand what they are being asked to do, and, on the government agency side, very little idea of the way that that private organisation will actually see and respond to what they are asked to do. That is, up until very recently in most departments and agencies, they themselves have not been structured in a way which properly dissects and values what they do and they have little understanding that in the broader private for profit world that is absolutely fundamental to the way that business operates and continues to stay in business. So there is still, in our experience at least, a fair degree of misfit, misunderstanding, as to how each side operates.

There is an assumption on the public side that private works roughly like the public does. On the private side there is too little understanding as to what the public administrator is looking to achieve by way of performance or value which has, as part of that judgment, a series of political outcomes which the private provider probably rarely brings to bear in carrying out their other operations. So there is still a fair communication deficit in this process.

CHAIR—We have had examples put to us that, ‘You can tender out a multistorey building. You can pretty well document costs—so much a cubic metre for concrete and so much for a bolt, and all the rest of it.’ But in a lot of that the documentation is backed up by Australian standards, where you can call up an Australian standard for quality of steel, concrete and everything that has already been well tested. There is no documentation like that in this whole sector. Your submission basically is saying almost that we are not ready for this yet; that someone has to prepare some overarching guidelines before we launch into wholesale competitive tendering across the welfare sector. That is how I sum up your

submission. It is couched in a lot of legal terms and it addresses all the other issues to do with privacy and access to confidential information, but I think your submission is basically saying, 'Caution here,' with flashing red lights. That is how I would sum up your submission in the vernacular.

Mr Rose—If we come down specifically to the work we have done in the community services, health and welfare area, while we were not being asked to look at the underlying policy of nursing home disability services and child care—and I would have to say that is against a fairly ageing background now of actually running one of those departments in the mid-1980s—we have a very difficult task to make the transition from the previous assumption which still resides in some people's minds that what we are doing in this area is simply providing a little bit extra to support non-government organisations which would otherwise be out there doing good works, if I can put it very simply.

Quite clearly, when you look at what we do, you see we have not been doing that for probably 35 years. At some point in the early 1960s—as for the level of funding and the degree of intervention, both in terms of dollars and requirements for outcomes—the federal government effectively started to contract out in those areas. While it may not have been called that at the time, it was doing that, and since then we have failed to come to grips with the very inadequate base we have for really specifying what it is—by way of type of service, quality of service, et cetera—that we want delivered.

We have, in effect, fudged those difficult questions all the way along because we have essentially been dealing—with some big exceptions, for example, in hospitals and nursing homes—with non-government, non-profit organisations and, quite frankly, we have not sought and have not achieved adequate and proper legal bases for what we have done there. We did not have binding contractual arrangements until early in the 1980s in most of these areas and, if you looked at it closely now, you would probably find we still do not in large measure. We have depended a lot therefore on good sense, good will, close liaison and whatever. The legacy is that too often we really do not know what we are paying for in any finite terms. If I may use your example, Mr Chairman, of a building contract, we have nothing like that in most of these areas and we have been struggling in the last decade to try and get to that point.

As I say, if you look at areas like disability services, I think you will find that we are nowhere near that position as it is with—going to a different area—all of the many changes that have been made in respect of providing employment services to the whole of the Australian community. We are only now trying to come to grips with precisely what it is that the Commonwealth has paid this money for over many years. So, in that sense, I guess I am agreeing with you: we are trying to catch up very quickly and get the horse back in front of the cart, and we are trying to do that very substantial task while ensuring that the whole of that administrative process rolls on.

For some, it is believed there is a panacea simply by pushing that difficult task of

what I am loosely calling ‘specification’ out to the contractor—‘You come back and tell us what we really should be asking for and paying for.’ It is still an iterative process. For many that is a very unsatisfactory process but, if you look closely, you will see that is what has been happening in the last five years. That is precisely what we are doing: we are trying to do both ends at once and we are trying to do it at the same time as trying to determine what is fair value for money in those particular fields—you know, can’t we get the overall cost down while quality does not suffer? But so many of those basic building blocks are not firm and are being moved at the one time that I think we are being quite ambitious in what we are doing.

CHAIR—It is a bit like trying to build the building when we have not built the foundation first—that is how I see it—although your cart before the horse is a good vernacular way to put it as well. Ms Ellis, do you have any questions?

Ms ELLIS—I have a brief one, Mr Rose. You have probably addressed the matter in your statement, but I just want to talk about it on the record here today. It concerns a question that I have asked Centrelink on both the occasions that they have appeared here before us in relation to the accountability issue. I note that some months ago the then Commonwealth Ombudsman made some comments in the public domain about her concern at the distance being created between government and the end delivery of a service, and how you stretch and remain accountable at the same time.

When I asked the question of Centrelink today, their answer was basically that the minister of the agency contracting the work originally is probably the person who is accountable. I wonder if you want to elaborate on your views about a system where you have a department that contracts to another person and then you have, a lot of times, a subcontracting arrangement. Where does the line of accountability and responsibility really start and finish? How reliant are we on the accuracy of contracts in those instances?

Mr Rose—To answer the last question first, we are over-reliant. If you look at the literature, you will see the unanimous, considered view is that the contract cannot carry that accountability weight. A contract, as a private law development, is all about mutuality between, essentially, two parties. It is a very inadequate vehicle for providing rights, obligations or any form of accountability to third parties who are not themselves within that privity relationship. While two parties can specify and can provide a whole lot of undertakings and so forth with respect to services, advice, or whatever is to be provided to third party groups, when it comes to accountability essentially that third party can complain and so forth but there is no real direct accountability to that service recipient.

For accountability purposes, you are drawn back into how good is the contract in specifying from the government agency to the contractor and to that contractor’s subcontractor, if they are involved—how good is that link? Are there specific obligations imposed on the contractor and the subcontractors with respect to the third party? How willing and able is the agency—for that read ‘the government’—and how open is the

agency, the government, to provide an overriding accountability mechanism if that contractor and subcontractor fail, including failure on complaint mechanisms and so forth with respect to the third party recipients of the service, if that is the sort of model.

In the three reports we have written we have noted, and the Administrative Review Council also has—they have probably informed you; I am an ex-officio member of the council—a contracting out project that we are currently handling. We have not yet reported on it, but we are looking in that context at what additional mechanisms—legislated, contracted or whatever—may need to or ought to be put in place to provide some added support to those contract obligations.

These would particularly be ones that might feed back to the Commonwealth Ombudsman, for example, to underpin other complaint mechanisms or, if the contractor in the Centrelink case, for example, is actually exercising statutory powers—as, for example, under the old ESRA arrangement with respect to the case management system where those case managers, although private contractors, exercised powers under the relevant pieces of legislation—whether the contractor should be just as accountable, for example, on review to the Administrative Appeals Tribunal, the SSAT or whichever is the appropriate tribunal, as a government official. So they become rather complex accountability arrangements but, again, they are ones that in many cases have not been thought through, or it has been specifically decided against extending those accountability mechanisms to private contractors.

In terms of practicalities, for the service recipient it becomes almost a question of remoteness. In theory, and I guess in practical political terms, the minister, the agency head and so forth will always be accountable to the parliament and so forth, but to the service recipient that is pretty remote. If you are not getting whatever it is from your employment service and you are in rural Victoria or New South Wales, the fact that the minister may be accountable is pretty remote. Unless it is a matter of cause celebre and major scandal, it certainly will not trigger the media or anyone else to pick it up and make that accountability stick.

What the ALRC has said in its reports and what the ALRC is currently contemplating is how we make the accountability between the service recipient, the contractor and subcontractors and an agency like Centrelink as effective as the accountability for that individual decision making was before it was contracted out. In other words, if Social Security denied me a benefit, then I had certain rights of review to the SSAT and possibly then to the AAT, and I had the Ombudsman who could investigate my complaint. Now the question is: do you simply extend those public law mechanisms, or should you be making some private law mechanisms more effective to allow that service recipient under the contracted out position to have just as effective a remedy as they had before it was contracted out?

Again, we have got the cart before the horse in that we are asking these questions now and we are trying to provide the answers, but the game has already started and it has got ahead of us. As we say in the submission, with respect to the accountability of government vis-a-vis contractors and government vis-a-vis service providers, we have, in the name of achieving better value for money, greater efficiency and productivity and maybe being more responsive and therefore providing higher quality services, jumped into a game against the background of an imperfect understanding of how the private operation works, including how contracting and so forth works in the private sector, between private company and private company, and with a very imperfect understanding of how government accountability works, with respect to the expenditure of public monies and so forth. We are out there doing it. It is almost like sketching out the painting and now we are painting the pieces in by numbers, hoping that the whole thing will be a picture by the time it is complete.

Ms ELLIS—In general contracting out areas that all becomes difficult enough. But my concern then goes to the area that we are specifically looking at—areas within human services, some of which deal with people who are even more vulnerable and even more unable, due to their circumstances, to respond to inadequate, incorrect, unfair and inappropriate delivery of service. What I am saying is that for the people that we are dealing with I then exaggerate the concerns that you put in terms of contracting out, particularly in a commercial competitive sense, within the human services area and the inability of some of those recipients in the best picture to respond to inappropriate or incorrect delivery of services. You would obviously agree with that concern by the way you have spoken, in general terms.

Mr Rose—Yes. There is another concern and that is, as I said in general terms at the outset in answer to the chairman, that I do not think we fully appreciate how much the specification of what the government was paying for in community and welfare services was actually provided by the non-government provider in the past. In other words, if I can put it very simplistically, all knowledge on the government department side saying, ‘We want to provide employment services and accommodation services to people with a disability,’ knowing precisely what they wanted—we put out a request for people to apply for grants in the old days, but now they contract it—was very much an iterative process. There was a general need or there was a more specified need and it was an iterative process between government agency and non-government provider as to how one would tackle this.

Via a whole lot of demonstrations, pilots and so forth over a period you build up a knowledge of what is best in the interests of people and how you can best provide for those people. If you jump very quickly into simply an arms-length tender contracting process it is up to the government agency to actually write a firm specification. If I can exaggerate a bit, there is now a gulf between the government with the money and some ideas and the market.

It was assumed that the government really knew what it was looking to buy and to pay for, but in too many instances that is not a correct analysis of the position. It was made doubly worse on many occasions by the fact that we never built adequate data sets and we have imperfect information—even now and that is 30 or 40 years after we started in some of these businesses—about what the client group is, how they are distributed, et cetera.

If you fracture that old relationship and do it precipitately, as I suspect we are in some cases, then you are in danger of wasting a lot of money. If you do not know what it is you want and you are getting back propositions that you cannot properly evaluate, then you are in danger of spending money where you may not have otherwise spent it and of going down dry gulches and finding out from hard experience that you have not bought what you thought you were buying.

If you do not specify and, therefore, pay for the production of that very important evaluation and basic statistical material, then as that contracting process goes on year by year, instead of building up better knowledge of the area, you end up going just in the other direction and becoming a total captive of those who are providing the service because you know no more than they will tell you; you know no more than the worst of some of them are doing. Your ability to evaluate, your ability to judge whether you are getting value for money and so forth, is just not there. I suspect that is a problem in some areas as well.

Mr JENKINS—Mr Rose, do you have further comments about the question of commercial-in-confidence. I note some moves by the recently re-elected ACT government on this front. But in the latest round of Job Network contracts there seemed to be a bit of hiding behind the cloak of commercial-in-confidence not to release certain details. I was wondering whether you think there has been any movement about a better understanding of what is an appropriate level of commercial-in-confidence when you are actually dealing with contracting out of government services?

Mr Rose—Unless we have missed something, I do not think that there is. We provided a copy of what we sent to the inquiry into government services. Essentially, we start from the proposition that, if the majority of administrative activity is to be handled through outsourced contracting, then there needs to be particular reinforcement for the transparency principles. We need to have very clearly agreed and understood—and we have suggested at the level of the parliament—general rules for what will be made available, how it will be made available. Simply stamping ‘commercial-in-confidence’ on a document will not in the future mean that it is not available to the parliament or it is not available to particular groups whose interests are directly affected by it.

What we have also said is that, quite clearly, there will be particular information in each contracting circumstance that is legitimately of commercial value. Whether that then amounts to a trade secret or intellectual property that should be protected will depend on

the particular case, but that material can and should be identified. While its protection would properly be protected under both FOI and any other guidelines, the bulk of the information about the contract itself should be readily available.

In the ARC context, we have been looking at whether there should be a general rule about free access to that information that is not charged for or whether it should be caught up generally within the charging regime of the freedom of information legislation. But, essentially, the basic principle, if it needs to be re-established and reinforced, is access to all of that material.

When it comes to parliamentary scrutiny, on the whole the bulk of these contracts, I am assuming, will not be pored over by committees or whatever in their fine detail. But, to the extent that, for whatever reason, parliamentary accountability contracts are called in question or are being routinely scrutinised, there ought to be a set of guidelines that establishes how committees and the parliament as a whole get access to that information, and what additional protection needs to be put in place to ensure that sensitive information, confidences, in a commercial-in-confidence situation, are not violated. This should be a matter for the parliament and the relevant ministers and authorities to settle in a guideline document, very much like the guidelines for official witnesses were worked out 20 or 30 years ago.

I am not here talking about what a particular minister on a particular day may wish to say to the parliament but, as a general rule, there should not be a question of a simple claim—as a claim for public interest privilege can be made—which, because it has been provided commercial-in-confidence, means that all scrutiny is locked out. There ought to be ways of ensuring that all of that information can be tested when the circumstances require it.

CHAIR—To sum up, in your submission you have a list of recommendations, which, I assume, is the sort of foundation that we were talking about earlier for this particular sector: charter of rights, quality standards, complaints mechanisms, privacy, accountability, records, monitoring, sanctions and review of decisions. It is the sanctions aspect that worries me the most because in any normal contract that you establish you have to say, ‘This is the expectation we agree to and you finish this project by a particular date. However, if you do not, there will be liquidated damages applied.’ It is always the delicate one and it is always the one where, at that point, there is always a reason why it was your fault, as the responsible client, I suppose—you delayed him and he could not achieve that date—and we end up with disputes. That is the building sector environment, which I know you are familiar with, but there is no difference in a contractual arrangement for any service: something can go wrong.

The argument about the sanctions at the end is a real dilemma. I cannot see a contractual arrangement where that element is not included. It has to be there. You have to have a stick. With all the goodwill in the world—and often there is a lot of that existing

in this whole sector with so many volunteer and not for profit agencies in there who are only there because they have got a humanitarian, altruistic concern—if you do not perform, we have to have an arrangement either to penalise you or to renew the contract with somebody else. It is almost impossible to achieve that in this particular element of service delivery, surely. You are actually suggesting that this should be legislated in some way. I bristle with that. I think it is almost impossible.

Mr Rose—The circumstances we are contemplating in the position that exists at the moment—for example in those areas like nursing homes and disability services—are that either the minister or the chief executive of the department, the secretary, have discretions when, for example, a contract is being so breached that not only is the quality of life or the quality of the service deteriorating, but the very safety of those individuals in that service is threatened. It is not unusual. It has happened.

CHAIR—It has happened.

Mr Rose—In effect, we need the minister or the secretary to give directions as to how that service is to be unwound and for the physical transfer of those clients. That is the level of sanction that we were contemplating—or where you need compulsory entry statutorily underpinned. That is the right to enter premises, not simply to demand documents or whatever, but to actually physically enter and search. If one is to give those sorts of powers to ministers and officials then you really need some legislative underpinning. It goes beyond a mere contractual term for liquidated damages or whatever.

CHAIR—I am raising it because I have an example back home—I am not prepared to put it on the public record; it is very sensitive—which I think is probably not a fraud situation but just mismanagement. No-one is going to put the local Rotary club president in gaol because he failed—it was not Rotary, but I am just trying to give you a broad example.

Mr Rose—I thought you were giving us a hint.

CHAIR—Let us say you have got a church organisation and they just messed up badly. What possible sanction could you have? My whole idea in raising this issue is that, rather than sanctions, there has to be some sort of incentive driven process. It is just unrealistic to put the local church organisation in gaol because they did not comply with their contract. Do you know what I mean? It is just unrealistic in this sector because the great bulk of it is provided by people out there who are motivated for all sorts of reasons to deliver a service.

Mr Rose—But you may, in extreme circumstances, have to provide for, in effect, the removal of that organisation and that organisation's authority from what at that point in time may be their property, and the installation of other individuals to manage a facility. That is the extreme sanction at the end of the day but, obviously, along the way

you have a series of carrots and sticks.

Termination of a contract and taking over of a facility are very extreme consequences but, as I say, there have been circumstances where that has been done. In any complete legal environment, you need that final ability to intervene and take over. If it is fraudulent activity or if some criminal offences have been committed, that is in addition to the management of the contractual arrangement. If there is the basis for commencing a criminal investigation, quite clearly that will be done in parallel with it; and that has been the case.

Again, that is not so unusual. There have been a number of those facilities which at times have got themselves involved in either tax frauds or circumstances where some other criminal purpose has been carried along in parallel with the community purpose. There is the need, in our view, for a well-based statutory power to intervene to the ultimate: to take over the running or start taking action to reclaim property and so forth that is in jeopardy. It is quite clearly an extreme reaction; it is not the normal case.

CHAIR—I suppose that, with all the best intentions in the world, with Murphy's Law, if it can go wrong it will. Is that what they teach you in legal school?

Mr Rose—Yes; and, if it has not gone wrong, then something has gone wrong.

CHAIR—Thank you, Mr Rose, for your time, effort and interest. We will go away now and wrestle with the preparation of a report to table in the parliament. I thank *Hansard* and the secretarial staff, Bjarne Nordin and Dr Darren Benham.

Resolved (on motion by **Ms Ellis**):

That, pursuant to the power conferred by section 2(2) of the Parliamentary Papers Act 1908, this committee authorises publication of the evidence given before it at public hearing this day.

Committee adjourned at 3.53 p.m.