HOUSE OF REPRESENTATIVES

STANDING COMMITTEE ON BANKING, FINANCE AND PUBLIC ADMINISTRATION

Reference: Aspects of the national competition policy reform package

SYDNEY

Wednesday, 11 October 1995

(OFFICIAL HANSARD REPORT)

CANBERRA

HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND PUBLIC ADMINISTRATION

Members:

Mr Hawker (Chair)

Mr Albanese	Mr McMullan
Mr Anthony	Mr Mutch
Mrs Bailey	Dr Nelson
Mr Causley	Mr Pyne
Mrs Gallus	Mr Willis
Mr Hockey	Mr Wilton
Mr Latham	

Matter referred to the Committee:

The aspects of the national competition policy reform package. The major issues the Committee has been requested to inquire into are:

(1) the 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 Principle 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 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 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.

WITNESSES

HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON BANKING, FINANCE AND PUBLIC ADMINISTRATION

(Subcommittee)

Aspects of the national competition policy reform package

SYDNEY

Wednesday, 11 October 1995

Present

Mr Simmons (Chair)

Mr Bradford Mr Braithwaite

Other committee members

Mr Thomson Mr Harry Woods

The subcommittee met at 9.33 a.m.

Mr Simmons took the chair.

CHAIR—I declare open this public hearing of the House of Representatives Standing Committee on Banking, Finance and Public Administration's inquiry into aspects of the national competition policy reform package. The committee hopes that the inquiry process will provide a forum for the views of as many individuals and organisations as possible. Forty submissions have been received from all parts of Australia, indicating a fairly lively interest in the inquiry. A number of fruitful lines of inquiry have surfaced in the submissions and the committee intends to pursue these with the organisations and individuals speaking to the committee during this round of hearings and meetings.

Among the issues on which the committee hopes to hear views are how the public interest tests, which are an important feature of the competition principles agreement, might be applied in various circumstances. The committee is also interested in canvassing with witnesses ideas on the definition and identification of CSOs, the delivery of CSOs, their funding and the oversight of performance and accountability of CSO providers. The committee looks forward to exploring these and a whole range of other issues at our hearing in Sydney today.

CARVER, Ms Liza, Senior Solicitor, Public Interest Advocacy Centre, and Treasurer, Consumers Federation of Australia, Level 1, 46-48 York Street, Sydney, New South Wales

JOHNSTON, Mr Craig Fredric, Principal Policy Officer, Public Interest Advocacy Centre, Level 1, 46-48 York Street, Sydney, New South Wales

CHAIR—Welcome. I remind the witnesses that the evidence they give at the public hearing today is considered to be part of the proceedings of parliament and, accordingly, advise that any attempt to mislead the committee could amount to a contempt of the parliament. I understand that you wish to make an opening presentation to the committee and then allow the committee to raise a number of questions relating to that presentation.

Ms Carver—I would like to express both my appreciation and that of Craig Johnston for being invited to appear before the committee this morning. Obviously, we regard the public interest aspects of the implementation of the national competition policy to be of profound public importance, and we think this inquiry is timely.

I would like to make some brief opening statements and then my colleague Mr Johnston will address some of the matters we wish to address. Given the time available and the issues we wish to canvass, we are obviously going to be doing so in a very brief overview way. We certainly invite interruptions and questions if anything we raise is unclear.

As we all know, in April of this year all Australian governments adopted the national competition package. While the implementation of that package and the policy over time will affect Australian consumers through such matters as deregulation of the professions and the extension of competition laws to unincorporated businesses, the two key areas of consumer concern that the Public Interest Advocacy Centre and the Consumers Federation of Australia identify are as follows: firstly, the structural reform of Australia's public monopolies; and, secondly, the review of anti-competitive regulation as required by the competition principles agreement.

The types of structural reform of our public monopolies contemplated by the COAG agreement include the commercialisation, corporatisation, vertical and horizontal desegregation of those agencies. As we know, desegregation involves the breaking up of large utilities into their functional parts and business units to facilitate competition. Horizontal and vertical desegregation includes separating regulatory functions, separating contestable services, providing pricing oversight of monopoly services and ensuring access by competitors to facilities owned by monopolists.

We believe that there a number of significant tensions in the implementation of the policy, as viewed from a consumer and public interest perspective, that need to be considered by state, territory and Commonwealth governments. In particular, there are four tensions that we identify. Firstly, in reform of our public utilities we will not see competition in the delivery of those services to household consumers in the sense of choice between competing suppliers. In energy and water industries we will continue to see utilities operating on a monopoly franchise basis at least for the rest of this century. That obviously gives rise to the second tension we identify: the risk of abuse of monopoly power and unreasonable price discrimination between different classes of consumers.

Thirdly, the restructuring of our utilities is to occur within a cost reflective pricing environment. We believe that has the potential to create a crisis in the affordability and delivery of universal essential services, such as energy and water.

Finally, we identify a tension in reconciling a commercial imperative to maximise profits through

maximisation of consumption with ecologically sustainable development. Unless the policy is implemented in a manner that accommodates the entire spectrum of Australians for not only an efficient society but also a fair, ecologically sustainable and equitable one, its adoption will increase disparities in quality of life and access to essential services irrespective of location, waste scarce natural resources and result in the abuse of captive household consumers. We believe that this committee's inquiry is well placed at this time to address those tensions and give a vision for how the policy can be implemented in a manner that accommodates that broader spectrum of society's expectations.

We will now address some specific matters we believe arise in the implementation of the policy and are anticipated by the terms of reference of this inquiry. Firstly, there is the issue of ecologically sustainable development. The conflict between resource conservation and aggressive competition is self-evident. Unbridled competition will encourage utilities to maximise their returns by encouraging consumption of scarce natural resources.

This basic impetus for profit through a higher consumption is exacerbated in industries with proportionally high fixed costs and low variable costs of production. This is because as long as there is excess production capacity the marginal cost of increasing output is comparatively small. This is a comment obviously specifically directed at the electricity industry, given the excess production capacity currently available in New South Wales, Victoria and Queensland.

Unless the national competition policy is implemented in a manner which provides also for supply and demand side incentives for demand management, there is a risk that its implementation will waste our scarce natural resources. In this respect, Australia compares poorly with the United States in relation to investments in electricity demand management. It is estimated by the New South Wales Government Pricing Tribunal that only about 0.1 per cent of annual turnover of the Australian electricity industry is spent on demand management initiatives, compared with 0.7 per cent on average in the US.

There are some mechanisms that we invite this committee to consider in exploring how the conflict between resource conservation and competition can be mediated. Firstly, there is the revenue regulation of transmission distribution and supply agencies. This type of regulation has the capacity to place a global cap on revenue of our utilities that is derived from total consumption targets. Secondly, there are demand management initiatives such as subsidised sales of energy efficiency appliances, lower priced energy per unit for interruptible contracts, load control programs such as off-peak hot water, energy and water advisory services and community education and information. Thirdly, there is a key role for cost reflective pricing in the objective of conserving scarce natural resources. In particular we think it is a desirable shift to have water pricing in this country moved away from rate based assessments to usage based pricing. Further, there is obviously a role for regulation setting of emission targets and requiring the least cost planning in the investment of future generation capacities.

We believe those four mechanisms we have outlined can be accommodated and provided for within the pricing oversight regimes that are contemplated by the competition principles agreement. In New South Wales, the Government Pricing Tribunal has gone some small way towards implementing some of these types of initiatives with regard to the setting of maximum prices in electricity and water supply. The New South Wales Government Pricing Tribunal has proposed revenue regulation of transmission and distribution agencies in electricity.

To date Australia has not adopted some of the initiatives that we have seen overseas. For example, in Britain costs that are incurred by utilities in furthering demand management initiatives, such as subsidising energy-efficient appliances, are allowed, in a strict flowthrough by the pricing regulator, to be passed on to prices paid by energy consumers. In New South Wales we are about to see the establishment of a sustainable

energy fund which will be a fund of money available to electricity utilities to be spent on demand management initiatives.

We have made some specific recommendations for this committee to consider with regard to the issue of ecologically sustainable development. In particular we think there is a risk that some jurisdictions will not look to demand management and least cost planning programs, particularly in energy and water utilities. A secondary risk is that different jurisdictions will pursue arbitrary initiatives in the absence of information available as to which are the most effective. Consequently we have suggested the committee consider how national ESD objectives may be enhanced through consideration at a national level of the options available to enhance demand management and least cost planning, the comparative strengths and weaknesses of those options and the processes which could be assessed to monitor the strengths and weaknesses over time.

Further, we recommend that the committee acknowledge and promote steps taken by the states and territories in incorporating ESD objectives in the restructuring and ongoing operation of GBEs and utilities. In that respect, we draw your attention to the differing ways that New South Wales and Victoria have gone about restructuring the electricity industry. In New South Wales there has been some explicit attempts and commitments to look at issues such as demand management and protection of the environment.

I would quickly like to move on to some of the other issues we think are important to the terms of your inquiry—in particular, the social welfare and equity implications of the national competition policy. The first issue is addressing cost-reflective pricing and cross subsidies. A key shift in the micro-economic reform of Australian utilities is a shift towards cost-reflective pricing. In general terms, we support that shift.

We believe that cost-reflective pricing has the capacity to provide appropriate signals for allocative efficiency in the consumption of our natural resources. It provides appropriate tools for the proper financial management of our utilities. However, it is being implemented against a background of a long history of cross-subsidies between different classes of consumers in the energy and water industries. Against that backdrop, we believe that the crude implementation of cost-reflective pricing without looking at other mechanisms to ensure universal access to affordable services has the capacity to create a crisis in the affordability of essential services.

CHAIR—Could I just interrupt to point out that we may run into some time constraints with your presentation. For the benefit of the committee, I am just wondering whether you could quickly summarise the rest of the documentation so we can ask some questions.

Ms Carver—Certainly. I understood that we had an hour.

CHAIR—We have an hour in total.

Ms Carver—But you have lots of questions.

CHAIR—We have an hour in total for your session. The usual process is for you to make an opening statement and for the committee to ask questions.

Ms Carver—Very briefly, the reasons why we believe cost-reflective pricing has the capacity to create a crisis in the affordability of essential services are as follows. The first reason relates to the differential access to the market. Obviously, we live in a community where there are wide disparities in access to income, literacy, numeracy and location of residence. All these factors will influence the capacity of individuals to participate in a market.

Further, we will have utilities—and this is one of the most fundamental points we need to make—that operate in a competitive market in parallel with monopoly markets. For example, Sydney Electricity in western Sydney will be operating in a competitive market. It is currently entering into negotiations with the Commonwealth Bank to sell electricity to the Commonwealth Bank in Melbourne while still having a very large number of captive domestic household consumers within the basin of western Sydney. That scenario of

one utility operating in both competitive and monopoly markets gives rise to the risk of what we describe as abusive price discrimination between those markets.

In the competitive contract market, Prospect Electricity will be under considerable pressure to price on a marginal cost basis to gain market share. We know that our utility industries—water and energy—deal with proportionally very high levels of fixed costs. Because of that, if they are pricing on a marginal cost basis in the competitive market, they are going to have to recoup their capital infrastructure costs from their domestic consumers.

We believe that cost-reflective pricing and partial competitive markets will lead to a risk of affordability for domestic consumers because of the wide discretion available to utilities in how they design their pricing packages. For example, most utilities are moving towards a regime of usage based pricing in conjunction with access or connection charges. High access charges or annual charges are regressive in nature. Some economists have described them as analogous to a poll tax.

As we say in our paper, we think there is an essential role for effective pricing oversight regimes to ensure two things: first, the provision of affordable essential services to all Australians in this process; and, second, that utilities operating in competitive markets and in parallel with monopoly markets are not engaging either in abusive price discrimination between those markets or in the other scenario—that is anticipated not only by us but particularly by economists in America who have seen it emerge in the telecommunications market—in what they describe as competitive parity. This is more likely to emerge in the gas industry where we will see new market entrants entering into markets, servicing either large industrial consumers or small niche markets and gaining access to the infrastructure—the pipelines and the reticulation systems—on the basis of sweetheart deals.

I refer in our submission to the work of Professor Alfred Kahn in America, a notable Chicago school economist, whose observation of the introduction of competition in the American telecommunications market has been that what has been witnessed is the avoidance of sunk costs by new market entrants which is neither socially rational nor conducive to economic efficiency. Again, we have made some very specific recommendations with regard to what we believe to be essential requirements to effective pricing oversight in energy and water utilities to address those sorts of concerns I have just outlined.

Obviously, the capacity for pricing oversight to promote universal access is limited. It is probably limited to such things as providing for standard tariffs on a regional basis. That provision of a standard tariff as well the provision of electricity supply involves a shallow cross-subsidy for those people residing at the outer edges of those regions. We believe that the level of shallow cross-subsidy is appropriate. It is provided for by the draft code of conduct developed by the National Grid Management Council and ought to be looked at equally by pricing oversight regimes.

But we acknowledge that the capacity for utilities to ensure that everybody has affordable access is limited. We identify two other regimes in our submission. The first is traditional CSO policy and licensing arrangements in competitive industries. Perhaps, Craig, you could just briefly outline the issues that we would identify in the operation of CSOs and licensing.

Mr C. Johnston—There has been a lot debate in Australia over the last few years about community services obligations. It is clearly a key matter for this particular inquiry to look at. In some ways, I suspect that much of what you will be looking at and what lots of people will be saying to you is not going to be new. However, there have been a number of new developments in the area that are probably relevant to this particular point of time in terms of a shift of government businesses, in particular, to a more competitive environment. One of those is: where does the purchaser provider model, which is the orthodox promoted by most central agencies of government, actually lead?

I think there are two new things emerging. One is that the term is being increasingly applied to the private sector—that is, private sector businesses—especially where you have a business that was originally in government ownership now a private sector business. I cite the case of United Energy in Victoria, the electricity distribution authority which has been privatised by the Victorian government, which is still providing the pensioner concessions previously provided by the corporatised GBE on a contract basis by the Victorian government. I think that is a new development. Increasingly, we are seeing concerns on equity grounds for governments to subsidise private sector businesses—for example, private bus operators to provide infrastructure services and explicit budget sector subsidies justified on equity grounds. The concept of community service obligations is being used in a new way. I will come back to that, but I think there might be some risks in that course.

The other new direction is that a lot of social programs are being provided on a contracted outsource basis by non-government organisations, non-profit and private sector organisations. A lot of people are now beginning to refer to those as community service obligations as well. I notice, for example, in the submission to this inquiry from WSROC, the Western Sydney Regional Organisation of Councils, that a lot of their core services of a social nature are assumed to be community service obligations. In terms of the other issues, while PIAC and the Consumers Federation have been focusing on utilities issues, there are clearly implications for competition policy for budget sector programs. You will see people trying to grapple with the CSO concept in a way that will be quite confusing. They are the two developments.

The strength of the concept has been on a purchaser provider model to try to give some transparency to the social programs of government that are actually delivered by a government business enterprise. Our view on that is that is useful in terms of income support services or roles provided by government business enterprises, such as price concessions and hardship relief, but it is not necessarily appropriate for a lot of other social objectives being provided by GBEs. The classic example is the universal service obligation provided to the government by Telstra as a licensing condition, where it is the deemed carrier under the Telecommunications Act. There are clearly other models in existence in Australia, apart from the traditional CSO purchaser provider model that, in our view, worked very well and do help to deliver that universal service of basic telephony or seek to deliver basic telephony services across Australia.

In terms of this committee, I guess we just want to reinforce that there are a number of options. They are serving different social objectives and they do need to be reinforced. There will be a lot of focus on CSO policy over the next few years. The chairman rightfully identified at the beginning of this hearing that a lot of consideration has been given to identification and costing issues. To date, most of the conferences on CSOs have focused on that.

We would like to add that the dark horse, or the grey area, at the moment appears to be the question of evaluation—that is, how you apply the evaluation techniques that you would normally have in any budget sector program. How do you know that the taxpayers' money that you are putting into programs actually deliver the outcomes that you want? There has been less consideration of that particular question than there has been to the costing.

If I can use another example from a recent conference that I was at, and the inquiry secretary was also at, a couple of weeks ago: we heard a report that Brisbane City Council had just done a CSO review of its transport services and had done the identification and costing. As a result of that review of the CSOs—that is, the non-economic bus and ferry services provided by Brisbane City Council, the non-economic lines, and pensioner concessions—it came up with a nice CSO scenario and policy but it had not in the process evaluated whether the money it was committing to CSOs—that is, uneconomic services and the pensioner or the price concessions—met the appropriate social objectives or whether this was the best means to use the

money the council had available in terms of delivering social justice outcomes. I think this is an area that is weak.

If I can just finish up: I think that has raised the broad question that the committee and governments are going to have to grapple with—that is, it seems easier to quantify programs on a financial cost-benefit basis. A great deal of methodology has been developed in that area. That is much more easily able to be done in terms of matters that you can put a dollar amount to. As we know, the Industry Commission put out a massive volume trying to assess the revenue and growth implications of the whole Hilmer and related program, or initiatives. But if we are talking about non-economic impacts and initiatives, how do you assess the impact of micro-economic reform on the social life of communities with the quality of life or with the ability of older people to access services that may not be necessarily available to them?

You are going into the much riskier and, if you like, fluffier area of impacts on people. We have done some work through focus groups—that is, using market research to try and tease out some of those issues—and would conclude that while you can try and construct some neo-market or surrogate market techniques like the contingency theory on the basis of willingness to pay—and there is a bit of literature on this—and use them for environmental goods as much as social goods, often these decisions, or rather people's assessment of what the net cost and benefit of a particular policy course might be, are going to be qualitative and fundamental. When it comes to politicians, to elected members of parliament, there is going to be a lot of discretion based presumably on value judgment and choice. That is the nature of the system that we live in and it is appropriate that that is the case.

All that we can say is we think those methodological challenges facing state and territory governments in applying those public benefit tests and taking into account those matters that cannot be easily quantified in economic terms are really important issues. What we have suggested to the committee is that you give your weight to actually monitoring how the states and territories apply that to see if they can do some pilots or tests of those particular methodologies, otherwise the non-economic factors will fall off and will not be considered because they are too hard or they are seen as soft and not important, but they fundamentally affect people's quality of life. It is important that the non-economic impacts of the micro-economic reform process, the social impacts, if you like, be taken into account and that we actually use the implementation period of the Hilmer process to do some testing and working through.

I do not think there are any easy answers. We have looked at the literature, we have looked at some cases; there is a bit of a history with health services, in terms of cost effectiveness. I do not think it is satisfactory but it is going to be a challenge further down the line. If this inquiry can give some impetus, at least, to a commitment to a more rigorous consideration of those sorts of issues we will certainly be further ahead than we are now.

These processes should be monitored. If we are talking about matters that are basically discretionary to politicians, the transparency process, the openness and the extent to which processes are participatory, such as this inquiry, it is important for ordinary Australians to have an in on these debates and on the extent to which the Hilmer reform process might affect them. One of the ways that open transparent balance process could be enhanced is through a reporting process against some of the non-economic issues like ESD objectives and social objectives through the Commonwealth's tranche payments to the states and territories. But we need some openness in those processes. The sharing of information is going to help us all get a better understanding of what we think are some of the harder issues to grapple with.

CHAIR—For the benefit of the committee it might be a useful starting point if you could let us know who is the Public Interest Advocacy Centre, how you are funded and what is your broad mission.

Ms Carver—The Public Interest Advocacy Centre is located in Sydney. It was established 13 years ago by the Law Foundation of New South Wales. Our principal source of funding is something called the

Westpac Trust. That is the trust into which all income earned on solicitor trust accounts is paid. That trust operates for publicly beneficial tasks. We are a minor beneficiary of that trust but it is certainly the core source of our income.

We employ in the vicinity of 14 staff. Our charter requires us to undertake public interest litigation, test cases, research and public policy development with a specific emphasis on issues as they affect people who are least able to advance their own interests. So we tend to focus on low income issues, issues of concern to people who speak different languages, et cetera.

We also represent the Consumers Federation of Australia which was established over 20 years ago. Formerly known as AFCO, the federation is the peak consumer body in Australia with approximately 80 other consumer organisations as its members. Work on the Hilmer inquiry and the national competition package has been a priority area for both organisations for some time now.

CHAIR—Thank you. That is useful background to have. Another fairly obvious question might be that in terms of the package that was adopted by COAG relating to the Hilmer reform principles is: how did PIAC approach that decision? Basically do you support the principles behind the Hilmer competition reform package as decided by COAG, or would you rather we had not gone down the track of Hilmer in the first instance?

Ms Carver—We support the national competition package. We have, though, concerns about the manner of its implementation by the states and territories. We have worked for nearly two years at a Commonwealth level having input into the development of the package. For example, the public benefit test in the competition principles agreement is something that was inserted after the first draft was released and as a consequence of the work of the Consumers Federation, PIAC, ACOSS and many of the environmental organisations. My personal view is that, if there is a criticism to be made of the package, it is light-on in vision with regard to implementation, to ensure that implementation occurs in a socially useful and environmentally friendly manner.

CHAIR—Do you know of any other examples in other countries, I suppose particularly those countries that may operate under a similar system of government as we have, where such a competition agreement has actually been implemented to the extent of the Hilmer reform package?

Ms Carver—I have some knowledge of those issues. I am not aware of another country that has adopted such an all encompassing package. But the pursuit of competition policy in a more narrow sense and competition law is something I understand to be common to most OECD countries. For example, I point to a conference that was held in Hong Kong in July by the OECD in conjunction with Consumers International, which brought together people from all over the world, but particularly from the Asia-Pacific region. The view expressed by most government representatives at that conference—it was entitled International Fair Trading—was that almost universal attention was being given to competition policy but perhaps more narrowly contemplated than the all encompassing policy that we have adopted.

CHAIR—The other issue that you spent a fair bit of time on was concentrating on electricity, gas and water, which are obviously key utilities as far as consumers are concerned. The actual legislative function involved for those utilities largely comes under the auspices of the various state governments. While our terms of reference ask us to look at the arrangements that should be developed between state governments and local government authorities for the implementation of the competition principles agreement, do you see any real hurdles for the Commonwealth government, and particularly a parliamentary committee, coming up with recommendations that are strongly supportive of the points that you have made that could in fact be seen to be impinging upon state sovereignty in that area?

Ms Carver—Clearly, it would be inappropriate for the Commonwealth itself to attempt to directly

intervene or mandate how the restructuring of utilities by the state and territory governments ought to be undertaken.

CHAIR—I do not think we can do that, though, can we, constitutionally?

Ms Carver—Once they are corporatised there is a capacity for the Commonwealth to rely on the corporations power. But while it may be legally constitutionally possible, it would be politically unpalatable, I would expect.

CHAIR—I was about to say a lot of organisations suggest the use of the corporations power to address a particular cause and I think you have probably struck the right chord there when you said that it is probably not a political option.

Ms Carver—No, we would not regard it as a political option, nor necessarily desirable. These utilities operate at a state, territory and regional level. The reforms that occur must very much come from the ground up and bring that local community into that process. Both Craig and I have extensive contact with people from all over Australia seeking information and ideas about the implementation of the national competition policy in government, in the union sector, in local government and in the community sector.

It is my very strong impression that, outside New South Wales and Victoria, there is limited expertise and limited information about some of the issues that we have addressed in our submission and that we have drawn to your attention—issues such as how to introduce competition in energy and water industries while preserving the natural environment, the demand management mechanisms, least cost planning mechanisms.

These types of ideas are reasonably novel in this country. There is some work done in New South Wales in particular, not as much in Victoria. The point I am getting to is that we believe there is a need for the Commonwealth to facilitate, at a national level, research and information gathering and the resourcing of pilot programs to identify the most effective options available to achieve some of the objectives that we say ought to be fundamental to the implementation of the package, that is, consumer protection, universal access to essential services and environmental sustainability.

Mr C. Johnston—Clearly, we accept that the whole package is within the context of cooperative federalism, and the states and territories no doubt are very wary about the extent to which the Commonwealth government, or the Commonwealth parliament, might be telling them how to do their job. But I guess there are two things that we might want to say. One is that it is quite a positive sign that the states and the territories, and the Commonwealth, have actually agreed to the package, and that there has been some, if you like, transfer of powers, and the agreement to pass application laws to businesses within state and territory jurisdictions. So there is some degree of cooperation.

The other element is cooperation between the states themselves, at least in terms of exchange of information. As states and territories are undergoing their own micro-economic reform processes, they are clearly trying to learn from each other about what to do and how to do things well. I think there is probably, in that process, a key role for the Commonwealth not to wave a big stick that it does not actually have, but to identify best practice. I think the states and territories can learn from each other and, if the Commonwealth can provide at least a leadership role in terms of ideas and point to best practice, I do not think any state or territory governments can resent that role being played.

Ms Carver—If I could identify an example of what we would regard as best practice in a consumer protection case, this is the customer contract for Sydney Water, which is exactly what it says. It contains all the respective rights and obligations between Sydney Water and customers of Sydney Water. This is an initiative that was adopted as Sydney Water Board was corporatised at the end of last year—in particular after Craig Johnston and some environmental groups got intimately involved in the political process of the corporatisation of Sydney Water. Now, there are some things in this contract we would say could be

improved next time around. But this is the sort of example of best practice that we think that the Commonwealth has a role in identifying and educating, or at least providing the information to the other states and territories. Within New South Wales itself, for that matter, this is exactly the type of initiative. When we are contacted by government from Queensland, by consumer groups and unions from Queensland, we say this is one good idea, and this is how you achieve it.

CHAIR—Would it be possible for the committee to have a copy of that?

Ms Carver—Yes.

CHAIR—Thank you. The document presented by the Public Interest Advocacy Centre, entitled *Sydney Water: customer contract*, is included in the committee's records as an exhibit. Do any members of the committee have any questions at this stage?

Mr BRAITHWAITE—Just to clarify it for the record, when you were talking about the amount spent in demand management, I thought you said one per cent and seven per cent. Obviously you meant 0.1 per cent and 0.7 per cent as in the document.

Ms Carver—Yes.

Mr BRAITHWAITE—Following on from that, your concern is the amount that has been designated as the savings in all of this, the $9 billion and $10 billion, and that this type of additional cost has not been factored into those savings. Do you know whether the environmental costs that you are suggesting here have been factored in?

Ms Carver—Are you asking me whether the Industry Commission took into account expenditure on demand management when modelling the implementation of the policy?

Mr BRAITHWAITE—Yes, and then defining its savings.

Ms Carver—No, I am afraid I am not aware either way of the answer to that question.

Mr BRAITHWAITE—Mr Johnston, you have delivered a paper which suggested that the Trade Practices Commission had already involved itself in making decisions on matters that were not anti-competitive in some of the decisions they have made. Do you feel that the new body would have the capacity in a similar fashion to define what is a community service obligation? If a case were brought before it about a CSO, would that have the capacity to make the same definition and decisions as it had before?

Mr C. Johnston—I do not think it would. In that early paper—if I remember what I said in that—I was drawing from information provided by the then most recent annual report of the Trade Practices Commission. Because the Trade Practices Commission is a Commonwealth government agency and there is a broad commitment by the Keating government to a social justice strategy, the commission felt obliged to try to point out where its activities might fit within the government's broad social justice strategy. It identified that some programs, in particular some employment programs, or activities might discriminate against particular sections of our population—I think it referred to Aboriginal Australians in rural and remote areas—and actually did have a social edge to them. I guess I want to also say that in the Hilmer report the Hilmer committee noted that there were some areas that would be appropriately addressed through social justice strategies of government rather than competition policy.

Within the existing structure, I think the brief legislative mandate of the Trade Practices Commission or the ACCC will probably be at the margin. In terms of the matters that the Australian Competition and Consumer Commission will have within its brief, it is not clear to me that community service obligations will be relevant factors.

The competition principles agreement does, for the prices oversight bodies, suggest that in setting prices they consider the community service obligations that state-based GBEs would have. But I think there seems to be a consensus that community service obligations are matters of social policy that might be best

delivered through fiscal policy—that is, through budget sector subsidies—at least for those CSOs that are appropriately applied to purchaser-provider models. If that is the case, I cannot see that a competition regulator or any pricing regulator would necessarily have the competence to assess what those might be.

One qualification to that is that the Government Pricing Tribunal of New South Wales, which does consider distributional impacts at least in its price setting, does try to take social matters into account. What it has done—and we have certainly at the state level proposed that this be given more explicit legislative mandate—is suggest, in a move to greater use of usage based pricing, that there be greater amounts put aside for hardship relief in transition periods. It has sought to deal with the CSO policy as part of the impacts of its preferred pricing formula. But it has only been prepared to do that as part of transitional arrangements to try to overcome or mitigate the severity of any negative impacts from usage based charging. Even the Government Pricing Tribunal has said quite clearly in all its reports that community service policy is a matter for government, not the regulator.

Mr BRAITHWAITE—Are you satisfied that governments right around Australia will be able to work their CSOs into social and fiscal policy and legislation?

Mr C. Johnston—I think it is a real challenge, but that is what we elected you for. We expect governments to govern in the interests of the welfare of Australians, including Victorians or Queenslanders. That is the core purpose of government. We expect you to do that, in terms of the resources you have available to you, in an economically efficient way. We do not want you wasting Australia's resources or our taxpayers' money. We want value for money from government. You are basically there to promote our social welfare. I actually prefer those very difficult political decisions that any government—Liberal, National, Labor, Democrat or Green—faces every year at budget time to be in the hands of elected people rather than public servants who staff our regulatory agencies.

Mr BRAITHWAITE—Or media barons.

Mr C. Johnston—Yes. There is a fundamental thing about the nature of our representative democracy and the role of government. That is not to say, as I said, that regulatory agencies, be it the ACCC or the Government Pricing Tribunal of New South Wales, should not be required to take into account community service obligations. It is certainly a weakness, in our view, with the Office of the Regulator-General structure in Victoria, where there is not sufficient explicit consideration by that Regulator of either social or environmental objectives in the competition regime in Victoria. Some consideration has to be given to it. The policy frameworks need to come from government.

Mr BRAITHWAITE—Could I just get on the record your background, Mr Johnston. I think it is important.

Mr C. Johnston—I am currently the principal policy officer of the Public Interest Advocacy Centre. I do policy work—a lot of it on a consultancy basis. I have worked in a previous job with the Office on Social Policy of the New South Wales government, which is the social justice unit. My area of expertise there was social impact assessment. I did a lot of the formative work around how the New South Wales government should approach a social impact assessment of the Olympic Games. Prior to that, I have worked in a number of consumer and welfare agencies, in the New South Wales Council for Social Service as its deputy director, and as a policy adviser to the New South Wales Pensioners' Association. In the very distant past, I actually taught politics at Sydney University.

Mr BRAITHWAITE—Right. You have an economics and welfare background. What is your overview?

Mr C. Johnston—My academic and work background is in what I call social policy.

Mr BRAITHWAITE—In your paper to the IAR, I thought you set out very clearly the different

layers of decision makers—the investors, deregulators and levellers. I thought that was a very good description. Are you prepared to tell me what you are?

Mr C. Johnston—I think we are investors. That is why we are here.

Mr BRADFORD—It would have been very helpful if we had had this paper to read before our meeting. Unfortunately, we are out of time and you have raised an enormous number of issues which I think would have been productive for us to discuss with you. I will pick up the initial comments you made about economically sustainable development. I am not sure that all economists would agree with the statements you have made. I think a substantial number would disagree with the notion of a conflict between resource conservation and aggressively competitive markets. You were implicitly critical of an arrangement that Prospect County Council has entered into to supply electricity to the Commonwealth Bank in Victoria. Just run by me again your concerns about that arrangement.

Ms Carver—I am not critical of that step taken by Prospect Council. It is obviously exactly what is anticipated and intended by the national competition policy. It is the emergence of competition in the contract market for the supply of electricity to large business users. As I say, I have drawn principally, both in this paper and in other papers I have written—and I mention I have a degree in economics—on the work of Professor Alfred Kahn, who I referred to.

The risk is that because Prospect wishes to gain market share in the competitive contract market, it will price to the Commonwealth Bank in Melbourne on a marginal cost basis. In electricity, as in gas, as in water, pricing on a marginal cost basis while in one view is economically desirable, means a revenue shortfall in the medium to long term with regard to infrastructure costs. So without appropriate pricing oversight of Prospect Electricity, the most economically rational thing for Prospect to do is what is called Ramsey pricing—that is, price on a marginal cost basis in the competitive market, but price on a fully distributed cost basis to its captive domestic consumers who have high inelasticity of demand and who have nowhere else to go. We regard that as abusive price discrimination between those two markets.

Mr BRADFORD—How would they be worse off? You are talking about Prospect's immediate consumers being in that council area. How are they going to be worse off by the arrangement that they are entering into with the Commonwealth Bank?

Ms Carver—Two ways. Firstly, over time, the captive consumers will become entirely responsible for funding infrastructure.

Mr BRADFORD—They are, anyway. They are now.

Ms Carver—No, at this point in time Prospect is supplying electricity to multiple classes of consumers—domestic, industrial and business consumers. The intention is that the industrial and business consumers will be able to choose between competing suppliers and will obviously clearly have a choice of where to go. But currently, infrastructure prices are shared across all consumers of those utility services.

Mr BRADFORD—Not necessarily. They can price their electricity any way they want, can't they? They do supply now on a differential cost—

Ms Carver—Of course. In fact, the history in Australia is in fact the reverse. We have had industrial and business consumers cross-subsidising household consumers, and that is undesirable, but the opposite is equally undesirable. The opposite scenario of industrial and business consumers being subsidised by captive household consumers is as undesirable, we would say, both economically and socially, as is the current scenario where we have business and industrial consumers subsidising household consumers.

Mr BRADFORD—There are a number of other issues that will arise from that. I think we are probably out of time. I just wondered where you had got the impression that there was an excess production

capacity in Queensland. Is that a fact? I am a Queenslander; we are about to purchase enormous amounts of electricity from New South Wales.

Ms Carver—My understanding through reading the work of the National Grid Management Council is that there is excess capacity in those three states. I think there may well be a question of where the excess capacity is. Queensland is a very large state. It is my understanding that Eastlink is anticipated to be used to sell electricity from New South Wales to the south-eastern corner of Queensland.

CHAIR—Do you have a view about the disaggregation of Pacific Power in New South Wales?

Mr C. Johnston—It is a very difficult one. I have a preliminary view—which I do not to be held to, but I am quite to share it with the committee—is in favour of disaggregation of Pacific Power. Let me say, though, that we think it is quite a difficult question. The core argument in favour from a consumer point of view is that, if there are within New South Wales—between now and when it will be actually be a fully competitive national market, or at least an eastern seaboard market—two or three generating businesses rather than one, it does lead to lower wholesale prices through efficiency gains which can be passed on to distributors and therefore to consumers. That is a consumer gain.

CHAIR—Do you think that the estimate of a reduction of upwards of 20 per cent is a realistic scenario or is that just political hype?

Mr C. Johnston—While we said that is a preliminary view and we could change our mind tomorrow, part of the problem are the claims and counter claims, and I am not in a position to assess that. In this particular debate over Pacific Power, at least in New South Wales, there have been two armies of true believers. It is very hard to work through the hype in order to actually work out the reality. That is why a number of organisations outside government, such as the environmental groups and general consumer organisations, at the moment are neutral on the question. All I have said to you is on the basis of that broad spectrum argument, which really needs to be subject to a critical scrutiny. Of course, the outcome could also depend on whether it is two or three generators. There seems to be a prima facie case in terms of having competition rather than a monopoly, but that is a preliminary view and we could change that.

Ms Carver—On the possible gains, I think it is worth noting that the Government Pricing Tribunal foreshadowed those sorts of productivity gains prior to any anticipation of the break-up of Pacific Power.

Mr HARRY WOODS—You state that it is undesirable for that cross-subsidy to exist between business and urban consumers; you then disagree with the principle that we have in some GBEs that people are entitled to a uniform service at a uniform rate.

Ms Carver—Hidden, unquantified cross-subsidies are undesirable.

Mr HARRY WOODS—Why?

Ms Carver—Because there is no accountability for how the community's resources are expended, and because the utility concerned is getting the wrong internal management and financial signals with regard to its own businesses. Having said that, we mention in this paper another argument that we support—and we identify it with Optus and Telstra. Where you have utilities that gain considerable commercial benefit due to having access to things such as public airways, public land and roads which are mandated by government, there is a very strong argument that you either charge them a licensing fee, which is then ploughed back into the industry to fund universal access, or mandate a universal access requirement as it has done with Telstra, which is partially funded with the levy upon Optus.

Mr HARRY WOODS—Would you agree that some government business enterprises provide services through a cross-subsidy that could be described as a community service obligation, except that they are not specifically required by the government, and that those so-called CSOs, which are not really CSOs, are an expectation of the community?

Mr C. Johnston—Yes. I think this is a real question in the whole CSO debate that, as I said at the beginning, has been around for three or four years, and it is a question the chairman identified: the identification issue. Where do you draw the boundaries? Often it is put in terms of 'Where do you draw the boundaries between activities of a good corporate citizen or where there is a specific government mandate directed to provide a different particular social program?' Those boundaries are not easy to draw. You could say, 'Would the board of the business decide to do that anyway even if it was a non-commercial activity?', in which case it is probably not a CSO.

But in some areas the boundaries are very difficult. For example, in Sydney we have what we call pensioner excursion tickets. A pensioner can buy for $1 a day a ticket for multiple rides, any sort of use. One might argue that a business—in this case it is a government-owned business—might undertake that sort of activity anyway, not because it is a social program or a social activity, but because it is a marketing device to try to encourage particular usage, for example, on off-peak periods. There is no extra cost in providing the bus but some revenue is gained for the same reasons commercial businesses provide discounted tickets. That is not a CSO according to the classic definition. However, if it is undertaken for business reasons—

Mr HARRY WOODS—Would you agree that the CSOs that government business enterprises supply now through the flexibility given to them by the cross-subsidy would not exist, or only some would exist if it all had to be budgeted for?

Ms Carver—I think that is a political reality of course. One of our fears of budget sector funded CSOs is that over time they are subject to such political pressure because they are budget sector funded that over time we will see a degradation in the level of services to those least well off in the community.

Mr HARRY WOODS—When you talk about those 'least well off', in the paper here you talk about low incomes, but you also talk about those areas that do not have economies of scale working for them, in other words, rural and remote areas.

Mr Johnston—So-called non-economic services are clearly within the category of a community service obligation. While we tend to talk about the usual examples of things like price concessions, non-economic services are clearly part of that. Mind you, some of those in New South Wales at the moment at state level are funded through budget subsidies. For example, the state government gives annual allocations through the budget to local governments providing rural water supply schemes and to some of the rural electricity distributors to help reduce the costs of providing those services that would otherwise be passed on to their own customers who would pay a higher price.

Mr HARRY WOODS—So you see competition policy bringing a change to the advantage of the big end of town and a disadvantage to the small end of town except if the government steps in with specific requirements and, even in that case, those specific requirements are not likely to deliver the sorts of services we have now?

Ms Carver—There are no absolute answers with regard to the delivery of uneconomic services. CSO policy has a lot going for it: transparency, accountability, appropriate targeting. Targeting of CSOs: currently we have pensioner rebating in water but none for unemployed households or single mothers or people suffering from disabilities. Traditional CSO policy may and probably would deliver better targeting and more efficient delivery of those unsubsidised services.

But it works for rebates. In relation to the quantification of cross-subsidies in the use of standard rural tariffs in large regions of New South Wales and how you quantify the level of cross-subsidy inherent in a rural tariff in itself, the transaction costs of costing it would be so great that by adopting traditional CSO policy there we would be concerned that it would be so contorted, and the transaction costs so high, that on any cost benefit analysis you would not do it: you would leave it as a cross-subsidy within that region. So

there are no absolute answers.

If there is anything to sum up, it is in addressing the delivery of uneconomic services that the political processes must be participatory and transparent as to how they are determined. And their needs to be research and information made available at a national level with regard to some of the very complex issues around costing methodologies, evaluations and the different options for delivery of uneconomic services.

CHAIR—Could I perhaps conclude at this point. I am sure there are lots of other questions the committee would like to raise. We may reserve an opportunity to come back to you at some later stage with either written questions or an opportunity to meet with you again. I thank you for your presentation this morning and for the provision of the other papers that were also provided to the committee. If there are issues that you wish to comment upon during the course of this inquiry, any written submissions lodged with the committee or evidence provided to the committee, we would welcome your response and look forward to that in due course.

[11.01 p.m.]

GOODING, Mr Alexander Steven, Acting Executive Director, Western Sydney Regional Organisation of Councils Ltd, 1st Floor, 80 Main Street, Blacktown, New South Wales 2148

CHAIR—Welcome, Mr Gooding. I remind you that the evidence that you give at the hearing today is considered to be part of the proceedings of the parliament. As such, any attempt to mislead the committee could amount to a contempt of parliament. The committee has received a submission from WSROC and it has been authorised for publication. Would you like to make an opening statement before the committee begins its questioning?

Mr Gooding—I will just make a brief statement. I wanted to emphasise the importance with which local government and WSROC view the implementation of national competition policy and point out that a lot of the issues relating to its impact on local government remain very uncertain. In this regard, WSROC, like most councils, is not opposed to the introduction of competition per se, but we are seeking to resolve some of these issues and to establish a constructive relationship with the other levels of government. We believe that this relationship has to be based on extensive consultation with local government, a realistic assessment of the extent to which competition policy can be productively applied at the local level—bearing in mind the relatively small size of most council enterprises—and a clear set of guidelines and some policies that local government can use when implementing competition reforms.

In western Sydney we have a particular concern with what we would call inter-regional equity in terms of access to infrastructure and investment in our region. We are also interested in the impact of national competition policy on those matters as well.

CHAIR—Yesterday we had some informal discussions with a number of councils in the Albury region, including with a representative of one of the councils at Wodonga, south of the border, as well as a lot of smaller councils, along with Albury City Council. The committee found the discussion very productive, and I think the participants found it to be equally productive as well. To some extent, it perhaps reinforced a view that I may have had in advance of that meeting that a lot of local government organisations, particularly the smaller councils, may not necessarily be aware of the implications of competition reform. While the President of the Australia Local Government Association is a member of COAG, the signatories to the competition principles agreement were, in fact, the premiers, the chief ministers and the Prime Minister. Would WSROC have a view in terms of that particular aspect of the competition principles agreement that local government was not actually a formal signatory to it?

Mr Gooding—We have concerns about the fact that local government was not a formal signatory to that agreement, to the extent that we think it does not set a good example in terms of the need to build the sort of relationship I was talking about and the need for consultation with local government. Basically, we are saying that any attempt to set a set of prescriptive standard for local government will not work. We need to have a degree of flexibility which takes into account the enormous variation in size and structure of local government throughout Australia. In New South Wales you go from Windouran, which has a population of 300 or 400, to Blacktown City, which has 224,000 people. Obviously, you cannot apply exactly the same process to each of those councils.

I agree with what you are saying about the lack of understanding of the implications of national competition policy on local government at the local level. We have been trying to address it in western Sydney. We are holding a seminar later in November on this issue. I think our councils are starting to come to terms with it, but there is still a lot of uncertainty about how it is going to work.

CHAIR—One of the issues of concern in the public hearing in Melbourne by representatives,

particularly from the Australian Services Union representing the work force largely in local government—the old MEU—is the introduction of compulsory competitive tendering. Has WSROC looked at what has been happening in Victoria in the context of the amalgamation of local government bodies in Victoria and the introduction of compulsory competitive tendering? Someone told us yesterday that, if something happens in Victoria that seems to work, it will probably flow north of the border.

Mr Gooding—We have not looked at what has happened in detail since those reforms were introduced in Victoria. WSROC has in the past opposed the implementation of compulsory competitive tendering. We have not looked at it in the context of the national competition policy. We have a concern, however, that when governments are introducing reforms which affect local government they should distinguish between those reforms which are specifically related to the implementation of national competition policy principles and those reforms which are designed to achieve other ends, such as compulsory competitive tendering. We also do not have a position on amalgamations. Most of our member councils are relatively large by Australian local government standards.

CHAIR—What implications do you see of the imposition on local government authorities for the requirements that the private sector be permitted to tender for the provision of local services? To what extent is that happening anyway with contracting out arrangements in WSROC councils?

Mr Gooding—It is already happening in WSROC councils to varying degrees. Some councils, such as Liverpool, have a more developed model for those sorts of arrangements than some of the other councils. We have made a number of recommendations in our submission regarding the issue of contracting out and tendering. I guess that we have argued for some degree of flexibility regarding the imposition of those arrangements. We think, for example, that there should be some agreement between local and state governments and federal government about how to define business activities. There should be some support for councils to assess the contestability and viability of local governments when identifying those activities and looking at tendering and contracting out.

I guess that we are arguing for a degree of flexibility in those arrangements. Councils may come up with quite different arrangements, depending on their size and structure and the nature of the local economy.

CHAIR—One aspect that is often raised as a point of concern is the operation of the competitive neutrality principle. Allegations are sometimes made against local government or some state and Commonwealth government business enterprises that compete in the private sector that they are competing with an unfair advantage over someone in the private sector. Does WSROC have a view about that argument?

Mr Gooding—Yes. We did address that issue in our submission. Whilst local government does enjoy some competitive advantages in terms of taxation and so on, it also suffers from a range of disadvantages, such as a sense of greater public accountability and electoral accountability, public sector employment conditions and global borrowing limits, et cetera. These also need to be taken into account if you are trying to establish some sort of level playing field. I am not saying that you should just forget about applying those tests and that everything will just balance out, but you have to look at both the advantages and disadvantages that local government has in terms of competition.

CHAIR—Recommendation 4 from WSROC points to the fact that you believe that councils should receive compensation for the up-front costs of establishing the national competition policy at the local level and that local governments should receive a specific share of the competition payment or, in other words, the windfall in taxation that is likely to accrue. What sort of process would you see for the provision of that? Would you suggest, for example, that the financial assistance grants to local government be a vehicle for that, or would we look at some other measure of direct payment back to local government?

Mr Gooding—As our recommendation says, it is one and/or the other of these two options. One

obvious way would be financial assistance grants. The other would be some sort of guaranteed share of the competition payments based on some assessment of the up-front costs that local government is likely to incur.

Mr HARRY WOODS—Has WSROC or local government adopted any definition for a CSO?

Mr Gooding—We have not adopted a definition. It is one of the grey areas. We have pointed out that most of the time people think of CSOs in two ways. They think of them either as a specific obligation, such as a pension concession and the like, or as the difference between, at a very broad level, what a service gets in the way of income in terms of user payments and the amount that it costs to run that service, which comes out of consolidated revenue. CSOs should be more specifically designated in that latter category. They should also include CSOs in relation to social and environmental objectives. For example, you might explicitly subsidise public transport because of its environmental benefits. We would regard that as a CSO. In some respects, I like the term that the UK Royal Commission on the Environment came up with, which was a 'community contribution' rather than a CSO. That is one way of defining it.

Mr HARRY WOODS—One of the common threads through all the definitions seems to be a specific government direction or legislation. I suppose that local government would provide a lot of services that would fall outside that definition, but that would fall probably within any other definition without that.

Mr Gooding—I agree with that. That is a difficult one for local government. A lot of the arrangements we have at the moment are relatively informal. People fix a certain charge for the use of a swimming pool, for example, bearing in mind that their local community has a relatively low average income. Those sorts of arrangements are made. Obviously, local government will have to try to specifically quantify how those judgments and assessments are made. **Mr HARRY WOODS**—The broad range of CSOs that are provided by local government are provided to some extent by cross-subsidy.

Mr Gooding—Yes. That would be correct.

Mr HARRY WOODS—Would the same degree of CSOs that you provide now be provided if the requirement was that they needed to be specifically government directed?

Mr Gooding—That is a difficult question to answer. It is hard to know what results you would get if you sat down and looked at all the CSO payments that you are making. They might not necessarily be exactly the same in terms of the range and the amount. We are arguing that there should be a fairly broad definition so that you can take into account things like, for example, the low socioeconomic profile of a particular community that is served by a particular service. I guess that you are trying to quantify the extent to which you provide that CSO.

Mr HARRY WOODS—You would hope that the CSOs the local government provides would reflect the expectation of the community in that area?

Mr Gooding—Yes.

Mr HARRY WOODS—That expectation would change from region to region and from council to council?

Mr Gooding—Yes. That is right.

Mr HARRY WOODS—So any state or federal government directive on CSOs that specifically fitted into that definition which seems to be accepted would be unlikely to reflect that community expectation in various regions?

Mr Gooding—There needs to be some flexibility. I am not saying that the state government cannot say that this group of people, such as pensioners and so on, needs to be considered for a CSO. Beyond that core, it will probably vary from area to area.

Mr HARRY WOODS—That flexibility is provided at present because you are able to cross-subsidise to some extent. But it would be less likely that you would be able to get that flexibility if it was a

particular budgetary item in a state or federal context.

Mr Gooding—If councils have the freedom to determine within the broad framework of state and federal government direction what their policy on CSOs will be. At the moment, as you have pointed out, CSOs are being met by a range of arrangements, including cross-subsidies, which are not formally identified in the budget process. I do not think there is necessarily a problem with formally identifying them in the budget process provided that there is an ability for local government to do that. I guess that this is the philosophical part of the exercise. The community clearly needs to understand that it is part of the local government role to provide those CSOs. They are just doing it in a more explicit manner.

CHAIR—What is the state government or the Department of Local Government and Cooperatives saying to you and other councils in terms of the competition principles of agreement, given that they have to provide by June next year details in a policy statement on the implementation of elements of the agreement?

Mr Gooding—It is probably fair to say a range of things. I guess they are saying that councils will have to come to terms with the national competition policy.

CHAIR—Is there consultation, or are they just telling you?

Mr Gooding—The consultation process will predominantly be between the department and the local government and shires associations. We have recommended that that process be inclusive and that both councils and regional organisations be involved in that process. We have tried, along with other regional organisations, to start the ball rolling by holding a variety of seminars on the issue to which we have invited government departments to put their views. As yet, we have not had any formal invitation to be involved in that consultation process.

CHAIR—Are you surprised by that, given the timing?

Mr Gooding—I am starting to get a bit concerned. I think that it would be appropriate for that to commence—if not now, very soon. In fact, we are looking at a submission under the local government development program—

CHAIR—Is this a Commonwealth program?

Mr Gooding—yes—to identify issues relating to the implementation of national competition policy in local government to actually produce, based on case study experience, a set of guidelines that will assist councils in that process.

Mr BRADFORD—I take your point about the disadvantages faced by council enterprises but, in the same context, your next recommendation deals with the exemption of the crown from paying council rates. That is an ongoing issue. Have you had any success with that at all? I assume the Commonwealth Bank would pay rates on properties it owns.

Mr Gooding—I am not sure exactly what the arrangements are with that, to be honest on that point—who does and who does not at the moment. But I know there are a number of operations that do not.

Mr BRADFORD—Government schools would not, would they?

Mr Gooding—No. And again that relates back to that grey area as to what is a commercial enterprise that should definitely pay rates and those that you could argue are not so commercial.

Mr BRADFORD—Your recommendation 4 refers to the need for councils to receive compensation for up-front costs. That could be a way for you to argue, could it not, that that compensation should come by virtue of a greater or broader requirement for governments to pay rates, or the crown to pay rates?

Mr Gooding—I think that is a separate issue. In a sense what we are saying in terms of the recommendation on rates is that, if you are going to have competitive neutrality, it has got to be a level playing field for everybody, and that applies to state and federal instrumentalities. That, in a sense, is a separate issue to the compensation issue. That refers to the actual costs that local government will incur in

trying to implement national competition policy.

CHAIR—Has the Local Government Association responded in any way to WSROC's recommendations or are you not aware of them at this stage?

Mr Gooding—We have only just forwarded the submission to them; we have not had a formal response back. I understand that they are organising a range of seminars as well to look at these issues, and obviously we will be raising some of them at our meetings with them.

CHAIR—Are you aware of other ROCs that are doing the same type of study and coming up with recommendations that largely accord with your view?

Mr Gooding—We have had a degree of consultation, especially with the Southern Sydney Regional Organisation of Councils, which has already held a seminar addressing some of these issues. We, as the regional organisations, will probably try at one of our meetings to develop a common policy on national competition policy.

Mr BRAITHWAITE—In connection with the recommendations, which are a great base for us, would you expect something definitive from the New South Wales government at some stage, early, to give their exemption to certain activities of councils?

Mr Gooding—I imagine that is something that the state government would address in the statement, which all state governments have to complete by June 1996, on how local government will be impacted by—or how national competition policy will be applied within their jurisdictions to local government. I hope that we do not suddenly get delivered the set of tablets from 30 June 1996 from on high and that is the first we know about it. I hope there is some interaction in the run-up to that process, so we have got a clear idea about where the state government is heading and they are aware of our concerns.

Mr BRAITHWAITE—Certain state governments have already given certain industries, particularly in the professional area, exemptions already. I can see that that might happen with local government in New South Wales.

Mr Gooding—I understand that the state government was saying that the range of exemptions has always been very limited. As I understand it, it has not actually identified what those are or what exemptions there might be. So at this stage I do not know.

Mr BRAITHWAITE—I was thinking mainly in connection with energy and water. There has been no indication whatsoever?

Mr Gooding—Not to us.

Mr BRAITHWAITE—Do you think it is possible in the CSOs that the Australian Competition and Consumer Commission might be the body that can eventually arbitrate on this?

Mr Gooding—Yes, though I would have to think about how that might work; I have not really thought about how that might work. I presume that that would be something that would primarily be done by the state government. If there is a dispute about that, then obviously there will need to be some mechanism for resolving that dispute. Again, I would like to see local government given flexibility in relation to how it applies CSOs within a broad framework that is established by the levels of government.

Mr BRAITHWAITE—You have done a great job so far. What do you expect the further involvement to be between yourself and the state government on this matter?

Mr Gooding—We will be doing a couple of things. We will be, as I said, holding a seminar on 10 November to discuss both the broad issues and the specific application of national competition policy at the local level. We are also looking at that in terms of related issues such as the New South Wales state government's urban strategy review and how that might be impacted.

The other thing we are doing, as I said, is preparing a local government development program

submission to actually do a detailed analysis and case studies to provide guidelines for councils in implementing national competition policy. We will also be holding further discussions with the other regional organisations and councils and with the associations to develop a policy position to put to state government in particular.

Mr BRAITHWAITE—Your recommendation 15 shows some of the difficulties that councils have—and No. 4 is about global borrowing limits. Do you think if you were allowed to go out into the open market in today's financial base that you may not even get to the same extent of borrowings as your global borrowing limits are at the moment?

Mr Gooding—That is a good point. I am not, to be honest, a finance expert, so I am not sure what the impact of removing or imposing those limits would be. The finance managers from WSROC raise that as one of the issues. Also, that economic climate might change as well.

Mr HARRY WOODS—Has WSROC done an assessment as to whether national competition policy will result in pressure on increasing charges or decreasing charges to consumers and local governments?

Mr Gooding—No, we have not. To do that sort of analysis would be a fairly complex exercise. To some extent it might be the sort of thing we look at in that project if we do get—

Mr HARRY WOODS—Have you got an opinion?

Mr Gooding—I think if you were 'over the top' in applying it, you could end up with a worse situation. If you applied competitive neutrality and regulated a provider separation to the nth degree, you might end up worse off. But I think if you apply it sensitively and if you give council some flexibility, if you look at a range of responses, it will result in some savings and a more efficient delivery of services. I think the gains will not be earth shattering, but there would be some gains there as long as it is applied sensitively.

CHAIR—There being no further questions, do you have any closing comments that you would like to make to the committee?

Mr Gooding—Just that issue about having some flexibility in how the policy is applied to local government. I also want to emphasise the point I made in my opening statement about looking at the potential for national competition policy to address inter-regional inequities, which is an area I do not think it addresses at this stage. It is very much about access and management of existing infrastructure; it does not impact so much on the planning of new infrastructure. It does not impose a requirement, say, on state and federal governments to ensure that, when decisions are made about infrastructure expenditure, that expenditure is spread evenly on a regional basis.

CHAIR—Thank you, Mr Gooding. We appreciate your time and WSROC's submission. We would also welcome any further response you have to any of the other evidence presented to the committee. If you wish to add further to your submission at any point during the inquiry, that will also be welcome.

Mr Gooding—Thank you very much.

[11.35 a.m.]

CHENEY, Mr Brian John, Financial Services Manager, Pittwater Council, 9/5 Vuko Place, Warriewood, New South Wales

COX, Mr John Anthony, General Manager, Pittwater Council, 9/5 Vuko Place, Warriewood, New South Wales

MAY, Mr Vivian Herbert Russell, General Manager, Mosman Council, PO Box 211, Spit Junction, New South Wales

THOMSON, Mr Frederick Leonard, General Manager, Warringah Council, Civic Centre, Pittwater Road, Dee Why, New South Wales

WOODWARD, Mr Maxwell Clem, Director, Engineering and Technical Services, Manly Council, PO Box 82, Manly, New South Wales 2095

CHAIR—I welcome the representatives from Pittwater Council and other councils. The hearing this morning is considered to be part of the proceedings of parliament. Any attempt to mislead the committee may be considered to be a contempt of parliament. The committee has received a submission from the Pittwater Council and it has been authorised for publication. We would also welcome representatives from the other councils that make the Regional Organisation of Councils in the area. Mr Cox, would you like to make an opening statement to the committee?

Mr Cox—Thank you, Mr Chair. Initially, when we put our submission together, it was done out of frustration more than anything, because it appeared at that point in time that local government had not been consulted to any great degree about the national competition policy and its ramifications. Some of the issues that came to light during state-local government briefings of recent times included the possibility of losing our crown protection status and therefore our sales tax exemption and the indication that the state would not be passing on any benefits to local government through national competition policy initiatives and changes at any level. We do represent a fairly high proportion of the population at grass roots level, regardless of the fact that we are not represented in the constitution.

The document that we wrote was from Pittwater initially on the basis that local government and Pittwater per se would have liked to have been involved in some of the strategies being planned.It was also a cry to the committee that there did not seem to be a lot of involvement of local government or state government in what was happening with national competition policy changes. Having said that, we have caucused as the SHOROC group, which is the regional group representing peninsula councils—Mosman, Manly, Warringah and Pittwater. I think collectively we have a view that we have some concerns and we would like the committee to hear our concerns. As a result, we pooled together a quick briefing document for you today entitled *SHOROC submission*.

CHAIR—Before you continue with your comments, we will formally order that the document presented by SHOROC as its submission be included in the committee's records as an exhibit.

Mr Cox—As I said in my submission, local government was going through a significant change process anyway as a result of the 1993 Local Government Act changes and, as such, we were looking at our local competitiveness and benchmarking ourselves against our peers, both state wide and internationally. It would appear from the original information provided on national competition policy that this situation had

been ignored.

I, as an ex-federal and ex-state public servant, was concerned that both the federal bureaucrats and state bureaucrats were producing models for the reformation of the electricity industry, rail and the like to be imposed at the local government level where they had no applicability at all. Again, it was a cry to say could local government be involved and could the contribution we make be recognised. One of the questions you asked the previous speaker was: have we been involved at state level and have we been given reasonable access to information? I think the answer, until the last two weeks, is no. Local government has not been involved very successfully or very openly. It is my view too—this is Pittwater's position—that it was getting too far down the track to drag local government back in at any level, hence the submission.

If you look at the document we have tabled, the SHOROC document, you will see that we target certain areas. Perhaps it is appropriate if we deal with them one by one and go through it. Obviously, the issue of compliance with part 4 of the trade practices legislation is difficult because to comply we have to do an audit of all our activities. I am not quite sure what expense Warringah Council has gone to recently but they have undertaken that part 4 audit. It would be very expensive for all councils to do that audit, to target effectively maybe 10 per cent of its operations, when the definition of a competitive business is still somewhat rubbery.

A national competition policy, by its nature, is meant to be a national forum, a national agenda, but as I understand it local government will be dealt with on a state by state basis. Therefore, the federal government would set national benchmark levels and national grants and provide funds on a national basis. For example, through its regional economic development funding program, it would be funding to a local government level in each state that has different measurement parameters, different directions, different measurables, different guidelines. It seems odd to do something like that when you are looking for a national competition policy and you are looking at a national initiative.

I suppose my view is that the federal government should be giving some guidance to the states so that there is some control put across all local government and we are dealing out of the one hymn book, singing from the one page, perhaps even at the one paragraph and in the long term from the one line.

CHAIR—It is the subject of intergovernmental agreements. Of course, like most intergovernmental agreements, it inevitably involves compromises across any federal system. You probably also heard my comment before, that while the Australian Local Government Association is represented on COAG it is not a signatory to the intergovernmental agreement on competition policy. I guess the issue of why they are not could probably be argued. I suppose the traditional hostility that often appears between local government and state governments may be the basis of that exclusion.

I do not think there is any problem from the Commonwealth perspective in terms of local government. So I can only assume that the fact that the local government representative was not a signatory may have been because of resistance from state governments who saw local government being a creation of their own legislation rather than as a third tier of government in Australia.

Mr Cox—I take your point, but I think it would be remiss not to raise it as an issue. You have a perfect opportunity to get some universality across local government in Australia and it seems to me that that is slipping out of everybody's grasp.

CHAIR—I should also declare my bias, of course, as a former federal minister for local government.

Mr Cox—On the issue of communications, the four councils represented today are suffering the ignominy of the federal government's legislation for telecommunications and third carriers in the form of Telstra and Optus. I think all of us have recently received statements of intent on the part of Optus to cable-ise, I suppose, for want of a better word, the whole of the peninsula. My understanding is that they will be

slinging large black cables from pole to pole, as the deal struck with Sydney electricity.

It just seems odd in a world where telecommunications is changing rapidly and digitised data and optical fibres have become almost passe that there is no capacity for Telstra and Optus to share underground old Telecom services on a fee for charge basis. I think all councils have suffered the critiques too—'No, we can't share a tower with Telecom because we are different,' and vice versa. When it is my understanding that there is very little difference between the two; it is more a commercial advantage we are dealing with.

As a national competition policy initiative, surely this committee could put some direction into getting sanity into this issue. We are not the only ones, I am sure, who are suffering, but we do represent some rather pristine environments. I am not saying that large black cables in western Sydney or Bullamakanka are right either, but there is a very strong environmental presence in our various communities. There seems to be a solution, but it is being ignored. Does that clarify that position?

CHAIR—The committee will take on board your comments.

Mr HARRY WOODS—Have you put that point of view to Telstra or any of them?

Mr Cox—Yes. We are trying to get together with Telstra and Optus as a working party. The inevitability is that we have no control over the federal legislation. Basically, local government pays lip-service to the federal act. If you look at the act, the hurdles to even get the secretary to the department of sport and recreation—of all things—signatory to stopping their activities are quiet bizarre.

Mr THOMSON—I have just had that issue explode in my electorate of Wentworth in exactly the same fashion as you probably all had. Have you considered almost a consumer boycott kind of campaign to stop this or are you satisfied with these working parties and bureaucratic sounding methods?

Mr Cox—Go back a step. We have no control—and this is my opinion, and I am sure my colleagues will step in if I am heading in the wrong direction—because the federal legislation takes that away from local government, and state for that matter. It is my view that the only way you will effect change in this area is by some sort of consensus position, hence Pittwater's position where we are trying to work with Telstra and Optus to try to find a strategy or solution which is palatable to all, assuming we have very little control.

The problem really lies in the federal legislation. If my memory serves me correct—and I did several years in the department of communications in Canberra—the legislation was geared around Telecom being the instrument of the department of communications and, therefore, a federal body. It did not recognise the commercial nature of Telecom and it did not recognise Optus in those days. The changes have not been significant since the move to commercialisation. I think we are saying the same thing; that you will suffer in terms of the problem. I do not know whether there is an easy solution, apart from a short sharp jolt at the federal level to get some control back in the agenda.

Mr THOMSON—They either go overground or underground. There does not seem to be anything in between.

Mr Cox—There doesn't seem to be, unless there is satellite, but then you have dishes everywhere. Having spent a little bit of time in England recently, I do not know whether that is an alternative either. But digitised information on an optical fibre cable, I understand, which will take a multitude of signals, certainly seems to be a solution. They are passing our doors. Why aren't they being used? So what if Optus has to pay or vice versa. Isn't that what national competition is all about?

Mr THOMSON—I think it is environmental; nothing to do with competition. It is the strength of the likely public pressure that you can apply to such an outfit like Optus that will get a solution that is acceptable to your electorate.

Mr May—The SHOROC mayors are endeavouring to meet with the communications minister when they will be pushing the conflict with the national competition policy versus the communications policy.

SHOROC has great difficulty in understanding how the federal government gives its blessing to this fight to the death almost, spending billions between Optus and Telstra, when Optus can be putting their wires in Telstra's underground cable pits. It is causing considerable problems in Mosman where I come from. Our federal member, who is also a member of this committee—

Mr THOMSON—I was hoping he would be here this morning. He would never shut up about it if he were. He is the expert. He has been the first one to really get stuck into it.

CHAIR—He has certainly put it onto the agenda, well and truly. You were talking before about bio-resistance, almost. I think Optus may find bio-resistance in the Mosman area if they continue with their plans to put these wires above ground.

But, as I say, for what we are here today is national competition policy. Sure, Optus does not understand why, when the federal government is pushing for shared use of infrastructure—and so is the state government—they give their blessing through approvals from city electricity to overhead wires.

Mr HARRY WOODS—If it is all so sensible, why do they not agree to it?

Mr Cox—Because it is a commercial imperative, and physically and technically you can do it. That is the thing that probably sticks in my craw.

Mr HARRY WOODS—So it gives one or the other the upper hand.

Mr Cox—Yes. But supposedly—and this is something apparently that is not public—they do deals behind the scenes when they realise there is a problem. In one of my previous lives I was the contract negotiator for the National Broadcasting Television Service. There are something like 500 sites around Australia where it carries the ABC signal, SBS, every commercial service in that region—radio cabs, et cetera. That is old technology; it is not digitised technology, it is not using optical fibre. It is 'line of sight' shooting, et cetera. I made some inquiries of previous colleagues in Canberra, and technically you can do it.

Why should a commercial advantage prejudice our environmental position? Mr Thomson took the view that it was an environmental position. Rubbish! It is a commercial position, no more, no less. It just happens that the environment is in the way. But that is my view, again.

Mr BRADFORD—I go back to the paper that you presented on the financial practices. Tim asked me whether I should declare an interest, having some in-laws still living in Narrabeen, but I do not think that is necessary.

Can someone take us through this part of it. I am interested particularly in what you describe as a rough estimate of the impact on councils who show an interest in costs between five and 10 per cent of total budget. I think that was the question we asked the WSROC representative, but he was not able to quantify anything. What is the point you are making there?

Mr F. Thomson—The numbers are very rough because really we have no basis for them. We were advised by officers of New South Wales cabinet that all local councils would have to pay payroll tax. In my case, out of a budget of $80 million, about $30 million is payroll. We would also have to pay sales tax; as you know, that varies depending on the item. We would also lose access to government stores because the removal of the shield of the Crown would take us out of the Q store operation.

They further advised us that we would have to break up our collective purchasing arrangements—and I cannot see there being any difference between what we do with the Q store and what franchises like Macdonald's and Chem-Mart do. You buy collectively—and that does not mean you are collusive in what you are doing. It does not mean in our case, in my view, that we are large enough, even collectively, to affect the national competition policy.

So I have had my Treasury people try to work out their best guess at what we would pay in the way of sales tax, if we had to pay it, what we would pay in payroll tax, and what the loss of access to government

stores and the loss of our collective purchasing would mean to us. Their estimate is that it goes between five and 10 per cent, and that is a very ballpark figure. It is the best they could come up with. But in our budget that represents, as I said there, significant dollars.

The other complication was that the same cabinet officer told us that the national competition policy would give money back to the state government. In the New South Wales case, the cabinet had already decided that none of that money would flow to local government. So we would be paying off $3 million to $6 million in extra taxes, and this state government was only going to put it into police, education, hospitals and the Olympic sites. None would go to local government. We cannot get that confirmed or denied by anybody.

Mr Cox—To superimpose that too, we have rate pegging imposed on us. So we have lost our Crown status and, therefore, the tax free status that we enjoy and our rates are pegged. So you have a net outflow of fairly significant proportions but no way of recovering that loss because the state sets the level of rates achieved.

CHAIR—Could I perhaps raise an issue that I raised with the WSROC representatives. In the last couple of days a message has been coming across from local government that suggests there is a lot of obvious concern about some of the impact of the national competition policy and the implementation of those principles that are agreed. I think we all have to accept that, whether we like it or not, it is now part of that inter-governmental agreement.

The purpose of this committee, or the reference it has been given by the Assistant Treasurer, is to look at ways in which that process may work effectively. It would seem to me that we do need to have a strong coordinated approach by local government through representative bodies of the state, like the Local Government and Shires Association, for example. I notice that at their annual conference in Wagga this year they had a panel discussion dealing with competition policy. What sort of contact has your ROC had with the Local Government Association of New South Wales in terms of pursuing the concerns that you obviously have on these issues?

Mr F. Thomson—We attended a RIPA conference. The first time we knew about this, RIPA put on a conference with the cabinet office which was the first advice we had.

CHAIR—RIPA?

Mr F. Thomson—It was a great conference. RIPA represents Royal Institute of Public Administration. That is where these cabinet people addressed some representatives of local government. That was just shortly after the agreement was signed, and they announced that these things had already been decided in cabinet. We instantly left that conference, rang the Department of Local Government and the Local Government Association. When we went and saw them, we had two conflicting views—one was that it would have no impact on local government whatsoever and, therefore, we need not worry about it. We are not concerned about the competition; we are into that as hard as we can go. That is not the issue. It is the question of impact on our ratepayers and where the equalisation is in this entire thing.

We were told by one government officer at that second meeting with those departmental representatives that it would not affect us because we are not nationally significant. The only thing they could think of in New South Wales that may be roped in was the Wyong-Gosford water and sewerage supply, which is equivalent to about a third of Sydney water and, therefore, significant in national terms. Nothing else in local government would be roped in. The other officer, on the other hand, said that all these other decisions had been made in cabinet and Treasury in New South Wales and would be applied unilaterally without consultation.

The attitude of the Local Government Association is that the status quo is going to prevail. It will not

impact on us. Therefore, we do not need to address it. That is their official stand coming from their executive director. I think that is just head in the sand, ostrich-like behaviour.

CHAIR—It sounds like it could be an interesting conference in Wagga.

Mr F. Thomson—Since then, I have had a conference at Warringah where I got all the North Shore general managers—11 of them—and their staff together. We got those people out to address us, and we have since had two meetings in their offices. We still cannot get any clarification. The nearest we have had is they keep telling us that New South Wales state Treasury is preparing a paper on the possible implications on New South Wales local government. The first draft was meant to be out a month ago. It still has not surfaced. On the other hand, they are telling us that if we want exemptions we have to have it into them before Christmas.

Mr Cox—That means that you have to do your part 4 assessment, identify all of your services and do a fairly onerous check listing the question and answer process to work out whether it is a competitive business. No-one has actually come out formally and said that the original statement by the cabinet office has been annulled. There has been a lot of rumour that it was all a little too much too soon. But, as far as we are concerned, that is the current state government policy.

CHAIR—So has the minister for local government had any formal response since the agreement?

Mr Cox—I am not aware of any.

Mr F. Thomson—Not a word.

Mr May—We would argue strongly that the arrangements between state, federal and local—particularly between state and local—must cross state borders. There must be a level playing field; it is a national policy. One is left with the taste in the mouth that we will get picked off state by state. That worries us greatly.

Mr Cox—I go back to a question that Mr Bradford asked on the financial issues. I also harp back to the comments with WSROC and the CSOs, the services that we provide are really out of duty to the community. It was just coincidental in the budget last night that the state government axed the two kilometre limit for free school student travel on buses, so anyone living inside two kilometres will pay. That has been a bone of contention with State Transit and State Rail for a long time—not the two kilometre limit but the amount of money that goes towards supporting a government initiative. Originally it started off, as I understand it, in the boondocks with kids in country towns, farms and so forth and progressively, as largess got carried away, politicians allowed it to become almost an enshrined right.

When I worked for State Transit it was quite a significant proportion of their budget. Each year when they went to have their funding structures looked at and their fare services and levels set, the CSOs were never addressed. So progressively they became a burden, but they were never rewarded for the service they were providing.

Likewise, we provide a lot of community services. We provide child-care services and we provide swimming pools. They are usually facilities that no commercial operator would go into because if there were a dollar in it the commercial operators would be there now. We then have to load up those services in this national competition policy, make them level playing fields and then say, 'Isn't it horrible?' We are running a service as an advantaged service because it is there rather than saying, 'Well, no-one else will provide the darned things.

It seems to be a little lopsided when you start getting into those grey areas of business. No-one argues the fact that, if we have got commercial services, they should not be on a level playing field and a competitive basis, given the guidelines of the national competition policy. But those social services, for want of a better term, really should be exempt right from the outset.

CHAIR—It gets back to a question of definition, I think, and that is part of the difficulty. It appears local government is trying to come to grips with what does constitute a business. Is a business, for example, a swimming pool that charges an admission fee in most cases compared with some other entrepreneurial activity that council might be involved in such as land development. In the case of my own council in Bathurst, we are actually part owners in a motor racing circuit with a number of joint venturers, which is clearly a business proposition. It gets very difficult, I guess, to make a firm judgment as to what is a business and what is not a business.

Mr Cox—I have no argument with what you are saying there, but it is that fine detail of the 10 per cent. The rest of it all falls over in that you provide rate services and you provide building application services, et cetera—no-one else provides those—it is that 10 per cent. But you have to work your way through all of your services to prove what are and are not competitive businesses under this policy.

Mr F. Thomson—I have engaged a firm of solicitors who specialise in trade practice to look at Warringah to try to develop guidelines of how we do a part 4 review in local government. To the best of my knowledge, it has not been done in local government anywhere in Australia yet, although I think one council in Perth is starting to tackle it. Our solicitor has gone off to talk to them to find out whether there is some commonality. In the work that has been done to date, it involves looking at all the activities and then seeing if it can pass or fail the part 4 assessment with a series of questionnaires. That is the way we are organising it.

Clearly, the majority of your functions will drop out and will not be competitive. But there are some at one end that clearly are, there are some at the other that are clearly not, and there is a big grey mass in the middle. You have to go through the rigour of the disciplined process to find out which is which and then be able to prove it. The solicitor's advice to me is that we are in for a legal feast because the word 'business', which appears in the national competition policy, is not defined and it is not common with the federal companies legislation. So all the case law that is in the various companies acts will not assist you with the definition of business. The courts will start all over again redefining what is a business and, in the case of local government, that becomes a very complex question.

Mr Cox—Look at our history. Invariably in the 177 councils in New South Wales, the majority of costs is probably picked up by 30 or 40 of those councils with a population in excess of about 35,000. Small struggling councils will have to take the burden of that audit or rely upon the work and the largesse of the large councils who do it and who may pass on some information. If I have spent a heap of money on it and set up a format for question and answer testing of my business and I pass it on, I would be looking for some sort of compensation. It is an onerous burden on larger councils. We do not fall within the larger bracket. We will pick up the cost. When you get into the smaller councils, it is a burden. Most of their services may not be national competition competitive services. By their nature, they are service driven, but not business driven.

Mr HARRY WOODS—I am interested in Pittwater Council, as it is a newcomer since May 1992. To what extent has your council been able to pick up some of the competitive factors that are now in the national competition? In other words, did you have an advantage by being able to predict a lot of these things in your initial structuring of services to make sure you were competitive and you were looking for outside contracts?

Mr Cox—I do not think so. We inherited basically the north area. We have taken over possibly three businesses, including one significant business. It was running under another regime prior to this operation. I do not think we are in a position to really say that we have structured our process on a national competition basis, but we are very commercial in our approach in terms of our accounting and our handling of the books. It will not take much to do the analysis on that basis. We are talking from a global perspective here, not Pittwater, as I read it.

Mr BRAITHWAITE—But it was your initial objective. We asked that question of Wodonga yesterday. They have gone through a major restructuring competitively. We asked them where they expect to go under the NCP. They expect to move further down the line than what the Victorian government wishes them to go at the moment.

Mr Cox—With full tendering, et cetera? We have got about a 60-40 split now anyway in our services. You would be lucky to get down to that ratio on either side—60-40 or 40-60 regardless—because a lot of the services cannot be provided by external services.

Mr HARRY WOODS—Have you developed any ideas about how you define a community service obligation, because I think that has obligations for what the business definition is? This particularly concerns what seems to be a common factor amongst most of the definitions of a community service obligation, which is that of a specific government direction.

Mr Cox—The answer is yes, but it is grey. We have things like child-minding services and out of school care that we provide. There are commercial services via people operating from home.

Mr HARRY WOODS—I am aware that councils provide a lot of services that will not fall into a definition because of the specific government direction.

Mr Cox—I see that they are more competitive services, but they are running side by side and they are not competing. We are filling a gap rather than competing on a commercial basis. That is where I think the logic of the legislation may lose those areas.

Mr HARRY WOODS—You would have a basic disagreement with that part of the definition that states it is a specific government direction?

Mr Cox—Yes. Take Meals on Wheels. It is a competitive service, but it is really a social service. Others provide meals around town in the form of cafes, restaurants, et cetera. There is Curry in a Hurry and God knows what. You can have food delivered anywhere in Sydney by vehicle. But is it a competitive service? Of course it is not. It is dealing with an element of the social community that really does need it. It is probably the only meal its recipients have on a daily or weekly basis. It is quite nutritious. By definition, it is a competitive service.

Mr HARRY WOODS—How do you provide that through a cross-subsidy of services.

Mr Cox—And across councils, too. But why would it be treated in any other context than a social service?

Mr HARRY WOODS—Hilmer says that these cross-subsidies are really not efficient.

Mr Cox—I do not think Hilmer thought of local government. As a matter of fact, he said—and it is anecdotal—'What is local government?' when someone asked him the question. I do not know that as a fact, but from what we have seen and heard it was certainly an afterthought very much afterwards.

Mr HARRY WOODS—What do you think would happen to some of these services you provide if they became budgetary items on a state budget or federal budget?

Mr Cox—They would fall over. You could not afford to pay for those services on a commercial basis.

Mr HARRY WOODS—So the only thing that really gives you the flexibility to fund them is the ability to cross-subsidise.

Mr BRADFORD—I am not sure that that is so. They have to be paid somehow and somewhere. It is a matter of accountability and proper accounting for them.

Mr Cox—But, if you had to recognise them fully as a commercial service and then back-charge to your client, I am sure your clients could fall over very quickly.

Mr BRADFORD—Meals on Wheels is a very good example. What are your fears about these

principles as they might impact on Meals on Wheels?

Mr Cox—I am doing this on the run, but if you made it a level playing field and then charged all of your costs proportionally, including every administrative cost and overhead, the clients could not afford to pay for them.

Mr BRADFORD—No, of course not. But there is no suggestion, as far as I am aware, that they would be required to pay for it. It would be a matter of proper accounting for it so that everyone would know what it would cost.

Mr Cox—I do not have a problem with that. But if we are then seen to be competing against another supplier and we have to apply that level playing field, the supplier may come in and take it over and it becomes a commercial service at the full rate, not at a recognised discount.

Mr BRADFORD—It might be delivered very efficiently by Curry in a Hurry if people want that. They would then be subsidised. They would be paid directly to ensure that the customer got it at the $2.50 or $3 per hour rate.

Mr Cox—That transparent amount is a recognised social payment of the social service. If one transcends the other as a commercial imperative takes over, that discount or social payment is lost.

Mr Cheney—In the delivery of community and social services, one must not forget the high reliance on volunteers.

CHAIR—That happens with Meals on Wheels. Perhaps that is really drawing a long bow. It is largely volunteer driven anyway through a program that operates with a social objective.

Mr Cox—It is a long bow, but we are asking where the guidelines are.

CHAIR—That is the critical point that you are raising here today. In the last couple of days, there has been clear evidence of problems with consultation between the New South Wales government and local government in terms of possible exemptions and the process leading to the competition principles agreement publication by June of next year.

Mr Cox—It is not right to say that local government, by virtue of the fact that it is a puppet of the state, should miss out and be held to ransom by each individual state. The federal government is holding the purse strings. You can condition how that money flows through. The federal government holds a lot more power in this whole exercise than what it is saying it does and what the state is saying it does.

CHAIR—That is a moot point. There is a requirement for the publication of these statements by June next year. The clear understanding is that those statements are largely going to be published in terms of local government's role in the national competition policy by the state governments. Clearly, we will have a role in the recommendations we make, particularly when it comes to the third section of our terms of reference, which deals with existing government policies relating to CSOs and the options for the delivery and funding of these services. That is clearly a critical part of our role in this committee.

Mr HARRY WOODS—Does SHOROC have any idea of how they think community service obligations should be costed and by what methodology?

Mr Cox—We have not given it a lot of thought. I suppose we just want a consistent approach, and that applied across both federal and state boundaries.

Mr May—If I could ask a question: how would the federal government address a scenario that was outlined by the cabinet office in New South Wales where the benefits of the competition policy do not flow through to local government in New South Wales?

CHAIR—I cannot really comment on what is largely a piece of hearsay evidence, as they say in the legal jargon, with due respect, but obviously matters in terms of the agreement between the Commonwealth and the state, particularly in terms of the so-called windfall taxation revenue that will accrue to the federal

government, and the state government asking for a share of that, the arrangements for that are a matter obviously that have to be worked out. I have made the point earlier on that I think it is a bit unfortunate that local government was not a signatory to the intergovernmental agreement even though they were, or are, a member of COAG, the Council of Australian Government.

Perhaps I can draw this to a conclusion at this point because we are, as I say, running into some time constraints, except to say that if there are any final comments that you would like to raise and leave with the committee, Mr Cox, or any of the other representatives—

Mr Cox—One point I would like to make is that if the committee could see its way clear to providing some guidance on part 4 assessments, what would and would not fit into the category to be assessed would save a lot of money and a lot of time. We have to have our submissions to the department by the end of January. At this point in time it means that every local government body has to go and do a part 4 assessment on its whole operation. It seems an awful waste of money and time.

CHAIR—My understanding is that there is not a formal requirement to in fact have a compliance audit of those activities, but obviously local government authorities would need to be sure that they are not in any way breaching the Trade Practices Act. In this respect they are not in any different position to anyone in the private sector or, indeed, government business enterprises at the state or federal level at the present time.

Mr Cox—With respect, Mr Chair, private business by its nature is a competitive business. We are not competitive in a lot of areas, 80 or 90 per cent of our activities, but the audit we would have to do would have to go across the whole organisation and it requires a lot of time, a lot of effort and a lot of money when we are only dealing with a very small proportion of our operations. Most of the non-competitive operations can be easily identified and put out as an addendum to the legislation or as an agreed position by federal and state for local government to adhere to, and at least then we only concentrate our resources on the part 4 review on that small area.

CHAIR—Perhaps I could leave you with the suggestion that you may like to make contact with an adviser with the committee, Mr Jim Dick, who is with us today, who might like to discuss this further with you in a private session which may help clarify some of those concerns.

I thank you and representatives from SHOROC for your appearance before the committee today. I think it has been useful, even to the extent that the waters may be a little bit muddied, and I guess that is part of the reason we have had this reference. But please feel free to comment at any stage during any other oral evidence presented to the committee or, if you wish to come back at any stage during the course of the inquiry, we would welcome your input.

I made the comment yesterday in an informal meeting with councils in the Albury area that the committee may give consideration to the publication of an issues paper later on during the course of this inquiry, because we may face a slight problem in our timetable with the election intervening before our report is completed, so I think something like that may be a useful way of providing guidance, to local government in particular, as to the direction in which the committee sees some of the references that we have been given by the Assistant Treasurer. Thank you once again.

[12.19 p.m.]

RANALD, Ms Patricia Marie, National Research Coordinator, Community and Public Sector Union (PSU Group), 5th Floor, 191 Thomas Street, Haymarket, New South Wales 2000

CHAIR—I welcome the representative of the Community and Public Sector Union and, in doing so, remind you that the evidence you give at the public hearing today is considered to be part of the proceedings of the parliament. Accordingly, I advise that any attempt to mislead the committee may amount to a contempt of the parliament. The committee has received a submission from the Community and Public Sector Union and it has been authorised for publication. Would you like to make an opening statement to the committee?

Ms Ranald—I will just make a brief statement, if I may. The Community and Public Sector Union is actually the largest union in Australia. It covers both Commonwealth and state government employees and a number of people working in statutory authorities. We have actually made two submissions: one from our SPSF group covering state employees; and one from our PSU group covering Commonwealth employees, which I represent.

The majority of our members in both state and Commonwealth government employment are workers who receive less than average weekly earnings and half of them are women. Our concerns about national competition policy go to both the concerns of our members as consumers and also the concerns of our members as employees; most of whom, as I said, are low paid employees and half of whom are women.

We welcome the committee's focus on public interest tests and their implementation. We have singled out five main areas in our submission on which we are asking the committee to make recommendations. I just want to mention briefly the legislation review, which is not addressed in the submission, but I would like to make a few comments about it.

First of all, in relation to the interests of our members as consumers, we have made some comments about what is likely to happen to prices under national competition policy. It is quite clear from both overseas experience, the Industry Commission's inquiry into the financial implications of competition policy and other submissions that you have received—for instance, from the electricity industry, the gas industry and so on—that the effect of national competition policy is likely to be the removal of cross-subsidies to domestic consumers and some rebalancing of prices; in other words, a raising of prices for domestic consumers and a lowering of prices for industry and commercial users. In that framework, we are anxious that the Commonwealth government take some responsibility for ensuring that there are equitable price control mechanisms so that these essential services remain affordable, especially to low income people and to women who form the majority of low income earners.

We draw your attention in the submission to the evidence collected of the United Kingdom experience by Mr John Ernst, who is the author of a book called 'Whose Utility?', which is one of the few comprehensive studies on the effects of these sorts of pricing changes on consumers, especially low income consumers, in the United Kingdom. It found that there were very steep price rises in the United Kingdom—such as up to 67 per cent over a four-year period in water—and that these price rises had very detrimental effects on low income people. It resulted in there having to be, for example, a special adjustment made for water costs to the social security payments in that country. So we are very keen that the committee should recommend there be equitable price control mechanisms and mechanisms which ensure that poverty does not lead to lack of access to essential services under this policy.

The second issue we address is community service obligations. The definition of community service obligations is problematic, as a number of submissions have drawn to your attention. We would argue that there has to be very wide community consultation as to the definition of community service obligations in the

case of essential services. We draw your attention to the process which has gone on with telecommunications, where there has been a recent public review with public submissions. The government has recommended that the definition of community service obligation in telecommunications be broadened from what it previously was.

We do not agree that the only way or preferred way of funding community service obligations is through budget funding. Again we draw your attention to the telecommunications situation where in fact the private competitors who have access to public infrastructure and who are operating profitably through that access actually make a contribution to the cost of community service obligations. We think that is very important. Otherwise, what will happen as a result of national competition policy is that the private sector will skim off all the profitable areas, leaving the state and the publicly owned parts of those essential services to pay for all the community service obligations. In the end, taxpayers are paying for those community service obligations.

So we want to make the point that we believe that if you are going to have private competitors operating in the profitable parts of these essential services, which are the only parts they will be interested in, then they should contribute towards the cost of community service obligations as they do in telecommunications. They should also pay a fair price including long-term costs for access to public infrastructure.

The third issue we want to address is the issue of where in fact the policy applies. On page 5 of our submission we draw your attention to the fact that a number of unions through the ACTU, but my union in particular, were involved in extensive discussions with George Gear and others in the preparation of this legislation. We were very concerned as to what the definition of a business was and what parts of the public sector this national competition policy would apply to. George Gear reassured us that it would not apply basically to the non-commercial parts of the public sector. We have a long quote from him where he reassures us, in his second reading speech, that national competition policy will not apply in areas such as health, welfare, community services, labour market programs et cetera which are not commercial services; they are community services.

Since those assurances were given we have had a number of indications that at least some people in the public sector at the Commonwealth level think that national competition policy does apply in those areas. You would not be aware of the current inquiry by the Industry Commission, which is due to report in draft form fairly shortly. During the process of that inquiry it has been indicated to us that there are some views in the Industry Commission that, for example, national competition policy in the form of competitive tendering for all these services should be applied across the board.

We oppose that on two major grounds. Firstly, if it is applied in this community services area we believe it will be to the detriment of those community services. Secondly, we do not believe there is sufficient evidence to indicate that competitive tendering actually saves money—in many cases even in the short term, but certainly in the medium term. Thirdly, there is a mountain of evidence which we have quoted, especially from the United Kingdom, which indicates that competitive tendering has very detrimental effects on equitable access to services for consumers and to equity issues in regard to employees.

Competitive tendering results in job losses. It results in the deterioration of employment conditions. It is particularly detrimental to interests of women employees, as a comprehensive study by Whitfield in the United Kingdom showed. In the majority of services in the United Kingdom which were competitive tendering, the employees were women. Those women had their employment conditions significantly reduced. Many of them had their employment casualised, which means that they no longer have access to holiday pay, sick pay, maternity leave and many other forms of leave. They are employed for fewer hours. The wage gap

between men and women in those areas actually increased following competitive tendering. So, for all of those reasons, we are very anxious that the Commonwealth keeps to its original commitment, which we understood was made in the second reading speech, that competitive tendering would not apply in those areas.

We draw your attention to the fact that in the Commonwealth government the majority of people who would be affected by that application would be women, who are the majority of employees in low paid occupations in the Commonwealth. It is one of the few areas in the economy where women currently have access to reasonable employment conditions, career paths and so on. Competitive tendering would destroy that for a significant group of women employees.

The other points we make in the submission go to what happens and what the Commonwealth can do in relation to protection of employment conditions if competitive tendering does occur in commercial areas. Again, George Gear did give guarantees or commitments in his second reading speech that it was not the Commonwealth's intention to reduce people's employment conditions through competitive tendering or the application of competition policy. We believe the Commonwealth should back that up with the necessary legislative change to ensure that, for instance, the relevant sections of the Industrial Relations Act are made tighter so that competitive tendering cannot be done on the basis of simply reducing people's employment conditions.

The point has been made by a number of economists, including John Quiggin and others, that it does not constitute efficiency simply to reduce people's employment conditions. It is a transfer, not an efficiency question. We have recommended that the Commonwealth take some steps to protect people's employment conditions in that situation. Of course, that is a basic tenet of the Commonwealth's industrial relations policy more generally.

We talk about the need for public inquiries. The original Hilmer report recommended that, before the introduction of competition or privatisation of essential services, such public inquiries should be conducted and they should be open to the public domain. The actual intergovernmental agreement does not require any reviews. It says that governments should conduct reviews, but it does not require them to be public. We believe the Commonwealth should take a lead here and commit itself to conducting public inquiries before any such introduction of competition or privatisation and it should urge the states to do the same.

Finally, I want to shortly comment on the review of legislation. The intergovernmental agreement provides for, as you know, a review of all legislation regulation against the criteria of competition principles. The terms of reference of this committee say that any application of the policy must take into account issues such as equity, social justice, occupational health and safety, industrial relations and other environmental and social issues.

We believe that state governments in particular will tend to interpret this in different ways. We are concerned that reviews of occupational health and safety legislation or equal opportunity legislation by individual state governments in the absence of national established standards could result in the erosion of these forms of legislation or an erosion of standards established by these forms of legislation. We believe it is very important that the Commonwealth take steps to establish national standards in all these areas of social legislation. I believe that some other submissions have addressed this, particularly in relation to health and safety.

CHAIR—Thank you for your comments. Within your submission there is a fair amount of competition bracketed with privatisation. Some of the concern about competition policy is predicated upon the basis that it is essentially a code word for privatisation. Competition policy will apply irrespective of whether we are talking about a privatised body or something that is still in government ownership. A classic example

is the variation in Victoria, for example, with the sale of the State Electricity Commission versus what is happening in this state with the decision to probably break up Pacific Power but to retain it in government ownership. I think it is important to make that distinction.

Ms Ranald—I understand that distinction. We do not regard competition as a code word for privatisation. We do, however, point out that if you have competition in an area like electricity, you are likely to get a private competitor using public infrastructure. That is what competition policy means. It is quite likely that you will have some private access to that public infrastructure. It is quite likely that that private access will be in the most profitable areas. Our concern is that that structure does not leave the public sector with all the unprofitable areas and, therefore, taxpayers funding all the infrastructure and community service obligations. That was the context of that comment.

CHAIR—You point out in your submission that it all depends upon the establishment of an appropriate access regime. In telecommunications, for service providers like Optus, for example, the interconnect charge call is an important principle for the use of that public infrastructure. You are saying that you strongly support that principle.

Ms Ranald—We believe that private competitors should pay a full price for access to public infrastructure. They should also contribute, as they do under the telecommunications regime, to the cost of community service obligations.

CHAIR—I want to flesh out in a bit more detail what the CPSU sees as an appropriate definition of a community service obligation.

Ms Ranald—It actually varies from service to service. The important thing is that the process of defining a community service obligation is open so that the government gets full input into that process. The parameters should not be unduly narrow.

CHAIR—Is that restricted to government business enterprises?

Ms Ranald—In our view, the legislation should be restricted to government business enterprises or business carried on by government. If you are talking about community service obligations in that context in telecommunications, for example, the universal service obligation is defined quite broadly as the provision of access to a fairly broad category of services, which is a minimum standard that people must have access to. If that cannot be done on a commercial basis, then it is funded through the mechanisms I spoke of. So that is the kind of process.

CHAIR—Can I just clarify that. Can I take it that you were suggesting that taxpayers should not pay for CSOs? Is that what you are saying?

Ms Ranald—No, I am not saying they should not make any contribution. Currently they do in the form of certain direct subsidies to pensioners and so on. What I am saying is that at the moment some of those CSOs are funded through cross-subsidies. The implication of national competition policies is that all cross-subsidies will be removed. That, inevitably, means two things: firstly, price rebalancing, which means prices for consumers go up; and, secondly, some form of subsidy, if required by government.

If that subsidy is entirely borne by taxpayers and there is no contribution from the private competitors, then I think, firstly, that is inequitable and, secondly, it will result in enormous budgetary pressures. In fact, I think it is quite likely that the government's obligation to pay those amounts of money will be eroded in the debates about the budget. What we are saying is that it is worth looking at the Telecom model more generally, because in the Telecom model the competitors who are making substantial profits out of their access to the public infrastructure contribute to the cost of those community service obligations.

Mr BRAITHWAITE—You expressed some concern about the public sector not having access to profitable enterprises. Wouldn't that be the ideal and the real world definition of the public sector—that, by

definition, it only provides unprofitable services?

Ms Ranald—That is not what I said. What I said was that, as the chairman has said, this policy is meant to be about competition, not privatisation. However, the only areas in which you are going to get competition from the private sector are, by definition, the profitable areas. So at the moment publicly owned essential services cross-subsidise the community service obligations from the profits they make from the more profitable areas of their operations. If all of those operations go to the private sector, then the public sector will be left with a bigger bill. That is all I am saying.

Mr BRAITHWAITE—Just let me be sure. There are a couple of recommendations that you alluded to. One was something about the conservative governments and that at a state level Australia should keep its commitment to competitive tendering because of the social justice, access and equity. Then further down you recommend that the government undertake to amend the IR Act to protect. You are coming quite clear from the point that all of this is okay provided the public sector jobs, conditions et cetera are sacrosanct, as long as they are maintained. In other words, what you are really arguing for is the status quo. You are not interested in any of this stuff, whether it has any impact on the numbers or pay and conditions of public servants. Is that right?

Ms Ranald—My job is to represent the interests of my members. As I said to you, there are two different sorts of interests that our members have in relation to competition policy. One is as consumers; the other is as employees. This government does have an industrial relations policy which commits it to protect the employment conditions of not only its own employees but employees generally to ensure that they are fairly treated.

The evidence from competitive tendering, particularly in the United Kingdom, is that it is a race to the bottom in terms of employment conditions. We do not apologise for pointing that out. What you are talking about in reality is lower paid workers, many of whom are women—in fact, in our case, 50 per cent of whom are women—who currently have access to some reasonable employment conditions. We are pointing out—and it is within the terms of reference of this committee, which is meant to deal with equity and industrial relations issues—that if competitive tendering in the way it has been introduced in Victoria and in the United Kingdom is introduced in these areas, then the incontrovertible evidence is that people's employment conditions are significantly eroded in that process. We do not apologise for pointing that out.

Mr HARRY WOODS—In your opinion, what effect would national competition policy and competitive tendering on CSOs and other services have in a geographical sense—that is, between the rural and regional areas and city areas?

Ms Ranald—I think that is one of the big areas of concern. At the moment most essential services—commercial services initially, but, in fact, all services—that are delivered to people in rural areas are delivered at below their real cost because of the nature of our geography and so on. If you move to a situation where you remove the cross-subsidies, you calculate the full cost of those services and then you either attempt to charge the full cost—which for most people would be unaffordable—or you have a direct government subsidy to cover the full cost. I think it is going to be very difficult for rural people because, for instance, those kinds of payments will be a significant increase for many governments, and there will be budgetary effects and arguments about whether or not those things should really be supplied in that way.

Again, I would draw your attention to the telecommunications model, where services for rural consumers have to some extent been preserved at below cost prices. I do not know the details of that. I am not an expert in telecommunications, but it is my understanding that that commitment is there and that those services are still being provided.

Mr HARRY WOODS—For various reasons like that, can you see a reflection of that sort of thinking

in what is happening in banking, for instance, or perhaps petrol pricing in country areas relative to city areas?

Ms Ranald—Yes. I think they are interesting examples. I do think that the introduction of a purely commercial regime in a lot of these areas does disadvantage rural areas and can lead to services being discontinued, as with the examples you have just given.

Mr HARRY WOODS—Do you think purely a budget item that tried to provide those services would provide to rural and remote areas the services that are expected and that they receive now through a system of cross-subsidies?

Ms Ranald—I guess the general point I am making is that once it has to be fully funded by the budget it becomes the subject of annual political budgetary debate. That is why I think it is very important that there be contributions towards the cost of community service obligations from the competitors. Then you are not just relying on budget funding.

Mr HARRY WOODS—Would it also take away flexibility?

Ms Ranald—Yes, I think that in many cases you can argue that cross-subsidies are an efficient and flexible means of providing such services.

CHAIR—I am aware of your time constraints, Ms Ranald, and we certainly have some constraints as well. Thank you for your appearance before the committee. Do you have any other final comments to make?

Ms Ranald—No, I do not think so. If there is any further material that you require from us, I would be very happy to supply it if you contacted me.

CHAIR—Thank you. We would welcome any response that you would have to any other submissions that may be lodged. Thank you for your appearance.

Luncheon adjournment

[1.46 p.m.]

CONNERY, Mr Bruce Anthony, Manager, Regulatory Affairs, AGL Gas Companies, PO Box 944, North Sydney, New South Wales 2059

JOHNSTON, Mr Paul Victor, Manager, Economic Forecasting, AGL Gas Companies, PO Box 944, North Sydney, New South Wales 2059

CHAIR—I advise the representatives from the AGL Gas Companies that the evidence they give at the public hearing today is considered to be part of the proceedings of the parliament, and I advise them that any attempt to mislead the committee may be regarded as a contempt of the parliament. The committee has received your submission and it has been authorised for publication. Would you wish to make an opening statement to the committee?

Mr Connery—Yes, I would.

CHAIR—Please proceed.

Mr Connery—The natural gas industry faces a number of transition issues which arise as a consequence of the competition policy reform. Senator Bob Collins has indicated that competition legislation contains a number of public interest provisions which could facilitate the consideration of transition issues. It is in the context of the committee's reference to the public interest that we raise the transition issues facing our industry, particularly the distribution part of the gas industry in Australia.

The first of the transition issues facing the gas industry is the existence of cross-subsidies. As with water, electricity and other infrastructure services, business users of gas subsidise household users. With micro-economic reform, cross-subsidies have lost favour to the user-pays philosophy. This philosophy is implicit in competition policy reform. A move to subsidy-free, user-pays prices may lead to significant price increases for household users of gas.

The second of the transition issues that we would like to raise is the existence of gas and transportation take or pay contracts which require that a distributor pay for pre-determined amounts of gas and long-haul transmission, for example from Moomba to Sydney, even if it takes less than this amount. These contracts were entered into in good faith and provide the foundation for the natural gas industry in Australia. Without them it is questionable, though, that natural gas would have been developed to meet market needs in New South Wales and other states. With competition policy, owners of gas distribution systems will be obliged to transport third party gas, an action which will likely result in those distributors paying for gas and long-haul transport that they are not going to use. Gas and transportation paid for but not taken will be an additional cost on the community.

If the committee so wishes, I could put these issues in the context of some history, which we from the industry point of view see as pretty important to understand how these issues arose. But I am not sure whether you would prefer just to ask questions and have it evolve in that fashion.

CHAIR—Perhaps if you can give us a bit of background on the matter.

Mr Connery—A potted history; okay. While I will start in 1837, it will not take me long to get to today. In 1837, AGL was established to light the streets of Sydney, and in 1841, in fact on Queen Victoria's birthday, gas lighting first commenced in Sydney town. In 1912, the prices we could charge for gas were first regulated. From 1912 until recent times, we have had some difficult issues to face, some of which arose out of that regulation of prices. Allowable price increases were not sufficient to cover the cost of supply, and this is what provided the seeds for the current issue we face in relation to cross-subsidy.

Because of price constraints, we had insufficient money to properly maintain our distribution system.

The system decayed, leading to significant amounts of gas leakage and to interruptions to supply to customers when water entered into the system through holes in our mains. I would only need to show you some of our old steel piping for you to see that, essentially, we had clay holes. The pipe had just disappeared in many instances because we have very, very corrosive clay soils in Sydney.

As a consequence of poor supply we lost customers. At the end of World War II, 85 per cent of the homes in Sydney used gas. They used it for heating, cooking, hot water and refrigeration. You might remember the Silent Knight; everyone had a Silent Knight refrigerator. In 1982 the absolute decline in numbers—that is, the customer numbers—actually came to a halt, but at that time our share of homes in Sydney had fallen to 30 per cent. So we had gone from an 85 per cent of share of market to 30 per cent, much of which was due to the deterioration of our system. In 1989 we embarked on a $400 million rehabilitation program to replace the medium and low pressure system in Sydney, a project which is now almost complete.

That is a little bit of history, the background behind where the seeds of cross-subsidy arose, in our inability to finance the maintenance of our system, leading to a fairly big cost burden which we have had to face. In more recent times, particularly since the arrival of natural gas, we have actually built up a different market, a big industrial market which we never had prior to the arrival of natural gas, and around that time what essentially has happened is those costs that had their seeds in insufficient prices in the tariff market have essentially been transferred to those large users. They have been paying more to allow us to maintain those lower prices in the tariff market.

Moving then to natural gas, that was another fairly significant event which provided the background in which these take or pay contracts were entered into. In the 1960s, natural gas was first discovered in Australia. In 1971, AGL entered into a 30-year gas supply contract with Cooper Basin Producers. As it turns out, gas did not arrive until 1976, so that contract started effectively in 1976 and goes through until the year 2006.

The project to bring natural gas to New South Wales required that, firstly, the producers prove up gas reserves sufficient to meet our needs for 30 years, because they had not done that at that time, and that AGL build a 1,300-kilometre pipeline from Moomba to Sydney. This was, in those days, a very large project, and it was one that would not be viable in terms of scale unless we could increase the market for gas in New South Wales from the current level of about nine petajoules per annum to something that was tenfold, to what it is now, which is close to 100 petajoules per annum, otherwise one could not justify these sorts of investments. The producers could not accept the risk that the market would not materialise, hence the take or pay contract that they required us to pay even if it did not happen. If we could not make that happen they would still be paid for the amounts of gas that they had proved up and reserved for us.

As would be well known to all here, the Commonwealth government took over the pipeline prior to it being constructed, but they too wanted protection, which turned out to be 100 per cent take or pay contract. There were a few negotiations before I guess it ended up at 100 per cent take or pay, but it was a 100 per cent take or pay contract. And when EAPL, East Australia Pipelines, purchased that pipeline just recently, the take or pay clause had to be maintained in another contract between the pipeline company and AGL Gas Companies in order to preserve the value of the pipeline. Without that take or pay the value would not have been there and the Commonwealth would not have sold the pipeline, and there are other consequences there.

These take or pay clauses are usual in gas supply and gas transportation contracts. Natural gas supply contracts could not have been financed without them. We would not have had natural gas in New South Wales without these sorts of agreements. They are common throughout the world; it is not just in Australia, it is not just in New South Wales. Those take or pay contracts are just part of the type of industry we are in.

Coming now to the public interest; sanctity of contract is in the public interest, we think. The federal government has certainly confirmed its concurrence with this principle. That means that we believe that these take or pay contracts will stand and they will continue to exist. Again, in our view, retrospective legislation is not in the public interest unless those exposed to the costs that arise as a consequence are compensated. While clearly the legislation is not retrospective, the fact that it overlaps these long-term contracts gives it the same effect from our perspective.

It may not be in the public interest to increase prices to households precipitously. An ordered transition may be preferable. It may not be in the public interest to have existing industry participants who have taken the risk to get the industry up and running bear the cost of take or pay contracts, particularly when that situation would prevent existing players from competing with new entrants who would not be burdened by these take or pay contracts which were the foundation of the industry. If these costs led to a repeat of the experience that AGL had after 1911 with a resultant decay in distribution infrastructure due to lack of finance, we do not believe that would be in the public interest.

An orderly transition to the new environment with specific regulatory provisions for the management of transitions would, we believe, be in the public interest. I believe we did distribute with our submission a copy of the distribution network access code, which was prepared by the Australian Gas Association, which does propose mechanisms for an orderly transition to the new competitive environment. That is the end of our statement.

CHAIR—Thank you very much, Mr Connery. In Melbourne on Monday, we had some representatives from the Victorian Gas Users Group commenting upon the possible extension of the southern lateral to link Wagga with the Victorian network. I understand that the company is entering into discussions with the Victorian authorities in respect of that.

Mr Connery—That is correct.

CHAIR—What stage is that up to?

Mr Connery—There has been no decision made by the joint initiators of that project: the Gas Transmission Corporation of Victoria and the pipeline arm of our business, which is EAPL. They are still studying that proposal.

CHAIR—Is there any sort of timetable as to when that is likely to be?

Mr Connery—Certainly, from our perspective, the gas company's side, the sooner the better. I am not aware of a specific time. All I can say is, from our perspective, the sooner the better, but I am not aware of a specific time when that decision will be made.

CHAIR—Again looking a bit out of the left field in terms of this committee's terms of reference, with the issue of the further extension of the Moomba-Sydney pipeline to other areas of country New South Wales, I know there has been some lobbying for a number of years. I have to confess that in a previous life I was Deputy Chairman of the New South Wales Local Government Gas Advisory Committee and a member of the energy board of New South Wales on the gas board. I know that over a number of years a lot of representations have resulted in, for example, Wagga and Cootamundra being connected and then Bathurst, Orange and Lithgow. I was wondering if there are further plans for the extension of that.

Mr Connery—There are proposals under consideration at the moment. One of them is an extension of our system rather than an extension of the transmission pipeline. That is an extension up to the Blue Mountains. That is really an extension of our distribution system rather than the EAPL, what was the old pipeline authority pipeline system. The only other major extension that I am aware of is a possible extension into the Murray Valley which would come off the Albury-Wagga link, if it were completed.

CHAIR—It would be a fairly natural extension from there?

Mr Connery—Yes, that is correct. There is potential there on both sides of the river.

CHAIR—Given the almost natural monopoly position of AGL, and obviously the benefits of having natural gas supplied to a lot of regional centres and the importance of that to regional economy, I suppose I am trying to establish whether or not competition policy would pose any threat to that possible extension.

Mr Connery—There is one area I am aware of which stems from competition policy which is of some concern, and it may not materialise but I will share it with you. In the response to competition policy, particularly through the gas reform task force, there are suggestions that there should be a complete separation of the gas marketing arm of a business from the network operation.

CHAIR—A bit like electricity, with the generation and the distribution.

Mr Connery—Even further than that. It is really on the retail side. So if you look at what we do currently today, we provide a bundled service to customers. We buy gas on their behalf. We buy long-haul transportation from Moomba to Sydney on their behalf. Where we add value ourselves is we move that gas from the city gate—that is, from Wilton—through to a customer's premises.

This suggestion with the new environment is that you would actually separate the part of the organisation that bought the gas from that part of the organisation that moved the gas. So in the part that Paul and I play we would simply be movers of gas. We would operate a network; we would not own the gas. There would be another arm, which would compete with other brokers who are buying and selling gas, which would operate independently. So there would be quite a separation. I can understand reasons for that. So there is neutrality, and so other brokers can compete against our gas marketing arm having no greater knowledge of customers or anything else than they would have, because they are quite separate then from the network.

CHAIR—Would it then get down to a question of an appropriate access charge to the gas on the main pipeline?

Mr Connery—Yes, that is correct. The access charge for moving gas would be the same to our marketing arm as it would be to your marketing arm or anyone else. So then it is fair competition. If you can buy gas better than we can buy it, or you can do something better, you are not hampered by the fact that we are charging you more for moving your gas from Wilton to your premises than we are charging our own marketing arm. So there is a desire to have that separation.

The concern I have if that separation occurs is who is going to actually drive the development of the network. At the moment, when there is a proposal—and most often we are very much involved in driving these projects with other interested parties who want natural gas to come to their areas—we evaluate the viability of the project. We go out there and lay mains and then we market because we have that investment in the ground. So there is a tremendous incentive to go out there and make sure that you actually get the load onto the pipes you put in the ground.

If that marketing arm is separated from the body that actually puts the investment in, I am just not absolutely comfortable that we will be willing to take the same sorts of risks. While there will be other marketeers out there who will do it, I am not sure that they will be so committed as a body who has actually put the money in the ground. So then it is sort of the chicken and the egg—that is, will we put the money in the ground? That is a potential risk. I do not know how great it is. It is just something I feel a bit uncomfortable about.

CHAIR—Could I touch on the subject of community service obligations. Does AGL see itself as having any community service obligations to the gas consumers of this state?

Mr Connery—AGL sees its role primarily as an economic institution, a body that tries to provide goods and services to the community at competitive and best prices possible. We do not believe that we are equipped to make the sorts of decisions that end up in community service obligations in the sense of

favouring one class of customers rather than another. We think that it is perhaps more a matter of public policy.

CHAIR—You do not have a policy, for example, of providing any concessions or rebates like county councils do to their pensioner customers?

Mr Connery—There is a pensioner concession but it is not one that was of our making; it was one that was made by the regulatory system under which we operate. It is not that we are hard; we are warm and fuzzy, like others. We feel about pensioners like others do. I have a mother who is a pensioner. I think it is simply that we do not feel we are well equipped to make decisions about who should be favoured. The consequence of our giving a discount or a rebate to a pensioner or someone else is that someone else has to pay more. We think that really comes down to these sorts of public policy issues. They are not decisions that we feel comfortable in making.

CHAIR—Although, you would have to acknowledge from your historical perspective, AGL is one of the few companies as such that has been the subject of very specific legislation in the parliament of New South Wales. In many respects, it has enjoyed, if you like, a special relationship with the legislature that no other company has enjoyed. There are particular reasons for that. But, given that position and perhaps status at times, I am just wondering whether or not that is a factor in looking at AGL in terms of being a good corporate citizen.

Mr Connery—I do not think there is any question that we would aim to be, and we believe we are, a good corporate citizen. We have certainly aimed to fulfil that label. I really think every company is in a position of privilege to be able to serve the community. I certainly feel that we are in a privileged position to be able to try to meet the needs of the whole community as best we can.

I will go back one step. In terms of being able to finance certain concessions, at the end of the day, if we want to go out there and grow in the market and invest, we must be able to attract a certain return for our shareholders otherwise it just does not happen. So, at the end of the day, those costs beyond that are going to be borne by other users. So in giving a discount to one user, which we might dearly love to do, we know the consequences would be that someone else would be paying more.

We are really not geared to make those sorts of decisions—that we should favour Peter at the cost of Paul. We do not believe they are decisions that an economic entity would normally make. We are not denying that perhaps they are appropriate, but they are not the decisions we believe we ourselves should make. If at the end of the day government says that there ought to be these discounts to pensioners, or whoever, and if they have made that judgment in their role of being responsible for public policy, we would not argue with that.

Mr HARRY WOODS—But you are making those decisions now, are you not?

Mr Connery—In what respect?

Mr HARRY WOODS—You are saying that existing cross-subsidies can be very large.

Mr Connery—Yes, that is correct. I do not think that is a consequence of making those judgments. We are in a position where we are not allowed to recover sufficient from the tariff market to cover the cost of that market. That was not a free choice; that was a limit imposed by regulators.

Mr HARRY WOODS—So you have a price constraint on that, have you?

Mr Connery—Yes, since 1912 we have been controlled in terms of prices or profits, or sometimes both. It has varied over time. Be we are constrained in what we can charge. Sorry, I should have introduced the tariff market and the contract market. It is mainly households, but it is also fish and chip shops and smaller commercial type users. There is a price control over that.

CHAIR—This is under the state act of parliament?

Mr Connery—Yes, under the Gas Act of New South Wales. Then, in theory, we are free to charge what we like in the contract market, the larger end of the market. In reality, when the regulator looks at the prices we are charging to the tariff market, he generally looks at what sort of profitability we are getting on the whole market at the same time. So, in a sense, we are really regulated in terms of our profit overall, but in terms of our prices at the tariff market. Over time, those tariff prices have been kept down with regulation. I think we need to be honest that, in the past—yesterday—'cross-subsidy' was not a dirty word. It was a thing that was a way of life.

Mr HARRY WOODS—Not everybody thinks it is a dirty word still.

Mr BRADFORD—In terms of accepting responsibility, say, for providing a pensioner discount, your argument is that that would be more efficiently done by the government stepping in and directly either subsiding you or subsiding the pensioner for that purpose. Is that what you were saying?

Mr Connery—First, I am saying that, at the end of the day, it is not something that our shareholders could subsidise, because they have got to get a return, otherwise we do not have the money to invest and grow the business. The second concerns an important issue you raised which I have not yet addressed. I do not know how well equipped I am to answer the question, but I do have a lot of sympathy with the thoughts behind it. It is a direct subsidy to a customer so that the customer can choose how he spends it. That might be a better way of looking at it. I do not know. It is not something that I am really well equipped to answer.

Mr BRADFORD—But all businesses cross-subsidise up to a point, because they have different marketing strategies for different products within their range. In terms of competition though, your main competitor would be the electricity supplier, and that would provide very severe constraints on you in terms of charging and so on, would it not?

Mr Connery—Yes, that is correct. Particularly in the tariff market, electricity is a significant competitor. If you are looking at the large industrial market, where they are looking for bulk heat, it is more the oil, coal and perhaps LPG, because they are really wanting bulk heat. They are the major ones.

Mr BRADFORD—Have you been in the retail business for a long time? In terms of retailing gas appliances, I think there was this suspicion for a long time that you were competing unfairly with the department stores and otherwise. Have you encountered that criticism?

Mr Connery—Yes, certainly. We would rather not be in the business of selling appliances at all. They are really a means to an end, as far as we are concerned, because, if you do not have gas appliances, you do not have gas sales.

Mr BRADFORD—So that is why you were cross-subsidising internally—to make those appliances as cheap as possible, selling them at a loss at times?

Mr Connery—Yes, that is correct. The revenue that we have generated from appliance sales would not have covered the overall costs of providing those appliances, including the information that we provide to customers. It is very hard when you start to try to separate those matters. There are some parts of our retail activity which are providing customers with information. It is a service. It is not a service that is available if you go down to your normal whitegoods appliance shop, because, unfortunately, in most cases they do not have the expertise that you need to have in relation to gas appliances.

They do with electricity, because electricity tends to be a lot easier—it is a plug in. You do not have to have a particular size; it does not matter what size of unit you have. When you are talking about gas heating, it has got to be sized to the room, so you have got to have some expertise in selling gas appliances. In the past, whitegoods marketers have really not had the incentive to learn what is necessary, because it is far easier just to sell an electrical appliance.

In our market, where I guess gas is a poor second cousin, where we only have a 30 per cent market

share of the homes and you do not have to have gas and no-one needs gas—seventy per cent of homes do not use it at all—there is not a great incentive for the Norman Ross's and those sorts of people to spend the effort to become marketers in gas. It is a lot easier just to move electricity through it. That is why we have been active in that market, because, at the end of the day, if there is not a gas appliance, you do not have gas consumption. If you do not have gas consumption, we do not move it through our system, and we go out of business. No-one was really willing to go out there and drive the sale of appliances.

It is different in Victoria. They have a very different climate, a far colder climate. To give you an example, in New South Wales the average household consumption is 22 gigajoules per annum, a very small amount of gas. In Victoria, the average consumption is about 60 gigajoules of gas, which is far more, and about 90 per cent of the homes in Victoria use gas. In North America, the average household consumption is over 100 gigajoules per annum. In fact, it is that cold that you freeze if you do not have gas there in winter.

In those places, they do not have to market gas appliances. The distributor does not have to get there and drive it, because it just happens naturally. People in cold climates like gas. You have probably got it in Canberra. I am sure you have—all of you.

CHAIR—None of us live in Canberra.

Mr BRADFORD—So there has never been a problem under the existing trade practices regime with your retailing activities; there has never been a complaint that you competed unfairly?

Mr Connery—No. In fact, in more recent years, we have gone out and have encouraged other retailers of gas appliances, and we actually are now selling less of the overall market of gas appliances than we were ten years ago. It has been difficult, though, for some of those specialist gas appliance arms that opened with a lot of encouragement from us, because it is not an easy market. More and more now, we are trying to drive the selling of appliances out to the whitegoods industry, because we believe that having 50 or 100 people marketing gas appliances is going to produce much better outcomes for us than us there with our three showrooms going like crazy. So we really want to get it out there as much as we can. But there has not been particular issues. I think that is because there really has not been a lot of interest—not as much interest as we would like, at any rate—from other whitegoods people in selling gas appliances. It has just been difficult.

Mr HARRY WOODS—Are you able to quantify the cross-subsidy?

Mr Connery—We are currently going through a process of review by the Gas Council of New South Wales, a review that was initiated by the Minister for Energy in New South Wales which is designed to look at a whole range of matters, including cost allocation and cross-subsidy. We are going through that process with them at the moment.

Mr HARRY WOODS—When do you complete that?

Mr Connery—I know that the Chairman of the Gas Council, Professor Tom Parry, wishes to complete this review by the end of this year. But I am not sure whether there is an actual deadline.

Mr HARRY WOODS—If there is any information on that quantification, it would be interesting to this committee and the committee would appreciate it if you could pass it on.

Mr Connery—I am sure there are things that we would wish to give you. They would be in camera, if that would be acceptable, because we are going through a process of review at this time. The answer is yes, we do have a feeling for those numbers. I must tell you now that there can be a range, depending on how you approach cost, because there are different ways of approaching it.

Mr HARRY WOODS—Yes, there are different methodologies. Nevertheless, going down the competition policy route, and recognising that there can be large cross-subsidies, as you say, without government intervention you would naturally expect large price increases for some sectors of your market.

Mr Connery—Unless other mechanisms were put in place.

Mr HARRY WOODS—Yes, without government intervention of some sort.

Mr Connery—Yes.

Mr HARRY WOODS—I think governments do recognise in some areas that government intervention to give equity is reasonable. For instance, with Australia Post and telecommunications people are entitled to a postal service wherever they live in Australia at a uniform cost. Do you think the same applies to gas? Do you think the people of Sydney are entitled to, or expect, a government subsidy for heating their houses?

Mr Connery—If you ask me as an individual rather than as representing AGL, I can give you my view from that perspective. I do not know whether the company has a view; we have not done surveys. As an individual, I suspect that the households of Sydney do not know that they are being subsidised, and the question has probably not entered their minds. I feel very confident that, if the cross-subsidy were unwound in a way that meant that it was reflected immediately in the prices they are paying, then they would recognise that very much.

Mr HARRY WOODS—So they would see the government as having an obligation to assist them there?

Mr Connery—I am not even sure that they would do that. I just think that they would feel very angry about the price increase.

Mr HARRY WOODS—But, even if they did think there was an obligation there, the people of Queensland would probably have a different view of that—talking about heating their houses.

Mr Connery—Yes, I am sure.

CHAIR—You do not have to worry about it too much in Queensland.

Mr HARRY WOODS—And the degree of subsidy would vary depending on where you live in Australia, I suppose.

Mr Connery—I really do not think that people in Canberra or Melbourne, where it is cold and they have to use a lot of gas, think that Queensland should subsidise them. I would be very surprised if they felt that. But I do think that people in New South Wales would be angry if their prices went up very quickly. Perhaps that is why the Australian Gas Association has suggested doing it over time rather than having it hit all at one hit. I do not think that New South Welshmen would think that Queenslanders should subsidise them. **Mr HARRY WOODS**—So you would not see it as a subsidy or a budget item to be subsidised from some government. Your idea really is bringing it in over time so that they did not feel the effect of the price rise.

Mr Connery—Yes, so they did not feel it like a big jolt. Yes, I would have thought that.

Mr BRAITHWAITE—In connection with your establishment—I am unfamiliar with it—if, for instance, you suddenly found yourself in a big market where you could encroach on the electricity industry by fair competition, to what extent could you use your current mains to give a supply to those people? You are on 30 per cent at the moment; if it built up to 40 per cent, would you have to duplicate mains and things like that to do that?

Mr Connery—Firstly, it depends where those customers were, because we do not have mains past all houses in New South Wales. If they were on a line of main, then we may require some reinforcement. It is horses for courses. It depends exactly where they are and how stretched our system is at that time. Reinforcing a distribution network is something that you are doing almost continuously. In fact, we are currently reinforcing the system that heads up north, up the peninsular up to Palm Beach.

Pressures over the last number of years have been dropping because there has been some growth there, and we have got a main that is currently being put on Mona Vale Road to reinforce that. Then that

system will have lots of capacity for a reasonable amount of time, and, some time in the future, some other bit of the system will be weakened because there has been growth or something else has happened and we have to reinforce that. So it is a sort of evolutionary thing; it is happening all the time.

Mr BRAITHWAITE—I agree with Mr Bradford; the main competition is the electrical power as against gas power.

Mr Connery—It is currently, but under the Competition Policy Reform Act the whole proposal is to enable third parties to put their gas through our distribution network, so their gas will then compete with the supply of gas that we have purchased. We are locked in under a long-term supply with take or pay provisions. So if another source of gas comes in and takes away the market that we have been serving, we will then be finding that we are actually selling less gas than we are committed to pay for. So that is where the issue arises for us in the competition.

The same is true for transportation. For long haul transportation from Moomba to Sydney, we are locked into long-term commitments. Whether we use the transport or not, it is a take or pay arrangement. So if a pipeline comes from Bass Strait, and perhaps there are 70 petajoules of gas coming through that pipeline—

Mr HARRY WOODS—Are petajoules more than gigajoules?

Mr Connery—Yes, they are. I am not sure how I will put it into perspective, but a gigajoule of gas—depending on whether you are a tariff user or a large user—is, say, $5 to $10. A petajoule of gas is about $5 million.

Mr HARRY WOODS—There is a big difference.

Mr Connery—Yes, you go from gigajoule to terajoule. A terajoule is a thousand gigajoules, and a petajoule is a thousand of those. It is a million; a petajoule is a million gigajoules.

Mr BRAITHWAITE—I was just wondering about the practicality of competition in this regard. You are supplying the mains. Surely, even under the control of an act you have the right to set a price for the use of those mains, which then makes your price competitive. You can competitively price out the rental of your lines. You might have a big supplier who has got gas in Melbourne and wants to ship it through the system. But in your own way you can still be competitive with the charge of the lease of the rental of your lines, can't you?

Mr Connery—You are right. If you break up our business—and they talk in America about unbundling—and look at the different services we provide, and if you look at the one that we actually provide ourselves rather than purchase from someone else, it is simply the part you are talking about; that is, we move gas through our mains.

Under the Competition Policy Reform Bill, we will charge ourselves for moving our gas through our mains the same price as we would charge someone else for moving BHP's gas or anyone else's. And you are right—that is not an issue for us. It is simply the fact that, because of the way the industry has evolved and had to evolve, we also have purchased a great big lump of gas that we are committed to taking—and take or pay on that, we have got to pay for it whether we use it or not—and it is that part that will get backed out by other suppliers of gas, and we will be left with take or pay.

The fact is that under the new competition policy, take or pay arrangements are the last thing you want—they are like a bullet in the head. You do not want long-term contracts; you want short-term contracts with no take or pay. That was not the way it was in the past. In the past you could not get a project off the ground without a long-term take or pay contract. It is just that transition. Until about 2002 we are exposed with our take or pay contracts. At 2000 the contracts actually start to wind down, to reduce, and by 2006 they will be over and done with. Down to about 2002 we are still exposed—in time that is.

Mr P. Johnston—That is after the gas supply and purchase contract—

Mr Connery—Transportation is the same; it goes down too.

Mr BRADFORD—It could not operate without this take or pay system. It is the only way this thing could work, isn't it? In the past that was the case because you never would have got these projects up and running, but that was partly because there was not a developed market. Prior to natural gas coming to New South Wales, the market for gas was about nine or 10 petajoules a year. To make natural gas a viable business, you had to have 100 petajoules of gas being sold. So there are lots of risks for the players. Was the market going to be made? That is why people needed take or pay contracts. I do not believe, now that there is a developed market, that those long-term take or pay contracts are essential. There is no question the producers will want them—everyone wants to be protected—but I do not think they are absolutely essential. The market is there. The risks are not anywhere near as great as they were when everything was starting off.

Mr BRAITHWAITE—You can turn it off and store it. It is not like electricity. Electricity cannot be stored, in effect.

Mr Connery—That is right. In terms of the transportation contract that we have with the EAPL to move gas from Moomba to Sydney, if we do not use it we have lost it. There is a saying like that: if you don't use it, you lose it. That applies to the transportation from Moomba to Sydney. In terms of the actual gas itself, there is a provision, what they call banking the gas—it does not actually come anywhere—and we can use it at the end of the contract. I should have mentioned that earlier.

There are two risks we face in relation to gas. One cost is that we have to pay for the gas up front and we are able to draw on it later, so we have a holding charge—interest on that gas. In relation to the second cost, let us assume we bought the gas for $2.20 and now you have this competitive environment. The market will pay only $1.90 for gas because of competition. We have lost the 30c as well as the holding charge.

Mr BRAITHWAITE—Could it be said, under the new arrangement, that that arrangement itself is anti-competitive?

Mr Connery—Take or pay?

Mr BRAITHWAITE—You would have the opportunity now of having another supplier of your product and you would take that.

Mr Connery—The fact that we are locked into one supplier?

Mr BRAITHWAITE—Yes.

Mr Connery—I do not know whether it would be anti-competitive, but I do believe the federal government has reinforced the sanctity of contracts and we, as players in that sort of environment, would say it, too. Santos entered into that agreement in good faith, as we did. We do not like the obligations in this current environment that are coming in, but they were—

Mr BRAITHWAITE—Could you buy your gas cheaper now from another source?

Mr Connery—At the moment no-one wants to sell to us because we have it. I am not sure what will happen with competition—what will happen with prices. I do not know.

Mr HARRY WOODS—Does EAPL believe that the national competition policy will reduce the average price of gas?

Mr Connery—The actual gas itself; the molecules rather than the transport?

Mr HARRY WOODS—The average price of gas to consumers.

Mr Connery—The average; so we forget about the cross-subsidy at the moment. There is not a lot of people who produce gas for the eastern part of Australia. There are primarily three producers: Esso, BHP and Santos. I do not really know whether the evolution of them supplying to additional markets beyond the ones

they do at the moment will lead to vital competition and therefore a reduction in prices.

Mr HARRY WOODS—Let me rephrase it: does the national competition policy have the potential of reducing the average price of gas to consumers?

Mr Connery—It provides the framework in which it can occur. The key ingredient and the only thing that will make it work is competition between producers. Australia is not like the USA. In the USA there are 26,000 gas producers and they compete. There is infrastructure all over the place like spaghetti. There are pipelines connecting all markets to all sources of gas, and they all compete. We do not have a market like that in Australia and I do not think we ever will. All I can see at the moment are three major suppliers of gas. If competition between them can create reduced prices, then we will end up with lower prices at the market. I certainly hope so because we believe that lower prices will build a stronger industry. The more gas that moves through the system in a stronger industry, the stronger our business is, because we are movers of gas—that is what we do, fundamentally.

CHAIR—We are going to have to end our discussion there because we are going to run into time constraints with commitments that members have very shortly. Thank you very much for your appearance before the committee today and we welcome any further input you may like to make during the course of the inquiry.

Mr Connery—I would like to thank you, ladies and gentlemen, for giving us that opportunity.

[2.34 p.m.]

O'DONNELL, Dr Carol Frances, Private Citizen, 10/11 Rosebank Street, Glebe, Sydney, New South Wales 2037

CHAIR—Today's hearing is considered to be part of the proceedings of parliament and any attempt to mislead the committee may amount to contempt of the parliament. The committee has received your submission and it has been authorised for publication, which I notice is the subject of another comment you made during the course of your submission. Do you wish to make an opening statement to the committee?

Dr O'Donnell—Nothing in particular, other than to draw the committee's attention to my major purpose in making this submission, which was to suggest that the public interest tests be dealt with by the Australian Competition and Consumer Commission commenting on regulatory impact statements which are provided by the bureaucracy to ministerial councils.

I draw the committee's attention, in my submission, to the New South Wales situation of occupational health and safety and other legislation under the subordinate legislation act, where all new legislation must be accompanied by a regulatory impact statement. I draw the committee's attention to the nature of that regulatory impact statement and to the fact that there is now a lack of clarity about whether occupational health and safety legislation and the regulatory impact statements will be at a national level or they will remain at a state level.

I recommend to the committee that the concept of public interest is encompassed by the nature of regulatory impact statements as they are utilised in New South Wales. For the Australian Competition and Consumer Commission to comment on those regulatory impact statements in, say, a national regulatory impact statement and provide that advice to the appropriate ministerial council would seem to me to be a very simple and clear way of estimating the public interest. That was one major interest I had in my submission to the committee.

The other major interest was to draw the committee's attention to workers' compensation and the concept of competition on premium price. Competition on premium price in the workers' compensation area, and probably in a number of other insurance related areas, is very much against the public interest. If competition on premium price is controlled, it is possible to organise insurance systems where you in fact have competition on the provision of risk and injury management service. So competition is retained in the system, but in a form which is in the public interest.

CHAIR—Dr O'Donnell, I am somewhat surprised, in the terms of reference for a committee inquiry like this, that we have a response from an individual rather than from a lobby group, union, government or some other organisation. I am just wondering whether you might be able to tell the committee about your academic background that promoted this interest in responding to the committee's terms of reference for this inquiry.

Dr O'Donnell—Yes. I have worked in state government for the last 10 years, first of all in the Department of Industrial Relations and, secondly, in the Workcover Authority. I left the Workcover Authority in December and went back to academia to work in the faculty of health at the University of Sydney. Workers compensation insurance and benefits have, of course, been a state matter, but the Industry Commission has undertaken an inquiry into whether workers compensation should be a national system and, if so, what issues should it address.

I suppose I was particularly interested in making a submission to the committee because I felt that, in workers compensation, the service providers of the system—who are public servants, insurance companies and the legal profession—sometimes do not administer sufficiently the system in the interests of employers,

in the interests of workers and in the interests of the public; that is, the taxpayers. I wanted to make a submission to this committee because, even with the best will in the world, I think it is politically difficult for public servants who are handling inquiries to provide appropriate yet frank advice when they themselves are involved in providing the service.

Mr THOMSON—Can I pursue the point you made that it is not in the public interest to have competition in terms of premiums for workers compensation. Earlier this year in New South Wales when premiums went up 38 per cent or so, I know of a company that had to lay off an employee to pay for the increase—in fact, the company was my company. I did it before I was elected into parliament in April. I thought, 'Well, it sounds to me as though that is the consequence of not having competition—that premiums go up and people get laid off.' What is the downside of competition in premiums?

Dr O'Donnell—With the downside of competition on premium price, if you look at the *Ships of Shame* report in the area of marine insurance, it shows very clearly that competition on an international scale within the insurance industry is so intense that unsafe ships are being insured because of the nature of the competition. If you take it back to, say, the workers compensation system, which I am very familiar with in New South Wales, the problem with competition on premium price is that, if you go back to the 1980s when New South Wales had over 40 insurers licensed to write workers compensation, competition between those insurers led to five insurance insolvencies.

Competition on premium price leads to a situation which I think can be quite clearly documented—as Dr Greg Taylor of Coopers and Lybrand has done. What happens is that competition on premium price creates a downward pressure on benefits to injured workers. However, because the insurance is third party insurance, the employer who pays for the premium does not receive the benefits from the insurance. So the employer has no vested interest in keeping benefits up. Competition on premium price leads to downward pressure on benefits, and the system then tends to respond via the courts making larger and larger lump sum payments.

I also think that competition on premium price leads to cost shifting by the insurer, if possible, on to the social security system so that the insurer has an incentive to save money by disputing claims or by lump sum settlements for all future liability. The result of that is usually that the person ends up on the social security system receiving social security benefits.

I also think that the downside of competition on premium price, if you compare it with the New South Wales system where in fact the government itself manages the money and regulates the system but it is industry's money, if you like, is that then you have got a large pool of premium, there is no need for reinsurance, whereas if, in fact, the money is paid to the insurance company, it is the insurance company's money, it needs to get reinsurance, it needs higher solvency margins. So there are a whole series of added costs in that kind of system, which is usually intrinsic to the competition on premium price situation. I think it creates, just through that downward pressure on benefits, a lot of problems for both the taxpayer and for injured workers and for employers.

Mr BRADFORD—Could I just compliment you on your paper? There are just two areas I want to speak about. You are absolutely right; it would be sensible to have everything in clear English. We would not have half the disputation that we have had in the past. That was one comment you made. The other one is the anti-competitive for Australia having nine separate jurisdictions. I think that is going to be far from clear English; I think it is going to be far from clear from the point of view of how you are going to get justice. In Queensland at the moment on your workers compensation arrangement they are legislating to avoid common law decisions. The point I come back to, going back to common law decisions, is it not the fact that we seem to have avoided the fact that we are making legislation so complex it is not clear English and that we are

actually legislating outside the realms of what we should be doing?

Dr O'Donnell—I understand your position. My own personal position is that common law is largely against the public interest. You can point to eight inquiries that have been held federally and in different states over a long period of years now, I think since the early 1970s, and not one of them has supported common law. I think the problems of common law, as you say, lead to unclarity in the legislation because the legislation is constantly amended and informed by the decisions of the courts. I think the problem with common law is the amount of time that it takes and that it has, in my view, absolutely no deterrent or prevention effect that is a successful one. For example, if you look at the occupational health and safety act and look at it in tandem with the workers compensation act, currently under the workers compensation act, an employer is expected to provide a safe place of work and an employee is expected to work safely.

If a prosecution is taken against an employer, half the funds go to government coffers. It would be much more sensible, in my view, when a worker is injured and the employer is prosecuted under the occupational health and safety act, to reserve some of the money for the worker at that point rather than to retry, if you like, the whole situation years down the track in another jurisdiction, in the common law, where fault has to be proved. It is very anti-competitive to do the whole thing over again in isolation.

CHAIR—Dr O'Donnell, do you have any other closing comments you wish to make?

Dr O'Donnell—No, I think I covered things to my satisfaction in the submission. I am very happy to answer questions.

CHAIR—We thank you most sincerely for the time you have taken to come in and present your submission. I would invite you, like other witnesses who have appeared before the committee, to feel free to respond at any point during the course of the inquiry.

Resolved (on motion by **Mr Braithwaite**):

That this subcommittee authorises publication, including publication on the parliamentary database, of the proof transcript of the evidence given before it at the public hearing this day.

Subcommittee adjourned at 2.49 p.m.