Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

CULTIVATING COMPETITION

REPORT OF THE INQUIRY INTO ASPECTS OF THE NATIONAL COMPETITION POLICY REFORM PACKAGE

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FOREWORD

The significant potential benefits arising from competition reform have been recognised by all levels of government and all major political parties. Implementing competition policy will impact across the whole economy and right across the community.

Lack of competition in the delivery of services in the public sector has been shown to add a significant cost for those services. National competition policy seeks to improve this by opening appropriate areas of the public sector to a competitive environment.

In this report the Committee has addressed three important aspects of the national competition policy reform package as set out in the inquiry terms of reference and several more general matters that arose during the course of the inquiry. In so doing the Committee has attempted to clarify aspects of the policy and its implementation and to set out its views on those matters. We have sought to make a constructive contribution to the debate on this critical reform. In addressing this report it is important to consider the conclusions the Committee has drawn as well as the recommendations made.

Society deals better with change when it: understands the rationale behind the decision making; can see a rigorous framework on which those decisions are based; is confident that those affected have been consulted; and believes all the consequences have been considered. Through this report the Committee has sought to encourage further the achievement of those objectives in the area of competition policy reform in the public sector.

This major inquiry has presented the Committee with a large volume of documentation to be considered and we are grateful to all who contributed to this Committee's work and that of its predecessor Committee in the previous Parliament.

The Committee's task has been greatly facilitated by the cooperation and assistance provided by the Commonwealth and all State and Territory Governments in making submissions and providing supporting documentation, and by the contributions of many industry, local government and community organisations and individuals who made submissions and provided evidence at public hearings, informal discussions and briefings.

I am pleased that the Committee was able to reach unanimous conclusions and recommendations in this report. These reflect the view of all major parties on the need to emphasise and promote competition as a strategy for making our public sector more efficient and effective. I thank all the members of the Financial Institutions and Public Administration Committee for their hard work on the inquiry and report, as well as the members of the Banking, Finance and Public Administration Committee in the 37th Parliament.

David Hawker MP
Chairman

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TERMS OF REFERENCE - 38TH PARLIAMENT

Background

The Commonwealth, State and Territory Governments have agreed to implement national competition policy reforms through co-operative arrangements involving Commonwealth and State legislation, and three Intergovernmental Agreements.

The Commonwealth Parliament has passed the Competition Policy Reform Act, which is the principal legislative instrument for implementing these reforms. State and Territory Governments have enacted legislation to apply the Competition Code (a personalised version of Part IV of the Trade Practices Act) contained in that Act in their jurisdictions.

As required by the Competition Principles Agreement, the Commonwealth, State and Territory Governments published policy statements on the implementation of elements of that Agreement by June 1996.

The Committee's report will assist Governments to address concerns which have been expressed about the means of implementing aspects of the competition policy reforms.

Terms of Reference

1. The Committee is to consider appropriate means, including review processes, for applying the 'public interest' tests included in the Competition Principles Agreement. These tests are a critical feature of this Agreement. They are described in Principles 1(3), which provides that:

Without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or of a class of consumers;

(i) the competitiveness of Australian businesses; and

(j) the efficient allocation of resources.

2. The Committee will have particular regard to the impact of competition policy reform on the efficient delivery of community service obligations including an assessment of:

(a) existing government policies relating to community service obligations; and

(b) options for the delivery and funding of these services.

3. The Committee will also examine the implications of competition policy reform for the efficient delivery of services by local government, including arrangements that have been developed between State Governments and local government authorities for the implementation of the Competition Principles Agreement.

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The Commonwealth, State and Territory governments have agreed to implement national competition policy reforms through co-operative arrangements involving Commonwealth and State legislation, and three Intergovernmental Agreements.

The Commonwealth Competition Policy Reform Bill, which is the principal legislative instrument for implementing these reforms, is expected to be passed by the Senate and House of Representatives by the end of June 1995. State and Territory Governments will be enacting legislation to apply the Competition Code (a personalised version of Part IV of the Trade Practices Act) contained in that Bill in their jurisdictions over the next 6 months.

The Competition Principles Agreement provides for Commonwealth, State and Territory Governments to publish policy statements on the implementation of elements of that Agreement by June 1996. The Committee's report will assist Governments in the preparation of those statements. It will also consider concerns which have been expressed about the means of implementing aspects of the competition policy reforms.

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ACRONYMS AND ABBREVIATIONS

ACCC	Australian Competition and Consumer Commission
ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
ALGA	Australian Local Government Association
ASU	Australian Services Union
ATSIC	Aboriginal and Torres Strait Islander Commission
BCA	Business Council of Australia
CAA	Civil Aviation Authority
CCCLM	Council of Capital City Lord Mayors
CCT	Compulsory Competitive Tendering
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CPSU	Community and Public Sector Union
CSOs	Community service obligations
DoF	Department of Finance
FAC	Federal Airports Corporation
FAGs	Financial Assistance Grants
GBEs	Government business enterprises
GTE	Government trading enterprise
IC	Industry Commission
IEAust	The Institution of Engineers, Australia
Implementation Agreement	Agreement to Implement the National Competition Policy and Related Reforms
LGAQ	Local Government Association of Queensland
MAV	Municipal Association of Victoria

NCC	National Competition Council
NCP	National Competition Policy
NFF	National Farmers' Federation
PIAC	Public Interest Advocacy Centre
RIS	Regulation Impact Statements
SOPI	Statement of Policy Intent
SRA	State Rail Authority
Steering Committee	Steering Committee on National Performance Monitoring of Government Trading Enterprises
TPA	Trade Practices Act
WSROC	Western Sydney Regional Organisation of Councils
WST	Wholesale Sales Tax

LIST OF RECOMMENDATIONS

Public interest test

1 The Committee recommends the following as necessary components of the 'public interest' process:

a) Responsibility for commissioning reviews (ie terms of reference, nature of the review and reviewers) should be taken at Ministerial level;

b) The nature of the review should be determined taking into account the significance, importance, diversity and sensitivity of the issue to be considered;

c) Clear terms of reference should be developed for the review including identification of the factors, whether in the list of factors set out in subclause 1(3) or otherwise, that the decision maker believes is relevant. Terms of reference should be agreed by the relevant Minister;

d) The process and its timing should be as transparent as possible;

e) A plan of the review should be developed including details of the nature of the review to be used, resources and funding, and specify key dates (start, end, advertisement, call for submissions, closing date for submissions, reporting);

f) Consideration should be given to variations of the process for example joint review, national review, etc;

g) Methodology used for weighing up the benefits and costs should take account of both quantitative and qualitative data;

h) The review should consider the overall, wider consequences and impacts of the decision;

i) Level of consultation may vary with the significance, diversity and sensitivity of the review. Consultation should involve key stakeholder groups;

j) Where possible reviewers should be independent of the existing arrangements with more significant, more major and more sensitive reviews demanding greater independence;

k) Where reviews are undertaken by persons closely involved in the activity in question, there should be provision for a review or reconsideration of the initial conclusion by some person or body independent of the relevant activity;

l) Results of reviews and relevant key stages in the review process shall be publicly available;

m) Where a matter is reconsidered at a later date, similar processes to those that applied to the initial consideration should be followed; and

n) The Parties should coordinate their efforts to achieve a common set of basic principles to apply the 'public interest test' as outlined in (a) to (m) above.

The Committee recommends all jurisdictions should publish guidelines encompassing the application of the 'public interest test'. (paragraph 2.76)

Community service obligations

2 The Committee recommends that all CSOs be explicitly defined and their details made publicly available. (paragraph 3.41)

3 The Committee recommends that the Council of Australian Governments address ways of better coordinating the provision of community service obligations and welfare payments to safeguard the equitable distribution of payments and benefits for all recipients. (paragraph 3.47)

4 The Committee recommends that the funding arrangements for both existing and new community service obligations be transparent and assessed on a case-by-case basis. (paragraph 3.74)

5 The Committee recommends that any decision by a party to contract out the provision of community service obligations is most appropriately made on a case-by-case basis. Any contracting arrangement should contain clearly identified performance criteria and exit provisions. (paragraph 3.90)

6 The Committee recommends all governments:

a) require their government business enterprises to include in their annual reports and corporate/business plans or other publicly available documents detailed information on the objectives, definition, costing, funding and contracting arrangements for community service obligations; and

b) implement effective monitoring programs for community service obligations and ensure that those programs be outcome oriented. (paragraph 3.100)

Implications for the efficient delivery of services by local government

7 The Treasurer as a matter of priority address the issue of taxation of local government businesses at the next meeting of the Council of Australian Governments as under the current regime there is a powerful disincentive to corporatise. (paragraph 4.54)

8 The Committee recommends that State and Territory Governments encourage their local councils to more urgently implement appropriate accounting and financial management systems to assist resource allocation decisions, including those relating to community service obligations. (paragraph 4.63)

Related issues

9 The Committee recommends that following the completion of the current assessment round the Council of Australian Governments evaluate the dual role of the National Competition Council to determine if both roles are appropriate. (paragraph 5.12)

10 The Committee recommends the National Competition Council adopt a more open approach to its work and be more active in disseminating information about the activities of the Council and National Competition Policy. (paragraph 5.15)

11 The Committee recommends that the review of the need for and operation of the National Competition Council after it has been in existence for five years be an independent review and if the review determines the Council is to continue, a sunset clause on this matter be inserted into the Competition Principles Agreement. (paragraph 5.18)

12 The Committee recommends that the Treasurer ensure that:

a) the assessment for payment of both the Financial Assistance Grants and Competition Payments be performance based and reflect both the spirit and intent of the competition policy reform legislation and the inter-governmental agreements; and

b) details of the assessment outcomes and process are made publicly available following each tranche's assessment. (paragraph 5.32)

13 The Committee recommends that the State, Territory and Commonwealth Governments put in place measurement and monitoring systems so that the outcomes of implementing national competition policy can be adequately assessed in the future. (paragraph 5.34)

14 The Committee recommends that all agencies involved in the implementation of national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes. (paragraph 5.39)

CHAPTER ONE

INTRODUCTION

1.1 The agreement between the Commonwealth, States and Territories to implement national competition reforms represents a major step forward in inter-governmental relations as well as bringing the potential for large and lasting economic benefits to the Australian community.

1.2 In this report the Committee looks at three aspects of the implementation of this policy, namely the 'public interest test', the impact on the efficient delivery of community service obligations (CSOs) and implications for the efficient delivery of services by local government. This inquiry spans two Parliaments and comes two years after the signing of the Council of Australian Governments (COAG) agreement and six years after the Hilmer Report[1] identified the enormous potential that such reforms could offer to Australia's GDP.

1.3 This report concentrates on the policy implementation rather than the reforms themselves. The latter no doubt will be the subject of much assessment in years to come both by Parliament and others.

The policy

1.4 One of the most important developments in microeconomic reform in recent years is the introduction of national competition policy. This policy was endorsed in April 1995 by the Commonwealth government in cooperation with all State and Territory Governments operating through COAG. The policy progressively came into operation after that date.

1.5 National competition policy establishes processes and institutions to encourage competition across the whole economy, not just in particular sectors.[2] It has '...the potential to trigger reform initiatives for many years to come.[3] The initial focus has been in sectors such as electricity, gas, water and road transport and government business enterprises, with the reforms then being addressed in Government trading entities, the professions and other entities such as the statutory marketing authorities.

1.6 Communities expect their governments to continually become more efficient and effective and enhanced competition is one way in which this can be achieved.

1.7 The expected benefits from the competition reforms for ordinary Australians are price reductions, lower inflation, more growth and more jobs. 'Businesses and consumers will [also] benefit from the uniform protection of consumer and business rights that the...policy

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1 Hilmer, FG. Independent Committee of Inquiry into National Competition Policy (Australia). 1993. *National competition policy*. Canberra, AGPS, 2 vols, 385p 29p.

2 Australia. Parliament. Senate. 29 March 1995. Competition Policy Reform Bill 1995: Second Reading Speech. Senator Crowley. *Parliamentary Debates*. Canberra, AGPS, p 2434.

3 Ibid p 2434.

will provide.'[4] Competition policy is not about competition for competition sake, it is a means to other ends.

1.8 More specifically, the Industry Commission's analysis of the growth and revenue implications of the Hilmer and related reforms, taking account of the limitations of the analysis, estimates a long run annual gain in real GDP of 5.5%, or $23 billion a year, as a result of the cumulative effect of the reforms.[5] Further details are set out in Table 1.1. While there is considerable agreement that the microeconomic reform program is beneficial to the economy, there is substantial disagreement on the magnitude of the benefits and in some cases why the benefits have been realised.[6] For example Professor Quiggin has examined the Industry Commission's estimates of the benefits for each area of reform and argues that in general the estimated benefits are likely to be lower (see Appendix 4).

1.9 In many instances it is difficult to differentiate the benefits of competition policy from those of other reforms.

1.10 There has been no major analysis of the broader socio-economic costs of the reforms particularly the impact on unemployment, changed working conditions, social welfare, equity, social dislocation, environmental impacts as well as the spatial variations in these.

1.11 National competition policy is an extremely comprehensive, complex and long ranging policy. However, the basic elements of the policy are relatively simple and commonsense[7]. A number of government agencies at all levels of government were already moving in that direction. The effect of national competition policy was to encourage the implementation and sharing of the experiences on a national basis.

1.12 The main elements of the policy are set out in the *Competition Policy Reform Act 1995*, which takes the form of amendments to the Trade Practices Act (TPA) and the Prices Surveillance Act and in State and Territory complementary legislation to ensure all business activities are subject to the same competitive conduct rules; and in three inter-governmental agreements - the Code of Conduct Agreement, the Competition Principles Agreement (CPA) and the Implementation Agreement. 'Related' reforms to the electricity, gas, water and road transport industries also form part of the National Competition Policy (NCP) package.[8]

1.13 The inter-governmental agreements deal with processes for amending the competition laws of the Commonwealth/State/Territories; principles for implementing the reforms; arrangements for the three key competition policy agencies - the Australian Competition and Consumer Commission (ACCC), the National Competition Council (NCC) and the Australian Competition Tribunal; and the Commonwealth's arrangements for payments to the States/Territories in relation to implementation of the reforms. Further details on the major policy elements are set out at Table 1.2.

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4 Ibid p 2434.

5 Industry Commission. *Economic impact of Hilmer and related reforms: Press release*, 10 March 1995, p 1.

6 See evidence by Professor JC Quiggin, Department of Economics, James Cook University, pp 376-402.

7 Australia. Parliament. Senate op cit p 2435.

8 National Competition Council. Jan 1997. *Compendium of National Competition Policy Agreements.* Canberra, AGPS, p 1.

Table 1.1 Industry Commission growth and revenue benefits of Hilmer and related reforms*[9]

Growth		
Real GDP	5.5 per cent pa	$23 billion pa
Real consumption	$9 billion pa	$1500 per household
Real wages	3 per cent increase	
Employment	30 000 more jobs	
Revenue		
Commonwealth	$5.9 billion (6 per cent)	
States, Territories and Local government	$3.0 billion (4.5 per cent)	

Contributions

	Commonwealth reforms	*States, Territories & Local government reforms*	*Total*
Real GDP	1.0%	4.5%	5.5%
Commonwealth revenue	$1.2b (1.2%)	$4.7b (4.8%)	$5.9b
States, Territories & Local government revenue	$0.4b (0.6%)	$2.6b (3.8%)	$3.0b
Total revenue	$1.6b	$7.3b	$8.9b

* These results are subject to the qualifications and explanations in the full report. Macro-economic and revenue effects (assuming monetary accommodation).

Source: Industry Commission. *Economic impact of Hilmer and related reforms: Press release,* 10 March 1995, p 6.

9 For a comparison of the Industry Commission's and Professor Quiggin's estimated benefits of Hilmer and related reforms (per cent of GDP) see Appendix 4.

Table 1.2 Main elements of National Competition Policy

The main elements of the policy are the ***Competition Policy Reform Act 1995*** which:

- merged the Trade Practices Commission and the Prices Surveillance Authority into a new body, the Australian Competition and Consumer Commission (ACCC) (from 6 November 1995);
- created a new advisory body, the National Competition Council (NCC) (from 6 November 1995);
- made several amendments to the Part IV competition conduct rules of the Trade Practices Act (these are the rules which prohibit the various forms of anti-competitive conduct, such as price-fixing agreements, anti-competitive mergers and misuses of market power);
- extend the coverage of competition conduct rules in Part IV to areas of the economy that were previously excluded;
- provides a template version of Part IV, called the Competition Code, which after enactment by the States, the Northern Territory and the Australian Capital Territory ensures that the same competition conduct rules will apply to all business activity in Australia, whether conducted by corporations, governments or individuals. The ACCC has jurisdiction in relation to these rules under Commonwealth, State and Territory laws; and
- enacts a Commonwealth scheme providing a right of access by third parties to essential facilities which have national significance.

The Act is complemented by **three inter-governmental agreements**:

- **Conduct Code Agreement** which underpins the legislative changes made by the Competition Policy Reform Act under which the States, the Northern Territory and the Australian Capital Territory were required to enact legislation implementing the Competition Code, and may participate in the appointment of members to the ACCC and the NCC;
- **Competition Principles Agreement** which provides a blueprint for future action by all Governments, and addresses:
  - prices oversight of government business enterprises;
  - competitive neutrality policy and principles;
  - structural reform of public monopolies;
  - review of legislation that restricts competition; and
  - access to services provided by means of significant infrastructure facilities; and
- **Implementation Agreement** which contains details of the financial assistance to be provided by the Commonwealth for implementation of the competition policy reforms and the conditions that apply to payments to the States and Territories

1.14 The CPA also applies to local government even though local governments are not parties to the Agreement. Each State or Territory is responsible for applying those principles to their local government sector. This is a particularly contentious issue with some elements of local government. It should be noted however that the President of the Australian Local Government Association (ALGA) is a member of COAG.[10]

1.15 The reforms had their origins in 1991 when the Commonwealth and the State and Territory Governments operating through COAG agreed to examine a national approach to competition policy.[11] More flesh was put on the policy by the National Competition Policy Review chaired by Professor Fred Hilmer.[12] The main consultation and discussion then took place within COAG.

1.16 The cooperative approach which the jurisdictions adopted in relation to the reforms meant that, in general, individual governments are responsible for setting their own agendas and timetables for implementing the reforms in line with the inter-governmental agreements.[13] This seems to be one of the least well understood, or perhaps least well accepted, aspects of the reforms. Some groups believe that the Commonwealth went too far in compromising on the degree of autonomy left to the states.[14] The differences of interpretation of the reforms by the various jurisdictions have created confusion about aspects of the reforms and generate complexity.

1.17 As required by the CPA several important details on the implementation of the reforms were set out in three major policy statements published by each of the Commonwealth/State/Territory Governments by June 1996. Those statements address the issues of competitive neutrality, the timetable for review (and where appropriate, reform) of all existing legislation which restricts competition by the year 2000, and the application of the reforms to local government.

1.18 This means that although competition policy was approached at a national level, the impact of the reforms has the potential to vary substantially across the States/Territories depending on how the reforms are implemented by a jurisdiction. A high level of cooperation will be needed to maintain a national perspective on the reforms.

1.19 In addition, it is not easy to compensate for a negative impact of the policy in one location, for example withdrawal of government services. This is particularly evident when implementing competitive neutrality policy and principles that have a negative impact on employment. Governments cannot simply focus on the national benefits of the reforms because there is the possibility of localised costs outweighing those benefits in some local communities. The reform package stresses that '...Erosion of their wages and conditions does

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10 *Heads of Government Meeting, Canberra, 11 May 1992, Communique,* pp 1-2. and *Commonwealth financial relations with other levels of Government 1992-93*. Budget Paper No. 4. Canberra, AGPS, p 16.

11 Australia. Parliament. Senate op cit p 2434.

12 Hilmer, FG op cit 385p 29p.

13 Australia. Parliament. Senate op cit p 2435.

14 CPSU Evidence p 9.

not equate with the 'benefits' in the Competition Principles Agreement against which policy changes need to be assessed...'[15]

1.20 National competition policy does not promote the benefits of private ownership over those of public ownership. It is about ensuring where public ownership exists competition policies should apply. As the role of government evolves over time so to does the application of competition policy to those functions.

1.21 Given the scope of the reforms, their potential to substantially impact on the lives of all Australians and the relative newness of the policy, it is critically important that there is adequate public education and consultation about the reforms and their progress. Without this there is little guarantee that the reforms are not misrepresented nor misunderstood. The reforms will stimulate discussion about the proper role of government.

1.22 To date there generally has been widespread support for the policy though there is dissension. Some States/Territories are experiencing more difficulties than others in implementing some of the reforms particularly because of the political downside especially regarding employment issues. Nevertheless the general consensus on the progress in implementing the reforms is that it has been progressing well.

Inquiry into National Competition Policy

1.23 It is against this background that in June 1995 the then Assistant Treasurer, the Hon George Gear MP, referred to the House of Representatives Standing Committee on Banking, Finance and Public Administration an inquiry into aspects of the national competition reform package. The Assistant Treasurer expected that the Committee's report would assist governments to prepare the aforementioned jurisdictional policy statements and to identify concerns in the implementation of the policy. The inquiry however was not complete by the dissolution of the 37th Parliament in January 1996.

1.24 In the 38th Parliament the new House of Representatives Standing Committee on Financial Institutions and Public Administration sought the rereferral of the reference. The inquiry was referred in August 1996 by the Treasurer, the Hon Peter Costello MP, with very similar terms of reference to the original inquiry. The terms of reference for the inquiry are set out at page *xi*. They address three of the most difficult issues in competition policy reform. In referring the reference the Treasurer suggested that the Committee's report '...will assist Governments to address concerns which have been expressed about the means of implementing aspects of the national competition policy reforms.' By this time the jurisdictional policy statements were publicly available and the policy had been in operation for over a year.

1.25 Progress with implementing the reforms has meant that this Committee is able to provide a more balanced and realistic picture on concerns and how the implementation is progressing and to comment on that progress. Given the wide ranging nature of the reforms, in undertaking its inquiry the Committee has focused closely on its terms of reference.

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15 Australia. Parliament. Senate op cit p 2437.

1.26 In conducting this major inquiry it was particularly important to this Committee and its predecessor that they heard the views of as many organisations and individuals as possible. Accordingly, the original inquiry was widely advertised in the major and capital city newspapers on 30 June 1995 or 1 July 1995. The Committee also wrote to all Premiers/Chief Ministers, the secretaries of all major Commonwealth agencies and significant organisations and associations with an interest in the inquiry seeking a submission. During the 38th Parliament the revised inquiry was advertised again in the *Financial Review* on 13 September 1996 and *The Weekend Australian* on 14 September 1996. The Committee also wrote again to all Premiers/Chief Ministers and all those who had made a submission in the previous Parliament asking them if they wished to add to and/or update their submission.

1.27 The Committee received 107 submissions (46 in the 38th Parliament) from a wide cross-section of the target audience; a list of these submissions and their authors is at Appendix 1 and the exhibits received are listed in Appendix 2. This was almost as many submissions as were received by the Hilmer Committee and it almost doubles the number of submissions to the public consultation process on the draft competition Bill and draft inter-governmental agreements.[16]

1.28 During the 37th Parliament the Committee undertook a wide ranging public hearing program with hearings held in Melbourne, Sydney, Canberra and Brisbane as well as five informal briefings interstate. Given the early stage of policy implementation the focus of the hearings was those individuals and organisation who wished to raise concerns. In the current Parliament as a result of those investigations this Committee undertook a more modest hearing program that sought to balance and supplement the detailed evidence it received in submissions and exhibits rather than duplicate it. Evidence at public hearings was taken from the new competition policy agencies; two prominent academic experts working in the competition arena with views at different ends of the spectrum - Professor Bob Officer and Professor John Quiggin; and several industry, consumer and union groups and a number of local councils implementing the reforms. Six informal briefings were also held.

1.29 In total the Committee's took evidence from 58 witnesses representing 31 organisations or themselves at 13 public hearings between 9 October 1995 and 30 November 1995 and between 2 December 1996 and 6 March 1997. Details of the hearing program and witnesses and the informal briefing program are provided in Appendix 3.[17]

Structure of the report

1.30 The remainder of this report is structured to reflect the terms of reference and the major concerns with implementing competition policy. Chapter 2 looks at the crucial, but controversial, issue of the application of the CPA's clause 1(3) which has been summarised as 'public interest test'; Chapter 3 examines a specific example of the general public interest

16 Ibid p 2434.

17 The submissions and public hearing transcripts have been incorporated into several volumes which are available for inspection at the National Library of Australia, the Commonwealth Parliamentary Library and the Committee Secretariat. References to the evidence in the text of this report refer to the page numbers in the submission volumes ('S' prefix) and public hearing transcripts (numeric sequence).

matters - the impact of the policy on the efficient delivery and funding of CSOs; Chapter 4 discusses the implications of the policy for the efficient delivery of services by local government; and Chapter 5 assesses the performance of the National Competition Council, comments on the arrangements for the National Competition Policy Payments, as well as the need for effective public education and consultation and gives the Committee's overall assessment on how the policy is progressing. A critical concern recurring throughout the inquiry has been the impact of the national policy in regional areas. This matter has been addressed in Chapter 3, in a specific section in Chapter 4 and referred to in other areas of the report.

1.31 With the extensive documentation available on the reforms, in this report the Committee has focused on the issues and attempts not to duplicate information made publicly available elsewhere.

CHAPTER TWO

PUBLIC INTEREST TEST

Introduction

2.1 A central tenet of competition policy reform is that competition is not an end unto itself and while in general introducing competition will deliver benefits to the consumer, there are situations where community welfare is judged better served by not effecting particular competition reforms. Thus in the implementation of the reforms spelt out in the Competition Principles Agreement (CPA) governments have recognised the importance of the concept of a weighing up process of costs and benefits to the community. Competition is to be implemented to the extent that the benefits to be realised from competition outweigh the costs.

2.2 The circumstances in which the weighing up process is called for, and some of the factors that need to be taken into account in making the decision, are set out in subclause 1(3) of the CPA, as follows.

> Without limiting the matters that may be taken into account, where this Agreement calls:
>
> (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
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> (b) for the merits or appropriateness of a particular policy or course of action to be determined; or
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> (h) the interests of consumers generally or of a class of consumers;
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> (i) the competitiveness of Australian businesses; and
>
> (j) the efficient allocation of resources.

2.3 A shorthand expression used to describe that whole concept is the 'public interest test'.

2.4 Given that the test is a critical feature of the CPA, the Committee has been asked to consider the appropriate means, including review processes, for applying the 'public interest test' included in the CPA.

2.5 'Public interest' matters in other areas of competition policy are not within the scope of this inquiry. Under the Trade Practices Act (TPA) these are the public benefit criterion used for the purpose of authorisation and notification, and public interest matters in the application of Part IIIA access regime declarations and undertakings. Nor is there any necessary nexus between the content of the 'public interest test' in the CPA and those other tests. This is underscored by the CPA subclause 1(4) which states that subclause 1(3) is not intended to affect the current interpretation of 'public benefit' under TPA authorisation and notification. The Australian Competition and Consumer Commission (ACCC) has advised that subclause 1(3) is one of four main sources used in identifying issues that the ACCC considers relevant in assessing public interest criterion for undertakings.[1]

2.6 In a sense though the whole process of competition policy reform is a 'public interest' one. In making decisions on competition policy reform, Governments are acting in the broad public interest as they see it.

Interpretation of 'public interest' in the CPA

2.7 There is some confusion surrounding the use of the term 'public interest test' under the CPA.

2.8 The terms 'public interest' or 'public interest test' are not used in subclause 1(3). The subclause provides a list of only some of the diverse factors that may be relevant where the parties are weighing up the costs, benefits, merits, appropriateness or effectiveness of particular actions. Thus what is loosely described as the 'public interest test' is not confined to those factors which are specifically described in subclause 1(3). In a particular case, the most important factor may not even be on the list. Further, all the items in the list may not be relevant in each case.

2.9 Those conclusions flow from the opening words of the subclause 'Without limiting the matters that may be taken into account' and the words 'where relevant'.

2.10 People interested in a matter have sought to stress particular factors in the list or other factors that their perspective regards as of deciding importance. For example the Business Council of Australia and the Department of Industry Science and Technology, while not objecting to the requirement of the test being broad ranging, suggest that the other factors in the list detract from the importance of competitiveness and efficiency. The Australian Chamber of Commerce and Industry see competition, efficiency and growth as being of guiding importance.[2] The Grains Council of Australia has also raised the issue of viewing

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1 Australian Competition and Consumer Commission. Dec 1996. *Access undertaking: A draft guide to access undertakings under Part IIIA of the Trade Practices Act*. Canberra, AGPS, pp 9-14.

2 Evidence pp S309, S549, S735-S736, S746, S828 and 480.

competition from an international as well as domestic perspective.[3] Some groups for example unions and local government placed greater emphasis on consideration of social equity issues.

2.11 While it is understandable that there will be differing perspectives on the factors, subclause 1(3) gives no significance to the order of listing.

2.12 The importance of a factor always will depend on the circumstances of a particular case.

2.13 The fact that a matter is specified on the list is an indication of its status as a key public policy consideration that cannot be ignored. Whatever else decision makers decide is relevant, at least they should turn their minds to each of the listed items.

2.14 Further confusion arises because some prefer to refer to a 'public benefit test' rather than a public interest one (for example Queensland and Tasmania).

2.15 Questions have also been raised about whether the assessment of the benefits and costs is a strict cost-benefit analysis and the relative merits of a qualitative versus quantitative assessment.[4] The National Farmers' Federation (NFF), Institution of Engineers Australia (IEAust), Australian Cane Growers' Council Ltd and Warringah Council also stress that the 'public interest test' should be based on long term assessments of costs and benefits.[5] As the National Competition Council (NCC) points out '...It is often the case that the costs of reform are short-term, upfront and concentrated, whereas benefits are often longer term and dissipated throughout the community...'[6] The CPA is silent on both these matters.

2.16 Business has stressed that establishing a clear and consistent means of assessing public interest will, amongst other things, generate greater business certainty.[7]

2.17 The ultimate decisions on the weighing up of the costs and benefits are basically political ones, to be justified by the Parliament and in the final analysis by the electors. The public interest process provides a discipline to assist this.

Application of the 'test'

2.18 The Committee's task is to consider appropriate means for applying the 'public interest test'. To be more accurate, to consider what processes governments should adopt when they are considering the matters to which subclause 1(3) applies.

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3 Grains Council of Australia Evidence p S944.

4 Evidence pp S279, S290, S332, S341-S342, S563, S621-S622, S637, S736, S898, S945, S974, S1064, S1149, 62 and 105.

5 Evidence pp S549, S555, S828-S829, S890, S1122 and S1151.

6 National Competition Council. Nov 1996. *Considering the public interest under the national Competition Policy*. Notting Hill, Fineline Printing Pty Ltd, p 11.

7 BCA and ACCI Evidence pp S736, 213 and 465.

2.19 Subclause 1(3) is relevant to:

- certain aspects of competitive neutrality;
- the structural reform of public monopolies; and
- the legislation review process.

2.20 As noted in Chapter 1, policy statements on competitive neutrality and legislation review had to be prepared by each jurisdiction by June 1996. Jurisdictions are also required to report to the NCC annually on progress in achieving those objectives. The first annual reports are due in mid 1997.

Competitive neutrality policy and principles

2.21 The CPA describes competitive neutrality as the elimination of resource allocation distortions arising out of public ownership of entities engaged in significant business activities: Government businesses should not enjoy any net competitive advantage simply as a result of their public ownership. The Committee believes the policy means that government businesses should not suffer a competitive disadvantage either.

2.22 The competitive neutrality policy applies to:

- entities that are publicly owned;
- which are engaged in significant business activities; and
- not to the non-business, non-profit activities of the entity.

2.23 Competitive neutrality policy can in a sense be seen as complementary to legislation review, since there may be circumstances where competitive neutrality cannot be applied because the barriers to a competitive environment are imposed by legislation. For example, where the government business activity is given a statutory monopoly.

2.24 The agenda for the application of the competitive neutrality principles is a matter for each government to decide.

2.25 When a government is applying the policy and the principles to a particular business activity it has first to decide how the principles set out in subclauses 3(4) and 3(5) are to be applied, for example whether a corporatisation model is to be adopted or whether full government taxes are to be imposed. It is in the area of how the principles are to be applied (and not the application of the policy or the setting of the agenda) that subclause 1(3) has its relevance.

Competitive neutrality policy statements

2.26 The policy statement and future annual reports required by subclauses 3(8) and 3(10) would seem to be a convenient and useful vehicle in which to set out the processes and mechanisms the parties will follow in deciding whether the principles in subclauses 3(4) and 3(5) are appropriate to the particular agency when the parties are taking into account relevant factors whether specifically referred to in subclause 1(3) or not.

2.27 The jurisdictions have pursued independent approaches to this and there is no consistency to whether this documentation should contain the detail of the public interest application methodology.

2.28 All jurisdictions have largely retained these decision making processes within government.

2.29 Queensland has prepared an *Overview of competitive neutrality public benefit test guidelines*. The approach employs a stakeholder analysis-type methodology; does not involve economic modelling and is not based on conventional cost-benefit analysis; a Steering Committee established by the portfolio department oversights the process rather than the significant business unit; the process involves assessing the existing situation and the incremental benefits and costs from the reform; specifies the factors to be taken into account including five in addition to subclause 1(3); and recommendations are presented to Cabinet.

2.30 South Australia advised that it is taking a case-by-case approach to the 'public interest test' and '...has not developed any detailed guidelines or formal processes to be followed...'[8]

2.31 Western Australia provided few details of process in its policy statement but elaborated on its approach to public interest tests in its submission to the Committee. It interprets public interest as an economic rather than a legal concept. Where appropriate it says it adopts a 'benefit cost' analysis approach though recognising that many matters cannot be quantified. In the later instances the weighing process is more subjective. It focuses on the impact of the 'matters' in subclause 1(3) on the change being examined. Its analyses are conducted in accord with the principles of transparency, objectivity and achieving a balance of input from interested parties.[9] Guidelines on the legislation review process have been issued and these deal with public interest matters. The same basic approach in this regard will apply in relation to competitive neutrality.

2.32 The Commonwealth states that its greatest challenge is the Non-GBE authorities as most Government business enterprises (GBEs), share linked companies and business units already comply with competitive neutrality requirements. Some of the Non-GBE authorities are being assessed in 1996-97 with a Task Force chaired by Treasury to establish a timetable and detailed implementation strategy for reviewing the rest. The Task Force was to report by March 1997 but a copy of that report was not available at the time of drafting. The Commonwealth has not prepared guidelines on public interest.

2.33 Application in the ACT has been through a government task force which will review all significant business enterprises on a case-by-case basis and consider the need for restructuring. The task force will report to government on scope and timing for reform including strategies for consultation. Costs and benefits to be taken into account were also listed. A consultative committee with stakeholder representation will provide monitoring and advice on implementation together with normal public scrutiny avenues such as Estimates Committees, etc.

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8 Government of South Australia Evidence p S1128.

9 Government of Western Australia Evidence pp S1057-S1058.

2.34 Northern Territory has identified its relevant agencies: with commercialisation policies, guidelines and procedures to be implemented by 1 July 1997.

2.35 Tasmania is applying the corporatisation model to the listed business enterprises. By July 1997 other agencies are to provide Treasury with a statement of the application of the competitive neutrality principles to their significant business activities including an implementation timetable. Detailed guidelines for undertaking public benefit and cost assessments were issued in March this year and apply to both competitive neutrality and legislation review.

2.36 Victoria outlined some of the costs and benefits associated with the two competitive neutrality models (that is, one for corporatisation and the second for other significant business activities) and how they are to be applied for weighing benefits and costs.

2.37 In NSW the onus will be on the government business to show that economic and social costs of implementation outweigh the economic and social benefits. Cost-benefit analysis will be undertaken by government businesses that seek exclusion from implementation.

Structural reform of public monopolies

2.38 In the case of the structural reform of public monopolies each party is free to determine its own agenda for the reform of public monopolies. Where a public monopoly is up for reform in accordance with the agenda the party has set, a review has to be undertaken into certain aspects which are set out in subclause 4(3). Most of these matters will involve the application of subclause 1(3).

2.39 There are also close links between structural reform of public monopolies and legislative review, for example the review of the *Broadcasting Services Act 1992* has competition policy issues as a strong feature and the reform of statutory marketing authorities is proceeding through legislative review.

Legislation review

2.40 The Commonwealth, States and Territories were obligated to develop a timetable, by June 1996, for the review, and where appropriate, reform of all existing legislation that restricts competition by the year 2000. This is an enormous task with some 1800 pieces of legislation being listed for review. The number of legislative Acts under review differ significantly between jurisdictions (98 Commonwealth, 190 NSW, 441 Victoria, 163 Queensland, 242 Western Australia, 160 South Australia, 213 Tasmania, 92 in Northern Territory and 126 ACT).

2.41 Reviews of existing legislation are to assess and balance the costs and benefits of the restriction on competition.

2.42 The parties are to require proposals for new legislation that restricts competition to be accompanied by evidence that the legislation is consistent with the principles that:

> legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:
>
> (a) the benefits of the restriction to the community as a whole outweigh the costs; and
>
> (b) the objectives of the legislation can only be achieved by restricting competition.

2.43 Once a party has reviewed legislation that restricts competition under the principles set out in subclause 5(3) and 5(5) then it should be systematically reviewed at least once every ten years.

2.44 The CPA recognises that the review of legislation may have a national dimension. If the party responsible for the review considers that the review should be a national review, that party is required to consult with other interested parties to the CPA before it determines the terms of the reference. It may request the NCC to conduct the review. Thus the responsibility for deciding whether the review should be a national one, and if so who should conduct it and what should be the terms of reference, rests with the initiating party.

2.45 By virtue of subclause 5(1), the 'public interest test' applies to assessing and balancing the costs of the legislative restrictions on competition only. The consideration of alternative means of achieving the objective is an additional issue. Also, the issue in this case is whether the benefits to the community *as a whole* outweigh the costs.

2.46 This has caused some debate whether a 'dollar terms' cost-benefit methodology is required here. For example the methodologies favoured by Queensland, Victoria and Western Australia adopt a cost-benefit analysis approach where appropriate. Victoria initially undertakes a risk analysis, and where this supports government regulation, proceeds to a full cost-benefit analysis. The cost-benefit analysis requires all major costs and benefits to be quantified though the analysis goes beyond just economic costs and benefits. The Industry Commission noted that the Regulation Impact Statement (RIS) guidelines used by the Commonwealth in its legislation review process states costs and benefits are not limited to dollar measures.[10] The Public Interest Advocacy Centre and the IEAust question the utility of a monetary approach.[11] The Committee accepts the use of both quantitative and qualitative assessments where appropriate.

Legislation review timetable

2.47 The parties have prepared their timetables for the review of existing legislation. Some of those documents incorporate methodology for undertaking the reviews; others do not.

2.48 Western Australia, the Northern Territory and South Australia have provided timetables only.

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10 IC Evidence p S563.

11 IEAust Evidence p S1149 and Public Interest Advocacy Centre. Jan 1997. *Community participation in pro-competition legislative review: Information paper: Draft.* Sydney, Public Interest Advocacy Centre, pp 14-15.

2.49 As discussed under competitive neutrality Western Australia elaborated on its general approach to public interest in its submission to the Committee. More specifically in relation to its legislation reviews it stated the appropriate Minister is responsible for the review process with the Treasury Competition Policy Unit advising on terms of reference and appropriate procedures to conduct the review.[12] Guidelines have now been developed on the review process which discuss the public interest issues. Regulatory Impact Statement guidelines will ensure new legislative proposals conform with the CPA.

2.50 In its submission to the Committee, South Australia noted that its approach is case-by-case, no detailed guidelines or formal processes to be followed, with assessments involving close consultation between responsible agencies and the Department of Premier and Cabinet.[13]

2.51 The Commonwealth states that the method of review will take account of its significance and the likely benefit of reform. Several methods are noted:

- in some, independent committees of inquiry are to be established;
- in others, the Industry (Productivity) Commission or the NCC will undertake the review; and
- in others, where the costs are not warranted, the reviews will be done by officials.

2.52 All Commonwealth review processes will involve public consultation with those affected. The Commonwealth also resolved that its legislation reviews would be progressed in a manner consistent with the Guidelines for Regulation Impact Statements (RIS). There is a substantial degree of similarity between the RIS and issues to be addressed by the 'public interest test'.[14] The Office of Regulation Review will advise Government on the operation and progress of the reviews.

2.53 Queensland's timetable document discusses possible review options and foreshadows a comprehensive methodology including guidelines for assessing costs and benefits and a software package to assist departments to work through the process. A 'Summary of Public Benefit Test Guidelines' has now been produced. There are major and minor reviews and consultation and input from relevant stakeholders. Regulatory impact statements are prepared for significant new legislation.

2.54 The Victorian timetable document allocates responsibility for commissioning reviews, foreshadows steering arrangements for each department and procedural guidelines and methodology guidelines which are to include appropriate approaches to the assessment of costs and benefits. The guidelines, now issued, are comprehensive and suggest four general models (from public to inhouse) depending on the scale/priority, independence and consultation required in the review. Separate Cabinet and subordinate legislative procedures test new legislation for consistency with the guiding legislative principle.

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12 Government of Western Australia Evidence pp S1057-S1058.
13 Government of South Australia Evidence p S1128.
14 IC Evidence pp S563-S564.

2.55 No review methodology is set out by NSW, but it is stated that NSW agencies which are undertaking reviews will undertake consultation with interested groups and affected parties to ensure that all aspects of the public benefit are considered. However, the document *From red tape to results*[15] which is a manual on regulatory review is relevant.

2.56 The ACT's stated emphasis is on self assessment by individual agencies. Reviews and examination of proposals for new legislation are to be guided by 'Regulation Review Guidelines' which are in the course of preparation. The outcome of reviews are to be independently assessed by the Office of Financial Management and the Attorney-General's Department.

2.57 Tasmania's timetable document contains much information on the legislation review program procedures and guidelines. It is also stated that more detailed practical guidelines for assessing public benefit will be developed by the Regulation Review Unit early in 1996-97. These have now been issued.

2.58 From the diverse nature of the timetable documents, it would seem that there has been very little coordination between the jurisdictions and this is commented on in the evidence.[16] This is an area where some sort of common approach would have been beneficial. Some of the policy statements including those of South Australia, NSW, Queensland and Tasmania point to areas where joint reviews might be undertaken. South Australia and Victoria have recently agreed on terms of reference for a joint review of the Australian Barley Board Act. A commendable initiative to facilitate coordination is the decision by the Agricultural and Resources Management Council of Australia and New Zealand, the peak body of agricultural and resource Ministers, to set up an NCP Contact Group to address coordination for agricultural legislation. Unfortunately to date the Group's main success has been in facilitating information flows.[17]

2.59 No national reviews have been initiated to date though efforts were unsuccessfully made for a national review of dairy legislation. There is potential for national reviews in any of the protected registered professions and occupations such as dentists, pharmacists, newsagents and optometrists. In their timetable some jurisdictions including Tasmania, NSW, Queensland and the ACT specify areas for possible national review. The importance of national reviews was alluded to in some of the evidence.[18] The Committee can see manifest advantages in their being national reviews of legislation that restricts competition in the several jurisdictions, rather than diverse separate reviews, and would urge all governments, possibly through the Council of Australian Governments to work towards this end.

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15 New South Wales. The Cabinet Office, Regulatory Review Unit. Feb 1995. *From red tape to results: Government regulation: A guide to best practice*. Sydney, New South Wales, Cabinet Office, Regulatory Review Unit, 49p.

16 IEAust and PIAC Evidence pp S1064, S1148 and 364.

17 See Nash J, Fagan M and Davenport S. Office of Rural Communities, NSW Agriculture, Orange. Jan 1997. Some issues in the application of competition policy to agriculture. Contributed paper to the *41st Annual Conference of the Australian Agricultural and Resource Economics Society, Gold Coast, 22-24 January 1997*. Unpublished, p 8.

18 IEAust Evidence pp S1065 and S1150.

Process

2.60 Evidence to the Committee and the policy statements and associated documentation point to a number of significant factors that should be included in the 'public interest test' process.[19] Most of the issues raised, and ultimately the process itself, are simply good commonsense. However, from the evidence available it is clear that there is still room for improvement in how the 'public interest test' is to be applied and processes and procedures are still being developed.

2.61 The NCC has suggested that it '...does not see a requirement for governments to undertake a formal assessment of the public interest where the net benefit to the community from a reform measure is clear.'[20]

2.62 In undertaking its task the Committee is of the view that a framework process that provides consistency of approach through the various jurisdictions would assist the public.

2.63 As previously highlighted, essentially, the ultimate decision as to the weighing up of the merits and costs and benefits is one to be made by the relevant government. While the process may involve the government receiving assistance or advice from some outside body, it is the individual government which takes responsibility for the decision and who must answer for it. This fact will colour how the whole process is structured in each jurisdiction and will inevitably mean that there will be differences, which are sometimes substantial, in how each of the parties deal with the issues.

2.64 The major principles jurisdictions should follow are transparency, objectivity, analytical rigour and achieving a balance of input from relevant and interested parties. These principles are also reflected in the NCC's expectations.[21]

2.65 Transparency should be the overarching concept. It goes to the heart of concerns about implementing competition policy and is equally important to business, unions and community organisations.[22] Transparency means that the processes need to be laid down in advance and publicised. The statements required by the CPA or the annual reports prepared by jurisdictions on their progress may be a good place to set out the general approach. Some States, for example Queensland, Tasmania, Western Australia and Victoria, have adopted an approach of this nature by way of detailed supporting documentation/guidelines. The Committee believes all jurisdictions should do this.

2.66 Parties first need to work out what the process is to be.[23] They will need to decide for example whether to have different procedures for different types of decisions and for minor and major matters. This is the route followed by several jurisdictions including Victoria, Queensland and Tasmania in relation to their legislative reviews. In the case of the

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19 Council on the Ageing and NFF Evidence pp S279-S280, S549 and S553-S556.

20 National Competition Council op cit p 17 and see p 10.

21 NCC Evidence pp 247-248.

22 Evidence pp S59, S106-S108, S255, S256, S354, S651-S652, S736, S802, S899, S957, S976, S1147-S1151, 3, 10, 16, 105, 213, 447 and Public Interest Advocacy Centre op cit pp 7-11 and 15-17.

23 NFF and Grains Council of Australia Evidence pp S556 and S957.

legislation reviews, decision makers will also need to consider if coordination is necessary with other jurisdictions or whether a national review is called for depending on cross jurisdictional or national dimension or effect.

2.67 The process should ensure that interested persons have the opportunity of knowing that a 'public interest' assessment is being proposed in relation to a matter and of submitting their views. Maintaining a register of groups known to have an interest in particular matters and making sure those groups are informed is one suggestion, though this should not be the only method. Newspaper advertisement is another. The nature of the inquiry could be expected to have a bearing on the route chosen.

2.68 A decision also has to be made on who is to undertake the assessment. The Hilmer report advocated independent reviews for legislation but this was not included in the CPA. Given the diversity of matters that are likely to involve the 'public interest test', it is not possible to put forward one model that will fit all. A major independent review might be quite the thing for one matter of high priority and impact, but quite unnecessary in another. Whatever the particular model chosen, and this includes the choice of persons or bodies who are to make decisions, assessments or recommendations, there must be confidence as to the integrity and objectivity of the process.

2.69 The Grains Council of Australia also raised the concern of not duplicating studies that have already been undertaken by reputable third parties.[24] Most states have woven the processes around existing reviews.

2.70 Input from the public and government will be facilitated by clear terms of reference[25] which identify the factors, whether in the list of factors set out in subclause 1(3) or otherwise, that the decision maker believes is relevant. For example Queensland lists five additional factors to be taken into account in weighing up competitive neutrality. This would not prevent the public and others from pressing other factors thought to be relevant.

2.71 There needs to be adequate opportunity for interested persons to input their views to the inquiry or review, and the process should be such that people can be confident that their submitted views will be given due consideration and taken into account. In other words, the consultation process[26] must be and be seen to be bona fide.

2.72 Once a decision is made, the result must be made publicly known.[27]

2.73 There is then the question of a possible review[28] or reconsideration of a decision made in relation to the application of the 'public interest test'. The actual decision itself is more than likely to be made by government itself, acting on advice or recommendations as to the public interest issues. In such cases, any review or reconsiderations would seem to be more appropriate at the earlier stage. Also, some matters might be quite minor, and this could influence whether a review is necessary and if so, what form it should take. But, however the

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24 Grains Council of Australia Evidence p S945.
25 IEAust Evidence pp S1147 and S1150.
26 Evidence pp S163, S254, S256, S279, S340-S341, S345, S354, S390, S623, S642, S736, S975, S1150, 105, 136-137, 364, 366 and Public Interest Advocacy Centre op cit 26p.
27 ACTU Evidence p S802.
28 IEAust Evidence p S1150.

whole process is structured, as a general principle, there should always be provision for a review/reconsideration of the outcome of the 'public interest test' examination where that examination was carried out by a person or body with a close involvement with the activity in question, and that review/reconsideration should be conducted by a person or body with no such involvement and who is independent of the primary decision maker. It is not suggested that this needs to be someone outside the government, for example one suggestion is that this could be the agency responsible for coordinating the government's national competition policy implementation. Implicit in a review/reconsideration is:

- the initial decision and the reasons for it need to be publicly available;
- interested people need to be given a reasonable opportunity to input their views to the reviewing body; and
- bona fide consideration of the issues by the reviewing body.

2.74 Decisions in relation to matters which are subject to the application of the 'public interest test' do not necessarily have final and irrevocable outcomes.[29] For example, later circumstances may dictate that a competitive neutrality principle is no longer appropriate to a significant business activity. There should therefore be a commitment by the parties to revisit a matter should the position change or the anticipated benefits not eventuate. In any reconsideration of the public interest issues, similar processes to those that were applied to the initial consideration should be followed.

2.75 The Committee has alluded to the apparent lack of coordination by the parties in the preparation of the legislation review statements (see para 2.58). The same comment can be made about the processes that apply generally to the application of the 'public interest test'. Some consistency of approach through all jurisdictions would obviously be of benefit to those who have to deal with similar issues in more than one part of Australia. This does not mean that everything need be exactly the same, but at least all the issues set out below should be common, and to achieve this will require more coordination than has been evident to date.

2.76 **Recommendation 1**

The Committee recommends the following as necessary components of the 'public interest' process:

a) Responsibility for commissioning reviews (ie terms of reference, nature of the review and reviewers) should be taken at Ministerial level;

b) The nature of the review should be determined taking into account the significance, importance, diversity and sensitivity of the issue to be considered;

c) Clear terms of reference should be developed for the review including identification of the factors, whether in the list of factors set out in subclause 1(3) or otherwise, that the decision maker believes is relevant. Terms of reference should be agreed by the relevant Minister;

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29 Grains Council of Australia Evidence p S944.

d) The process and its timing should be as transparent as possible;

e) A plan of the review should be developed including details of the nature of the review to be used, resources and funding, and specify key dates (start, end, advertisement, call for submissions, closing date for submissions, reporting);

f) Consideration should be given to variations of the process for example joint review, national review, etc;

g) Methodology used for weighing up the benefits and costs should take account of both quantitative and qualitative data;

h) The review should consider the overall, wider consequences and impacts of the decision;

i) Level of consultation may vary with the significance, diversity and sensitivity of the review. Consultation should involve key stakeholder groups;

j) Where possible reviewers should be independent of the existing arrangements with more significant, more major and more sensitive reviews demanding greater independence;

k) Where reviews are undertaken by persons closely involved in the activity in question, there should be provision for a review or reconsideration of the initial conclusion by some person or body independent of the relevant activity;

l) Results of reviews and relevant key stages in the review process shall be publicly available;

m) Where a matter is reconsidered at a later date, similar processes to those that applied to the initial consideration should be followed; and

n) The Parties should coordinate their efforts to achieve a common set of basic principles to apply the 'public interest test' as outlined in (a) to (m) above.

The Committee recommends all jurisdictions should publish guidelines encompassing the application of the 'public interest test'.

CHAPTER THREE

COMMUNITY SERVICE OBLIGATIONS

Introduction

3.1 '...CSOs are goods and services which government businesses are required or expected to supply to certain sections of the community on a non-commercial basis. They generally relate to governments' broader policies or social goals...'[1] Such policies have been pursued by all three levels of government over many years.

3.2 Well known examples of community service obligations (CSOs) are the provision of services in rural and remote areas at similar rates to metropolitan areas, concessions of various sorts to pensioners, bulk billing arrangements under Medicare and input CSOs such as government procurement programs like 'Buy Victoria' as well as various ethnic, gender and regional employment initiatives.

3.3 Most CSOs provide essential services such as health services, water, sewerage, electricity, public transport and mail services and operate in ways which impact directly on social welfare. CSOs are critically important in ensuring those services are provided to lower income and/or socially disadvantaged groups and to those in rural and regional areas and in minimising price differences between those areas and metropolitan areas.

3.4 The total annual cost of CSOs provided by government business enterprises (GBEs)[2] has been estimated by the Industry Commission to exceed $3 billion.[3]

3.5 Until recently '...CSO policies often lacked transparency, detracted from the efficiency and financial performance of GBEs and were frequently delivered inefficiently and ineffectively...'[4] They suffered from conflicting objectives, were protected by legislation, costs were inadequately monitored and there was poor targeting and delivery.[5]

3.6 For example there is a common belief that the CSO in the postal area is basically designed to provide a reasonable mail service to regional and sparsely populated areas. However, when disaggregated most of the CSO goes to outlying urban areas.[6]

3.7 In the early 1990s NSW, Victoria, Queensland and the Commonwealth developed CSO policies in the context of improving the management of their GBEs. Many GBEs and parts of the services of others operated under monopoly status. A national perspective to

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1 National Competition Council. Jan 1997. *Competitive neutrality reform: Issues in implementing clause 3 of the Competition Principles Agreement*. Canberra, AGPS, p 20.

2 The terminology used varies between jurisdictions The term GBE is used in this report.

3 Industry Commission. Feb 1997. *Community service obligations: Policies and practices of Australian governments.* Information paper. Canberra, AGPS, p 20.

4 Ibid p 1.

5 See IC Evidence pp S753-S755.

6 Treasury Evidence p 241.

CSO policies was developed under the Council of Australian Governments (COAG) through the Steering Committee on National Performance Monitoring of Government Trading Enterprises[7] (hereinafter referred to as the Steering Committee). Competition policy reform reinforces those policy changes and has provided the framework (or part thereof) for some of the more recent policy statements of the other States and Territories.[8] The NSW and Victorian policies have led the way for other jurisdictions.

3.8 The general aims of CSO policies are to ensure social objectives are achieved and to improve the commercial performance of GBEs.

3.9 The policies provide consistent frameworks for identifying, costing, reviewing, funding, delivering and in some cases monitoring CSOs. Those components are interrelated. Some jurisdictions have supplemented their policies with guidelines on particular components.

3.10 The impact of competition policy has raised concern in the community about the ongoing provision of CSOs, in terms of both the service and its cost, even though the Competition Principles Agreement (CPA) contains '...no mechanisms or incentives for governments to reduce their commitment to the effective delivery of these CSOs.'[9] The importance of CSOs to the community was very forcibly put by the Community and Public Sector Union (CPSU) which stated '...CSOs are not marginal, to the poor and powerless,...'[10]

3.11 The business community want change to CSO policy as many consider they bear a substantial proportion of the costs of CSOs because of cross-subsidisation and this affects their competitiveness and ability to provide jobs.[11] The Business Council of Australia (BCA) suggests that competition policy reform provides an opportunity for the Commonwealth and States to address the CSO issue from a national perspective. It believes this would facilitate community acceptance and ensure that inadequate approaches do not limit the introduction of competition reforms.[12] The need for such a perspective is supported by a number of groups.[13]

3.12 The Committee has been asked to examine the impact of competition policy reform on the efficient delivery of CSOs, including an assessment of existing policies relating to CSOs and options for the delivery and funding of these services. Further comment on the impact of competition policy on CSO delivery and funding by local government is examined in Chapter 4.

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7 Steering Committee on National Performance Monitoring of Government Trading Enterprises. April 1994. *Community service obligations: Some definitional, costing and funding issues.* Canberra, SCNPMGTE, xi 57p.

8 For details of history see New South Wales Government. July 1994. *A social program policy for NSW Government trading enterprises*. Sydney, NSW Government, p 3.

9 Australia. Parliament. Senate. 29 Mar 1995. Competition Policy Reform Bill 1995: Second Reading Speech. Senator Crowley. *Parliamentary Debates*. Canberra, AGPS, p 2435.

10 CPSU Evidence p S63.

11 ACCI and BCA Evidence pp S16 and S737.

12 BCA Evidence p S740.

13 MAV Evidence p S838.

Interpretation of CSOs in the CPA

3.13 'The CPA places an obligation on governments to address CSO issues in implementing competitive neutrality principles. In particular, the means by which CSOs are funded...'[14] These provisions also require that CSO arrangements do not confer competitive advantage or disadvantage on government businesses.

3.14 As well, CSOs which are dependent on anti-competitive legislation will be affected by the agreement to review all legislation restricting competition; in reviewing monopolies governments are required to consider the merits and best means of funding and delivering any mandated CSOs; in establishing their pricing oversight arrangements for GBEs State and Territory governments are to have regard to any explicitly identified and defined CSOs; and where relevant, CSOs are one of the matters to be considered in applying 'public interest test'.

3.15 More generally, the CPA is expected to '...facilitate a more careful and systematic consideration of the delivery of community service obligations...by State and Territory governments where they decide to undertake structural reform of their business enterprises...'[15] This should contribute to improved performance in achieving social objectives, improved financial performance of government businesses and greater accountability.[16]

3.16 In addition, several sectors in which CSOs exist - electricity, gas and water - are also affected by related NCP reforms in those sectors.

Definition

3.17 The CPA does not provide a definition of CSOs, it leaves it to individual jurisdictions to decide.

3.18 There is not a unanimity of opinion on what exactly are CSOs. One view is quite expansive, extending to the whole of the public service itself.[17] Another is that CSOs are minimum standards for delivery that should be available anywhere in the country.[18] The definitions used in the jurisdictions' policy statements are more focused.

3.19 The general basis for the jurisdictional definitions is the following definition proposed by the Steering Committee:

> A Community Service Obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs which it would not elect to do on a commercial basis, and which the government does not

14 National Competition Council op cit p 20.
15 Australia. Parliament. Senate op cit p 2435.
16 ACCI and NFF Evidence pp S18 and S557.
17 CPSU Evidence pp S61 and S347.
18 NFF Evidence pp S558, 224 and 226.

> require other businesses in the public or private sectors to generally undertake, or which it would only do commercially at higher prices.[19]

3.20 The Steering Committee definition has been accepted by most jurisdictions though with some amendments. For example: the NSW Government requires the government directive to identify a specific social objective; the Victorian Government states that both directives to carry out an uncommercial activity and directives to cease carrying out an activity not in the public interest (though it may be in the commercial interest of the GBE) may be CSOs, for example a GBE discharging waste water; the Tasmanian Government requires the CSO to be a net cost to the GBE; and the definition adopted by the NSW and ACT Governments also depends on the method of funding[20] with non-commercial activities which fulfil other criteria but have no funding described as quasi-CSOs. Details of the jurisdictional definitions are set out at Table 3.1.

3.21 The National Competition Council (NCC) points to the Steering Committee definition in its discussion on CSOs.[21]

3.22 The common threads of the definition are:

- the purpose of a CSO is to provide an identifiable social or community benefit which otherwise would not be met, either in support of specific sections of the community or the community at large. The latter type are sometimes called 'universal service obligations'[22];

- the service would not otherwise be provided as a commercial decision, or may otherwise be provided on a different commercial basis; and

- its provision is a specific requirement of government imposed on the providing agency thus clearly making the decision ultimately a government one. Some government agencies which provide services for the community on a non-commercial basis, although not directed to do so, class these as CSOs of an implicit kind. NSW and the ACT describe these as 'community services'. There are then services provided by corporations, including government-owned corporations which are provided below cost to show that the provider is a good 'corporate citizen' which are not considered CSOs. Examples include Australia Post's registered mail service and the uniform electricity tariffs of the State Electricity Commission of Western Australia.[23]

3.23 Some applications of the CPA reinforce the need to make CSOs explicit. The Pricing Oversight principles require regard to be had to 'any explicitly identified and defined' CSOs, while Structural Reform of Public Monopolies refers to 'the best means of funding and delivering any mandated community service obligations'.

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19 Steering Committee on National Performance Monitoring of Government Trading Enterprises op cit p xi.
20 Industry Commission op cit pp 7-8 and 10.
21 National Competition Council op cit p 20.
22 See Council on the Ageing Evidence pp S281-S290.
23 IC Evidence p S754.

Table 3.1 Australian governments' definitions of CSOs

NSW

'To be proposed and approved as a CSO...an activity must satisfy the following criteria:

- it would not be pursued by a Government Trading Enterprises (GTE) operating on a purely commercial basis;
- it has a specified social objective;
- there is an explicit Government directive to the GTE that the activity should be pursued; and
- funding is from the Budget, or internal funding over the transitional period has been approved by the Treasurer' (NSW Government 1994).

Victoria

'A Community Service Obligation should be defined as arising when Parliament or the executive government expressly requires a government business enterprise to carry out an activity which it would not elect to provide on a commercial basis, or which would only be provided commercially at higher prices' (Office of State Owned Enterprises 1994).

Queensland

Queensland's *Government Owned Corporations Act 1993* broadly defines CSOs as activities that:

(a) are not in the commercial interests of the Governmnent Owned Corporation to perform; and
(b) arise because of a direction, notification or duty to which this section applies; and
(c) do not arise because of application of the following key principles of corporatisation (and their elements) -
  (i) Principle 3 - Strict accountability for performance;
  (ii) Principle 4 - Competitive neutrality.

South Australia

'A Community Service Obligation is defined to arise when a government specifically requires a government business enterprise to provide a concession, a service or to carry out an activity which the enterprise would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sectors generally to undertake, or, which the government business enterprise would only do commercially at higher prices' (Government of South Australia 1996).

Western Australia

The WA Government has adopted the Steering Committee definition (Treasury 1994).

Tasmania

'A Community Service Obligation...is a function, service or concession provided, allowed or performed by a GBE as a result of a direction under the GBE Act or any other Act of Parliament, or a specific requirement in any Act, and which would not have been performed, provided or allowed if that GBE were a business in the private sector operating in accordance with sound commercial practice' (Tasmanian Government 1996b).

ACT

'A Community Service Obligation arises when a government specifically requires a public enterprise to carry out activities relating to outputs or inputs, with identified public benefit objectives, which it would not elect to do on a commercial basis, and which the government does not require other businesses in the public or private sector to undertake, or which it would only do commercially at higher prices' (OFM 1996. Attachment A).

Northern Territory

The NT Government has adopted the Steering Committee definition.

Commonwealth

'A community service obligation arises when the Government specifically requires a Commonwealth organisation to carry out activities relating to outputs or inputs;

- which the organisation would not elect to do on a commercial basis, or which it would only do commercially at higher prices; and
- which the Government does not require other organisations in the public or private sectors to generally undertake' (Department of Finance 1996).

Source: Industry Commission. Feb 1997. *Community service obligations: Policies and practices of Australian governments*. Information paper. Canberra, AGPS, p 10. Including revised section for South Australia from Government of South Australia. Dec 1996. *Community service obligations: Policy framework.* Adelaide, Government of South Australia, [7p].

3.24 The National Farmers' Federation (NFF) suggests that '...where provision of services are to be corporatised, privatised or otherwise removed from the direct control of government, CSOs need to be clearly defined in legislation to ensure that they are understood and have sufficient force to be demanded of independent corporate entities...'[24] Alternatively, the Australian Chamber of Commerce and Industry (ACCI) recommends the directions for the provision of a CSO be set out as a Ministerial Statement to the Parliament and to the GBE concerned and explicitly recorded in the annual report of the GBE.[25]

3.25 In this new commercial environment welfare agencies are concerned that the opportunity to go outside the boundaries of CSOs will be lost. The National Anglican Caring Organisation Network reported that experience from privatisation of water (particularly in the United Kingdom), electricity and other essential services sectors indicate that a lot of the ability to negotiate about services has disappeared and it has become much more hardline.[26]

3.26 Strictly speaking CSOs are provided by government businesses. However, changes in government operations including corporatisation and privatisation of GBEs and the introduction of competitive tendering, has meant that the delivery of the CSO may not be the responsibility of the GBE. Further the Industry Commission points out that where CSOs are competitively tendered to GBEs they are no longer CSOs as the activities are undertaken on a voluntary basis and earning commercial returns.[27]

3.27 In these circumstances some States and Territories including NSW, South Australia and the ACT note that there would no longer be a CSO but a budget funded social program. NSW stresses 'From the Government's perspective, the focus should be on achieving desired social objectives, regardless of whether the GTE [Government Trading Enterprise] is the preferred delivery vehicle or not...The term CSO is retained in a technical sense to describe those social programs which continue to be delivered by GTEs and which will be funded through the Budget.'[28] South Australia describes its CSO policy '...as an interim measure to enable government utilities, or in some cases government departments, to complete their transformation to primarily commercial Corporatised government businesses.'[29]

3.28 On the other hand the Victorian policy statement '...is concerned exclusively with the management of services provided by GBEs...The policy does not cover general government programs which are part of departmental responsibility. Nor does it, at this stage, address those services which are contracted to unrelated third party providers...'[30]

3.29 Alternative delivery mechanisms is a new focus of work in CSO policy.

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24 NFF Evidence p S557.
25 ACCI Evidence p S23.
26 National Anglican Caring Organisations Network Evidence p 73.
27 Industry Commission op cit p 31.
28 New South Wales Government op cit p 1.
29 Government of South Australia op cit [p2].
30 Victoria. Department of the Treasury, Office of State Owned Enterprises. Aug 1994. *Community service obligations: Policy statement and background to policy*. Melbourne, Office of State Owned Enterprises, p 7.

3.30 Confusion surrounding the definition of CSOs is accentuated by this option of contracting, as many government social programs are also provided on a contracted outsourced basis by non-government, non-profit and private sector organisations.[31]

Conclusion

3.31 The Committee accepts the Steering Committee definition of CSOs noting that it requires flexible interpretation or amendment to take account of possible contracting of the delivery of CSOs. All CSOs should be explicitly defined and their details made publicly available for example in legislation, Ministerial directives, annual reports, corporate or business plan, etc. With the introduction of competition in some cases the terminology describing the process of satisfying the social objective will change, but the focus will still be on addressing the social needs.

Identification of CSOs

3.32 There is widespread support for greater transparency of CSOs[32] and this is a key objective of CSO policies.

3.33 All jurisdictions have programs to identify their CSOs which have usually been undertaken as part of a review of all GBE activities. NSW and Tasmania have detailed review (evaluation) systems including published timetables for the review of their CSOs.

3.34 However, the Industry Commission reports that the extent to which the programs have been implemented varies considerably, with NSW's nearing completion and others, such as South Australia, just beginning. The Industry Commission also suggests the Commonwealth needs to improve its performance in this area.[33]

3.35 The Industry Commission also notes that work on input CSOs (that is, directions to GBEs from government about the purchasing and use of inputs) is less advanced than that on output CSOs.[34]

3.36 As well many CSOs should come under rigorous review as part of the competition policy legislative review program and competitive neutrality reviews outlined in Chapter 2. However the extent to which there is intermeshing of the two programs is unclear. The NFF suggests that all reviews of anti-competitive legislation undertaken in pursuit of competition policy include as a standard term of reference a requirement to identify and define any CSO which needs to be preserved.[35] Strictly speaking this should not be necessary as CSOs are specifically listed in the matters to be considered in the 'public interest test'. However, according to Treasury such a term of reference is encouraged at Commonwealth level.[36] It is

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31 PIAC Evidence p 104.

32 Evidence pp S23, S60, S66-S69, S231, S237, S279, S287, S310, S348, S379, S466-S467, S557, S796, S963, S990, 3-4, 24, 63-64, 104, 114, 138, 203, 213, 225, 414, 465 and 477.

33 IC Evidence p 267 and Industry Commission op cit p 16.

34 Industry Commission op cit pp 2 and 16.

35 NFF Evidence pp S557-S558.

36 Treasury Evidence pp 241-242.

unclear whether other jurisdictions have adopted a similar approach. All jurisdictions should consider doing this if they have not already done so for the CSOs that are yet to be evaluated.

3.37 To clarify responsibilities and roles in the process of identifying and delivering CSOs, most jurisdictions have adopted the purchaser/provider or purchaser/producer model which separates out the policy making and funding decisions from service delivery. This assists in putting the responsibility back on government to clearly decide what it wants the CSO to achieve and for whom, and to make those requirements explicit.

3.38 Genuine public consultation in setting CSOs is critical to ensure the government focuses on issues which service users consider most important and to bring the community along with the process.[37] The NSW, Victorian and Tasmanian policies set out distinct approaches in this regard.

3.39 As a result of the evaluation process an explicit decision may be made not to continue funding some CSOs which are no longer appropriate.

Conclusion

3.40 While considerable progress has been made on specifying CSOs, more effort is required of jurisdictions to ensure that all CSOs are clearly identified and appropriately defined. Transparency of CSOs is essential for informed decision making; efficient provision of CSOs; effective targeting of public funds; and facilitating public awareness of the basis of decisions about CSOs.

3.41 **Recommendation 2**

> **The Committee recommends that all CSOs be explicitly defined and their details made publicly available.**

Costing of CSOs

3.42 Costing is also an important component of making the CSO explicit. It is required to: allow the performance of the GBE to be assessed; determine whether the CSO is being delivered efficiently; and where the GBE operates in a competitive market, for reasons of competitive neutrality.

37 Evidence pp S63, S279-S280, S319, S347, S739, S990, 62-63 and 135.

Table 3.2 Australian government policies on CSOs

	Definition of CSOs	*Identification procedure*	*Costing method*	*Funding method*	*Contracting of CSOs*	*Monitoring of CSOs*
New South Wales	Yes	Yes	AC, FDC and FR[b]	DF and CS	Yes	Yes
Victoria	Yes	Yes[a]	AC[c]	DF and CS	Yes	Yes
Queensland	Yes	Yes[a]	AC, FDC and FR	DF, LRR and CS[d]	Yes	Yes
South Australia	Yes	Yes[k]	AC	DF, CS and EL[d]	Yes	No
Western Australia	Yes	Yes[a]	AC	DF[f]	No	Yes
Tasmania	Yes	Yes	AC[c]	CS and LRR[g d]	No	Yes
ACT	Yes	Yes	AC, FDC and FR	DF[h d]	Yes	Yes
NT	Yes	Yes	AC, FDC and FR	DF and LRR[i d]	na	Yes
Commonwealth	Yes	Yes[l]	AC and other	CS and DF	No	No[j]

Notes:

a The identification procedure has been undertaken sector by sector as part of the commercialisation of government business operations.
b The NSW Government has also advocated the use of the 'activity based costing' method.
c Departures from the avoidable cost method are permitted in certain circumstances.
d It is intended that identified CSOs be funded at efficient costs.
f This relates to WA's identified CSOs.
g The policy of the Government is to move towards direct funding of CSOs in the medium term.
h Other funding methods may be also be used.
i This is the policy of the NT Government.
j Although explicit CSOs (like those performed by Australia Post) are reviewed periodically, no overall monitoring program is in place.
k SA GBEs are required to specify the nature and scope of non-commercial operations in their corporate charter.
l Not all of the identified non-commercial activities performed by GBEs and Business Units are recognised by the Department of Finance as CSOs.

Abbreviations AC Avoidable cost; CS Cross-subsidies; DF Direct Funding; FDC Fully distributed costs; FR Forgone revenue; LRR (Accepting a) lower rate of return; EL Explicit levy on consumers

Source: Industry Commission. Feb 1997. *Community service obligations: Policies and practices of Australian governments.* Information paper. Canberra, AGPS, p 4. Modified with additional information from the new policy statements of South Australia and Western Australia.

3.43 The costing of CSOs is the subject of considerable ongoing discussion. The two common methods of estimating the costs are the fully distributed costs method and the avoidable cost method.[38] The latter is generally preferred by jurisdictions as the fully distributed cost method may overestimate the cost of a CSO (see Table 3.2). On the other hand GBEs generally prefer the fully distributed cost method.

3.44 The Steering Committee and the Industry Commission have made significant contributions to clarifying costing issues. However, the Industry Commission notes that many CSOs remain uncosted and there are still widespread differences in the costing methodologies.[39] ACCI suggests the Steering Committee determine 'best practice' or preferred approaches to quantifying CSOs and these be used as benchmarks for measurement purposes for those concerned with evaluating CSOs.[40] The Committee supports working towards the following major priorities identified by the Industry Commission in this area, that is, the expansion of costing programs to include those CSOs that remain uncosted; improvement of the cost information systems of GBEs to permit greater use of the avoidable cost method of costing of CSOs; and greater consistency in costing methods.[41]

CSOs and welfare payments

3.45 An issue related to the identification of CSOs and their costing is the interrelationship between CSOs and welfare payments.

3.46 There is scope for inter-governmental cooperation with regard to welfare transfer payments and CSO policy. For example a Commonwealth pension might qualify someone for a state pension card which entitles them to transport benefits, local government rates benefits, etc which may be CSOs. Those on pensions can become dependent on the CSO as an integral part of their net income. Any reduction in those CSOs could have a substantial impact on those groups. COAG should address the issue of the interrelationships between CSOs and welfare payments and their impact in the community.

3.47 **Recommendation 3**

> **The Committee recommends that the Council of Australian Governments address ways of better coordinating the provision of community service obligations and welfare payments to safeguard the equitable distribution of payments and benefits for all recipients.**

38 Avoidable costs are those '...costs that would be avoided if the organisation was not required to provide the CSO...' (Department of Finance op cit p 105); and '...Fully distributed costs measure the variable costs of...[providing a CSO] plus a proportion of the fixed costs which are not directly attributable to any particular activity...' (Industry Commission op cit p 17).

39 Industry Commission op cit p 21.

40 ACCI Evidence p S15.

41 Industry Commission op cit p 2.

Options for funding

3.48 Funding and delivery of CSOs are particularly contentious issues.

3.49 CSOs can be funded in different ways. Current methods employed are:

- cross-subsidy between different users;
- acceptance of a lower rate of return to the Government to compensate for expenses incurred in providing the CSO;
- direct funding from the budget to the service provider; and
- levies on industry.

3.50 'The methods are not mutually exclusive; and a GBE may have its CSOs funded by different methods.'[42] For example Australia Post CSOs are funded by both cross-subsidy and adjustment to the rate of return.[43]

3.51 The advantages and disadvantages of each method of funding are well documented. Particular attention is drawn to the expositions in the policy statements of the Commonwealth, NSW, Western Australia and Queensland.

3.52 The traditional method of funding CSOs is by cross-subsidisation that is, by charging a higher price to some users to cover the losses incurred by supplying the CSO to others. For example a cross-subsidy pointed to by the ACCI was in the early 1990s NSW electricity industry undercharged residential users by between 13% to 21% depending on the time of day the power was consumed, rural users were undercharged by 36% and business users were generally overcharged by between 9% to 37% depending the volume of electricity used and nature of business.[44]

3.53 The Department of Finance (DoF) says cross-subsidy '...may be a more efficient method of CSO delivery than direct Budget funding because the CSO activity is treated as an integral part of the total operations of the business, and therefore the organisation retains the incentive to apply productivity improvements to the CSO activity; [and] can be combined with price capping to increase pressure on the organisation to supply CSOs efficiently.'[45] Glenelg Shire Council stresses that the removal of cross-subsidy will accentuate the drift from rural to urban centres.[46]

3.54 The major arguments put forward by the jurisdictions against cross-subsidies were: the lack of transparency; economic inefficiencies because of distortion of production and investment decisions by GBEs and consumption decisions by consumers; poor targeting; inadequate monitoring of service delivery; adverse equity effects; unsustainability in a competitive market as the higher prices needed to fund the subsidy to CSOs can be undercut

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42 Ibid p 23.
43 Ibid p 23.
44 ACCI Evidence pp S31-S32.
45 Department of Finance. July 1996. *Guide to commercialisation in the Commonweralth public sector.* Canberra, Department of Finance, p 107.
46 Glenelg Shire Council Evidence pp S787-S788.

by competitors that only supply users which generate profits; and may conflict with competition reform initiatives because of the need to maintain market power.

3.55 ACCI suggests that in the electricity industry such distortion has led to inappropriate development of generating capacity, placement of transmission facilities and the uncompetitiveness of more energy-intensive industries especially smaller companies. The application of cross-subsidies is greatest in monopoly or highly regulated markets where the GBE concerned is at little risk of losing market share. In a competitive market a new entrant would have an incentive to offer cheaper services in the overcharged segment such as happened with Optus/Telstra in the domestic subscriber trunk dialling (STD) niche of the market when it was opened to competition.[47]

3.56 Further, ACCI notes such barriers to competition permit cross-padding practices in GBEs such as over-manning, relatively high remuneration and easier working conditions for employees; impede the take-up and dispersion of new technologies; and act as a break on broader structural adjustment.[48]

3.57 The use of cross-subsidy is not restricted to use in the public sector. There are cross-subsidy from private sector to private sector. The most obvious example is the owner of the family car who subsidises heavy axle vehicle users in terms of the damage done to roads and the resultant road maintenance costs.

3.58 Direct budget funding is the preferred method of funding of all jurisdictions except Victoria which gives in principle support where there is agreement to the scope and cost of the CSO. The Commonwealth is particularly seeking that new CSOs be funded from the budget.

3.59 The major arguments put forward by the jurisdictions in favour of direct budget funding were that it: provides greater transparency; enables the CSOs to be better targeted; improves the performance comparison for the commercial activities of the GBE; greater accountability; equity for taxpayers and consumers; and efficiency in pricing for the GBE.

3.60 For example since the passage of the *NSW Transport Administration Act 1988*, the State Rail Authority (SRA) has been required to act in a commercial manner, with loss making activities at the Government's direction provided under CSO contracts which reimburse the SRA for losses incurred.[49]

3.61 The Commonwealth stresses that given the advantages and disadvantages of each funding method, decisions about the source of funding need to be made on a case-by-case basis.

3.62 Some jurisdictions for example Victoria and Tasmania also acknowledged that direct budget funding may have to be implemented over time due to budgetary constraints and others note that other funding methods may be more appropriate in some circumstances. Table 3.2 lists the funding methods advocated by each jurisdiction. In addition, Tasmania

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47 ACCI Evidence pp S26-S27.
48 ACCI Evidence p S27.
49 Railnet State Rail Authority of NSW Evidence p S200.

stated that direct budget funding will only be considered where the GBE has been fully commercialised.

3.63 Direct funding also is strongly supported by ACCI and Institution of Engineers[50] and preferred by the NCC. The NCC suggests that cross-subsidy is inconsistent with the resource allocation objective of competitive neutrality policy and the objectives of corporatisation support a move away from funding through cross-subsidies and regulatory restrictions on competition.[51] The BCA points out that competition policy reform is not the only factor placing pressure on a move away from cross-subsidies.[52] The ACCI pressed for urgent reform with a move to direct funding of CSOs within the next three years and the phasing out of other methods.[53]

3.64 A contrary view on the appropriateness of budget funding was put by the CPSU. In its view, there will be cases where the loss of dividends from utilities could result in governments being unable to afford the CSOs that were formerly funded by the utilities. The CPSU also believes that if you have competitors operating in the profitable parts of essential services, then they should contribute to the CSOs (as they do in telecommunications) and pay a fair price including long term costs for access to infrastructure.[54]

3.65 DoF suggests direct budget funding 'has the disadvantages of leading to a 'cost plus' approach in the CSO area and hence undermines incentives for efficiency in that area; and requires accurate estimates of costs which are sometimes difficult to achieve.'[55] Further, it may tend to make social goals subordinate to budgetary goals; may make the funding of CSOs more subject to gradual reduction because of changing political priorities or an overall reduction in budget deficits; and may increase the risk of the CSO continuing as it comes up for annual scrutiny in the budget process.

3.66 South Australia, Tasmania and the Northern Territory are also seeking to introduce their policy in a budget neutral manner.

3.67 Funding by the government accepting a lower rate of return on its total operations than similar entities operating in the private sector is another option. Here CSOs are funded from the commercial operations of the organisation without cross-subsidy. DoF points out 'this is less transparent than direct budget funding but may be a more efficient method of CSO delivery than direct budget funding for the same reasons as cross-subsidisation.'[56] Queensland, Tasmania and the Northern Territory use this funding method on occasions.

3.68 'Funding by levies on industry can be applied where the burden of providing the CSO is shared among the CSO provider and competing suppliers or where the industry is clearly a beneficiary of the service and there are no alternative suppliers of the service' according to DoF.[57] For example the Department of Communications and the Arts reported under the

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50 Evidence pp S15, S29-S30, S231 and S741.
51 National Competition Council op cit pp 20-21.
52 BCA Evidence pp S738-S739.
53 ACCI Evidence p S30.
54 CPSU Evidence pp S61-S63, S346-S348, 16 and 135.
55 Department of Finance op cit p 106.
56 Department of Finance op cit p 107.
57 Ibid p 107.

Telecommunications Act 1991 'The cost of meeting the universal service obligation is shared between all participating carriers in proportion to their market share. Carrier market share is calculated on the basis of a carrier's share of timed traffic.'[58] Some union groups see this as providing a comprehensive precedent for other CSOs.[59] Telstra outlined some areas for improvement in the arrangement.[60]

3.69 The Aboriginal and Torres Strait Islander Commission (ATSIC) stressed that an added complication in setting and managing CSOs for Aboriginal and Torres Strait Islander communities is the additional funding provided by ATSIC for service levels. They also point out that existing levels of cross-subsidisation by State and Territory Government utilities do not go far enough to meet the needs of indigenous communities in rural and remote areas now and competition and associated commercialisation of GBEs may exacerbate this situation.[61]

3.70 There is widespread acceptance that none of the funding methods is more appropriate than all others in all circumstances.

3.71 Several jurisdictions including NSW, South Australia, Queensland, Tasmania and the ACT state that while the costs of CSOs will be determined on the basis of actual expenditures incurred, funding should only be provided to meet "best practice" costs. For example the NSW Government only compensates the State Transit Authority for 75% of the cost of providing its CSOs on the basis that the difference is an incentive to overcome remaining deficiencies by moving to world best practice benchmarks.[62] While this may provide an incentive for the efficient delivery of services it may be at the risk of properly satisfying the needs of CSO recipients.

3.72 From evidence presented to the Committee[63] and the Industry Commission's report[64], NSW, Victoria, Queensland and Western Australia have progressed significantly in implementing their preferred option of direct budget funding. For example NSW expects to have all direct budget funding by 1998-99; Western Australia reported that in 1996-97 explicit budget funding was introduced for particular electricity, water and rail services; and Queensland said in the case of corporatised utilities, CSOs have been identified and funded separately by the Government.

Conclusion

3.73 From the evidence available, the Committee concurs with the general view that no one method of funding for CSOs is more appropriate than all others in all circumstances. The approach to funding should be flexible with decisions made on a case-by-case basis. This is consistent with the general approach of competition policy.

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58 Department of Communications and the Arts Evidence p S1016.
59 CPSU Evidence pp S63, S348, 4, 16 and 135.
60 Telstra Evidence pp S680-S683.
61 ATSIC Evidence pp S485-S486 and S990.
62 ACCI Evidence p S30.
63 Evidence pp S300-S301, S1059 and S1157.
64 Industry Commission op cit pp 24-28 and 30.

3.74 **Recommendation 4**

> **The Committee recommends that the funding arrangements for both existing and new community service obligations be transparent and assessed on a case-by-case basis.**

Options for delivery

3.75 Related to the funding issue is the question of how CSOs are to be delivered.

3.76 With the changes to government operations, including the corporatisation and privatisation of GBEs, and the introduction of competitive tendering procedures, it is possible that the actual delivery of a CSO may become the responsibility of another GBE, the private sector or a charitable organisation. However, there is nothing in the CPA that requires privatisation or contracting out. This is entirely a decision for individual governments.

3.77 Other options for delivering CSOs include direct cash transfers to customers and the use of voucher systems both of which received little attention in the policy statements. The main argument against those systems is high administrative costs. ACCI suggested 'Greater use of carefully targeted transfer payments to consumers/users could be made in selected instances where the direct funding of enterprises is not suitable, such as specific areas of social welfare.'[65] The BCA notes that '...While no one method is perfect in every respect, the strong tendency would be to favour direct funding (to the customer), an approach which the Council supports unless there are compelling reasons to the contrary.'[66]

3.78 The CPSU argues that direct delivery is more flexible, cheaper and more efficient.[67] On the other hand the BCA and ACCI and other groups consider service contracts and competitive tendering will improve the delivery of CSOs and reduce the costs.[68]

3.79 Some jurisdictions including Queensland are considering preparing competitive tendering guidelines.

3.80 The Industry Commission found that to date there have been few CSOs contracted out. NSW's policy is that all CSOs will be performed under contract by 1998-99 when budget funding has been confirmed; after the first year of direct funding in 1998-99 Tasmania will examine the possibility of contracting CSO provision to the private sector; and Victoria already has some CSOs provided under contract by the private sector, for example electricity concession discounts are supplied by distributors under contract with the Department of Human Services[69] and a privately operated train runs from Warrnambool to Melbourne with subsidy from the Victorian government. More recently the Victorian Government has announced its intention to: contract out the provision of metropolitan bus and tram services; metropolitan and country rail passenger services; and to corporatise and sell rail freight

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65 ACCI Evidence p S15.
66 BCA Evidence pp S740-S741.
67 CPSU Evidence p S61.
68 ACCI and BCA Evidence pp S15 and S741.
69 Industry Commission op cit pp 31-32.

services. South Australia has also contracted all of its water services while retaining ownership of the infrastructure.

3.81 The inquiry received little evidence on contracting out of CSOs. However, the nature of likely impacts can be inferred from wider experience with contracting and competitive tendering.

3.82 Even if CSOs are provided internally it is likely they will be subject to a contract between the purchasing Minister and the GBE particularly when the organisation adopts the separation of purchaser/provider roles.

3.83 Contractual arrangements are critical when external suppliers are involved. In these circumstances agreed standards of performance and delivery are essential and should be set out as part of the contract for the provision of CSOs. Reliability, stability and quality of service and the social components of a service can be as important as price. The specifications in the contract will be as important to the private sector supplier as they are to the government. Professor Officer stressed that in preparing those contracts government should plan their exit at the same time as they plan their entry, so as to be able to withdraw from an unsatisfactory arrangement.[70]

3.84 The NSW policy is the most well developed with: details of contract inclusions; pricing arrangements; separation of the role of the purchaser and the producer of the service; and allocation of responsibility for CSOs with the relevant portfolio Minister together with the funds to purchase the CSO services. Service contracts will be the main accountability document.

3.85 The issue of making service contracts publicly available is still a matter of debate. Given the importance of transparency in the CSO process, the Committee encourages making such contracts publicly available.

3.86 Before GBEs are privatised decisions have to be made regarding how to handle CSOs. These need to be incorporated into service contracts or legislation which should be very specific and take account of longer term delivery of the service.

3.87 NSW pointed out that consumer protection provisions are also important in the new delivery context with both the consumer protection provisions of the Trade Practices Act and related State/Territory legislation providing important safeguards.[71]

3.88 As well NSW pointed out that hand in hand with opening its utilities and other Government authorities to competition it is developing a plan for consumer protection. Work has been done on consumer protection principles specifically as they relate to state owned utilities and government businesses and addresses best practice themes of universal access, consultation and participation, complaints and redress, information, service standards and pricing.[72]

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70 Professor Officer Evidence p 422.
71 Government of NSW Evidence p S1135.
72 Government of NSW Evidence pp S1135-S1136.

3.89 The pricing oversight arrangements for GBEs add another dimension of protection. For example the NSW Government stated that '...the Government has accepted the need for independent pricing oversight of Government monopoly businesses through the Independent Pricing and Regulatory Tribunal of New South Wales...'[73]

3.90 **Recommendation 5**

> **The Committee recommends that any decision by a party to contract out the provision of community service obligations is most appropriately made on a case-by-case basis. Any contracting arrangement should contain clearly identified performance criteria and exit provisions.**

Reporting and monitoring

3.91 To date less attention has been given to reporting and monitoring the delivery of CSOs. Monitoring is critically important for ensuring that the social objectives that the CSOs is designed to fulfil are, and continue to be, met. It is a task which should be set in place early and evolve as an integral part of implementing CSO policy.

3.92 The possibility of contracting out of CSOs reinforces questions of proper oversight and monitoring of performance of the actual provider. This is not to say that oversight and monitoring are not necessary where the GBE itself undertakes the obligation; but an additional dimension is added where some other organisation which would expect to profit financially from the arrangement is the provider.

3.93 Monitoring and reporting arrangements for the delivery of CSOs are still being developed by most governments. Summary details are set out at Table 3.2. Again NSW provides a model for other jurisdictions.

3.94 Recent changes in transparency of CSOs provide Ministers with better information and an incentive to improve performance in this area. The involvement of relevant consumer groups in the assessment of the effectiveness of individual CSO programs is important and is included in the policy statements of some jurisdictions for example Victoria and NSW.

3.95 Reporting arrangements include reporting on CSOs in the corporate or business plans, annual reports, charters, etc of GBEs with the requirements for doing this specified in the related GBE acts. However, it is not clear that: this is happening in all jurisdictions; the documents in which the information is included are publicly available; and the detail relating to definition, costing, funding and delivery arrangements (particularly contracting information) and the outcomes of annual reviews, etc are provided.

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73 Government of NSW Evidence p S1135.

3.96 For example the Department of Communications and the Arts reported Australia Post publishes an estimate of its of CSOs in its annual report. The value in 1995-96 was $72 million in nominal dollars.[74] However, the Industry Commission pointed out there are difficulties in determining how the figure was calculated.[75]

3.97 Monitoring strategies outlined by the jurisdictions include development of performance indicators; annual reviews by the purchasing Minister sometimes reporting to Treasury/Finance Ministers, other Ministers and/or Parliament often undertaken as part of the budget cycle; longer term reviews; etc. Jurisdictions' use of purchaser/provider models means that the responsibility for evaluation and funding will be in the hands of the purchasing Minister not the GBE. This and contractual arrangements should significantly assist in improving the monitoring process and ensuring clients needs are fulfilled.

3.98 The Industry Commission suggests the implementation of effective monitoring programs which are outcome oriented would improve the delivery of CSOs.[76]

3.99 The focus of CSO work to date has been on definition, identification and costing - attention should now be extended to reporting and monitoring.

3.100 Recommendation 6

The Committee recommends all governments:

a) require their government business enterprises to include in their annual reports and corporate/business plans or other publicly available documents detailed information on the objectives, definition, costing, funding and contracting arrangements for community service obligations; and

b) implement effective monitoring programs for community service obligations and ensure that those programs be outcome oriented.

Overall conclusion

3.101 The Committee firmly believes that CSOs (or equivalent) are an integral part of the system of Government. They are of vital assistance to national economic development through providing a degree of social and economic equity, particularly between regional and metropolitan Australia.

3.102 While past CSOs have lacked transparency; detracted from GBE performance; suffered from confused objectives; and were poorly targeted and delivered, circumstances have now changed for the better. More rigorous policies are now being put in place which are

74 Department of Communications and the Arts Evidence p S1023.
75 IC Evidence p 279.
76 Industry Commission op cit p 3.

leading to a more efficient and effective system which truly meets user needs. Public accountability and monitoring of the new processes must be in place early.

CHAPTER FOUR

IMPLICATIONS FOR EFFICIENT DELIVERY OF SERVICES BY LOCAL GOVERNMENT

Introduction

4.1 Across Australia there are some 750 local councils which expend about 5% ($11 billion pa) of total government spending and in 1995-96 employed approximately 155,000 people.[1]

4.2 While local government makes up only a small percentage of public sector outlays, its importance varies considerably between states and territories and it is the closest level of government and hence highly visible to the community when it comes to implementing national competition policy.

4.3 Councils vary in size from the City of Brisbane with expenditure over $770 million and 800,000 residents, to small country councils with expenditures of less than $1 million. Councils also vary in population density from the inner suburbs of Melbourne such as Port Philip to the large but sparsely populated councils such as the East Pilbara which covers some 380,000 square kilometres.[2] They also vary in the nature of local government business activity. For example, in Queensland local councils have responsibility for an extensive range of business activity such as public transport, water supply and sewerage, whereas in Victoria local government has been divested of water and sewerage services and the distribution of electricity.

4.4 The Queensland Government has stressed '...local government in Queensland has a somewhat different status to local government in other jurisdictions. It is a level of government in its own right and has a range of specific responsibilities and independence.'[3]

4.5 Competition is as important for local government as other jurisdictions. However, there are no specific estimates of the benefits nor costs of the reforms to local government. The Industry Commission's analysis on the growth and revenue implications of the reforms aggregates local/State/Territory government data (see Table 1.1).

4.6 This chapter examines the implications of competition policy reform for the efficient delivery of services by local government, including arrangements that have been developed between State Governments and local government authorities for the implementation of the Competition Principles Agreement (CPA).

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1 The Hon W Smith MP, Minister for Sport, Territories and Local Government. Dec 1996. *Commonwealth, councils and community: Looking ahead: Commonwealth policy on local government*. Canberra, AGPS, p 1.

2 Ibid p 1.

3 Government of Queensland Evidence p S1156.

4.7 Of the submissions the Committee received about a third focused on local government issues. There were few submissions received from business on the arrangements put in place for local government.

4.8 Chapter 1 noted that much to the initial chagrin of local government they were not party to the CPA. The seven State/Territory governments with local councils have ultimate responsibility for the competition arrangements and outcomes for their local government.

4.9 As with other aspects of competition policy there is jurisdictional variation in the way the policy is applied. Some in local government and business however, would like to see as consistent approach as is possible.[4]

4.10 There was considerable uncertainty for local government when the policy was introduced but many of their initial fears now have been alleviated with the availability of more information, analysis and discussion of the issues.

4.11 Significant contributing factors have been the release in February 1996 of the Emcorp report[5] analysing the implications of the competition rules for local government; consultations between local government and the Australian Competition and Consumer Commission (ACCC) on the application of the Trade Practices Act (TPA) to local government culminating in the release in June 1996 of a report on *Local government and the Trade Practices Act*[6]; and the consultations between local and state/territory governments on the preparation of, and the release of the clause 7 policy statements on the application of the competition principles to local government.

Scope of implications for local government

4.12 Both the changes to the legislation and the inter-governmental agreements have implications for local government.

4.13 The ACCC has confirmed that '...the extension of the Part IV prohibitions [of the TPA] to local government by way of State and Territory laws will certainly expose this sector to provisions that previously may not have applied, or were only of indirect application...'[7]

4.14 Regarding the CPA it is generally agreed that at least in the shorter term, the critical impact from National Competition Policy (NCP) is likely to be in the area of competitive neutrality policy and principles, with significant effects in the longer term likely to come from the review of legislation related to local government.[8]

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4 Evidence pp S145, S194, S218, S1074, S1099, 132 and 325.

5 Emcorp Pty Ltd. Feb 1996. *National competition policy: Implications for local government.* Adelaide, Emcorp Pty Ltd, 69p appendices. This study was commissioned by the ALGA with support from the Commonwealth and State Governments through the Local Government Ministers Conference to provide information to assist the three levels of government as they consulted on the issues. For a summary of the Emcorp report findings see Evidence pp S1075-S1076 and Emcorp Pty Ltd op cit pp 45-47 and 69.

6 Australian Competition and Consumer Commission. June 1996. *Local government and the Trade Practices Act*. Canberra, AGPS, vi 18p.

7 Ibid p 14.

8 ALGA Evidence p S1076.

4.15 The effects on local government generally are likely to be minimal from the principles on prices oversight of government business enterprises (GBEs), structural reform of public monopolies and access to services provided by means of significant infrastructure facilities. Most of these findings are reflected in the clause 7 statements.

4.16 The consensus now is that '...the direct and immediate implications of the CPA for Local Government are likely to be more restricted in scope than many in Local Government had expected...'[9]

4.17 Some groups suggest that it would be inappropriate to see the CPA, certainly on its own, as a vehicle for critical change in local government in Australia. More significant efficiency gains are likely to come from other developments affecting local government such as organisational reform, outsourcing developments, comparative performance measures, financial management and accounting systems, etc.[10] All of this makes for a dynamic environment in which local government operates.

Clause 7 statements

4.18 The clause 7 statements set out the arrangements that have been developed between State governments and local government authorities for the implementation of the CPA. An overview of the clause 7 statements is presented here with further comments on the arrangements between the State/Territory government and local authorities included in the discussion in the rest of this chapter.

4.19 Most States, with the exception of Victoria and its compulsory competitive tendering (CCT) policy, have taken a cooperative rather than interventionist approach in dealing with local government.

4.20 The Australian Local Government Association (ALGA) reported that the required consultation with local government in developing the statements varied from valuable to largely superficial[11] but provided no detail on individual jurisdictional performance in its most recent evidence to the Committee. The Municipal Association of Victoria (MAV) points to close cooperation between State and local government in Queensland and Western Australia in developing the policy and notes the contrast to that in Victoria.[12] The Local Government Association of Queensland (LGAQ) reinforced this view of Queensland.[13] On the other hand, many businesses see Victoria as doing well.[14] It is a requirement of the CPA that the clause 7 statements be prepared in consultation with local government. While those statements set out impressive arrangements for consultation, the State/Territory governments should ensure that the process is bona fide.

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9 ALGA Evidence p S1075.

10 Evidence pp S1074, S1080, S1129, 324 and Emcorp Pty Ltd op cit p 47.

11 ALGA Evidence p S1073 and see Evidence pp 162-163.

12 MAV Evidence p S840.

13 LGAQ Evidence p 191.

14 Fair Go Alliance Evidence p 362 and Prescott J. Chairman, Business Council of Australia's Australian Competitiveness Panel and Managing Director and CEO BHP Co Ltd. July 1996. Opening address. *National Competition Policy 'Forum The Way Ahead', Sheraton Towers Southgate, 9-10 July 1996*, p 6.

4.21 The National Competition Council (NCC) has been critical of the approach adopted by some States in implementing the reforms, suggesting the current approach would lead to insufficient action. It points to a tendency by governments to define 'significant' businesses based on size alone, a tendency to devolve responsibility for reform to local government without adequate support or monitoring mechanisms, and the need for incentives for greater local government participation.[15]

4.22 Governments are now expanding on their policy statements for local government with codes of conduct, legislation and guidelines.

4.23 All jurisdictions have outlined complaints mechanisms for dealing with competitive neutrality complaints against councils. Most councils are responsible for undertaking the initial level of investigation. If a complainant is not satisfied they can then refer the matter to the relevant state body. The Fair Go Alliance was critical of the NSW complaints mechanism and is seeking an alternate process which avoids local government being both judge and jury.[16] In Western Australia, only business can complain.

4.24 Most states have left the review of local government legislation to local government's discretion with some specifying timelines and methodology. The Victorian Government is reviewing options for handling local laws and NSW stated that its local councils do not legislate. However, local government acts are to be reviewed by each state government.

4.25 A number of councils, for example Bankstown City Council in NSW, have embraced the reforms to a much greater extent than required by their State government. Many other councils are proceeding too slowly and need to improve performance.

Ongoing concerns

4.26 Despite the clause 7 statement arrangements there are still a number of ongoing concerns regarding the policies that need to be addressed. Legislative concerns are dealt with first, followed by those relating to competitive neutrality and then broader concerns. As implementation progresses and local government gains experience with the policy, new problems may emerge particularly if the policy and/or jurisdictional statements are contravened.

15 *National Competition Council annual report 1995-96*. Aug 1996. Canberra, AGPS, pp 24-25.
16 Fair Go Alliance Evidence p S1099.

Anomalies in exemptions of business activities from the Trade Practices Act

4.27 The ALGA reported it remains a concern to local government that it was not granted the same exemption of certain activities from the application of Part IV of the TPA as were the States.[17]

4.28 Before the enactment of the *Competition Policy Reform Act 1995*, certain activities (but not all) undertaken by State Governments and their agencies were excluded from the operation of the TPA. Now this is not the case, but a special provision was inserted to clarify which State government activities did not amount to the carrying on of a business and so were excluded from the Act. Another provision was inserted to clarify which activities of local government did not amount to the carrying on of business. The two provisions are not the same; there are more 'non-business' activities in the provision that applies to the States. Partly the discrepancy may be explained by differences in function carried out by the two tiers of government.

4.29 However, the particular difference in treatment about which local government feels strongly is that the list of State and Territory activities that do not amount to the carrying on of a business includes the imposition or collection of taxes, levies or fees for licences. This exemption is absent from the local government list.

4.30 It is understood that this exception was not included in the amending legislation at the time because of an absence of demonstrated need.

Conclusion

4.31 The Committee has no objections on policy grounds to the inclusion of a reference to the imposition or collection of taxes, levies or fees for licences in the local government exempting provision if a demonstrated need were shown.

Practicalities of 'public interest' testing

4.32 The ALGA and MAV are concerned that insufficient attention is being given to the practicalities of weighing up the costs and benefits of the reforms. Councils believe they have received little guidance on how subclause 1(3) should be applied.[18] There is also concern that the overall benefits from NCP will be generally applied to individual activities and the Australian Services Union (ASU) raised problems about the 'transaction costs' of introducing competition (including all costs incurred by an organisation in undertaking a competitive process) and Dorset Council pointed to possible escalation of administrative costs in some areas.[19]

4.33 Most State/Territory governments have included in the clause 7 statements some comment on how the 'public interest test' is to be applied at local government level for competitive neutrality and, where appropriate, legislation review. The depth of the information varies from a few lines to detailed guidelines prepared by Queensland for the

17 Evidence pp S145, S317, S322, S600 and S1078.
18 Evidence pp S834, S837, S1071-S1072 and S1078.
19 ASU and Dorset Council Evidence pp S144 and S926.

application of competitive neutrality. The degree of attention given to this matter by Queensland no doubt reflects the size and importance of local government in that state. Some States/Territory governments including South Australia and Tasmania are preparing guidelines.

4.34 South Australia has recognised the particular circumstances of local government in applying the test to competitive neutrality decisions and has included additional considerations specifically related to local government. Those address the items in subclause 1(3) as well as: the impact on actual and potential competitors of the relevant local council business activity; the impact on the local community; and impact on the state and national economies. Additional factors have also been included by Queensland which notes that its list is not exhaustive.

4.35 Queensland and South Australia specifically recognise that both quantitative and qualitative assessments will have to be used, with Queensland noting that a quantitative assessment is preferred.

4.36 The approaches adopted by the State/Territory governments for local government reflect that applied at State/Territory level. The Committee's views on the application of subclause 1(3) are set out in Chapter 2.

Conclusion

4.37 All jurisdictions should provide guidelines for their local councils on the application of 'public interest test'. These guidelines should incorporate the components recommended by the Committee in Chapter 2.

Significant business activities

4.38 Whether the competitive neutrality policy and principle in the Agreement will apply to a particular local government activity will depend on whether it is to be regarded as a significant business activity.

4.39 Table 4.1 shows the range of categories State governments have adopted in determining whether a business activity carried on by local government is 'significant' for the purposes of the competitive neutrality policy and principles. In most cases a monetary threshold, measured in terms of annual revenue, asset base, annual sales turnover, current expenditure, workforce of a certain size, or some combination of these, has been used.

Table 4.1 Definition of significant business activities for local government ($ million)

Queensland	**Type 1** - (corporatisation) activity has current expenditure, in case of water & sewerage enterprises combined, >$25m pa or, in case of other enterprises, >$15m pa in 1992/93 terms **Type 2** - activity has current expenditure, in case of water & sewerage enterprises combined, >$7.5m pa or, in case of other enterprises >$5m pa in 1992/93 terms **(**Above accounts for 15% of local governments in Queensland but 80% of total current expenditure on water & sewerage by all Queensland councils) **Type 3** - smaller business activities - introduce voluntary code of competitive conduct Local government road construction and maintenance work on roads under a council's control is <u>not included</u> as a significant business activity
Victoria	Which model applies depends on the scale of operations and its significance in the relevant market As a guide: **Model 1** (corporatisation approach) - annual revenue of at least $10m or workforce of at least 15 esp revenue bases $10m - $20m **Model 2** (apply to non-commercial local government activities subject to competitive tendering) - apply pricing principles and consider structure & ownership options Exception is if council team were to bid for work outside own municipality then Model 1 applies
NSW	Threshold for corporatisation is $2m for businesses with significant economic impact (but will be reviewed over time by State and local governments) **Category 1** - businesses with expected annual sales turnover (annual gross operating income) of ≥$2m. The business does not need to be formally or legally incorporated as a separate organisation but does need to have accounting and other operations structured so that it is a distinct reporting framework for its operations to council **Category 2** - ≤$2m expected annual sales turnover
South Australia	**Category 1** - business activity with an annual revenue >$2m, or employing assets with a value ≥$20m **Category 2** - all other business activities which generate income or consume resources and which are significant to the local council concerned Decision is one for council
Western Australia	Only required to implement the principles to the extent that benefits outweigh the costs in respect of individual activities >$500,000 annual income. For the purposes of determining the time period regarding this: **Category 1** - local government with annual turnover of ≥$2m (competitive neutrality decision by 1 June 1997) **Category 2** - local government with an annual turnover of < $2m (decision 1 June 1998) Process to be implemented by local government with the Committee and Dept of Local Government having oversight and monitoring role In cases where not introducing competitive neutrality consider applying States 'Costing of government activities model'
Tasmania	List to be developed by councils and reviewed by peer group before reporting to Minister for Finance. Corporatisation to include Public Trading Enterprises and councils list
Northern Territory	Local government body concerned to decide when a particular activity is significant - little application. The following for discussion: **Category 1** - business activity with an annual turnover of >$1m, or employing assets with a sale value >$10m **Category 2** - all other business activities which generate income or consume resources and which are significant to the local government body concerned

Source: Clause 7 Statements

4.40 The ALGA see the use of monetary thresholds as a useful mechanism for prioritising reforms commencing with the most important enterprises in the largest councils. It believes there is a need for a staged approach to the implementation of NCP.[20] The Council of Capital City Lord Mayors (CCCLM) favours the Queensland three tier model (see Table 4.1) and has recommended the NCC assess the model's appropriateness in an Australia wide context.[21]The model's wider application should be approached cautiously because of the peculiarities of Queensland's local government.

4.41 The NCC has been critical of selecting reform candidates based on size alone as it believes this has the potential to severely limit the scope of the reform.[22] More recently the NCC has suggested that:

> ...[it] sees value in a broader test of significance, involving consideration of the impact of an activity on its relevant market...[this] would involve various considerations, for example, about the business's size, its influence on the relevant market, its contribution to the local, state or national economy, the resources it commands and the effect of any poor performance. Size would play a part, but more appropriately in establishing reform priorities in order to achieve the larger reform gains as early as possible.[23]

4.42 Business groups such as the Fair Go Alliance go further and strongly propose all local government business activities be open to competition. It points to instances of councils breaking up their business activity to get below the quantitative threshold or creating businesses for specific projects, etc.[24] Such a proposal is inconsistent with the intent of the CPA.

4.43 On the other hand, the ASU believes the policy points to a narrow interpretation and the application would be limited to a very narrow range of activities undertaken by local government.[25] A similar view was put by the Brisbane City Council.[26]

4.44 CCCLM has drawn attention to the fact that State legislation governing councils may prevent or inhibit the corporatisation of appropriate businesses.[27] Removal of any such legislative restrictions is something that States should consider in the light of the competitive neutrality principles. This is on the agenda of several states.

Conclusion

4.45 Given the diversity of local government in terms of size, location, budget, regional employment, etc in different states, variation in the definition of significant business activities

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20 Evidence pp S218-S219, S1071, S1077-S1078, 160, and 315 - 316.

21 Council of Capital City Lord Mayors. Mar 1996. *The national competition policy: A capital city perspective.* Melbourne, Council of Capital City Lord Mayors, p 3 and 16-17. (Position paper No. 2).

22 *National Competition Council annual report 1995-96* op cit p 24.

23 National Competition Council. Jan 1997. *Competitive neutrality reform: Issues in implementing clause 3 of the Competition Principles Agreement.* Canberra, Panther Publishing & Printing, p 10.

24 Fair Go Alliance Evidence pp S1099 and 355.

25 ASU Evidence p S145.

26 Brisbane City Council Evidence p S175.

27 Council of Capital City Lord Mayors op cit pp 20-23.

between jurisdictions is inevitable. The Committee supports the inclusion of a broad range of matters to define significant business activity rather than relying just on monetary thresholds.

Taxes and tax equivalents

4.46 A common criticism levelled against local government when it competes with the private sector is that local government is exempt from payment of many taxes that apply to private enterprise. This concern is fully addressed by the CPA. Under subclause 3(4) of the CPA corporatised business activities will have imposed on them full Commonwealth, State and Territory taxes or tax equivalent systems. Where a non-corporatised agency undertakes a significant business activity subclause 3(5) requires that the tax principles applying in the corporation model are to be implemented where appropriate, or alternatively, the prices charged by the agency are to take full account where appropriate of those taxes and reflect full cost attribution for them. However, the principles specified in those subclauses are only required to be implemented to the extent that the benefits outweigh the costs.

4.47 'The taxation arrangements for State and Territory business enterprises were agreed at the March 1994 Premiers' Conference, and encapsulated in a 'Statement of Policy Intent' (SOPI)...'[28] Treasury advised that the SOPI provides that:

> the Commonwealth would legislate to exempt all state and territory trading enterprises from Commonwealth income tax and wholesale sales tax (WST);
>
> state and territory governments retain the tax equivalent of Commonwealth tax liability for those enterprises which were not subject to Commonwealth income tax nor had borne WST prior to 25 March 1994;
>
> for enterprises that were subject to Commonwealth income tax or had borne WST prior to 25 March 1994, state and territory governments would pay compensation to the Commonwealth equivalent to the amount the Commonwealth would have collected in respect of that enterprise had it continued to be liable to tax.
>
> In recognition of problems that have emerged with the operation of the taxation arrangements agreed under the SOPI, Commonwealth and State officials are currently reviewing these arrangements. It is expected that the results of that review will be presented to Heads of Treasuries in late 1997.[29]

4.48 Similarly, the majority of States in their clause 7 statements have mechanisms for councils (as the owner of the business) to retain the equivalent of the State taxes of its business enterprises. Local government is seeking a similar arrangement with Commonwealth taxes.[30]

4.49 The Queensland Government has stated:

> The main issue arising from the application of NCP to local government is the absence of Commonwealth agreement to grant 'tax equivalent regimes' to local government business activities which may be candidates for corporatisation.

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28 Treasury Evidence p S1166.

29 Treasury Evidence p S1166.

30 Evidence pp S154, S178-S180, S196, S319, S330, S374, S459, S727, S839, 170, 176, 181, 317, 319-320 and Council of Capital City Lord Mayors op cit pp 4-5 and 15.

> Without Commonwealth guarantee of tax equivalent regimes to local government business activities, it would be difficult to sustain a public interest argument for their corporatisation.[31]

4.50 This view was also put by the ALGA which stated 'This factor would represent a significant net transfer of revenue away from Local Government and thus a considerable disincentive to pursuing competition reforms.'[32] It was also concerned that the matter may be deferred pending a review of State and Commonwealth arrangements.

4.51 Treasury has advised that:

> While the Treasury considers that there would be substantial benefits in ensuring that all government-owned enterprises are subject to identical taxation treatment, it does not consider that it would be appropriate to extend SOPI-like arrangements to local government before the review of those arrangements is completed and considered by relevant governments.[33]

4.52 Concerns also have been raised about council business units tendering for work beyond their municipal boundaries on a tax free advantaged basis since subsidiaries of councils may be exempt from income tax under Section 23(d) of the *Income Tax Assessment Act 1936*. This could have a dual effect on Commonwealth revenues and on the ability of private sector operators to compete.

4.53 It would first have to be established whether the business unit in question was a significant business activity as set out in the relevant state/territory statement on the application of NCP to local government. If that was the case, the matter would then need to be examined carefully in the context of subclauses 3(4) and (3(5). Each state/territory government has put in place mechanisms for dealing with competitive neutrality complaints regarding local government and the matter could be referred to the relevant unit for investigation.

4.54 **Recommendation 7**

> **The Treasurer as a matter of priority address the issue of taxation of local government businesses at the next meeting of the Council of Australian Governments as under the current regime there is a powerful disincentive to corporatise.**

Community service obligations

4.55 Local government has concerns about its continued ability to deliver and fund community service obligations (CSOs) under the reforms.[34] The ALGA noted that where there is structural separation of council business undertakings CSOs may have to be funded from general council revenues. It said the narrowness of the councils' revenue base, particularly in those states where property rates rises are precluded or artificially limited, may limit the ability to provide CSOs adequately. This situation is accentuated where activities

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31 Government of Queensland Evidence p S1156.
32 ALGA Evidence p S1077 and See Evidence pp S1069 and S1076.
33 Treasury Evidence p S1166.
34 Evidence pp S145, S157-S158, S220, S375, S847, S1078-S1079, 61, 164, 168 and 322-323.

are contracted out and if councils are liable for payment of taxes from which they were previously exempt.[35]

4.56 Local government authorities place high value on providing subsidised services to their respective communities with CSOs subsidised from the general income stream.[36] The MAV believe the cross-subsidisation process for delivery of CSOs is being dismantled without due regard to the development of alternative mechanisms.[37] Brisbane City Council raises concerns for smaller councils which must take a 'whole of government ' approach. It said for those councils cross-funding and subsidisation between services ensures budgetary flexibility to meet priorities.[38]

4.57 Details on the CSO policy for each State/Territory have been analysed in Chapter 3. Particular comments on the impact of those policies on local government have been outlined in some of the clause 7 statements with Queensland again being a notable example. Queensland emphasises that where competitive neutrality is applied it will not interfere with the capacity of local government to subsidise the provision of goods and services to particular groups provided the level of CSO payment is readily identified in public accounts. NSW similarly stresses that the maintenance of CSOs or social programs by local government is an important part of the implementation of competition policy and reform generally; CSO funding from a council to a business unit should be transparent; and the Government will continue to work with councils to ensure social programs meet community needs.

4.58 Warringah Council in NSW suggested '...federal and state government assistance in developing frameworks to assist councils to cost CSOs would be a cost-effective exercise...'[39]

4.59 The Bankstown City Council which has embraced competition believes that it will be able to better manage and possibly embellish its CSOs through opening its services to competition.[40]

4.60 Competition reforms are not about winding back CSOs, but are more concerned with the most cost effective means of their delivery. As councils come in all shapes and sizes, as it were, competition policy reform does not dictate a 'one size fits all' approach. Governments and local councils may need to do more to assist a community understanding of these facts.

4.61 A prerequisite to efficient delivery of services, including CSOs, is that councils have appropriate accounting and financial management systems in place to assist resource allocation decisions. State and Territory Governments should encourage councils to address this issue more urgently.

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35 ALGA Evidence pp S1070-S1071.
36 Berrigan Shire Council and WSROC Evidence pp S56 and S319.
37 MAV Evidence p S833.
38 Brisbane City Council Evidence pp S157-S158.
39 Warringah Council Evidence p 348.
40 Bankstown City Council Evidence p 332.

Conclusion

4.62 All State/Territory Governments should clarify the application of their CSO policy as it applies to local government in the new competitive environment. That policy should be consistent with the approach to CSOs recommended by the Committee in Chapter 3.

4.63 **Recommendation 8**

> **The Committee recommends that State and Territory Governments encourage their local councils to more urgently implement appropriate accounting and financial management systems to assist resource allocation decisions, including those relating to community service obligations.**

Safeguards for rural and remote communities

4.64 There is widespread concern about the potential impact of the application of reforms to rural and remote councils and communities,[41] particularly where the size or isolation of the market is not conducive to minimising unit costs. This matter is of critical concern to the Committee.

4.65 Some rural communities believe that change resulting from NCP is focused on highly urbanised areas and may lead to further growth in capital cities and acceleration of loss of equity in employment and social experience in rural communities.

4.66 Many such communities believe they cannot afford increased costs to consumers of council services which might flow from full attribution of costs in pricing regimes. Also causing concern are loss of employment and people from the area which may occur if services are contracted out especially where the council is the major employer and the local community depends on this operation. The multiplier effect of retaining wealth in local communities is well documented.[42] Some small rural shires have a multiskilled workforce in order to gain maximum benefit from their employees and once lost this is not easily duplicated.

4.67 There is also questioning of the availability of competition in rural and remote areas and whether service providers in smaller rural communities will be able to compete with providers based in larger local markets.

4.68 If external providers are brought in there may be adverse impacts on the quality of service and the willingness of volunteers to participate.

4.69 It has been suggested that the profit of the local government provided service is social or community capital as opposed to private capital in terms of the private contractor and therefore the former can be used for community services whereas the later is returned to the

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41 Evidence pp S5, S49, S51-S52, S53-S56, S137, S140, S177, S181-S182, S269, S319, S330, S375, S474, S660-S662, S664-S667, S670-S674, S834, S846, S921, S1071, S1079-S1080, 139, 190-191, 193, 195 and 224.

42 City of Ballarat Evidence p S846.

owner of the company or business. This of course can be counterbalanced by losses also being borne outside the council.

4.70 In commenting on the different impact of competition reform in the city versus rural areas the ACCC stated '...sometimes these reforms actually bring down prices for everyone but they just bring them down much more for people in cities than rural areas. The people in rural areas are not always worse off, it is just that they do not gain as much as others do from some of the reforms...'[43] The Commission notes that the players are smaller and the market structure less competitive in smaller country areas. In discussion of this matter further with the Committee's as part of the Committee's review of the ACCC's 1995-96 annual report, the ACCC noted' ... I do not know whether there is a huge amount more that can be done directly under the Trade Practices Act to fix the problems...'[44] The Committee will be commenting further on this issue in its report on that review.

4.71 On the other hand, Bankstown City Council suggests lack of competition can be an exaggerated limitation in terms of applying the policy in regional Australia; the NFF suggests the fear of large operators putting councils out of business is overstated and mostly the very existence of councils operations is putting small individual operators out of business; and Fair Go Alliance points to examples of successful tendering by the private sector such as road grading and maintenance work in Wilcannia.[45]

4.72 As discussed earlier in this chapter some state governments, for example South Australia, have recognised the particular circumstances of local government in applying the 'public interest test' relating to competitive neutrality decisions and have included additional considerations in their 'public interest test'. This strategy could be of particular assistance in dealing with application of the policy in rural and remote communities.

Conclusion

4.73 Rural communities need to build on some innovative thinking already appearing on how to approach opening their businesses to competitive neutrality while still allowing the council to retain skills and expertise, ownership of infrastructure equipment, etc. For example options for doing this include phasing in of tendering over time; councils in a region specialising and sharing services; etc. This would apply in some metropolitan areas as well.

4.74 Councils need to factor in the flow-on effects of introducing the reforms such as loss of jobs, people and services from country areas. There may need to be some testing of the impact of the reforms in rural areas. Councils need some scope in applying the principles in rural and remote areas as was found with Victoria's CCT review (see later section). In making policy or decisions on introducing competition State/Territory/Local governments need to recognise the special needs of small and isolated communities. Subclause 1(3) public interest tests provide adequate scope to do this.

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43 ACCC Evidence p 305.

44 Evidence House of Representatives Standing Committee on Financial Institutions and Public Administration. Inquiry into *Australian Competition and Consumer Commission annual report 1995-96.* Transcript, 21 April 1997, Melbourne, p 6.

45 Evidence pp 230, 336 and 357.

Competition Payments and the status of Financial Assistance Grants

4.75 The Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement) provides for the provision of financial assistance to the States and Territories to allow them to share in the substantial overall benefits arising from the reforms as demonstrated by the Industry Commission's analysis.[46] Subject to the agreement, the Commonwealth undertook to maintain the real per capita guarantee of the Financial Assistance Grants (FAGs) pool on a rolling three year basis and to give the States and Territories general purpose payments in the form of a series of Competition Payments. The only reference to local government in this agreement is in relation to the FAGs pools, where it is stated that 'Local government will benefit from the link between the State and Local Government FAGs pools'. The FAGs make up about 70% of the package agreed by the Council of Australian Governments.[47]

4.76 The MAV stated 'The costs to local government in implementing NCP has not been adequately considered, (if at all)...'[48]

4.77 It is of considerable concern to local government and others that there is no specific provision made in the agreement in relation to Competition Payments for them.[49] '...As an incentive for local governments to implement the NCP reforms, the Queensland Government has agreed to share with local governments $150 million of its competition payments from the Commonwealth.'[50] Such innovation has received the support of the NCC.[51] Queensland's financial assistance '...would be incentive-based and linked to both the size of the councils' business operations and, in particular, the extent of genuine competition reform undertaken.'[52] This reflects some of LGAQ sentiments on how the funds should be allocated.[53]

4.78 Should other states not follow suit, the ALGA suggests the Commonwealth either make direct payments to local government for that purpose or require the States to negotiate with local government as a condition of their payment.[54]

4.79 The CCCLM has recommended that local government receive approximately a 30% share of the Competition Payments in line with local government's share of (state and local government) investment in economic infrastructure as an incentive to accelerate the adoption

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46 Industry Commission. March 1995. *The growth and revenue implications of Hilmer and related reforms: A report by the Industry Commission to the Council of Australian Governments: Final report*. Canberra, AGPS, 560p.

47 For details of FAGs see table in the *Agreement to implement the National Competition Policy and related reforms,* p 6.

48 MAV Evidence p S839.

49 Evidence pp S49, S217, S317, S322-S323, S459, S550, S601, S785, S789-S791, S846, S916-S917, 117, 160, 175, 179, 192, 197, 313 and Council of Capital City Lord Mayors op cit pp 3-4 and 15.

50 Government of Queensland Evidence p S1156.

51 NCC Evidence p 253 and *National Competition Council annual report 1995-96* op cit p 25.

52 Queensland Government. July 1996. *National competition policy and Queensland local government: A Queensland Government policy statement*. Brisbane, Queensland Government, p 5.

53 LGAQ Evidence p 199.

54 ALGA Evidence p S1070 and 314.

of the NCP principles by local government. It sets out activities local government should achieve to receive the funds.[55]

4.80 The issue is of significant concern to the MAV which reported that the Victorian Minister for Planning and Local Government said Victorian local government has little chance of being allocated a share of the Competition Payments.[56]

4.81 In its 1995-96 annual report the NCC flagged that in 1996-97 it would consider the best way of encouraging implementing the agreed reforms at the local government level.

> ...In particular, linking the Financial Assistance Grants to demonstrated local government reform action would provide a greater incentive for participation by local governments. Allocating Financial Assistance Grants in this way would recognise that a portion of the monies available for distribution to the different spheres of government derives from comprehensive implementation of reform measures.[57]

4.82 The Fair Go Alliance also supports funding to local government being tied to demonstrated achievement of reforms by local government.[58]

4.83 Local government totally reject that suggestion. The ALGA has argued that the approach is '...at odds with the role of FAGs as a device for achieving fiscal equalisation, the proposal contradicts the NCC position that Local Government reform is ultimately the responsibility of the States and Territories, and the intent of the Council of Australian Governments agreement on implementation of NCP'.[59]

4.84 Treasury advised that 'It would be beyond the scope of the present agreements to link the Commonwealth's financial assistance grants to local government (and local government untied road funding) to reform action at local government level.'[60] Treasury further advised that the NCC has not made such a recommendation on this matter to the Commonwealth.[61]

Conclusion

4.85 Local government receiving direct access to a share of the available Competition Payments is totally a matter for each State and Territory government to decide. Were the State/Territory government to agree to such an arrangement, the Committee strongly suggests that local government's share of the Competition Payments be based on the same principle recommended by the Committee for the Commonwealth's Competition Payments to the States as discussed in Chapter 5.

4.86 The Committee does not support the linking of FAGs to demonstrated local government reform action. A more effective route to enhanced performance would be for the

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55 Council of Capital City Lord Mayors op cit p 27.
56 MAV Evidence p S839.
57 *National Competition Council annual report 1995-96* op cit p 25.
58 Fair Go Alliance Evidence pp S1099, 358 and 361-363.
59 ALGA Evidence p S1079.
60 Treasury Evidence p S1167.
61 Treasury Evidence p S1167.

State/Territory governments to consider legislating the changes they required through their local government acts.

Competitive tendering

4.87 The competitive tendering issue was brought to the Committee's attention several times.[62] Strictly it does not fit easily into the competition policy reform package as understood by the Committee, rather being one of the many micro-economic reform initiatives that are taking place at the moment. However, because it was raised so often, it is appropriate that it be mentioned in this report.

4.88 At the outset it is important to stress that NCP does not require competitive tendering for government activities. Neither the legislation nor the Agreements contain any obligation to impose outsourcing requirements on local government or to introduce competitive tendering. This has been a common misconception and has led to confusion in these early stages of competition policy implementation.

4.89 To date the Victorian Government has been the only government to include CCT as part of its policy statement for local government.

4.90 South Australia, Queensland and NSW discuss competitive tendering in their clause 7 statements with South Australia encouraging it, while Queensland and NSW leave it to individual councils to decide. NSW has recently released competitive tendering guidelines for its local government.

4.91 Under Victoria's CCT arrangements local councils are required to publicly tender work equivalent in value to a set percentage of their total operating expenses each year, that is 20% in 1994-95, 30% in 1995-96 rising to 50% from 1996-97 onwards. A recent review of the CCT implementation noted the overall success of the program but pointed to problems in implementing the requirements in three broad areas, namely, by rural councils and others concerned over the effects of CCT in small rural communities; by private sector firms bidding for CCT jobs; and by councils concerned about the speed with which the 50% target has to be delivered.[63]

4.92 Following the review of CCT implementation[64] Victoria has introduced the *Local Government (Further Amendment) Act 1997* to add more flexibility to its CCT requirements. It eases the competitive arrangements so that: the CCT base of total expenses in the Act exclude depreciation but include capital expenditure; small value contracts (under $5000 and under $50,000) use quotation systems similar to those used by the Victorian Government Purchasing Board; councils able to count as CCT-compliant, contributions towards contracts

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62 Evidence pp S49, S55-S56, S144, S146, S473, S561, S661-S662, S664-S667, S832, S839, S845, S923, S935, S939, S1069, S1074, S1116, 27-38, 40-42, 162-163, 165, 177, 180-182, 184-186, 195, 208-210, 230, 316, 325, 329-331, 334-343, 349-353 and 354-361.

63 *Review of CCT implementation: Report of the Review Panel to the Minister for Planning and Local Government.* Dec 1996. Melbourne, Department of Infrastructure, Office of Local Government, pp 13-14.

64 Ibid 62p.

under State and Commonwealth project or service contracts; and exemption for sub-contracts to an inhouse agreement between $50,000 and $100,000. Best practice guides will also be introduced and a number of other matters are being considered further.[65] The CCT implementation review noted that 'The Government has always stressed that it would fine tune CCT to ensure its policy goals could continue to be met...'[66] The new legislation should alleviate some of the concerns of, and impacts on, smaller and rural councils in Victoria.

Monitoring performance

4.93 As part of the clause 7 requirements all councils are expected to include details on progress in implementing the reforms in their annual report and several States have requested details of allegations of non-compliance and the outcomes of investigations also be included. In several cases these details will then be included in the State/Territory government's annual statements.

4.94 Ultimately, if local government was failing to implement the competition reforms it would be open to State/Territory governments to legislate the required changes through their local government legislation.

65 Hon Robert Maclelland. MLA. Speech to the *Annual Conference of Local Government Professionals, 20 February 1997*, World Congress Centre Melbourne, pp 8-15.

66 *Review of CCT implementation* op cit p 14.

CHAPTER FIVE

RELATED ISSUES

Introduction

5.1 During the course of this inquiry a number of more general issues have emerged that are dealt with separately in this chapter.

5.2 As well in April this year as part of the Committee's program of reviewing annual reports in its area of portfolio responsibility, the Committee examined the *Australian Competition and Consumer Commission annual report 1995-96*.[1] During the current Parliament to ensure continuing strong public accountability of the Australian Competition and Consumer Commission (ACCC), the Committee will review each year the Commission's annual report.

National Competition Council

5.3 Part of the competition policy reform package were arrangements for new key competition policy agencies - the ACCC and the National Competition Council (NCC). Those influential national agencies commenced operation on 6 November 1995.

5.4 The NCC is an independent agency with five part time Councillors drawn from various business sectors and regions and in 1996-97 a research secretariat of 14 staff located in Melbourne. Appointments to the Council are made jointly by the Commonwealth, State and Territory Governments. The NCC reports to the Council of Australian Governments (COAG) but is funded by the Commonwealth and its staff are employed under the Commonwealth *Public Service Act 1922*. The Council's budget in 1996-97 was $1.9 million.

5.5 'In view of the potential impacts of the legislative package on Local Government, ALGA [Australian Local Government Association] believes it would be appropriate for the Act to specify that one member of the Council should have expertise in Local Government.'[2] Given that ultimate responsibility for local government competition reforms rests with the State and Territory Governments the Committee sees no justification for such a requirement.

5.6 The NCC has two ongoing programs and several as requested functions which are set out in the Trade Practices Act (TPA), Prices Surveillance Act and the inter-governmental agreements. These are:

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1 *Australian Competition and Consumer Commission annual report 1995-96*. 1996. Canberra, AGPS, xxx 333p.

2 ALGA Evidence pp S216 and See Evidence pp S317, S1070, S1078 and 318-319.

- to play a central role in the development of regimes to provide third party access to significant 'bottleneck' infrastructure such as electricity transmission grids, transmission pipelines, rail networks. The aim of allowing access is competition on either side of the bottleneck;

- to assess the progress of the stakeholder governments in implementing the competition reform agenda (with links to payment of Financial Assistance Grants (FAGs) and Competition Payments from July 1997 onwards);

as requested:

- to report to the Commonwealth Parliament where the Commonwealth is considering overriding State and Territory legislation reliant on section 51 of the TPA;

- to make recommendations about whether State or Territory government businesses should be declared for prices surveillance; and

- it is open to jurisdictions, by majority, to agree to refer certain issues to the Council for inquiry. [3] For example jurisdictions are likely to refer the review of postal services to the NCC.

5.7 The Council also has a key implicit responsibility to support and promote national competition policy. This is done in conjunction with all its other work where it both makes and takes opportunities for that promotion[4] The new Chairman of the NCC, appointed in April this year, '...signalled plans to pursue "a much more collaborative approach" with State Governments and to invigorate public debate on the need for major competition reform.'[5]

5.8 The NCC stressed that '...[It] is primarily a support body: it is an advisory group, not a regulator...'[6]

5.9 The NCC's dual role in advising the Commonwealth, States and Territories and assessing their progress in implementing reform has been described as a serious structural flaw. Mr Gary Sturgess has likened this to '...both trying to lift the hurdle and judging whether the States have cleared the bar.'[7] In response the NCC stated:

> ...the council recognises that those two roles involve some tensions, but the council sees its challenge as using those tensions in a constructive way. I think that involves ensuring that when the council is providing feedback to jurisdictions or conducting work, it is very clear in which of those roles it is operating. At the moment we do not have any formal work program items, so the focus of the council is in the assessment process, and it is fairly clear to jurisdictions that the work it is doing is related to the assessment process...

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3 *National Competition Council annual report 1995-96*. 1996. Canberra, AGPS, pp 1 and 13-14.
4 Ibid pp 1-2.
5 Murphy, K. ACCI chief resigns to head NCC. *Financial Review*, 9 April 1997.
6 *National Competition Council annual report 1995-96* op cit p 1.
7 Skulley, M and Burrell S. States urged to deliver reforms. *Australian Financial Review*, 11 July 1996, p 7. and Forman, D. States wary about competition policy. *Business Review Weekly*, 29 July 1996, p 38.

> As we move into the promotion role and as we move to conducting work on a formal work program, I think it will be relatively easy to demonstrate that,...we are providing advice on what the most appropriate reforms are...[8]

5.10 This approach seems to negate the 'advisory role' which the NCC reported it has taken to providing feedback to agencies so that it achieves a 'no surprises' assessment process. Treasury said it believes the dual role that the council has is worrying, at least from a presentation point of view, and this will have to be worked out over time as jurisdictions see how the council responds in providing advice in various areas and how it implements its assessment role.[9] The Committee agrees with the concerns expressed about the dual role.

5.11 It is difficult to comment on the NCC's assessment role until after the first assessment for National Competition Policy Payments is made in July this year. However, it is clear there is little public information available on the processes the NCC will use. This matter is taken up in the next section.

5.12 **Recommendation 9**

> **The Committee recommends that following the completion of the current assessment round the Council of Australian Governments evaluate the dual role of the National Competition Council to determine if both roles are appropriate.**

5.13 There have been more general criticism of the NCC such as those from the Institution of Engineers Australia, ALGA and the Australian Council of Trade Unions that the NCC: approaches its tasks too theoretically; about the level of consultation with various industry, community and local government groups; and its slowness in delivering promised papers of vital interest and need to participants in competition reform.[10]

5.14 Comparisons are made with the approach the ACCC has taken to consultation where it has an advisory committee which involves various business and consumer groups and in the case of local government a full-time compliance officer who deals with local government issues.[11] This is possibly an unfair comparison given the different resourcing levels and roles and wide variations in the years of experience of the two organisations.

5.15 **Recommendation 10**

> **The Committee recommends the National Competition Council adopt a more open approach to its work and be more active in disseminating information about the activities of the Council and National Competition Policy.**

5.16 At this stage no problems have emerged regarding overlap in roles and responsibilities between the NCC and the ACCC nor gaps in responsibilities[12] though there could be

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8 NCC Evidence pp 248-249.
9 Treasury Evidence p 237.
10 Evidence pp S1064, 317-318, 324-325, 449 and 458.
11 ACTU Evidence p 458 and See also ALGA Evidence p 324.
12 ACCC Evidence pp 286-287.

improved coordination between the two agencies regarding publications on similar topics such as the Part IIIA declarations.

5.17 With regard to the general evaluation of the role and operation of the NCC, the Committee notes that the Competition Principles Agreement (CPA) requires the parties to review the need for, and the operation of, the Council after it has been in existence for five years. The Committee would expect that the parties would consider any particular problems that might arise before this quinquennial review. In addition, Committees of this Parliament have a role in considering the operation of government agencies through their examination of the agencies annual report and this could be done in relation to the NCC.

5.18 **Recommendation 11**

> **The Committee recommends that the review of the need for and operation of the National Competition Council after it has been in existence for five years be an independent review and if the review determines the Council is to continue, a sunset clause on this matter be inserted into the Competition Principles Agreement.**

Competition Payments and Financial Assistance Grants

5.19 Chapter 4 provides some comments on the payments made to state and local government so that they can share in the benefits arising from implementing the competition reforms. The Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement) specifies this will be achieved via the Commonwealth maintaining the real per capita guarantee of Financial Assistance Grants (FAGs) pool on a rolling three year basis and through three tranches of general purpose payments in the form of a series of Competition Payments.

5.20 Very significant funds are at stake. The total National Competition Policy Payments to state and local government from 1997-98 to 2005-2006 will be $16.1 billion (or $12.5 billion in 1994-95 prices). FAGs will account for $10.8 billion and Competition Payments $5.3 billion. FAGs are paid to the state and local government whereas the Competition Payments are only made to the states on a per capita basis.[13]

5.21 The three tranches for the Competition Payments are:

- first tranche commencing 1997-98 $200 million pa in 1994-95 prices
- second tranche commencing 1999-2000 $400 million pa in 1994-95 prices
- third tranche commencing 2001-2002 $600 million pa in 1994-95 prices.

5.22 The first tranche of payments will commence in July 1997 and will be made quarterly thereafter and be indexed in real terms. Table 5.1 from the Budget shows the allocation of

13 For details of annual National Competition Policy Payments see table in the *Agreement to implement the National Competition Policy and related reforms*, p 6.

National Competition Payments in 1997-98 if each State meets its obligations under the Agreements.

Table 5.1 National Competition Payments, 1997-98 ($million)[(a)]

NSW	VIC	QLD	WA	SA	TAS	ACT	NT	Total
72.7	53.2	39.9	20.9	17.2	5.5	3.6	2.1	215.1

(a) Estimates. Final figures will depend on the actual increase in the CPI and the Statistician's determination of population as at 31 December 1997.

Source: *Federal financial relations 1997-98*. Budget Paper No 3. May 1997. Canberra, AGPS, p 29.

5.23 Payments are conditional. The Implementation Agreement states that:

> The Competition Payments [are] to be made to the States in relation to implementation of the National Competition Policy and related reforms...
>
> If a state has not undertaken the required action within the specified time its share of the per capita component of the FAGs pool and of the Competition Payments pool will be retained by the Commonwealth.

5.24 The Implementation Agreement sets out detailed conditions on which the payments are to be made. Those conditions range across all of the reforms and focus on implementation. It is unclear whether part implementation will entitle jurisdictions to pro rata payments.

5.25 The NCC notes that the annual reports of the States/Territories on progress in implementing the reforms will indicate whether a state or territory has met its obligations under the agreed package of reforms.

5.26 Little formal advice has been made public by the NCC on the assessment process. The NCC should redress this after the first assessment round. However, the NCC advised the Committee informally that: one of its early tasks was to establish an iterative process with states and territories designed to attain a 'no surprises' outcome of its assessments; it is looking for implementation that reflects the spirit and intent of the competition policy agreements, not mere technical compliance with a certain interpretation of each agreement; and it will only be significant failures in implementation that will attract a negative assessment.

5.27 The NCC also stated:

> ...In relation to the reforms as agreed, it is not necessary in many areas for the council to satisfy itself that these reforms are desirable. That work has already

> been done and it is reflected in agreements by jurisdictions to implement these reforms. The council's task is simply to assess whether that is done or not.[14]

5.28 The work on reforms as agreed are matters related to the application of the public interest test as discussed in Chapter 2. The CPA states that reforms should only be introduced where the benefits outweigh the costs.

5.29 The NCC provides advice to the Commonwealth Treasurer on three occasions (by 1 July 1997, by 1 July 1999 and by 1 July 2001) on whether each jurisdiction has met its obligations under the package of the reforms and the Treasurer makes judgements on those recommendations.[15]

5.30 The 1997-98 Commonwealth Budget states that 'Each State's NCP [National Competition Payments] are subject to the State making satisfactory progress with the implementation of the specified reform conditions in the Agreement...'[16]

5.31 The NCC supports an assessment that is performance based and meeting the spirit and the intent of the legislation and inter-governmental agreements not just meeting implementation milestones. Unless this is the actual basis for the payment decisions the whole competition reform policy could be left open to the criticism that it is competition for competition sake. Support for a performance based allocation was also expressed by Australian Chamber of Commerce and Industry.[17]

5.32 **Recommendation 12**

The Committee recommends that the Treasurer ensure that:

a) the assessment for payment of both the Financial Assistance Grants and Competition Payments be performance based and reflect both the spirit and intent of the competition policy reform legislation and the inter-governmental agreements; and

b) details of the assessment outcomes and process are made publicly available following each tranche's assessment.

5.33 While it is generally agreed that in many cases it is still early in the reform process and some outcomes will not become clear until there is further implementation, each jurisdiction at least should be putting in place a measurement and monitoring system so that assessment can be made in the future. It is a fundamental precept of modern public administration that the actions of government are evaluated and the results used to ensure that the direction selected is appropriate. In particular, the Committee is concerned that such monitoring systems enable assessment as to the extent that the benefits of competition have flowed through to the end consumer.

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14 NCC Evidence pp 255-256.
15 NCC Evidence p 250.
16 *Federal financial relations 1997-98*. Budget Paper No 3. May 1997. Canberra, AGPS p 29.
17 ACCI Evidence p 466.

5.34 **Recommendation 13**

> **The Committee recommends that the State, Territory and Commonwealth Governments put in place measurement and monitoring systems so that the outcomes of implementing national competition policy can be adequately assessed in the future.**

Public education

5.35 Given the scope of the reforms, their widespread potential impact and recent introduction it is critically important that there is public education and discussion about the policy and its principles. The community needs to know what the reforms are and what the expected outcomes are likely to be. Without this, support and understanding of the process will not develop and the momentum for the policy may be lost. Professor Officer stressed this public education process needs to begin early while the areas for reform are being assessed and introduced.[18] The community needs to be involved with competition reform as it evolves. Some of the recommendations contained in earlier chapters of this report should assist in that regard.

5.36 So far there has been little discussion in the community on competition reforms.

5.37 To date there has been little public education with the result that several States/Territory governments now list common misconceptions related to the reforms in their policy statements. Many rural councils are particularly concerned about this issue.[19] This overall deficiency needs to be redressed now.

5.38 There is a need for a major ongoing program of public education which outlines the contents of the policy and stresses the outcomes (runs on the board). All agencies involved in the competition reform process must be involved, not just the NCC and ACCC.

5.39 **Recommendation 14**

> **The Committee recommends that all agencies involved in the implementation of national competition policy devote resources to ensure community understanding and debate about the contents of the policy and its outcomes.**

Overall assessment

5.40 After two years of implementation the NCP reform policies of most jurisidictions are now firmly in place. Overall, the Committee was impressed by the amount of effort parties have expended in meeting their obligations under the CPA, and it notes the progress that has been made to date. Much, of course, remains to be done.

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18 Professor Officer Evidence p 410.

19 For example Culcairn Shire Council and Glenelg Shire Council Evidence pp S140 and S779.

5.41 The 'public interest test' is a pivotal element of the policy. The Committee has outlined its interpretation of the tests and believes there should be some consistency of approach throughout jurisdictions. Accordingly, it has outlined what it sees are the basic principles that should guide the application of the test in all jurisdictions.

5.42 CSOs are an integral part of the system of government in this country and are operated by all three levels of government. The NCP has reinforced and encouraged a greater awareness of what CSOs are, what they cost, how they are funded and how they are to be delivered. In the Committee's view the delivery and funding of CSOs should be assessed on a case-by-case basis and attention should more strongly focus on their ongoing transparency and relevance, with appropriate reporting and monitoring systems being implemented.

5.43 At the commencement of the inquiry in 1995 local government held significant fears about the negative impact of national competition policy reforms. Whilst many of their concerns have been allayed, there continues to be, within local government, concern over the nature of the impact of the changes arising from national competition policy. An area of critical concern to local government is the issue of the taxation of local government businesses. The Committee shares that concern and has recommended the Treasurer address that issue as a matter of priority in COAG, as under the current regime there is a powerful incentive for local government not to corporatise. The Committee has also addressed concerns about the application of NCP to local government in rural and remote localities and has put forward suggestions to meet these.

5.44 Transparency in assessment of the implementation and impact of the process is important. The Committee has recommended that the Treasurer ensure that the assessment is performance based and make details of the outcomes and process publicly available following each tranche's assessment.

5.45 While there are significant direct financial incentives and benefits for State and Territory Governments to implement the reforms, the success of the policy still requires national public support.

David Hawker MP
Chairman
5 June 1997

Dissenting Report from Mr G Wilton MP, Mr A Albanese MP, Mr M Latham MP, Hon B McMullan MP, Hon R Willis MP

The minority disagree with the statement in para 5.20 that:

> The total National Competition Policy Payments to state and local government from 1997-98 to 2005-2006 will be $16.1 billion (or $12.5 billion in 1994-95 prices). FAGs will account for $10.8 billion and Competition Payments $5.3 billion.

Although these amounts were the agreed payments as contained in the "Agreement to Implement the National Competition Policy and Related Reforms" they are not the amounts the states and local government will receive. This is because the Howard government has required the states to make "Fiscal Contributions" to the Commonwealth of $1,559 million over the three years 1996-97 - 1998-99, the net affect of which is to diminish the Commonwealth's National Competition Payments by that amount. Accordingly, the most that the states and local government can now receive from the National Competition Policy Payments is $14.6 billion. That is to say, even if the states and local government fulfil to the letter their obligation to implement the National Competition Policy they will be net beneficiaries from the Commonwealth of only $14.6 billion, not the $16.1 billion contained in the report.

Mr G Wilton MP Mr A Albanese MP Mr M Latham MP

Hon B McMullan MP Hon R Willis MP

5 June 1997

APPENDIX 1

LIST OF SUBMISSIONS

1	Mr Derek Walter
2	The Council of the Shire of Inglewood, QLD
3	Hawkins Masonic Village
4	Australian Chamber of Commerce and Industry
5	Swan Hill Rural City Council, VIC
6	Hume Shire Council, NSW
7	Berrigan Shire Council, NSW
8	Community and Public Sector Union, State Public Services Federation Group
9	Associate Professor P G Laird
10	Australian Dairy Farmers' Federation Ltd
11	Dr Carol O'Donnell
12	Australian Education Union
13	Holbrook Shire Council, NSW
14	The Council of the Shire of Culcairn, NSW
15	Australian Services Union
16	Brisbane City Council, QLD
17	National Anglican Caring Organisations Network
18	Pittwater Council, NSW
19	RailNet State Rail Authority of New South Wales
20	The Victorian Gas Users Group
21	Australian Local Government Association

22	The Institution of Engineers, Australia
23	National Tertiary Education Industry Union
24	AGL Gas Companies
25	WA Farmers Federation (Inc.)
26	Council on the Ageing (Australia)
27	Government of Victoria
28	Government of Tasmania
29	Department of Industry, Science and Technology
30	Western Sydney Regional Organisation of Councils Limited, NSW
31	Federal Bureau of Consumer Affairs
32	Community and Public Sector Union, Public Sector Union Group
33	Department of Administrative Services
34	Glenelg Shire, VIC
35	Ministers responsible for Consumer Affairs/ Fair Trading
36	Department of Communications and the Arts
37	Local Government Association of Tasmania
38	Australian Council of Building Design Professions Ltd
39	Dorset Council, TAS
40	Associate Professor F J B Stilwell
41	Aboriginal and Torres Strait Islander Commission
42	Australian Conservation Foundation
43	The Australian Gas Association
44	Australian Wheat Board
45	The Dental Board of Victoria
46	Department of Foreign Affairs and Trade

47	National Farmers' Federation Australia
48	Industry Commission
49	Dr Evan Jones
50	The Council of the Shire of Culcairn, NSW, (Supplementary Submission)
51	Public Interest Advocacy Centre and Consumers Federation of Australia
52	Department of the Environment, Sport and Territories
53	Queensland Farmers' Federation
54	Australian Council of Trade Unions
55	Longreach Shire Council, QLD
56	Barcaldine Shire Council, QLD
57	Roma Town Council, QLD
58	Telstra
59	ShoroC Regional Organisation of Councils, NSW
60	Business Council of Australia
61	Industry Commission, (Supplementary Submission)
62	City of Port Phillip, VIC
63	Associate Professor P G Laird, (Supplementary Submission)
64	Professor Emeritus H M Kolsen and A W Williams
65	Glenelg Shire, VIC, (Supplementary Submission)
66	Hawkins Masonic Village, (Supplementary Submission)
67	Australian Council of Trade Unions, (Supplementary Submission)
68	Mr Thomas Knox
69	Australian Dairy Farmers' Federation Ltd, (Supplementary Submission)
70	Australian Cane Growers' Council Limited
71	Loddon Shire Council, VIC

72	Municipal Association of Victoria
73	Mr Derek Walter, (Supplementary Submission)
74	City of Ballarat, VIC
75	Industry (Productivity) Commission, (Supplementary Submission)
76	Warringah Council, NSW
77	AGL Gas Companies, (Supplementary Submission)
78	Shire of Yarra Ranges, VIC
79	Dorset Council, TAS, (Supplementary Submission)
80	Carol O'Donnell, (Supplementary Submission)
81	City of Darebin, VIC
82	Grains Council of Australia
83	Department of Foreign Affairs and Trade, (Supplementary Submission)
84	Australian Capital Territory Government
85	Association of Rural Water Authorities, VIC
86	The Pharmacy Guild of Australia
87	Aboriginal and Torres Strait Islander Commission, (Supplementary Submission)
88	Department of Communications and the Arts, (Supplementary Submission)
89	Australian Wheat Board, (Supplementary Submission)
90	Government of Victoria, (Supplementary Submission)
91	Government of Western Australia
92	Government of Tasmania, (Supplementary Submission)
93	The Institution of Engineers, Australia, (Supplementary Submission)
94	Australian Local Government Association, (Supplementary Submission)
95	Fair Go Alliance

96	Australian Grain Industry Taskforce
97	Bankstown City Council, NSW
98	Warringah Council, NSW, (Supplementary Submission)
99	Associate Professor P G Laird, (Supplementary Submission)
100	Government of South Australia
101	Government of New South Wales
102	Associate Professor P G Laird, (Supplementary Submission)
103	The Institution of Engineers, Australia, (Supplementary Submission)
104	Government of Queensland
105	PMP Communications Limited
106	Streetfile Pty Ltd
107	The Treasury

APPENDIX 2

LIST OF EXHIBITS[1]

1a Dr Carol O'Donnell
Submission to the Taskforce on Quality in Australian Health Care.
O'Donnell, Carol. Aug 1995. Unpublished, 7p.
(Related to Submission No. 11)

1b Dr Carol O'Donnell
Appendix I: A national insurance scheme for work related accident and injury.
Unpublished, 23p.
(Related to Submission No. 11)

1c Dr Carol O'Donnell
Appendix II: Protecting health, safety and welfare at work.
Unpublished, 33p.
(Related to Submission No. 11)

1d Dr Carol O'Donnell
Appendix III: Rehabilitation and compensation of people injured at work.
Unpublished, 27p.
(Related to Submission No. 11)

1e Dr Carol O'Donnell
Submission to the NSW Dept of Consumer Affairs on the Regulatory Impact Statement for the Fair Trading (Product Safety Standards) Regulations 1995.
O'Donnell, Carol. Aug 1995. Unpublished, 4p.
(Related to Submission No. 11)

2 Ms Sarah Bridge
Consumers' Telecommunications Network
Reforming universal service: The future of consumer access and equity in Australian telecommunications: A report prepared by the Consumers' Telecommunications Network.
Wilson, Ian R and Goggin, Gerard. Dec 1993. Sydney, Consumers' Telecommunications Network, xii 119p.

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1 The name, position and organisation of the person who provided the exhibit proceeds the bibliographic details of the exhibit.

3 Ms Sarah Bridge
Consumers' Telecommunications Network
For whom the phone rings: Residential consumers and telecommunications competition.
Consumers' Telecommunications Network. Apr 1995. Sydney, Consumers' Telecommunications Network, 310p.

4a Mr Graham Sansom
Chief Executive Officer, Australian Local Government Association
Attachment a. Hilmer review of competition policy: Overview report on potential implications for local authorities.
Minter Ellison Northmore Hale. nd Unpublished, 86p. (Report for Western Australian Municipal Association.)
(Related to Submission No. 21)

4b Mr Graham Sansom
Chief Executive Officer, Australian Local Government Association
Attachment b. Position paper: Draft legislative package for national competition policy.
Australian Local Government Association. Nov 1994. Unpublished, 31p.
(Related to Submission No. 21)

4c Mr Graham Sansom
Chief Executive Officer, Australian Local Government Association
Attachment c. Information paper: National competition policy.
Local Government Association of Queensland. Nov 1994. Unpublished, 9p. (Prepared for Queensland Government and COAG Working Group on Micro-Economic Reform.)
(Related to Submission No. 21)

5a Mr Grahame McCulloch
General Secretary, National Tertiary Education Industry Union
Attachment a. National competition policy and universities.
Nicholls, Jane. nd. Unpublished, National Tertiary Education Industry Union, 9p.
(Related to Submission No. 23)

5b Mr Grahame McCulloch
General Secretary, National Tertiary Education Industry Union
Attachment b. Universities and the public sector.
Nicholls, Jane. Jul 1995. Paper for the Higher Education Funding Conference, Sydney, 24-25 July 1995. Unpublished, National Tertiary Education Union, 20p.
(Related to Submission No. 23)

5c Mr Grahame McCulloch
General Secretary, National Tertiary Education Industry Union
Attachment c. Extracts from NTEU submission to Higher Education Management Review.
Aug 1995. Unpublished, 5p.
(Related to Submission No. 23)

5d Mr Grahame McCulloch
General Secretary, National Tertiary Education Industry Union
Attachment d. National competition policy and universities.
Kolsen, H M. Professor Emeritus University of Queensland. *NTEU Advocate*, 4/95, Sept 1995, 3p, forthcoming.
(Related to Submission No. 23)

6 Mr B A Connery
Manager Regulatory Affairs, AGL Gas Companies
Exposure draft: Gas Distribution Network Access.
The Australian Gas Association, Commercial Development Committee. Aug 1995. Unpublished, AGA, 23p.
(Related to Submission No. 24)

7 Government of Victoria
Community service obligations: Policy statement and background to policy.
Victoria. Department of Treasury, Office of State Owned Enterprises, Aug 1994. Melbourne, Office of State Owned Enterprises, 12p.
(Related to Submission No. 27)

8 Mr David Bunn
Joint National Secretary, State Public Services Federation Group
Community and Public Sector Union
Scrutiny of Government Contracting Out and Privatisation Activities Bill 1995.
Western Australia Legislative Assembly.
(Related to Submission No. 8)

9 National Anglian Caring Organisations Network
Community service agencies of the Anglican Church of Australia.
Address list. Unpublished, 2p.

10 Ms Liza Carver
Senior Solicitor, Public Interest Advocacy Centre and Consumers Federation of Australia
Customer contract.
Sydney Water. nd. Sydney, Sydney Water Corporation Limited, 24p.

11 Ms Lois O'Donoghue, CBE, AM
Chairperson, Aboriginal and Torres Strait Islander Commission
1992 housing and community infrastructure needs survey: Final report Stage one.
Australian Construction Services. [1993]. Brisbane, Department of the Arts and Administrative Services, 4p, tables, appendices.
(Related to Submission No. 41)

12a Miss N A McCrindle
Chief Executive Officer, Waggamba Shire Council
Submission to the Local Government Association of Queensland Inc. on contracting out by public sector agencies.
Mar 1995. Unpublished, 7p.

12b Miss N A McCrindle
Chief Executive Officer, Waggamba Shire Council
Submission to Industry Commission on contracting out by public sector agencies.
Mar 1995. Unpublished, 8p.

13 Millmerran Shire Council
Revenue and expenditure figures 1994/95.
nd. Unpublished, 1p.

14 Mr R D Noble
Chief Executive Officer, Rockhampton City Council
Copy of letter to the Local Government Association of Queensland Inc from the Rockhampton City Council dated 6 May 1994. 2p.

15 Mr R D Noble
Chief Executive Officer, Rockhampton City Council
Submission from the Local Government Association of Queensland Inc entitled National Competition Policy.
May 1994. Submission in relation to the report by the Independent Committee of Inquiry chaired by Professor F Hilmer, established to review National Competition policy. The submission is in the context of the communique issued by the COAG on 25 February 1994. Unpublished, 8p.

16 Mr Michael Peck AM
Chief Executive and National Manager Practice, The Royal Australian Institute of Architects
The market economy and the role of governments in determining the quality of the built environment.
Peck, Michael. 1996. Paper presented to seminar conducted by Australian Council of Building Design Professions, Adelaide, 1996. Unpublished, 5p.

17 Mr Bob Lim
Director, Policy Analysis and Research, Business Council of Australia
A status report on national competition policy: A report to the Business Council of Australia.
Sturgess, Gary L. July 1996. Canberra, Business Council of Australia, 34p.

18 Mr Bob Lim
Director, Policy Analysis and Research, Business Council of Australia
Opening address.
Prescott, John, AC. Chairman, Business Council of Australia's Australian Competitiveness Panel and Managing Director and CEO BHP Company Ltd. National competition policy forum 'The way forward', 9-10 July 1996, Sheraton Towers Southgate. Unpublished, 8p.

19 Mr Bob Lim
Director, Policy Analysis and Research, Business Council of Australia
Business Council Bulletin. No. 133, Aug/Sept 1996.
35p. General articles on competition policy.

20 Mr John Webster
Chief Executive, The Institute of Engineers, Australia
Engineering the transition to competitive utilities: Innovation, design capability and human resource requirements.
The Institution of Engineers, Australia. Feb 1996. Canberra, The Institution of Engineers, Australia, 41p.

21 Mr Andy Friend
Chief Executive Officer, City of Melbourne, Council of Capital City Lord Mayors
The national competition policy: A capital city perspective.
Council of Capital City Lord Mayors. Mar 1996. Melbourne, Council of Capital City Lord Mayors, 32p. (Position Paper No. 2).

22 Mr Peter Conran
Secretary, Department of the Chief Minister, Northern Territory of Australia
1996-2000 national competition policy legislation review.
Northern Territory of Australia, Department of the Chief Minister, Policy and Coordination Unit. [1996]. Darwin, Northern Territory of Australia, Department of the Chief Minister, i 8p.

23 Mr Peter Conran
Secretary, Department of the Chief Minister, Northern Territory of Australia
National competition policy: Northern Territory statement on competitive neutrality.
Northern Territory of Australia. [1996] Darwin, Northern Territory of Australia, Department of the Chief Minister, 6p.

24 Mr Peter Conran
Secretary, Department of the Chief Minister, Northern Territory of Australia
Local government and national competition policy: Policy statement.
Northern Territory of Australia. Feb 1996. Darwin, Northern Territory of Australia, 11p.

25 Carol O'Donnell
Lecturer, University of Sydney, Faculty of Health Sciences, Department of Behavioural Sciences
Our health is our business.
O'Donnell, Carol, nd. Unpublished, 183p.
(Related to Submission No. 80)

26 Dr Carol O'Donnell
Lecturer, University of Sydney, Faculty of Health Sciences, Department of Behavioural Sciences
Grant application: Australian and Asian Institutional Linkages (AAIL) Program.
Dr Carol O'Donnell, University of Sydney, Faculty of Health Sciences, Department of Behavioural Sciences and Professor Wai-On Phoon, University of Sydney, Faculty of Medicine, Department of Occupational Health. Oct 1996. Unpublished, 9p.
(Related to Submission No. 80)

27 Mr Graham Sansom
Chief Executive Officer, Australian Local Government Association
National competition policy: Implications for local government.
Emcorp Pty Ltd. Feb 1996. Canberra, Australian Local Government Association, 69p, various pagings for attachments. (This project was funded through the Activities Fund of the Australian and New Zealand Local Government Ministers Conference).

28 Australian Capital Territory Government
Guidelines on costing of community service obligations.
Office of Financial Management Memo 1996/6 to Agency Heads from Mr Steve Finn, Acting Director, Budget Management Branch, Office of Financial Management, ACT Chief Minister's Department, dated 28 February 1996. Canberra, Office of Financial Management, [16p].
(Related to Submission No. 84)

29 Australian Capital Territory Government
Competitive neutrality in the ACT.
Australian Capital Territory Government. 1996. Canberra, Publications and Public Communications, Department of Urban Services, 18p.
(Related to Submission No. 84)

30 Mr Maurie Tucker
General Manager, Local Government Services, Queensland Department of Local Government & Planning incorporating Rural Communities
Issues paper on enabling legislation for local government owned corporations (LGOCs).
Queensland Department of Local Government and Planning. Oct 1996. Brisbane, Queensland Department of Local Government and Planning, 56p.

31 Ms Lois O'Donoghue CBE, AM
Chairperson, Aboriginal and Torres Strait Islander Commission
National competition policy, community service obligations and the delivery of services to Aboriginal communities.
Deloitte Touche Tohmatsu. Feb 1996. Canberra, ATSIC, 75p. (Report commissioned by ATSIC).
(Related to Submission No. 87)

32 Ms Lois O'Donoghue CBE, AM
Chairperson, Aboriginal and Torres Strait Islander Commission
Comparative study of essential services delivered to selected Aboriginal communities and remote townships: Final report.
Deloitte Touche Tohmatsu. nd. 144p. (Report commissioned by WA Aboriginal Affairs Department and ATSIC).
(Related to Submission No. 87)

33 Mr Peter Moylan
Industrial Officer, Australian Council of Trade Unions
Industry Commission report on competitive tendering and contracting by public sector agencies: ACTU analysis.
Australian Council of Trade Unions. Oct 1996. Melbourne, ACTU, 21p.

34 Government of Tasmania
Application of the competitive neutrality principles under national competition policy.
Government of Tasmania. June 1996. Hobart, Government of Tasmania, 26p, attachments - various pagings.
(Related to Submission No. 92)

35 Government of Tasmania
Legislation review program: 1996-2000: Tasmanian timetable for the review of legislation that restricts competition.
Government of Tasmania. June 1996. Hobart, Government of Tasmania, 26p, attachments - various pagings.
(Related to Submission No. 92)

36 Government of Tasmania
Application of the national competition policy to local government.
Government of Tasmania. June 1996. Hobart, Government of Tasmania, 13p, attachment - various pagings.
(Related to Submission No. 92)

37 Government of Tasmania
Community service obligations policy for government business enterprises.
Government of Tasmania. July 1996. Hobart, Government of Tasmania, 9p.
(Related to Submission No. 92)

38 Government of Tasmania
Guidelines: Community service obligations.
Government of Tasmania. July 1996. Hobart, Government of Tasmania, 22p, appendix [1p].
(Related to Submission No. 92)

39 Mr Edward Willett
Executive Director, National Competition Council
Considering the public interest under the National Competition Policy.
National Competition Council. Nov 1996. Melbourne, National Competition Council, 17p.

40 Government of Victoria
National competition policy: Guidelines for the review of legislative restrictions on competition/Competition policy.
Victoria. Department of Premier and Cabinet, Competition Policy Task Force. 1996. Melbourne, Department of Premier and Cabinet, 122p.
(Related to Submission No. 90)

41 Government of Victoria
National Competition Policy: Steps to assist agencies in complying with the Guidelines for the application of the competition test to new legislative proposals.
Government of Victoria. nd. Melbourne, Victorian Government, i 15p.
(Related to Submission No. 90)

42 Government of Victoria
Competitive neutrality: A statement of Victorian Government policy/Competition policy.
Victoria. Department of Premier and Cabinet. June 1996. Melbourne, Victorian Government, 48p.
(Related to Submission No. 90)

43 Government of Victoria
Assessing corporatisation proposals.
State Government of Victoria. Department of Treasury and Finance. July 1996. Melbourne, Department of Treasury and Finance, Privatisations and Industry Reform Division, 9p.
(Related to Submission No. 90)

44 Government of Victoria
National competition policy and local government: A statement of Victorian Government policy/Competition policy.
Victoria. Department of Premier and Cabinet. 1996. Melbourne, Victorian Government, 56p.
(Related to Submission No. 90)

45 Government of Victoria
Victorian Government policy on exemptions from Part IV of the Trade Practices Act (The Competition Code) issued October 1995.
Victoria. Department of Premier and Cabinet, Competition Policy Task Force. nd. Melbourne, Department of Premier and Cabinet, 9p attachments - various pagings.
(Related to Submission No. 90)

46 Ms Deborah Cope
Deputy Executive Director, National Competition Council
Material documenting outcomes associated with reforms in the electricity industry.
Published papers provided by the National Competition Council.

47 Mr Stephen Rix
Principal Policy Officer, Public Interest Advocacy Centre
Where second best is ok: Assessment of consumer welfare impacts during microeconomic reform.
Johnston, C. May 1996. Paper to PIAC seminar on techniques for assessing consumer welfare impacts in microeconomic reform, Sydney, 2 May 1996. Unpublished, 14p.

48 Mr Stephen Rix
Principal Policy Officer, Public Interest Advocacy Centre
Community participation in pro-competition legislative review: Information paper. Draft.
Rix, Stephen. Jan 1997. Sydney, Public Interest Advocacy Centre, 26p.

49 Mr Vincent Kelly
Member, Australian Grain Industry Taskforce
Canadian wheat farmers want their freedom.
Henderson, David R. *The Wall Street Journal,* 15 November 1996, 1p.

50 Mr Hank Spier
General Manager, Australian Competition and Consumer Commission
Material on retail sugar prices and Australia Post.
Australian Competition and Consumer Commission paper, 8p.

51 Mr Hank Spier
General Manager, Australian Competition and Consumer Commission
Access undertakings - 2 vols. An overview: Overview of Part IIIA of the Trade Practices Act and the draft access undertakings guide and *Draft guide.*
Australian Competition and Consumer Commission. Dec 1996. Canberra, AGPS, iii 40p (overview) and v 79p (draft guide).

52 Professor Robert R Officer
Deputy Director and AMP Professor of Finance, Melbourne Business School, University of Melbourne
Competition policy: The role of government and the future of Commonwealth and State governments in service delivery.
Officer, R R. AMP Prof of Finance, Melbourne Business School, University of Melbourne. Paper presented to the NSW Forum of Commonwealth Agencies 1997 Conference, NSW, Friday 21 February 1997. Unpublished, 11p.

53 Government of South Australia
Competitive neutrality: Policy statement.
Government of South Australia. June 1996. Adelaide, Government of South Australia, 15p.
(Related to Submission No. 100)

54 Government of South Australia
Review of legislation which restricts competition: Timetable.
Government of South Australia. June 1996. Adelaide, Government of South Australia, [11p].
(Related to Submission No. 100)

55 Government of South Australia
Clause 7 Statement on the application of competition principles to local government under the Competition Principles Intergovernmental Agreement.
Government of South Australia. [1996]. Adelaide, Government of South Australia, 42p appendix [15p].
(Related to Submission No. 100)

56 Mr Edward Willett
Executive Director, National Competition Council
National Competition Council.
National Competition Council. 1996. Melbourne, NCC, unpaged.

57 Mr Edward Willett
Executive Director, National Competition Council
The national access regime: A draft guide to Part IIIA of the Trade Practices Act.
National Competition Council. Aug 1996. Melbourne, NCC, v 64p.

58 Mr Edward Willett
Executive Director, National Competition Council
Compendium of National Competition Policy Agreements.
National Competition Council. Jan 1997. Melbourne, NCC, iii 98p.

59 Mr Trevor Cobbold
Director, General Research Branch, Industry (Productivity) Commission
Community service obligations: Policies and practices of Australian governments: Information Paper.
Industry (Productivity) Commission. Feb 1997. Canberra, AGPS, v 47p.
(Related to Submission No. 75)

60 Prof John Quiggin
Professor of Economics, James Cook University
Estimating the benefits of Hilmer and related reforms.
Quiggin, John. Prof of Economics, James Cook University. nd. Unpublished, 36p.

61 Government of Queensland
Queensland legislation review timetable: A Queensland Government policy statement.
Queensland Government. July 1996. Brisbane, Queensland Government, 71p.
(Related to Submission No. 104)

62 Government of Queensland
Competitive neutrality and Queensland Government business activities: A Queensland Government policy statement.
Queensland Government. July 1996. Brisbane, Queensland Government, 47p.
(Related to Submission No. 104)

63 Government of Queensland
National Competition Policy and Queensland local government : A Queensland Government policy statement.
Queensland Government. July 1996. Brisbane, Queensland Government, 48p.
(Related to Submission No. 104)

64 Government of Queensland
Public benefit test guidelines: Summary.
Queensland Government. April 1997. Brisbane, Queensland Government, [7p].
(Related to Submission No. 104)

APPENDIX 3

LIST OF HEARINGS AND WITNESSES

37th Parliament

Melbourne, Monday 9 October 1995

Australian Dairy Farmers' Federation Ltd

Mr John McQueen, Chief Executive Officer
Mr Patrick Rowley, President

Australian Education Union

Ms Sharan Burrow, Federal President

Australian Services Union

Mr Stephen Gibbs, National Secretary
Mr Timothy Lee, National Industrial and Research Officer
Mr Steven Nichol, Shop Steward
Mr Brian Parkinson, Assistant Branch Secretary

Community and Public Sector Union

Mr Terry Monagle, Federal Industrial Officer

Council on the Ageing (Australia)

Mr Denys Correll, National Executive Director
Ms Anne Marie Purtill, Canberra Liaison Officer

National Anglican Caring Organisations Network

Mr William Couche, Member of the Executive
Ms Susan Kirkegard, Executive Officer

National Tertiary Education Industry Union

Dr Julie Wells, National Research Officer

The Victorian Gas Users Group

Mr David Headberry, Chairman
Mr Alan Reichel, Secretary

Sydney, Wednesday 11 October 1995

AGL Gas Companies

Mr Bruce Connery, Manager, Regulatory Affairs
Mr Paul Johnston, Manager, Economic Forecasting

Community and Public Sector Union

Ms Patricia Ranald, National Research Coordinator, (PSU Group)

Dr Carol O'Donnell

Public Interest Advocacy Centre

Ms Liza Carver, Senior Solicitor and Treasurer Consumers Federation of Australia
Mr Craig Johnston, Principal Policy Officer

ShoroC Regional Organisation of Councils, NSW

Mr Brian Cheney, Financial Services Manager, Pittwater Council
Mr John Cox, General Manager, Pittwater Council
Mr Vivian May, General Manager, Mosman Council
Mr Fredrick Thomson, General Manager, Warringah Council
Mr Maxwell Woodward, Director, Engineering and Technical Services, Manly Council

Western Sydney Regional Organisation of Councils Limited, NSW

Mr Alexander Gooding, Acting Executive Director

Canberra, Thursday 26 October 1995

Australian Local Government Association

Mr Graham Sansom, Chief Executive Officer

Brisbane, Friday 10 November 1995

Brisbane City Council, QLD

Councillor John Campbell, Deputy Mayor and Chairperson of Finance Committee
Mr John McHugh, Manager of Finance

Local Government Association of Queensland

Mr Gregory Hallam, Executive Director (Economist)
Councillor James Pennell, President

Canberra, Thursday 23 November 1995

Australian Chamber of Commerce and Industry

Mr Robert Davis, Director, Trade and Policy Research

Canberra, Thursday 30 November 1995

National Farmers' Federation Australia

Mr Garry Goucher, Director of Policy
Mr Donald McGauchie, President

38th Parliament

Canberra, Monday 2 December 1996

Industry (Productivity) Commission

Mr Trevor Cobbold, Director, General Research Branch
Mr Robert Kerr, Head of Office
Mr Garth Pitkethly, Acting First Assistant Commissioner
Mr Andrew Wait, Research Officer

National Competition Council

Ms Deborah Cope, Deputy Executive Director
Mr Edward Willett, Executive Director

The Treasury

Mr Brian Cassidy, First Assistant Secretary, Structural Policy Division

Canberra, Thursday 5 December 1996

Australian Competition and Consumer Commission

Professor Allan Fels, Chairman
Mr Hank Spier, General Manager
Dr John Tamblyn, Adviser

Canberra, Thursday 12 December 1996

Australian Local Government Association

Mr Christopher Bell, Policy Manager, Finance and Micro-economic Reform
Mr Graham Sansom, Chief Executive Officer

Sydney, Thursday 30 January 1997

Bankstown City Council, NSW

Mr Mark Fitzgibbon, General Manager

Fair Go Alliance

Mr Bernard O'Donnell, Executive Director
Mr Anthony Peek, Secretary

Public Interest Advocacy Centre

Mr Michael Hogan, Director
Mr Stephen Rix, Principal Policy Officer

Warringah Council, NSW

Ms Sheridan Dudley, Director, Strategy Group

Canberra, Thursday 6 February 1997

Professor John Quiggin, Department of Economics, James Cook University

Melbourne, Thursday 20 February 1997

Australian Grain Industry Taskforce

Mr Mark Johns, Committee Member
Mr Vincent Kelly, Committee Member

Professor Robert R Officer, Deputy Director and AMP Professor of Finance, Melbourne Business School, University of Melbourne

Unions

Mr Peter Moylan, Industrial Officer, Australian Council of Trade Unions
Ms Jennifer Newcombe, Research Officer, Australian Education Union, TAFE Division
Ms Jane Nicholls, National Research Officer, National Tertiary Education Union

Canberra, Thursday 6 March 1997

Australian Chamber of Commerce and Industry

Mr Robert Davis, Director, Trade and Policy Research

PRIVATE BRIEFINGS

37th Parliament

Albury, Tuesday, 10 October 1995
Noosa, Wednesday, 8 November 1995
Mackay, Wednesday, 8 November 1995
Longreach, Thursday, 9 November 1995
Roma, Thursday, 9 November 1995

38th Parliament

Canberra, Thursday, 22 August 1996
Canberra, Thursday, 19 September 1996
Canberra, Wednesday, 30 October 1996
Canberra, Wednesday, 6 November 1996
Canberra, Thursday, 7 November 1996
Melbourne, Thursday, 20 February 1997

APPENDIX 4

ESTIMATED BENEFITS OF HILMER AND RELATED REFORMS (PER CENT OF GDP)

Area of reform	Industry Commission (1995a)		Quiggin (1995f)	
	Direct	Final	Direct	Final
Telstra	0.5	0.65	0.2	0.018
Australia Post	0.04	0.07	0.006	0.004
FAC & CAA	0.03	0.03	0.01	0.01
Electricity, gas & water	0.6	1.50	0.1	0.08
Rail, road & ports	0.18	0.46	0.08	0.07
Competitive tendering	0.5	0.87	0.1	0.08
Statutory marketing[1]	0.025	0.15	0.025	0.025
Professions	0.1	0.33	0.06	0.06
Building industry	0.18	0.98	0.08	0.08
Private monopolies[1]	0.03	0.14	0.03	0.03
Self-regulation	0.1	0.28	0.02	0.02
Total	**2.29**	**5.46**	**0.71**	**0.48**

1 The Industry Commission gives no estimate of direct gains for reform of statutory marketing and private monopolies. Gains computed by the standard procedures described below have been imputed.

a Industry Commission. March 1995. *The growth and revenue implications of Hilmer and related reforms: A report by the Industry Commission to the Council of Australian Governments: Final report*. Canberra, AGPS, 560p.

f Quiggin, JC. 1995. *The growth consequences of Hilmer and related reforms*. Working paper, James Cook University.

Source: Quiggin J. 1996. *Great expectations: Microeconomic reform and Australia*. St Leonards, Allen & Unwin, p 214.

APPENDIX 5

COMPETITION POLICY DOCUMENTS

Competitive neutrality statements

Commonwealth Government of Australia. June 1996. *Commonwealth competitive neutrality policy statement*. Canberra, AGPS, iii 38p.

Australian Capital Territory Government. 1996. *Competitive neutrality in the ACT*. Canberra, Publications and Public Communications, Department of Urban Services, 18p.

New South Wales Government. [1996]. *NSW Government policy statement on competitive neutrality*. Sydney, New South Wales Government, 20p.

Northern Territory of Australia. [1996]. National competition policy: *Northern Territory statement on competitive neutrality*. Darwin, Northern Territory of Australia, Department of the Chief Minister, 6p. (also as Northern Territory of Australia. 1996. *1996-97 issues in public finance.* Budget Paper No. 5. Darwin, Northern Territory of Australia, Appendix pp 104-110.)

Queensland Government. July 1996. *Competitive neutrality and Queensland Government business activities: A Queensland Government policy statement*. Brisbane, Queensland Government, 47p.

Queensland Government. April 1997. *Public benefit test guidelines: Summary.* Brisbane, Queensland Government, [pp 1-4].

Government of South Australia. June 1996. *Competitive neutrality: Policy statement.* Adelaide, Government of South Australia, 15p.

Government of Tasmania. June 1996. *Application of the competitive neutrality principles under national competition policy.* Hobart, Government of Tasmania, iii 26p, attachments - various pagings.

Government of Tasmania, Department of Treasury and Finance. March 1997. *National competition policy: Guidelines for considering the public benefit under the national competition policy*. Hobart, Government of Tasmania, 26p.

Victoria. Department of Premier and Cabinet. June 1996. *Competitive neutrality: A statement of Victorian Government policy/Competition policy*. Melbourne, Victorian Government, 48p.

Government of Western Australia. June 1996. *Policy statement on competitive neutrality.* Perth, Government of Western Australia, 20p.

Legislation review statements

Commonwealth Government of Australia. June 1996. *Commonwealth legislation review schedule*. Canberra, AGPS, 10p.

Australian Capital Territory Government. [1996]. *Regulation review program: ACT timetable.* Canberra, Australian Capital Territory Government, 51p.

New South Wales Government. [1996]. *NSW Government policy statement on legislation review*. Sydney, New South Wales Government, 23p.

New South Wales, The Cabinet Office, Regulatory Review Unit. Feb 1995. *From red tape to results. Government regulation: A guide to best practice.* Sydney, New South Wales, The Cabinet Office, Regulatory Review Unit, 49p.

Northern Territory of Australia, Department of the Chief Minister, Policy and Coordination Unit. [1996]. *1996-2000 national competition policy legislation review*. Darwin, Northern Territory of Australia, Department of the Chief Minister, i 8p.

Queensland Government. July 1996. *Queensland legislation review timetable: A Queensland Government policy statement*. Brisbane, Queensland Government, 71p.

Queensland Government. April 1997. *Public benefit test guidelines: Summary.* Brisbane, Queensland Government, [pp 5-7].

Government of South Australia. June 1996. *Review of legislation which restricts competition: Timetable*. Adelaide, Government of South Australia, [11p].

Government of Tasmania. June 1996. *Legislation review program: 1996 - 2000: Tasmanian timetable for the review of legislation that restricts competition.* Hobart, Government of Tasmania, 26p, attachments - various pagings.

Victoria. Department of Premier and Cabinet, Competition Policy Task Force. June 1996. *Victorian Government timetable for review of legislative restrictions on competition.* Melbourne, Department of Premier and Cabinet, viii 34p.

Victoria. Department of Premier and Cabinet, Competition Policy Task Force. 1996. *National competition policy: Guidelines for the review of legislative restrictions on competition/ Competition policy*. Melbourne, Department of Premier and Cabinet, 122p.

Government of Victoria. nd. *National competition policy: Steps to assist agencies in complying with the Guidelines for the application of the competition test to new legislative proposals*. Melbourne, Victorian Government, i 15p.

Government of Western Australia. June 1996. *Clause 5 legislation review table*. Perth, Government of Western Australia, 12p.

Government of Western Australia. Treasury, Competition Policy Unit. April 1997. *Legislation review guidelines*. Perth, Government of Western Australia, [84p].

Local government statements

New South Wales Government. June 1996. *NSW Government policy statement on the application of national competition policy to local government.* Sydney, New South Wales Government, 23p, appendix - 15p.

Northern Territory of Australia. Feb 1996. *Local government and national competition policy: Policy statement*. Darwin, Northern Territory of Australia, 11p.

Queensland Government. July 1996. *National competition policy and Queensland local government: A Queensland Government policy statement.* Brisbane, Queensland Government, 48p.

Queensland Department of Local Government and Planning and Queensland Treasury in conjunction with the State/Local Government National Competition Policy Working Group. Dec 1996. *Local government competitive neutrality public benefit assessment guidelines: Guidelines for the assessment of the public benefits and costs of implementing competitive neutrality principles for the significant business activities of local government in Queensland.* Brisbane, Queensland Government, 17p.

Queensland Government. March 1997. *National competition policy: Local government in Queensland issues paper: Code of competitive conduct.* Brisbane, Queensland Government, 41p.

Government of South Australia. [1996]. *Clause 7 statement on the application of competition principles to local government under the competition principles intergovernmental agreement*. Adelaide, Government of South Australia, 42p, appendix [15p].

Government of Tasmania. June 1996. *Application of the national competition policy to local government*. Hobart, Government of Tasmania, 13p, attachments - various pagings.

Victoria. Department of Premier and Cabinet. 1996. *National competition policy and local government: A statement of Victorian Government policy/Competition policy.* Melbourne, Victorian Government, 56p.

Government of Western Australia, the Western Municipal Association and the Institute of Municipal Management. June 1996. *Local government clause 7 competition policy statement: Application of the competition principles agreement to local government activities and functions under the national competition policy package.* Perth, Local Government Competition Policy Committee, 48p.

Community service obligations

Department of Finance. July 1996. *Guide to commercialisation in the Commonwealth public sector*. Canberra, Department of Finance, 176p.

Office of Financial Management Memo 96/6 to Agency Heads from Mr Steve Finn, Acting Director, Budget Management Branch, Office of Financial Management, ACT Chief Minister's Department, dated 28 Feb 1996. *Guidelines on costing of community service obligations.* Canberra, Office of Financial Management, [16p].

New South Wales Government. July 1994. *A social program policy for NSW Government trading enterprises.* Sydney, New South Wales Government, 57p.

Northern Territory of Australia. 1996. *1996-97: Issues in public finance.* Budget Paper No. 5. Darwin, Northern Territory Government Printer, i 123p.

Government Owned Corporations Act 1993. Queensland. Part 9 - Community service obligations, 2p.

Queensland Treasury. Oct 1994. *Commercialisation of government service functions in Queensland: Policy framework.* Brisbane, Queensland Treasury, 58p.

Queensland Treasury. March 1992. *Corporatisation in Queensland: Policy guidelines.* Brisbane, Government Printer, 164p. (A Queensland Government white paper.)

Government of South Australia. Dec 1996. *Community service obligations: Policy framework.* Adelaide, Government of South Australia, [7p].

Government of Tasmania. July 1996. *Community service obligations policy for government business enterprises.* Hobart, Government of Tasmania, 9p.

Government of Tasmania. July 1996. *Guidelines: Community service obligations.* Hobart, Government of Tasmania, 22p, appendix [1p].

Victoria, Department of Treasury, Office of State Owned Enterprises,. Aug 1994. *Community service obligations: Policy statement and background to policy.* Melbourne, Office of State Owned Enterprises, 12p.

Western Australia Treasury. Jan 1996. *Community service obligations: Performed by government trading enterprises.* Perth, Western Australia Treasury, 19p.

APPENDIX 6

INTER-GOVERNMENTAL AGREEMENTS

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