



HOUSE OF REPRESENTATIVES

**STANDING COMMITTEE ON FINANCIAL INSTITUTIONS AND
PUBLIC ADMINISTRATION**

Reference: Aspects of the national competition policy reform package

SYDNEY

Thursday, 30 January 1997

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

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Present

Mr Hawker (Chair)

Mr Albanese	Mr Mutch
Mr Anthony	Mr Pyne
Mrs Gallus	Mr Willis
Mr Hockey	Mr Wilton
Mr Latham	

The committee met at 9.35 a.m.

Mr Hawker took the chair.

FITZGIBBON, Mr Mark Anthony, General Manager, Bankstown City Council, The Mall, Bankstown, New South Wales 2213

CHAIR—I declare open this hearing of the House of Representatives Standing Committee on Financial Institutions and Public Administration inquiring into aspects of the national competition policy reform package. This is the fourth hearing the committee has held since it commenced inquiry late in 1996.

I welcome the representative of the Bankstown City Council to today's public hearing. I remind you that the evidence you give at the public hearing today is considered to be part of the proceedings of parliament. Accordingly, I advise you that any attempt to try to mislead the committee is a very serious matter and could amount to a contempt of parliament. Do you wish to make a brief opening statement before I invite members to proceed with questions?

Mr Fitzgibbon—Yes. I have prepared a very brief handout which, with your permission, I would like to distribute.

CHAIR—Certainly.

Mr Fitzgibbon—First of all, thank you for this opportunity. We are doing some creative things at Bankstown which we like to talk about at every opportunity, not only because we believe they are important to Bankstown but because we believe they are important to the industry. The industry, in my own personal view, is a bit of a laggard in the application of national competition principles, and we are certainly doing our best to turn that around. I now will give a brief overview.

At Bankstown council we are pursuing what we like to call a program of reform, without wanting to sound as though we are taking ourselves too seriously. There is nothing fancy about it. It is simply focused upon four key outcomes. One is to improve the quality of our forward planning. I like to say that local government is in two businesses: firstly, to provide services which the market, left to its own devices, would simply fail to provide; secondly, as to the point of view about the future, having the policies and actions in place which are about achieving that future.

In relation to services, we want our services to be much more customer driven, designed around the needs of people rather than the needs of the bureaucracy. We want our services not only to be the best that can possibly be delivered but to represent value for money—and that is where competition has a major role to play. Also, we want to provide rewarding and satisfying employment for our staff. Like me, they spend a lot of their life at work and we want to make that worth while. That is a general overview of what we are up to at Bankstown, albeit in a very abridged form.

There are just seven quick points I want to make about the strategic context by which our competition policy has been developed. I think, arguably, the most important point we recognise is that competition is not an end in itself; it is a means to other ends. I heard Fred Hilmer say recently that, if competition were some sort of god, we would allow Lindsay Fox to drive his trucks at 100 miles an hour through Sydney because probably that would be efficient. But that is not the only thing that matters. There are other social and safety objectives we have at hand. We have recognised that we must apply competition within an environmental and

a social context. We have done that by, first, putting in place an agenda for the future, a strategic plan which we call Cityplan 2000.

My second point is that we are fairly convinced that, once the context is established, if you apply competition appropriately, you will save a lot of money. I think the evidence is overwhelming that that is the case. It is not just a matter of thrift; it is a matter of freeing up money that can be used to pursue other priorities, be they projects to do with the Olympics or new programs, many of which have very serious community service and social objectives.

My third point is that competition in the form of competitive tendering encourages clarity of purpose as well as a better definition of service levels and outcomes. I think this is an argument too often overlooked by proponents of competition policy. We do know from competitive tendering that it not only achieves savings but also forces an agency to sit down and say, 'Well, what are we doing? At what levels should we be doing it? What are the outcomes we are searching for?' Competitive tendering in our experience enforces that discipline.

Competition, the fourth point I make there, does provide motivation to staff to lift their game. Our experience makes that unquestionable. We do not think competition is detrimental to our important social and community service obligations. We see that as a separate policy issue. But, having made the decision as a council to provide a service which may have a heavy community service obligation, we want to make sure we get the best price and the best result in the way that service is provided.

The fifth point is that the council remains accountable for the services no matter who delivers the service. So even if our own internal operations are not competitive and it goes outside, if a resident or a customer rings with a complaint, they do not want to be told, 'Well, we don't do that service any more; you'd better go see ABC Pty Ltd.' The accountability and the buck must continue to stop with council.

My last point is that we really believe that competition is upon us. If local government somehow thinks it can quarantine itself from this important reform, it is kidding itself. We are strongly of the view that we need to shape competition and get ready for it in a way that suits us, rather than to just sit around with our heads in the sand and ultimately become a victim of competition.

That is the strategic context, if you like, which is driving a lot of our efforts. I have just made some points there on the national competition principles. I was going to quickly run through those, but given the time constraints I will not. I will simply jump on to the next part which talks purely about contestability.

I would just make one comment in respect of Hilmer. Hilmer was not written within the local government context, and he says as much himself. I think local government has used that as a bit of an alibi to say, 'Well, look, there's nothing in this which directly relates to us.' But of course, if we forget about what Hilmer says literally and start to think of what Hilmer was saying conceptually in terms of structural reform, third party access, he was saying that a public agency needs to open up and make its operations contestable. So the underlying principles behind Hilmer do have a very strong application to any public agency, be it state, Commonwealth or local. It is just that local, being a small player, I think has tended to be overlooked in the formulation of the principles and the legislation which support those principles.

Theory contestability. In relation to specific things which we are using to promote contestability, we have what you probably are all familiar with: purchaser/provider separation. That simply recognises that just because government has an obligation to purchase—

CHAIR—What was that?

Mr Fitzgibbon—Purchaser/provider separation simply recognises that just because government has an obligation to purchase certain goods and services on behalf of the community it does not mean the government itself must also provide those services. Government can set itself up as a commissioning agent, a purchasing agent, and purchase those services. We have a clear separation—which you will see on the fourth page of the handout—between those who work out what the people want and across all our services purchase services on behalf of the community and those within our organisation who then physically deliver those services in a businesslike way and, ultimately, in competition with any other potential provider.

We have also separated our regulatory functions. There are a number of reasons for that, perhaps one of the most important being that you cannot have regulators living in the same company or business environment as those who are delivering services. You cannot have the same person in charge of picking up the waste who is also in charge of making sure that proper environmental standards are being kept.

We have a new structure, as you will see on the last sheet of my handout, and when we get into questions perhaps you would like me to elaborate. But the main feature there is a separation between responsibility for purchasing services and responsibility for providing services.

We have adopted a detailed competitive tendering program, which I understand you have a copy of. Basically, that is to identify all those services which we currently provide which will be subject to market testing. That to some sounds like a bit of a euphemism, I know. It is another way of saying that we are going out to tender.

We have given this program a graduated approach. It does not start, as you will see, until 1997-98. There are two reasons for that. We wanted to give ourselves sufficient time to properly work out what we were going to commission. I think a lot of agencies have raced into competitive tendering without really thinking through what it is they are trying to commission in terms of the standard and quality of the service. We also wanted to give our own staff time to prepare for this tremendous challenge—time to re-engineer their operations, and so on. So our program is a graduated one and is spread over five years. It starts in earnest next year where an amount equivalent to 20 per cent of our operations will be subject to market testing, competitive tendering.

Significant effort is going into the compilation of service specifications and contracts, with an emphasis on customer values and outcomes. That is just reinforcing the point I have just made. We are spending a lot of time. We are not just saying, 'Well, let's go to the market with a service and see who can do it the best.' We are spending a lot of time working out first what it is that we are doing and then what the needs, expectations and preferences are of those who consume that particular service, be it garbage collection, using a park or using a library.

Major organisational operational reforms have been undertaken to underwrite the competitiveness of our provider operations. We now have self-managing work teams. There used to be eight levels of management between me and the real worker—that is, somebody who mowed the parks, or whatever the case may be; there are now three. We had business units and, within those business units, constellations of teams. There are no gangers, overseers or foremen as there were in the past; there are purely business unit managers and team leaders.

Re-engineering our operations has been a major point of focus for us to make sure that, when we do push the competition button, we are not just throwing our own staff to the wolves and saying, ‘Well, good luck; sink or swim.’ We are very serious about giving them an opportunity to become more competitive and to prove to everybody that ownership is not a question. It does not matter whether it is a public or private provider. What matters is the quality of the management, the quality of the staff and how smart they go about their work practices.

We are currently developing some fairly detailed competitive neutrality guidelines. They look at issues with which you would be familiar: debt guarantee fees, which are not such a big issue; more to the point, tax equivalents, sales tax, company tax and so on; and, of course, making sure that our own business units operate in a regulatory environment similar to that of any other provider so that they do not enjoy any unfair advantage.

To finish off, I have just noticed some relevant issues. I anticipate that they may well come up in questions in any case, so I will just make some quick points. Right from the very beginning—and this process has been under way for about two years now—we have involved the unions and discussed our plans with them, cards on the table. I would not say that philosophically they agree with the competitive tendering side of things, but I am sure they respect and recognise that we are approaching the task in good faith and with a genuine commitment to improving the competitiveness of our own operations and our long-term ability to survive.

We have had a policy of no forced retrenchments. We think that is very important. People will not come along with you if they feel they may get the old DCM the following day. We have been dealing with rationalisation by voluntary redundancy and attrition. Our staff levels have dropped from probably about 900 two years ago—although nobody knows quite what they were—to about 760. I have been very careful in saying, ‘Look, this is not some downsizing exercise.’ We did not start off with a pre-determined number in mind whereby we said, ‘We have to save \$5 million and that means 100 staff have to go.’ We said to our staff in forming our new structure, ‘You come up with the resources that you feel you need to undertake the work.’

Historically, local government has been input driven. In other words, the question is: this is how many people we have; what can we do with them? The question rather should be: look what needs to be done; how many people, what level of plant and machinery do we need to get the job done? That has been a major paradigm shift, if you like—pardon that dreadful expression. But it has meant that we have been looking at—and this is another dreadful expression—‘rightsizing’ rather than downsizing saying, ‘What needs to be done and what do we need to get it done?’ rather than saying, ‘What do we have and what on earth are we going to do with it?’

Local employment has been an issue. There certainly was a sentiment, which probably goes back a long time, that the council was there to employ people and somehow soak up all the unemployables around town who would not otherwise secure gainful employment. I think the council is quite convinced now that the most it can do for local employment is not to try to soak up all the unemployed people around town. The problem is simply too large and retractable. It recognises that the best thing it can do for local employment is to encourage local business investment—and local business investment is not encouraged by having an inefficient and bureaucratic council. Local employment is certainly a focus for us, but we do not see ourselves as the solution to local employment.

A further point, as I have already mentioned, is that we are in no way abandoning the very many and important community service and social obligations we have. In fact, we believe that the better we can manage, the greater the possibility that many of those obligations will be embellished. We will have more money to spend on pursuing, perhaps expanding, some of those obligations. In respect of those who rely upon those services, we will be better at servicing their needs.

Mr Chairman, I hope I have not taken too long. I just thought I would cover those points to give some context to what we are up to.

CHAIR—Thank you very much. I think that will stimulate the committee considerably.

Resolved (on motion by Mr Hockey, seconded by Mr Albanese):

That we authorise for publication submission No. 97, the additional notes on competitive reform, as part of the inquiry into aspects of the national competition policy reform package.

Mr Fitzgibbon, you mentioned the competitive neutrality guidelines. How is that made to occur so that there is not seen to be some sort of advantage for the local government situation with things like sales tax—and that is the obvious one, but there are others too?

Mr Fitzgibbon—For example, with the service of operating the library, an ad will go in the paper. Any bid that our own business unit will make will need to make certain allowances. Those allowances will be for things like those I mentioned—sales tax, payroll tax, company tax and so on. However, it gets quite complicated in as much as it depends on how they are bidding. Theoretically, anybody bidding for a council operation should be able to claim sales tax exemption—and it does not matter whether it is ABC Pty Ltd or our own business unit—as distinct from a situation where we are bidding for work outside in the private sector where sales tax needs to be paid and we would need to make full allowance for that sales tax.

But it gets a bit complicated in that we can say to our own unit, ‘Well, you don’t have to provide for sales tax in your bid, tax equivalent, because you are bidding for government work and theoretically any other provider will not have to pay sales tax either.’ But we now know that that provider will probably be paying sales tax on their plant and equipment and their stationery, and so on. So there is an element of sales tax that an external provider will still face. We are currently trying to fathom how on earth we are going to come up with that allowance. We are currently working at about two per cent.

Similarly, with company tax equivalents, a notional company tax will need to be factored into any bid. This is based upon the fact that with our business unit any bid will be structured on the basis of making a rate of return of 10 per cent, which we are just saying is the normal profitable level. To be perfectly honest, the solution to it at the end of the day is to get rid of all exemptions. Of course, it really is a nonsense coming up with all of these notional amounts. I suspect that there is a lot of activity going on throughout the government trying to find a solution to these things. But the rub for that is that it has to be reciprocal: we are more than happy to pay sales tax and company tax if Commonwealth and state agencies pay local rates.

CHAIR—That is a very interesting proposition. What reaction are you getting from other councils in Sydney and other parts of Australia to what you are doing, or is it too early to say?

Mr Fitzgibbon—I would say the interest is significant. Certainly the ball was set rolling by Liverpool. I am sure they learned some important lessons out of that. I suppose to some extent, in terms of the competition side of things, we have now taken that mantle. You can correct me if I am wrong, Mark.

Mr LATHAM—No, you are right. That is why you are here.

Mr Fitzgibbon—So we are probably way ahead in terms of where this state is at. Others may yet go past us. Putting this state aside, Victoria is certainly leading the pack in terms of the application of contestability. However, again, I foresee some problems with the Victorian approach inasmuch as I do not see how they are possibly giving themselves sufficient time to either, firstly, prepare proper specifications or, secondly, allow their staff to properly prepare.

Mr LATHAM—I am interested in the targets you are setting for contestability. You mentioned, quite correctly, that these initiatives should not be seen as an end in themselves but rather a means towards better community service. I tend to draw from the operating expenses—20, 40, 60 per cent to go out contestability—and this is the reservation I have about the Victorian model: they mandate a target for contestability without starting at the other end of the process to say, ‘There are certain public good functions of a council. There are regulations that need to be kept. There are in-house controls that need to be maintained.’ There are large slabs of a council’s work that can be quarantined from contestability, rather than starting at the other end and saying, ‘We have a target and irrespective of those categories the target needs to be arrived at at some point in time.’ What has been the thinking behind the targeting?

Mr Fitzgibbon—I understand that the committee has a copy of our contestability program. You will note from that program that right from the very beginning, taking your point, Mark, the first section talks about non-contestable activities. As you suggest, on pages 3, 4 and 5 you will see a raft of functions and services which for various reasons we believe should not be exposed to contestability—things like planning, volunteer services and so on. A lot of our functions cannot be made contestable because the law requires that functions be undertaken by a council employee, such as issuing a building permit or issuing a car parking fine. So we are certainly cognizant of the fact that at the end of the day there are various reasons which militate against some functions being made contestable.

Having said that, we estimate—it is only a guesstimate really—that probably 60 per cent of our operations remain contestable. Hence, the upper limit of 60 per cent. It is not a hard and fast guide either. I

suppose we took that lesson out of New Zealand whereby they said, 'Look, you have two years and after two years she is on.' Murray Douglas, the Chief Executive at Dunedin, gave me some fairly wise counsel and said, 'Look, graduate it, Mark, because our experience was that everyone just sat around for two years and then everyone panicked. Graduate it in. Introduce it gradually so that people can test it, pilot it and get used to the idea.'

It is also useful to break it down like that in terms of not exposing yourselves too heavily at any one time. For example, we are a large city—165,000 people. We have structured our parks maintenance in the four districts. If we put it into one district and put it out to tender and we lost it, suddenly we would have 130 people on our hands. We do not want to face that situation. We have said that we will break it into four districts. We still believe that is of sufficient scale to create a viable market. If we do happen to lose a contract, it is not the end of the world. We can manage that situation appropriately.

Mr WILTON—In regard to restraining monopoly pricing behaviour, you have said in your action plan that pricing oversight must be a primary obligation of councils if they are to ensure that ratepayers get value for money. How do you go about monitoring pricing arrangements and overseeing?

Mr Fitzgibbon—The problem of monopoly pricing in local government is not the problem a lot of people think it is. There are very few natural monopolies remaining in local government. Monopoly oversight pricing only becomes an issue when you have a true natural monopoly. They tend not to exist. One hundred years ago a firm may have been able to create a natural monopoly for garbage collection in Bankstown, for example. But today you have any number of viable competitors out there keeping the marketplace honest.

I do not think it is a big issue. I do not think what people have traditionally regarded as monopolies in local government are any longer monopolies. There are very few examples I can think of. Where there are monopolies, I suppose the best way to supervise pricing is through benchmarking, although again I think we are placing too much reliance on benchmarking. The best form of benchmarking is competition.

CHAIR—Do you still hold to that in regional areas as well?

Mr Fitzgibbon—I do a little bit of speaking in the country and this is constantly an issue. People say, 'Well, it's all right for you city guys to talk about this, but out here these provider markets just do not exist.' Again, I think they do not exist because they have never been given an opportunity to develop. The enormous leaps in communication technology these days mean that a lot of companies can reach into these remote areas and provide services. It also means that if you signal to the marketplace that in three years time, for example, as a council you are going to expose the grass mowing to competition there may not be competitive providers there, but in three years time there may be. If you signal to them that you are prepared to create this market, there could be guys and gals who leave the council and say, 'We are going to set up our own business. We have a couple of years to prepare.' Suddenly there is a competitive marketplace. Again, I think it is an exaggerated limitation in terms of the application of a lot of these principles in regional Australia.

Mr PYNE—Your council has obviously grabbed the ball and run with this national competition reform package and so on. How do you explain the reticence of a lot of other councils to do similarly?

Mr Fitzgibbon—I think there is a host of reasons.

Mr PYNE—Would you like to comment on them?

Mr Fitzgibbon—Machiavelli said 500 years ago that man is incredulous fearing change, and that is clearly a factor. People fear change. They are happy with their status quo and they do not necessarily want the boat rocked. That is certainly a factor. I think lack of education is also a factor. I think there is a lot of misunderstanding as to the implications of applying competition. For example, people in the country say, 'Look, we are the largest employer. We want to employ local people.' Fine. Specify the contract in a way which requires the provider to employ local people. You can do that. It does not infringe on competition policies.

There is certainly an industrial dimension to it, too. Staff and unions are very concerned about where this is heading. There is some inertia there amongst the unions. We work closely with the unions. I believe they have been fairly supportive of us. I think, like us, the thinking union has recognised that this is coming. It may not be next year or the year after, but two things are certain in local government. One is probably amalgamations in this state ultimately and another is a greater influence of competition policy. I think they see that we are making a genuine commitment to our staff to make sure that their job security in the future is not founded upon being a council worker but that it is founded upon being competitive, like 70 per cent of people in society.

Mr PYNE—Do you think outcomes and assessments are being monitored properly? If not, what do you think should be happening?

Mr Fitzgibbon—Outcomes in terms of the application of the policy to local government?

Mr PYNE—Some of the evidence that the committee has received in the past has suggested that people do not realise who is responsible for monitoring the actual implementation of the reform package and assessing the outcomes. Do you feel that too?

Mr Fitzgibbon—Councils are autonomous entities, I suppose. We are accountable at the end of the day to our constituents. We like to think we are open in reporting our outcomes, although it is still very early days in terms of the effect of competition policy on those outcomes. I suppose the only other stakeholder in that regard is the state department of local government. I would not be so audacious today as to comment on how well they are going in terms of that aspect.

Mr ALBANESE—Your zealous attitude is perhaps admirable, but I have some reservations with regard to the impact on the program which Bankstown council is certainly going down in a fairly extreme way compared with the response of other councils. I note that your program is yet to be implemented. It is at the theory stage up to now. The reticence of other councils, I think, can be explained perhaps by some experience that they have had in terms of competitive tendering. How do you envisage getting around the problem of, to use an example, garbage collecting services which have been contracted out in other councils—once the infrastructure which belonged to the particular council is gone—suddenly putting the prices up the next time tendering comes up? How do you build into your program a response to that?

Mr Fitzgibbon—One of the criteria which we applied in assessing whether or not a service should be made contestable—on page 2 of our document you will see it is the third factor—is ‘the absence of mature competition within the marketplace for the foreseeable future’. If we do believe there is natural monopoly so that we risk that situation, we simply would not do it. You mentioned garbage. It is a very competitive market. It is not a natural monopoly. That risk does not exist.

What creates a natural monopoly, as you probably know, is barriers to entry to the marketplace. Typically, in local government the greatest barrier to entry is the investment required to give up to actually be a competitor, such as buying half a dozen garbage compactors and so on. If that were a problem, particularly in regional areas, one solution to that is for council to own the capital investment whereby it is simply contracting the operation and management of that equipment. So most of the barriers to entry which create natural monopolies can be overcome just by a little thinking, such as with the example I gave.

Mr ALBANESE—With the examples you have put forward, the sorts of targets over a period of time were drawn up, as I understand it, on the basis of a perception that the state government was going to impose those sorts of guidelines when they came down with their policy. The state government has not done that. I guess I know the answer to this, but are you batting on regardless or is there going to be a re-examination in the light of the perceived change in state government policy?

Mr Fitzgibbon—The answer is yes. Getting back to your original point, the perception that somehow this was thrust down people’s throats as if to say, ‘If you do not do it now it is going to happen anyway,’ is totally wrong. Our activity preceded even the release of the Hilmer report. This is based upon a recognition that at the end of the day the punters out there in Bankstown, including a lot of battling punters, will do well out of the application of these principles and they will do well because we will better define what we are doing and at what level we should be doing it, and they will do well because what they will be paying for it then will not be as great as it used to be. We have an obligation to Mrs Smith, an invalid pensioner in the backblocks of Bankstown, to make sure that if we can pick up her garbage for \$100 a year rather than \$130 we should explore that opportunity.

Mr HOCKEY—In all the papers that you have provided us with I cannot see—and could you point me to—any anticipated outcomes of either a financial nature or a productivity nature. I cannot seem to see whether you are going to save 20, 25 or 30 per cent on product delivery. The only figures that have been cited are those of the City of Stonnington where, for example, the Malvern Valley Golf Club contracting out of services delivered six per cent, the contracting out of waste collection delivered 32 per cent and the contracting out of services to the Harold Holt Swimming Pool was eight per cent.

Mr Fitzgibbon—That report you have is almost 12 months old now. It is a good question and, again, it is a question I am glad you asked because it reinforces that we are not just doing this for the sake of doing it. The other reason we are doing it is to fund priorities which we just will not be able to fund if we do not save some money. We have a five-year financial plan. Our operating expenses currently are \$65 million. The five-year plan demonstrates that by the year 2001 we hope to pull those down to \$56 million through changes we have made through the discipline imposed by competitive tendering. That is a 20 per cent reduction in real terms. More to the point, it is an accumulated saving of \$16 million which can then be used to finance other community priorities.

Mr HOCKEY—I am curious about that because the goals set by the state government and various ‘industry standards’ are that contracting basically saves around 20 per cent of costs. That includes contracting in and market testing and so on. On the figures you have just given us, you are saying that you would have a 20 per cent saving when you are up to 60 percent of the services being contracted.

Mr Fitzgibbon—It is hard to put a finger on the extent of savings. The Industry Commission says between 20 and 30 per cent, but it depends what base you are coming off. If you are applying these types of principles to a council which for a long time has been running very efficiently, you are not going to achieve that level of savings, I agree. You may focus upon those other benefits, particularly in terms of specifying outcomes. We think we can achieve those types of savings, given the application of this at 60 per cent of our services. They are targets we have set ourselves. Maybe at the end of the day they will not be achieved. We are going to give it our best shot.

The major point is, again, if I can just re-emphasise it: they are not targets based upon some goal of thrift. They are targets based upon the need to free up money to pursue new projects. We have on the books plans to spend \$5 million on our sporting facilities in preparation for the Olympics, for pre-game training and practice during the games. That just will not happen unless we improve the bottom line. The money is just not there.

Mr HOCKEY—So for the 20 per cent of operating expenses that you are putting out to tender in 1997-98, do they represent the areas where you and the council believe it is most likely that savings will be achieved and contestability will be achieved?

Mr Fitzgibbon—No, not necessarily. What that means is that in 1997-98 an amount equivalent to 20 per cent of our operating expenses, say \$18 million, would have had to have gone out to tender.

Mr HOCKEY—On what basis do you choose those areas?

Mr Fitzgibbon—We have done that in the program I have mentioned. We have in fact cut some of our operations a bit of slack and given them a little bit more time, recognising that they are going to need a little bit more time to be competitive. For example, the area where we would most save money if we went out to competitive tender tomorrow is garbage collection because we have only recently converted to one-man trucks. Having only recently converted to one-man trucks, we said to our staff, ‘You need time to bed this down so we are not going to go to tender for the garbage collection unless 1998-99.’ We could have gone straight away and we would have saved a lot of money, but they would have all lost their jobs and we would not have been true to our commitment that we are going to give them time to prepare and compete.

Mr LATHAM—I will just follow up on competitive tendering. Of the long list of items you have in your advertisement, 90 per cent of the federal and state government equivalents would have been tendered years ago, so I suppose it is a case of local government catching up to those practices. I want to mention just four in particular. Where is the private market for library management or have you got in mind a sort of franchise system where a council with a winning formula in library management might take over the Bankstown libraries, which is one option that can be pursued? Have you considered the downside of the Meals on Wheels meal production tendering of breaking up the community style and integrated homely

delivery of that particular service, which seems to be almost without peer in that particular sector? Then there is the tendering of development inspection and assessment plus rezoning application assessments, LEPs. Are not they things a council wants to have control of in-house?

How, for instance, with any of these development matters would you specify in a tender the adequate level of community consultation that a private organisation might undertake in those areas, given that every application is different and the community reaction is very different? In any case, is not the model these days for local government to integrate the development application stage with the rezoning and the building application stage to get a proper, more professional outcome for the community? Having two things as part of the one process out on tender, how would private organisations or non-council organisations interact at the point of delivery?

Mr Fitzgibbon—I will endeavour to cover each of those points because they all raise separate issues. The first issue is: how do you know whether there is a market to deliver services? One of the reasons we did that ad was to suss out if there is a market. That was the purpose: to find out if there is a market there. We do know there is a market. The state library is interested in operating libraries. Even if nobody else tenders, what has been lost? We have spent some time in specifying what is to be done, but that is a healthy thing for any organisation.

Mr LATHAM—But there is no for profit market. These are not for profit organisations.

Mr Fitzgibbon—But whether they make a profit or not is incidental to us.

Mr LATHAM—I know. I just wanted to clarify what you said.

Mr Fitzgibbon—The second point is that Meals on Wheels only relates to delivery. In fact, the delivery of Meals on Wheels is listed as a non-contestable activity. It only relates to the supply of meals. That is currently out to contract, so it is already a contract function. It is undertaken by Bankstown Hospital.

The issue of regulatory functions is an interesting one. We already commission external providers to do rezoning reports on our own land because of the inherent conflict of interest of assessing or rezoning application for our own land. So there is a market out there of consultants and so on who will come in and do as good a job as somebody you employ in terms of assessing rezoning applications.

A point about combined DA and rezoning applications is that some developers do that. Then again, it is entirely up to them. Some do not want to go to the expense of preparing a detailed DA unless they have got the security of knowing that the land is going to be rezoned.

We have thought long and hard. I could probably sit down with you, Mr Latham, and talk through these issues for hours. They are issues we have certainly spent a lot of time thinking about to the point that also we wonder if it is necessary. What we are basically saying at the moment with our building applications is that as the authority we can receive all the building applications which have come in, bundle them up and send them down a chute for somebody to assess and tell us if they meet our codes and policies and then send them back to us and if we do we will approve them as the authority. That provider we send them down the

chute to can be any provider in competition. At the moment, we are just sending it down the chute to our own people and giving them a monopoly to assess an application. Having made that decision, we are conscious of the fact that there may be other competitive forces at work which make that unnecessary at the end of the day, such as the state government legislating professional certification of building inspections and assessment and so on, as in Victoria.

The question of neighbourhood notification is a problem. Again, that is something we can do prior to sending it down the chute. It just depends what element of that particular service you make contestable. You can make the whole service contestable or you can make single elements of that service contestable.

Mr ANTHONY—I refer to some of your earlier comments regarding speaking to regional councils. With competition policy pricing, you have mentioned that in some of these areas if you put it out to tender or indicated to the community then these providers might come to the fore. How do you reconcile, let us say, in the local council area where they take the duty of road construction and where it would be I think improbable in many of these remote communities that anybody would want to tender out there? There just are not the economies of scale as there are in an urban area.

Where does a CSO come into place? Does a CSO come into place where clearly no-one is going to tender in a particular area? This is a question that governments at all tiers grapple with: where do you put that obligation to get a proper pricing arrangement for local communities?

Mr Fitzgibbon—The questions of CSO and competitive tendering are quite separate policy issues. Bankstown council tomorrow as a CSO could resolve that every resident is going to get a new Commodore every year. Having made that decision and having funded that as a CSO we are going to get the best price we can for those Commodores by going to the marketplace. It really is that simple. Too often we confuse competitive tendering as being alien or the antithesis of CSOs.

In relation to the earlier point about road construction, there will be natural monopolies in some areas. I have tried to highlight that contestability will always be applicable. There will be circumstances where there is not a market. Certainly with a lot of the regional councils too, something which I am sure they will awaken to is that perhaps they need to specialise. You may have four or five councils within a few hundred miles of each other. The idea that they should all be experts at road building, all be experts at running libraries and all be experts at maintaining parks is a bit of a nonsense. Perhaps their future is that one specialises in one function, another specialises in another function, and so on. Really, competition policy can only give impetus to that type of thinking.

Mr WILLIS—I take up a point that was raised with you by Mr Albanese about the situation where you have contracting out to a private operator and what happens to the capacity of the organisation to bid in the future. You instanced a situation where if you own the equipment, say with garbage collection, you can retain the equipment and so there is a capacity just to tender out the operation. A criticism in Victoria from employees and unions about all this has been that once it has gone it is gone. Basically, there is no capacity for the employees or the organisation to regain the activity from the private sector because all capacity to actually do it is gone.

Even in the situation where the equipment might be kept, what you lose is all the staff who were there before and there is no internal capacity any more to actually undertake that activity. So it really is a permanent contracting out. So if there is not much contestability in terms of the private sector bidding, then you basically have just transferred it from the council to perhaps a monopoly provider—not necessarily so, of course. That is one criticism which causes a lot of aggravation because they do not see it as being a sort of level playing field. They see the whole thing as being biased against the internal provider.

The second criticism which is made is that the service provided is often cheaper but it is a lesser service. I think it is particularly so in the area where people are providing community type services, services perhaps to individuals and so on. They feel that the service provided is a considerably lesser service than the one that was provided by the council employees before. I wonder whether you could comment on both of those points. In making these points, I am not against the whole concept—in fact, I am very much in favour—but I just mention these as criticisms which are very widespread, certainly in my home state.

Mr Fitzgibbon—These issues need to be challenged. If there is not a response, you should be concerned. But I think there is a response. I think in Victoria they have come from the point of view that they are happy to see it all contracted out. That is where I think they are coming from. Consequently, that is what I think is going to happen.

Last week I spoke to some Victorians about trying to get our minds around competitive neutrality and they said, ‘We are not worrying about that.’ I think the reason they are not worrying about that is that they do not think it is going to be an issue into the future because all the providing will be done by the private sector who face our tax regime in any case. I think that is their point of view and, consequently, they have not given much thought to what they do to enable council to remain within the marketplace if that is what it wants to do.

As another demonstration of our commitment to that—I mentioned the example about the parks and our contestability being split in the four districts—our program requires that one of those districts will always remain in council’s control. It will always be kept a monopoly to make sure that we still have that nucleus of the business unit to work from to bid for future works and just in case a contractor fails. So we will be maintaining an element of business within that business unit for those reasons. That is a genuine concern, but again I think there are answers to it. I think it is also instructive to note that in Victoria the providers are still winning 70 to 80 per cent of the contracts. So it is not all doom and disaster yet.

In respect of lesser services, again, to my way of thinking you will get a lousy service, no matter who provides the service, whether it be an internal or external provider, if you do not properly specify what you are on about. I do see councils who have raced down in the competitive tendering without spending enough time making sure that not only do they specify outcomes but at the end of the day, if the provider does not deliver on those outcomes, they have the strength in that contract to do something about it. Again, I think it is mainly a matter of proper specification, having a contract which is tight enough to enforce that specification and making sure the specification is based on actually talking to the people who use the service and not just some bureaucratic perception.

It is interesting to see what is happening. If these things are not being properly specified, on what

basis is the service being conducted? When we were restructuring our street cleaning operations, as an example, I sat in their work redesign team one morning and said, 'How are you going, fellows?' They said, 'Well, we are a bit stuck. You guys have not yet specified exactly what you expect.' I said, 'Okay, that is a fair enough problem. But tell me: what are you working to?' They said, 'What do you mean?' I said, 'Well, for example, I live at Picnic Point. How often do you sweep my street?' They said, 'In your case, once every four weeks but for everybody else once every 12 weeks.' And I do not think they were joking.

But I said, 'Why is it about once every 12 weeks that you come down a residential street and sweep? Is it because council 10 or 15 years ago said, "This is how nice we would like the streets to look and we reckon to get it that way you need to do it at least once every 12 weeks"?' They said, 'No, that never happened, or if it did we do not know about it.' I said, 'Well, what is magical about 12 weeks? Why not once every six weeks or 24 weeks?' They said, 'Well, that is just the way it works out.'

In other words, the machine is driving itself. The machine itself is setting the level of service and standards for quality. It is not a democratically elected council saying, 'This is what it should be and this is what you should be doing to get it that way.' This is a machine just going on from year to year, totally input driven. I think it is a classic example of how local government tends to function. Competitive tendering is forcing councils, if anything, to start saying, 'Well, what business are we in? What level of service should be provided?'

CHAIR—I am sure there would be many more questions the committee would like to put to you, but time is running away from us again. I thank you very much, Mr Fitzgibbon, for a very comprehensive submission and I think some very interesting answers to the questions that the committee has put. We will be watching with interest to see how you progress.

Mr Fitzgibbon—Good luck with your own inquiry and I thank you for this opportunity.

[10.30 a.m.]

DUDLEY, Ms Sheridan Helen, Director, Strategy Group, Warringah Council, 725 Pittwater Road, Dee Why, New South Wales 2099

CHAIR—I welcome the representative of the Warringah Council to today's public hearing. I remind you that the evidence you give at the public hearing is considered to be part of the proceedings of the parliament. Accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament.

We have received your submission.

Resolved (on motion by Mr Wilton, seconded by Mr Willis):

That submission No. 98 be authorised for publication.

CHAIR—We have also received your submission No. 76, additional to the one just authorised for publication. Do you want to make any corrections or amendments to it or to make a brief opening statement?

Ms Dudley—I would like to take the opportunity to make a brief statement which will expand on the submission that we have already made. It takes some parts of it a bit further, adds a recommendation and clarifies some of the recommendations that we made previously. It might be useful for me to put into context where Warringah is going. Having listened to Mark talk about Bankstown, I need to tell you that Warringah has also moved to a purchaser-provider split model.

As to my role, it might be useful for you to be aware that the strategy group for Warringah Council is, in fact, the purchaser for council. Within my control, as part of the strategy group, is a policy and planning unit which is being established at the moment. It will determine what services should be provided by the council and what standards the community wants those services to have. There is also a competition and performance unit. This might address some of Mr Willis's concerns about quality.

What we have done with Warringah is link into one unit the issues of competition and performance. That unit will determine who provides the services and will ensure that the standards that we have determined ought to exist are met through specifications and monitoring. So competition and performance are part of the same unit. That might give you some context. I would be happy to elaborate on what Warringah is doing later.

In this supplementary submission, I want to explore further the issue of public interest. From the questions you have asked, Mr Fitzgibbon, it seems to be an issue of concern to a number of you from a number of different viewpoints. Perhaps some of what I am going to say will address some of those issues.

There are four issues of public interest that we would like to explore further. The first is the point or points at which public interest is required. The second is balancing both narrow and wide benefit. The third is balancing immediate and long-term benefit. The fourth is costing community service obligations.

In this context, I would also like to say that, since we made our submission, the Department of Local Government in New South Wales released the competitive tendering guidelines in January 1997, of which I am sure you are aware. I do not propose to go over any issues in there, but I do commend them to this inquiry. They set out a number of the issues very well.

Warringah believes that there is a danger that competition is going to be pursued as an objective in its own right without adequate regard for the public interest. One of my concerns about Victoria is the attitude that the great god is contracting, so people say, 'Let's go and contract.' Warringah believes that competition ought to be used to drive improvements in effectiveness and efficiency of service provision. That is not necessarily the same as contracting. I want to make that distinction.

In that context, there needs to be a more sophisticated debate about this whole issue of public interest. The words are there in a number of documents, but there is not a lot of underlying understanding of what it means. I want to address that from a local government perspective. It has mainly been addressed from the perspectives of Hilmer and the federal and state governments. The perspective of local government of public interest might be slightly different, and that is what I want to look at. We are firmly of the opinion that competition will lead to major benefits for local government residents, and that is why we have moved to a purchaser-provider model.

Let me look briefly at those four public interest considerations. The first question for us is when you should consider the issue of public interest. We do not believe it is a once-only concept—'Hey, we have considered the public interest and now we go forward.' We think there are two stages at which you need to consider the public interest.

The first stage is in considering whether or not an activity should be considered for market testing at all. That concerns issues like accountability, access and equity, and the requirement to have the capacity to provide services. There is bushfire fighting, and the bushfires in New South Wales of 1994 are an example. Warringah Council basically dropped everything and allocated all its heavy equipment to assisting with the firefighting.

There is a need to have the capacity to do those kinds of things. If you contract out that sort of service, you would pay an enormous premium for a contractor to have all of its facilities available to drop everything to come in and assist. It is probably not worth it. With those sorts of accountability and public interest issues—where corruption might also be an issue, as in development applications—you have to decide right up front, at the first stage, whether you want to contract out at all.

The other issue which needs to be considered—and it is one we often forget—particularly at the local government level is creating social cohesion, a community life and a community capacity to support itself. It might be really efficient for us to contract out bushfire brigades, lifeguards and bush regenerators or something like that, but we have 600 bush regenerators in Warringah who are working on those kinds of projects. We need to consider as a matter of public interest what would happen to social cohesion and community leadership if we contract out those kinds of things. That is the first stage of public interest consideration.

Once you have decided to market test, you go to the second stage of public interest consideration. That is the point at which you set out the criteria for the successful tender. You would need to think about issues like ecological sustainability and the economic and social impacts. Those kinds of issues need to be thought about in the public interest when you do the specification of the tender.

Incidentally, we firmly believe that social objectives for services are legitimate. They are a legitimate part of local government. But that needs to be thought about at the second stage. Those sorts of issues are listed fairly clearly in the local government competitive tendering guidelines. So it is a two-stage process.

The second issue of public interest is about balance. It is balancing the narrow view of benefit against wider social policy considerations. The question is: in whose public interest is this? A narrow consideration of public interest might be, 'Let's accept the best price and quality tender if we go out to tender.' But the contractor says, 'I'm going to source everything from outside the local area. Employees and supplies are all going to come from somewhere else.'

That may mean that we then lose employment opportunities in the local area and we have a multiplier effect on business of maybe five or six. If part of the council's objective is to ensure a viable local community with viable employment opportunities, by contracting out and not considering the wider social impact on our community are we doing our ratepayer a disservice? It is all very well for them to get their garbage service cheaper, but what happens if they no longer have a job because of it? I do not think they will think that is in the public interest. We think that needs to be considered on its merits.

In Warringah, almost half the community lives and works in the same area. Mr Anthony has raised the issue of regional communities, and I have to say that I have worked in the Northern Territory, Tamworth and in country Victoria, so regional and remote areas are something I am aware of. In Warringah, there is likely to be a considerable social impact and an economic multiplier effect that a council will have to assess against the narrow view of benefit—better cost now—or the longer term, wider social impact. Again, it is about assessing balance.

We must say that we are not advocating local preference. That is anti-competitive. However, there is no reason why you cannot specify in a tender that the tenderer needs to show what benefit there would be for your community in them winning that tender. If they know that is part of the assessment, it is a fair thing to put in.

For example, when Manikau Works got a big tender for Brisbane City Council, part of the agreement was that 95 per cent of that value would stay in the Brisbane City Council community—through establishing a depot, through local employment, through local purchasing. Only five per cent goes back to New Zealand—Manikau Works is a New Zealand company. So, by ensuring those kinds of things, local preference is not a problem. That needs to be sorted out.

The other balancing trick is short-term benefit verses long-term suboptimal outcomes—lower cost, better service for one activity against long-term add-up of those decisions. By contracting out a number of activities in a limited market, you can actually establish a virtual private sector monopoly. What good is that? Is it any better than a public sector monopoly? No, it is not. That is another area where you need to balance

public interest on case by case merit. It is no good saying, 'Yes, we can get a better price now,' if the longer term means that the cumulative effect of decisions in one area is a private sector monopoly.

The fourth problem area in implementing competition policy at local government level concerns costing community service obligations. We do not think it is possible to break services up into two classes. You cannot say, 'Here is a commercial service and here is a community service.' Sydney Water, which is a commercialised, corporatised operation, gives rebates to pensioners as a government policy obligation. Child care provides a community service, but it can be run as a commercial operation. You cannot say it is one or the other.

The key to this is not to try to separate it and to classify it but to ensure that, in packaging services for contracting, you clearly specify the commercial side of it and the community service obligation side of it—the side that people cannot do on a commercial basis. The key is transparency. Provided you make those issues transparent and cost them transparently, it is possible to deal with it.

However, the costing is a point of some contention. Somebody—I forget who, but I think it was Mark—mentioned Meals on Wheels. Costing the community service component of Meals on Wheels is very difficult. How do you cost checking that the recipient is okay and providing that source of social contact that recipients get through Meals on Wheels? How do you measure the quality of that kind of interaction if you contract out that delivery? Given that the costing of HACC services generally has occupied numerous government committees for several years without actually coming to an agreement, I think that costing is going to be quite difficult.

In that context, Warringah Council would like to suggest that federal and state government assistance in developing frameworks to assist councils to cost CSOs would be a cost-effective exercise. There are 177 councils in New South Wales. All of us are going to go through the business of working out how to cost CSOs. It would be an extremely cost-effective exercise if someone provided some central guidelines and assistance on that so we did not have the resources of 177 councils tied up in it.

On that note, our additional submission includes those things about public interest not being a one-off and the four points I have gone through. We would also like to add a dot point to the last recommendation in our original submission, which is that we believe that assistance in developing frameworks to assist councils to cost community service obligations would be useful.

The last thing I would like to do is clarify the intent in the recommendations of our previous submission which refer to the requirement to undertake and publish social impact assessments in relation to the application of competition policy to significant businesses. We are talking about significant businesses, with a type and scale of activity which has the potential to impact significantly on the community, where it represents a major change in policy and where there is likely to be public interest and concern. Examples are the privatisation of significant government enterprises, banks and infrastructure, or of major services, such as firefighting, which currently is not contracted out.

For smaller enterprises where no real policy considerations are involved, we would not advocate that kind of assessment. But you have to do it anyway in going through step 1 of our public interest consideration

as an internal thing.

CHAIR—Thank you very much for that comprehensive submission. Who is going to be responsible for defining public interest?

Ms Dudley—As I said, the question of whose interest it is is difficult to determine. At the end of the day, it is the responsibility of part of a level of elected government to determine what it thinks the public interest is in relation to a particular issue. At the end of the day, it comes down to the council. They are the elected representatives. They stand or fall on how they deliver services and the standards at which they deliver them in the community. That is a simplistic answer, but it is really the ultimate one.

It is pretty much a case by case basis. In setting services, it goes back to defining what services councils ought to deliver and what standards the community wants. It is that question of what standards the community wants that is part of the key to it. There needs to be significant community consultation and input from the community about whether it wants its potholes filled in six hours or whether eight hours will do if it costs half as much. There need to be those kinds of inputs from the community.

Then the wider perspective is needed. The community is traditionally not very good at looking past saying, 'This is going to cost me less today,' to asking, 'What will the impact of this be in five years on our local community?' It is hard for the community to assess. So there is that overlaying that needs to be done at a policy level. A range of inputs need to go into that. It is on a case by case basis. I do not think there is a rule.

Mr WILTON—It seems as though Warringah Council is becoming a victim of the new competitive forces rather than shaping them to its own needs. How far have you gone in progressing competition policy reform?

Ms Dudley—I think I would vigorously contest that we have become a victim of it. We have not. At the moment, Warringah Council is going through the process of moving from a traditional five-division functional structured organisation to a purchaser-provider model, which will have a public office, a strategy group and a service provider. So we are actually in transition as we speak.

As to whether we are a victim of it, I do not think so. This is a choice Warringah has made because it believes that there are strong benefits to be achieved from ensuring that we can deliver integrated services to the community and that we can get better quality at a lower price.

Moving towards a purchaser-provider model is not just about implementing competition principles. Let us not have the debate about whether it is 20 per cent or whether it is some other amount. You might get Professor Domberger and Professor Walker in here, and they could have that argument on the basis of a whole range of things. We believe there are benefits to be obtained financially, and particularly in terms of the delivery of quality and the ability of an organisation, by creating a strategy group, to deliver integrated services on the ground to the community.

So it is not just about being driven by competition; it is also about being able to deliver better services

to the community. We believe that, by putting our policy and planning as a group rather than them being separated across five functional departments, we will be able to deliver better services.

Mr MUTCH—Has council made any resolution to pass some of the hoped for savings back to the ratepayers?

Ms Dudley—Indeed, part of the reason for achieving savings is to ensure that council is able to fund the requests of communities to provide services. Part of the change in the thrust of any level of government providing services is communities asking for more services in certain areas, like the environment—helping to assist clean up the environment through ecological services. They have to be funded. The community is not saying, ‘Stop doing this,’ but it is saying, ‘Start doing some other things.’ So we need to fund those sorts of services.

It is also about ensuring that the increases in service costs are held down as much as possible by driving it through competition so that you can free up that money—I am echoing what Mark said—in order to return it to the community through facilities that they want upgraded or by creating new facilities that the community is asking for.

Mr MUTCH—It would be nice to see some of the return go to the pockets of the taxpayers. My view is that people think they are being overserviced in areas that they do not want to be serviced. There is always the good question about what the community is.

Ms Dudley—Indeed.

Mr MUTCH—I do not think you should overestimate the desire of people to pay less in rates.

Ms Dudley—I would agree. Part of what I hope the strategy group will be doing with Warringah is trying to work out—I used this example earlier—whether getting your pothole service down to four hours is a community good at all. Do they care if it is eight hours provided it costs half as much and that it does not impact on their rates? They are the kinds of things that I want to work with the community on to work out whether we are overservicing and whether we can wind down services in some areas and move them into other areas or, alternatively, hold down rate increases.

Mr LATHAM—I want to seek your response to two propositions. The council’s submission seems to throw the term ‘public interest’ around as we politicians might—that is, as an all-sweeping generalisation that leads you to the Burkean scenario where the politicians will work out the public interest as they announce it. Is it not better to have a framework that recognises that there are public interests in local government—obviously, ratepayers as funders of council activities, residents as consumers of service delivery and producer interests, and the people who work for the council—that might reconcile conflicts among those public interests?

To that end, I worry when I hear people assume that more competition means less social cohesion. In some instances, competition forces more cohesion and cooperation. For instance, Mr Fitzgibbon outlined how competition in Bankstown council’s business units has led to self-managing work teams. So, instead of having eight tiers of hierarchy and coercion in the workplace, you actually have a more cooperative

arrangement as the best means to compete as producers of services. Whether that works in practice, I do not know, but it does make the point that competition does not always have to be seen as mutually exclusive to cooperation.

Equally, you were saying that certain forms of contracting will lead to less social cohesion. Not all contracting is to for-profit organisations. You might contract resident cooperatives to look after your parks, which is a socially cohesive thing to do. I am trying to draw out some of the complexities of these things which go beyond 'public interest' as a banner and the assumption that all competition is mutually exclusive to all forms of social cooperation.

Ms Dudley—If I gave the impression that I thought all forms of competition were mutually exclusive to social cooperation, I apologise. It was not intentional.

Mr LATHAM—It was more in the submission.

Ms Dudley—I do not think that all forms of competition are mutually exclusive to social cooperation. You are quite right: you can contract out to various forms of co-op, local residents groups, and that is not a problem. I know that Liverpool has done that in a couple of areas. I have had the benefit of reading your paper about place management.

Mr LATHAM—You are well read.

Ms Dudley—I agree that you can do that. But you need to make sure that, in balancing how you go out to tender on those kinds of things where there is already an established social infrastructure, you do not wreck it by insensitively saying, 'Hey, we will now get into commercial tendering here.' That is the sort of public interest balance that needs to be achieved. It is about being sensitive to what is happening in your community. It is not just about the dollar issue of competition. So I take your point, and I agree with it.

A framework for each council or a general one that was put up would be a fine idea. I am really concerned that one of the things that has happened in Victoria is an emphasis on contracting, with people saying, 'We are going to contract out this much of our services by now.' I am not sure that what is driving us is not actually contracting rather than the benefits of competition. I am wedded to the benefits of competition, but they should include needing to look at those public interest issues as part of it rather than contracting down the line.

Frameworks are really useful to say, 'Have I considered it at each step of the way as I go through the competitive process?' It is not about saying that public interest stops everything—it does not. But it is a consideration you need to make. I should note that Warringah Council actually has self-managed work teams in a number of areas already, and we will be moving further in that direction.

CHAIR—You mentioned the Victorian situation. One of the factors driving Victoria is a recognition that, unless local government costs or charges are competitive with those of other parts of Australia, Victoria will be disadvantaged. So, if you want an answer to that, that is the short answer.

Mr ANTHONY—I want to pick up the point about whose interest it is in. As to some of the social considerations, particularly where something is going to tender, whilst there is a desire to have a local preference, you cannot specifically state that because it is anti-competitive, and yet that seems to be the case with the Brisbane City Council. It probably is desirable for many councils to keep services in the local area. Could you expand on that, including some of your experiences, as you mentioned, and not just with Warringah Council?

Ms Dudley—It is a really difficult issue. It is like being in Tamworth and wanting to get Holden cars for the TAFE college and there being only one Holden supplier in the area, so de facto you have a local preference. There are more subtle ways to do it which work. It is about getting the tenderers, as part of that tender, to look at what benefit they will bring into the community and getting them to specify that in the contract. I do not think it is necessary for everything, but it is something that is going to have to be worked through.

If you can get a tenderer to say, ‘We will source locally certain products,’ or ‘We will employ locally,’ or ‘We will staff a depot locally,’—whatever it is—‘and we will therefore bring benefit to the community,’ that may be something that you would want to consider in the tender. You would have to be very careful in the specifications. It would have to be specified that it would be a consideration. It would have to be given a weighting, like any other specification. At the end of the day, the person who comes up best on that particular dimension might not win it anyway because the overall weighting might lead you to actually choose someone else.

It is a legitimate thing to put in your tender specification because it is certainly something communities expect of councils. Any council in a rural or remote area which simply contracted out everything to outside the local area would have a short lifespan. That has to be weighed.

Mr MUTCH—You are running a big risk here of corrupting the whole tender process. Some of these big companies can come in and they might just say, ‘We will provide a creche over here. We will provide a park here for you.’ Unfortunately, what you seem to be doing is complicating the tender process whereby you are not allowing any comparison. Obviously, it is price. The simplest thing is to specify the service that is required quite precisely and then whoever put in the best price wins it, subject to their subsequent performance. But what you are doing is opening up the tender process to all sorts of corruption. What is your comment on that?

Ms Dudley—I take issue with you on two points. Firstly, the specification of what benefit their tender would bring is in terms of that tender for that service. It is not in terms of any ancillary pieces that do not relate to the tender. I think that would need to be made clear. It is not about saying, ‘We are tendering for a garbage contract, but we will also set up six creches.’ It has to be in terms of the tender and the benefits that the tender for that particular service brings in terms of the service. I would want to narrow that.

On your other point that it is best price, I take issue with that. Wearing a previous hat working for the New South Wales state government and wearing my current hat, the issue of price is not about lowest price. The best tender is not about lowest price. The best tender is the tender that delivers the best quality service for a reasonable price. It is a value for money service that you assess tenders on.

If we just took the best price that met the specifications every time, you then would not take into account things like safety practices in garbage collection operations. You would not take into account a whole number of quality issues that are important in selecting a tender. So I would say that it is not about best price, it is about value for money quality service, and the tender that delivers that ought to be the winning tender.

CHAIR—Unfortunately, time is getting away from us. Thank you very much for coming along today, Ms Dudley. I am sure that your contribution will be carefully noted by the committee.

[11.00 a.m.]

O'DONNELL, Mr Bernard Kevin, Executive Director, Fair Go Alliance, 2 O'Connell Street, Parramatta, New South Wales 2150

PEEK, Mr Anthony George Owen, Secretary, Fair Go Alliance, PO Box 147, North Sydney, New South Wales 2059

CHAIR—Welcome. Is there anything you would like to add to the capacity in which you are appearing today?

Mr O'Donnell—I am the executive director of the Civil Contractors Federation. We are one of the organisations which is loosely formed together into what we have described as the Fair Go Alliance.

Mr Peek—I am also secretary of the Australian Pre-mix Concrete Association, New South Wales branch, and the Crushed Stone and Sand Association of New South Wales, which are both members of the alliance.

CHAIR—I point out that the evidence that you give at the public hearing is considered to be part of the proceedings of the parliament and, accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of parliament. The committee has received your submission, No. 95, and it has been authorised for publication. Are there any corrections or amendments that you would like to make to your submission?

Mr O'Donnell—No.

CHAIR—Would you like to make a brief opening statement?

Mr O'Donnell—We might make some statements to elaborate on what is contained in the submission. We have endeavoured to set the submission out in reasonably short form. It would have been possible to supply the committee with substantial books of material relating to all sorts of tenders that have gone on and what we think are examples of unfair competition.

We think that issue has been very well canvassed over many years by a number of inquiries, in particular submissions we made to the Industry Commission inquiry into competitive tendering and contracting out, as well as the investigations which Professor Hilmer made for the Hilmer report originally.

There are a few things we would like to elaborate on in our submission. Even very small local government activities, which in New South Wales, with the arbitrary division of significant business activities and other business activities at \$2 million turnover annually, can have quite a devastating effect on their local community and local businesses.

There are many instances of councils which have embarked upon business enterprises which do have a serious effect on many local businesses. For example, a business which Sutherland Shire has been operating

now for many years is sending out material offering carpenters, plumbers and small plant hire to ratepayers. I happen to have some family who live in the shire who are carpenters—two of my brothers. That has a fairly significant effect on their business.

They are not able to get all of the advantages. The council is able to use the mailing list with the rate notices to send out their information. It is also able to get media coverage to promote the business it is operating. That would not be a business that would generate \$2 million of turnover. The business that they are offering is on an ad hoc basis, but it would have a significant effect on some fairly small businesses.

The concern we have about the \$2 million arbitrary division of significant and other businesses is that it is all too easy for any council to break-up their activity. One simple example would be with what would generally be looked at as a road making business activity. They could have a road construction business that might do \$1.5 million turnover; a plant hire business supplying plant, which might do \$1.5 million turnover; a project design and management business within the council doing, for example, \$1 million turnover; then the road maintenance business as an entirely separate business; and the quarrying, material supply, operating crushing plants, et cetera, under \$2 million as well.

In the private sector, if you were doing all that it would be regarded as part of a specific business activity of construction and maintenance of roads and competing with all the same contractors doing it. It would be doing so fairly unencumbered, with the full application of competition policy requirements.

Alternatively—and there are enough instances of this—councils are looking at creating businesses for specific projects, so any particular project which is less than \$2 million, and a knife and forking of projects into segments so that each section will be treated as a separate business. There is a lack of definition in the way the New South Wales government has defined what is a significant business activity and what are other business activities.

As we have set out in our submission, we believe that all business activity of local government should be included in competition reform. That means that, subject to other social needs, the necessity for provision of emergencies—those areas which are core business activities which are not involved in competition with the private sector—by all means should be treated separately.

Regularly, we are now finding that councils are tendering to councils outside their own area. I have moved on without announcing the issue of public interest tests. When it comes to comes to measuring what benefits there are in a council maintaining particular types of operations, what we think is the critical issue is that full competitive neutrality applies to it.

Competition should be welcome. Whether it comes from a council or not does not make any difference, provided people are competing on a fair basis. That means that, by virtue of being a council, no advantages are gained in terms of avoidance of taxes and charges or not having to depreciate plant and equipment and all the other things which, in a proper test of competitive neutrality, they would have to apply.

So we think public interest tests need to be applied with a clear appreciation of what we think are the facts. Most work in which councils compete with the private sector does involve local businesses. The issue

of what is in the public interest—such as whether, because of the potential of bushfires, a particular council should maintain a fleet of bulldozers and water carts—may well be a fairly illogical exercise to go through.

We have been involved for some years with the State Emergency Service in New South Wales. This actually started with two bushfires in New South Wales several years ago. About 3.30 a.m. I was getting phone calls about where they could get contacts for people to supply all sorts of heavy earth moving machinery—water carts, graders, dozers and those sorts of things. We were able to get into the office and get the material faxed through. From that, we then set up a formalised arrangement through the liaison group with the State Emergency Service. So we supply the names, phone numbers, the details of what plant and equipment is available through all contractors throughout New South Wales. There are literally thousands of pieces of plant and equipment.

Believe it or not, private sector companies do have a community interest and a social conscience. It is not just the domain of local government. Very often, those resources are contributed on an entirely voluntary basis, because they see that it is in their interest. They are part of the community. Councils are not isolated from the community and the judge of what is of benefit to the community and how to best serve the community.

The businesses we are talking about that perhaps are being unfairly competed against because of the drive today to encourage councils to take on more commercial operations is creating a very serious detriment to those businesses which are equally community minded and which have the best interests of the community at heart.

In the circumstances that even larger contractors may come in and do projects and they are based outside a local area, my experience of some 20 years in the construction industry is that the majority of the labour to do any construction type projects with councils in any council area would be carried out using local labour. There are all sorts of award provisions related to living away from home allowance and things like that which are a great discouragement to the large contractors to take people from one end of the state to the other.

So the fear of the marauding contractor who comes into town and cleans up the local community and leaves with all the money after they have done the job just does not wash. Probably one of the best examples is Wilcannia. There are about five contractors there. Two of those five contractors are members of our federation. The council does not run any of its plant and equipment, because it is too poor. It does not have the resources to do it. But some of the people who are running contracting businesses do all the road grading and maintenance work. They are as isolated and removed from the big city resources as you could get. It does not really stack up to argue that councils as a right should run large plant and equipment fleets and have very large work forces just because they are in an isolated region.

There is another issue to the question of whether or not councils should operate various businesses, whether it be a quarrying operation, a crushing plant, concrete plants or construction businesses. You can put it on a very simple footing. If I own a concrete mixer and I have a driveway which I want to resurface, obviously I am going to use concrete on that driveway. I will not consider whether asphaltting or paving or some other sort of surfacing would be the best. I will not consider whether it is efficient, because I have

already invested my capital in the technology of the concrete mixer.

It is exactly the same with the rapid change in new technology with equipment. With the laser and computer gear on most of the modern excavators, dozers, graders, et cetera, for councils to commit themselves to saying, 'We are going to have this fleet of graders or this fleet of front-end loaders,' shuts off the opportunity for any innovation because their capital is committed and the community's capital is committed. It also shuts off the opportunity to test the market to see what other options might be more efficient and more productive. That is what you would get if you put it out to tender where you use contractors.

Clearly, without competition it is almost impossible to measure value. I think that is a generally accepted premise. Competition is a key way of measuring value for money and efficiency of whatever the service is that is provided. However, if that competition from local government competing with the private sector is not subject entirely to competitive neutrality, then that competition creates serious distortions of those markets. The definition of market cannot be on a national scale—and the Superleague decision is probably quite a good one in that respect.

How you define the market is very critical. If you are talking about regional areas, whether it is Grafton or Tamworth or Liverpool or some other areas closer to the city, how you determine the effect of competition and whether it is significant is a very different thing with different types of services. So the local draftsman may find that the council has got a team of draftsmen out winning work against him. They promote it with slogans like, 'What better place to go to get your plans drawn? We will be looking after them.'

I know a council that has put it in that light. It has said, 'We know what is involved with the approval process.' The questions of the regulator and provider roles also become critical in that respect. On that small scale, that small businessman has not got a hope of competing as a surveyor or draftsman against the sorts of resource that the council might have. So we agree with the submissions others have made that the key is transparency. It is critical that the application of competitive neutrality be as wide as possible.

For those reasons, we have made the recommendations that are set out in section 5 of our submission. We think one key thing can be done. In the early 1970s, one of the most significant social decisions was made by the federal government at that time—the tying of all road grants from the federal government to the requirement that the work had to be tendered out. There is no way in the world that anywhere near the amount of road works would have been completed and the amount of highways would have been built in the last 25 years in Australia if it had not been for the benefit that was achieved through that requirement. We think that tying the application of competition policy to the provision of federal government grants to local government would have a significant long-term beneficial effect and would be significantly in the public interest.

CHAIR—That is a fairly all-embracing presentation. The question that comes to mind straightaway is: have you seen any change in local government since competition policy has been introduced? Are you seeing changes? I am sure you can find examples where it may not be going as quickly as you would like, but have you seen some changes?

Mr O'Donnell—Yes, we have seen some very good change. We believe there has been very significant change. We applaud some of the things that Bankstown Council is doing. The approach the Sydney City Council is take to managing the implementation of competition policy is exactly the right way to go. We have had meetings with their policy staff and with Greg Maddock. We have reviewed all of the documentation that they have provided to us and we think they are going down the right track.

We think some of the things that Liverpool Council has done over the years was very good. We think there was a lack of application of competitive neutrality in some respects, but as an approach, generally extremely good improvements have been occurring. One of the most significant changes is the developing relationship between the private sector and local government, particularly from our organisation's point of view. I am speak a little narrowly. There are a number of organisations that we are speaking on behalf of.

At a local government level we have worked very closely in the development of training programs. We have got a new civil construction declared calling and, for the first time in New South Wales history at least, we have actually got an accredited cooperative level training qualification in civil construction. Councils have been strongly involved with us in the development of the curriculum. We have used a lot of the Lake Macquarie city council's construction work program in the development of this training program. We have 105 trainees now in place throughout New South Wales.

I can see that cooperative relationship extending a lot further than just in the area of training. A number of councils are associate members of the Civil Contractors Federation today. They want to be involved with us because of the climate of increasing competition. There is a need to increase that partnership in a relationship.

Mr ALBANESE—In your submission, you recommend that all local government business activities be subject to competition. Your emphasis is on competitive neutrality. Essentially, it is based upon your suggestion that there is fundamentally no difference in impact whether something is provided by the local government organisation itself or by private contractors—it should all be about the result.

How would you respond to the argument that, if a particular activity is provided by the local government area, the distinction between that and the private sector is that the profit of the local government provided service is social or community capital, as opposed to private capital in terms of the profit of the private contractor, and therefore can be used for community services or it becomes social capital rather than simply being a profit returned to the owner of a company or a business or what have you, however valid and valuable that might be?

Mr O'Donnell—You might employ more people using it.

Mr ALBANESE—That is right. How would you respond to that?

Mr O'Donnell—How a properly competitively neutral local government business activity utilises the moneys returned should be entirely a matter for that local council. I do not have any problems whatsoever with councils generating profits which will serve valuable social and community benefits, provided they are real profits that are not subsidised through any advantage or not counting the full costs of what it was that

they were doing that business for to achieve that profit.

So the fact that you might hire out some graders at \$80 an hour and say, 'They only cost us \$60, but then again we have not taken into account that we have been sales tax exempt on the graders, and the fuel is excise exempt, and we have not counted the cost of the repairs and maintenance, and we have not properly amortised the workshop operations that we have got to run that, and we have not depreciated it.' If they have loaded everything on it, if they are on a fair basis, competing with the private sector and they win the work and make a profit, then I would say that that is a perfectly valid and reasonable function.

Mr ALBANESE—But do you accept that there is a distinction in terms of where the profit goes between the social distinction and the private one?

Mr O'Donnell—It is hard to know where the return might go.

Mr ALBANESE—And that it can be argued that a local government area, be it Bankstown or Grafton or what have you, has a responsibility to its local community.

Mr O'Donnell—Certainly. If they are able to make profits I do not have a problem with it. I accept that there is a distinction between what a council might do with those profits and what a private business might do with the profits. Whether what the council does with those profits or the private sector business does with the profits is more in the benefit of the community, you would have to look at the facts in any situation.

The council might not do what was in the interests of the community. They might build themselves a very large council chambers which the community could admire but might not know what other real benefit they got out of it. Whereas the private sector business may stay in the shed down the back, employ another four or five people and they would get to build houses and pay rates and generate more real wealth. It is a debatable thing where the ultimate benefit to the community is. I would accept that there is a distinction in where the wealth flows. It is a question of how you want it to flow.

Mr MUTCH—You are talking about profits. What about the potential for losses? If you have a private enterprise company performing a service, they either wear a loss or they can be sued by the council. In a properly tendered contract that should be feasible. But if the council is running a service and it is running at a continuous loss, does the council sue itself?

Mr O'Donnell—That is right. The ultimate burden falls upon the council's shareholders who are the ratepayers.

CHAIR—The councillors have to face an election though.

Mr O'Donnell—Yes, they face election certainly, but hopefully that would be where there is some penalty applied for those who run an unwise business.

Mr LATHAM—One issue is that most councils do not see themselves as having profits—they have

costs. They obviously have options through tendering to lower costs as per one part of the public interest consideration. You have come to us with the idea that we should be recommending financial assistance grants from the federal government to the council should be tied to notions of contestability, competitive tendering, and that business units should be fully open.

Is it not a better argument for you to go to the state governments and say that these business units should be corporatised? You alluded to Liverpool Council, which was winning work outside its local government area and, by definition, taking that work off private organisations that were not paying sales tax. On behalf of our ratepayers we were not going to pay sales tax unless the federal government made that legally compulsory. We were not going to make a donation to the federal government just because we are the one council in the world that believed in competitive neutrality.

Local government is not in the federal constitution. It is a state government entity. You cannot touch councils in many respects unless they form their businesses into corporations. This is what has happened in New Zealand. Is there not a better argument for state governments to actually corporatise some of these functions and, by definition, that puts them on a competitively neutral plane? They will be paying their sales tax, but also it is in their corporate interests to get outside their local government area and aggressively compete for the work that your type of members might currently hold?

Mr O'Donnell—We would believe so, but the catalyst for developing the competition principles agreement has been at a Commonwealth level.

Mr LATHAM—No, it is a Commonwealth-state agreement.

Mr O'Donnell—I know that it is Commonwealth and state, but it arose out of a Commonwealth inquiry and the catalyst for generating that agreement was coming from the Commonwealth. A significant carrot-and-stick approach was being used by the Commonwealth with respect to the states. Some \$5 billion worth of work is done each year by local government just in the construction and maintenance area that is not well managed in terms of how competition policy is being applied.

So the same approach that the Commonwealth applies to the state government and to state trading enterprises should, we think, be applied in the same way with that carrot sort of approach, so that those who are the best examples who are achieving the best competition policy application for the benefit of their communities have some reward for that in terms of priorities for expenditure.

Mr LATHAM—There is an enforcement problem because it is hard for the government out of Canberra to inspect 800 councils and see how they are going in every single tender for competition principles before they get their financial assistance grant, particularly when state government departments are already there inspecting them for the same type of thing.

Mr O'Donnell—I understand what you are saying.

Mr LATHAM—I agree with what you are saying in this area, and competitive neutrality makes sense to that extent, but in getting to that goal it might be better for state governments to look at corporatising in

their legislation particular local government functions, rather than tying up the Commonwealth grants and for your organisation to be advocating that to the state politicians rather than the backdoor method of tying up the financial assistance grants. That is the point I am making. Do you advance that argument?

Mr O'Donnell—We have had discussions with the Premier and with Mr Egan, the Treasurer, on our concerns about how the application is being applied in New South Wales. We think New South Wales is not the best example of how competition policy implementation is being managed. We are not saying that Victoria is perfect, either. There are aspects of how it is being done down there that are perhaps too lead footed in some respects. We think the whole process is too open-ended and too voluntary.

Councils are going into competition, but they are not going into it with the reasonable strings attached of competitive neutrality. That is where we think very serious distortions are currently being caused to the markets at those local levels in particular by that competition, which is coming, quite reasonably from the council's point of view, with the advantages that they currently have.

There is such a large loophole with the category of 'significant and other business activity' that they can just drive through it. Some \$1.8 billion, as I understand it, of direct moneys is granted each year to local government from the Commonwealth. There may be some reasonably simplified way of setting some time frame for corporatising those business activities as part of some of those grant moneys.

Mr LATHAM—You cannot.

CHAIR—Is that the thrust of your last recommendation?

Mr O'Donnell—The last recommendation is looking at tying in what ever way is possible, and we have not gone into that—

CHAIR—That is really Mr Latham's point: in what way would you do it?

Mr O'Donnell—The way you would do it is that councils, in making application for receiving various grant moneys would need to satisfy a series of criteria—that is, the application of competition principles. By submitting, there probably is not a need for any significant amount of auditing on a random auditing basis. I think that those facts that they submit when seeking grants would be able to be verified.

CHAIR—Do you want to expand on that? You said the state government is not instituting competition policy as best it could. You made a couple of comments. Did you have anything else that you wanted to add to that?

Mr O'Donnell—With respect to the categorising of significant business activity and saying, 'That means you are earning \$2 million turnover and if it is less than \$2 million turnover then it is an other business activity', I would refer you in particular to the press release and letter from the Minister for Local Government, which we attached to our submission just to give the example. That letter was circulated to every local council.

There have been some newspaper articles in the last few days re-emphasising what a voluntary exercise the application of competition policy is supposed to be, and going on to talk about how councils are, in fact, voluntarily adopting competition themselves, and this is such a good thing. But they are going into that without having the stringency of having to apply competitive neutrality to their operations, and we think that is creating some problems.

So in that respect, we think that the New South Wales government statement on application of competition policy does not go far enough. It is too loose, it does not have any clear time frames, and it lacks definition with respect to significant business.

CHAIR—As there are no other questions, thank you Mr O'Donnell, Mr Peek, very much for your submission.

Before calling the next witnesses, we might just take a couple of minutes' break so we can just stretch our legs.

Short adjournment

[11.49 a.m.]

HOGAN, Mr Michael William, Director, Public Interest Advocacy Centre, 1/46-48 York Street, Sydney, New South Wales 2000

RIX, Mr Stephen Darcy, Principal Policy Officer, Public Interest Advocacy Centre, 1/46-48 York Street, Sydney, New South Wales 2000

CHAIR—Welcome. I remind you that the evidence that you give at the public hearing today is considered to be part of the proceedings of the parliament and, accordingly, I advise you that any attempt to mislead the committee is a very serious matter and could amount to a contempt of the parliament. You have circulated two exhibits. The committee has already received your submission No. 51 made during the last parliament, and it has been authorised for publication. Are there any corrections or amendments that you would like to make to that submission?

Mr Hogan—No, Mr Chairman. I just want to note that we made that previous submission and to add that the papers that we have provided as exhibits to the inquiry really build on some of the issues raised by us in that previous submission. We were keen to address issues around some process matters, and in particular the legislative reviews that are currently under way.

CHAIR—Thank you. Do you want to make an opening statement before I open up to questions?

Mr Hogan—We appreciate the opportunity to address the committee on this important reference and to indicate some of the issues that we were keen to address and express some concerns that we would like to come back to to elaborate on and to answer any questions if the committee is keen to follow those up with us.

Firstly, I would like to address the issue of some concern about the lack of coordination between jurisdictions in relation to the processes for implementing the competition policy agreement, and some evidence of emerging differences between jurisdictions, in particular in relation to the legislative review program. I would also like to express some concern in particular about the uneven commitment to public participation and consultation in the legislative review processes.

We would also like to focus on some of the conflicting interpretations and lack of development in relation to public interest and public benefit tests, and the inadequate state of the methodologies that are to be used in relation to how those tests are to be applied.

We also wanted to raise the issue of the difficulty facing consumer and citizen organisations in participating in these processes, given the vast size of the enterprise and the lack of capacity of many organisations to participate effectively without the information and resources that they require to do so effectively.

We also just wanted to touch on some of the key institutions involved in implementation, such as the National Competition Council, and to address enforcement of the principles.

Mr Rix—On the lack of coordination that Mr Hogan has already referred to, this lies at the heart of our concerns with the process issues. I would like to point out that, on our reading of the legislative review documents that were produced by the eight Australian governments, they vary in quality and detail. For example, the Tasmanian document was extremely detailed, running to, from memory, a couple of hundred pages, while the Western Australian document was extremely short and some would say poor.

To us, that reflects a lack of coordination between any of the jurisdictions in the preparation of the documentation that was to be considered by the aborted COAG meeting in November of last year. Moreover, even though those documents were prepared in time under the agreement and the payment of the tranches as financial assistance grants, the National Competition Council has not yet prepared an amalgamated version of those documents. They advised us shortly before Christmas that it would be available soon, but we still have no clarification of when that amalgamated document will be prepared.

We would also point out that there are 1,000 acts to be reviewed over the next four or five years, covering all jurisdictions, which necessarily means that in some of the jurisdictions similar types of acts will be reviewed at the same time. But it is unclear to us from either the principal agreement or the documentation that was produced by June of last year whether there will be coordination of those review processes.

We also express concern with the fact that the forum, which would have given some degree of coordination, was postponed but, nevertheless, the process is continuing. In other words, each of the jurisdictions has produced its documentation on legislative review under the CPA, and they were supposed to be considered together last November at COAG. Even though that has not occurred, those reviews are continuing. Those documents also place varying emphases on components of the principles, in particular, and are of concern to us as a public interest centre on consultation and participation.

Mr Hogan has already referred to the fact that there appear to be emerging differences. We think we have identified that in the differing quality and content of the documents. In other words, we infer from the differences in the documents that some governments are more committed to the process than others. We are concerned that, given the similarities that do exist, there not be a lowest common denominator approach adopted. That is, that the jurisdiction which has the least onerous regulatory regime becomes the model for all other jurisdictions.

We have more which we would like to say, but I think it might be appropriate for us to stop there and we can continue at a later time.

CHAIR—Thank you. Can I ask you to expand on that last point and maybe to cite some examples. You talk about state differences and so on. Could you illustrate the point you are making.

Mr Rix—I refer to the exhibit—the community participation in pro-competition legislative review information paper—in which we draw some of those things out. I would refer to what we have said in there around consultation and participation by citizens.

We have, for example, in all documents produced by all jurisdictions, made reference to the competition principles agreement commitment to consultation with groups in the community. We would point out that in some jurisdictions that appears to have been interpreted as affected groups, which would be identified by the agencies which have first line responsibility for the review. In other jurisdictions that is somewhat different.

If I could give you a clear example of the differences: the Tasmanian documentation has a number of attachments which were provided to us by the NCC which detail in some respects the consultative mechanisms to be employed. The Queensland documentation actually places community consultation in a prominent position in the review processes which are to be undertaken. From memory, the other jurisdictions do not go into that detail, particularly in New South Wales. The commitment to consultation is there but, reading the documentation, it is very difficult to see how they propose to go ahead with this.

CHAIR—You say consultation, but it is more than that. We are talking about competition policy as well. Are you seeing differences between the states on that itself?

Mr Rix—On competition policy? What I have said is that there is a difference in the commitment to some of the principles that can be inferred by the quality and content of the documentation that has been produced. From that, I would then draw the conclusion that there may be differences in the commitment that there is in those jurisdictions to competition policy itself, but I cannot give you any clear indication, at this time, that there are differences in commitment to the notion of competition itself.

CHAIR—Do you have any anecdotal evidence to give an indication?

Mr Rix—The indication that I would give would be the timing of the Western Australian election and the discussion which is occurring on the timing of the South Australian election.

CHAIR—I suppose elections are something that everyone around this table is acutely aware of the implications of, so it does affect some of those decisions. So you do not wish to go any further on that?

Mr Rix—No, unless Mr Hogan wishes to.

Mr Hogan—I think there is also some confusion in the documentation—or lack of clarity in the documentation might be a better way to put it—again in relation to the issue of public participation and consultation, about the relationship between these legislative reviews and other documentation about regulatory reform and other statutory processes for regulatory reform. It is striking that many of the documents don't even mention some of those other key documents or processes. For example, the New South Wales documentation does not refer to the requirements for legislative review and consultation and public participation under the Regulation Review Act. There is no reference to some key documents, such as the state government's policy in relation to regulatory reform, in that it is titled, 'From Red Tape to Results.' So we have got a public commitment to consultation and participation, but very little guidance about how that process is to be put into effect.

CHAIR—I would like to go back to your earlier submission—a couple of points. In talking about

water and energy, you mentioned the suggestion that introduction of competition in these markets will result in wasteful consumption of scarce natural resources. I was wondering what the basis of that statement is.

Mr Rix—This is related to the internal logic of competitive structures and the result of that internal logic competitive structures on pricing decisions. Take, for example, the question of electricity. Establishing a competitive regime between existing generators will, under their own internal logic of competition theory, result in improvements in efficiency, narrowly defined. Those improvements in efficiency are postulated to flow through to price. On the other hand, the internal logic of the economic theories that are being implied argues that if there is a reduction in price there is likely to be an increase in demand, so that the internal logic would suggest—

Mr LATHAM—People have not said that for 150 years.

Mr Rix—No, this is price—a reduction in price—

Mr LATHAM—Generates demand.

Mr Rix—Could lead to a generation in demand because the internal logic of this school of economics suggests that wants are unlimited, so that people are likely to consume. I believe that this is the internal logic in the school—

Mr LATHAM—When you sleep you do not use electricity. That is not an unlimited want. You don't leave your lights on when you are asleep just because electricity is cheaper.

Mr Rix—No, but you may run other appliances at night. This is a concern that has been expressed not only by us but by others; that reductions in price could jeopardise the achievement of goals such as greenhouse gas emissions.

CHAIR—Wouldn't you also say, to contrast that with a state government totally controlling electricity, for example, that there have been occasions when state governments, in trying to attract industry, have offered discounted prices—often probably below cost—which may mean that other consumers are in fact subsidising that? Generally these are very large users of electricity, so does it necessarily follow that, by bringing in competition, you are necessarily going to increase consumption?

Mr Rix—No, it does not necessarily follow, but you asked us to clarify the position. Let me talk about water then. The argument would run that producing competition in the supply of water would lead to a reduction in price. We know from our own experience—and I think it is reasonably incontrovertible—that low prices for water lead to greater consumption. So there may be a purpose served by having a regulated pricing system for water and not allowing the internal logic of competitive structures to continue to run.

CHAIR—But hang on, there are a couple of points to make there. First of all, I do not know about other states, but in Victoria, until recently, in many places water was not charged on a consumption basis, it was charged on access. But, secondly, if you believe that the resource is scarce, why would you avoid competition, rather than providing competition plus some sort of levy or something if you believed

consumption was too high?

Mr Rix—It is a reasonable suggestion, except that there are cases to suggest an alternative approach. There are cases that are recognised even in conventional economics where the creation of competitive structures actually leads to higher costs and lower costs. These are called natural monopolies, as you know. The creation of competitive structures in water distribution and water supply could be a case in point.

CHAIR—Could or would?

Mr Rix—I think, in the end, it depends on which part of the water market you consider. But I would have a predilection to say ‘would’.

CHAIR—Okay.

Mr ANTHONY—In your theory there, do you really not have to look on a case by case basis? We have seen now reductions in gas prices, and I would have thought for ecologically sustainable development it is far better to have substitution with gas than, let us say, with other forms of fossil fuels. Is it a bit simplistic just to generalise in those terms, because many of these commodities, having lower prices, are actually producing a cleaner environment.

Mr Rix—I could not agree more but, even to have that mechanism operate, the question then that has got to be asked is whether a mechanism that leads to a reduction in the price of electricity vis a vis other forms of energy is going to achieve the goals. Do you see what I mean? What you are saying is correct, but the price of the good which is currently being consumed cannot be permitted to drop in such a way that it replaces the possible alternative.

Mr ANTHONY—Why not?

Mr Rix—Because you have already said that in order to achieve environmental goals gas substitution is a good idea.

Mr ANTHONY—In this case, if the price of that commodity drops even further, it makes others less efficient and you are getting a cleaner environment and a cheaper price to consumers.

Mr Rix—It is possible.

Mr HOCKEY—Mr Rix, if you applied your model, then every motor vehicle available on the market should be priced at around a million dollars, because every motor vehicle is not only environmentally unfriendly, but it should be fitted out with the very best safety equipment available. So it seems as though the model that you are talking about simply has no real practical application.

Just to add one more point, from a more theoretical perspective, when you say that decreases in pricing affects the level of demand, what you are discounting is the fact that a consumer has alternative reasons to spend money. So, for example, using the initiative that my colleague, Mr Latham, talked about

where the electricity consumption would go on all night, what you are assuming is that the consumer has disposable income to spend only on electricity.

Mr Rix—Yes, you are correct, but I do not see any fundamental contradiction in the way I answered the question about specific instances. If you like to use the term which has already been employed—case by case basis—then what you are saying about how the balance of these effects has to be borne in mind is what case by case means.

Mr LATHAM—I think the problem people are detecting is that you have spoken of one competition theory when I think it is acknowledged that there are many theories of competition. One of the problems in this debate is that sometimes one strain is erected more or less as a straw man solely for the purpose of knocking it down. To go back to the origins of this—and it was Ralph's baby, I think, from the beginning—a lot of the Hilmer stuff was actually very empirical. It is not linked to one overarching theory of competition, it is pragmatic—what actually works in terms of public sector administration, public sector utilities and the like.

Through the public debate, it has been in some quarters narrowed down to a certain strain of competition theory, but I think it does not fairly represent many of the things that decision makers would be trying to apply in practice.

CHAIR—Do you want to respond to that, Mr Rix?

Mr Rix—No, Mr Chairman.

Mr WILLIS—I was somewhat confused by the whole tenor of the argument. It just seems to me it is axiomatic that we are all better off if we produce goods more efficiently—and services as well. That is a good starting point for any sort of basic economic policy, and what the competition policy is all about is trying to get the state, local and federal governments to produce outputs as cheaply as possible for the benefit of the taxpayers and consumers in the country. It seems to me anything that challenges that has got a terrible hurdle to overcome, unless it can show that the achievement of those efficiencies is in some way damaging to the public interest.

You are suggesting, it seems to me, that there is some kind of environment problem here. I find that quite astonishing. Certainly, it is true that we need to have regard to greenhouse issues, but they are fundamentally different, it seems to me, from saying that we need not to worry about efficient production. What we need to do is to ensure that we have maximum efficiencies, and then address the greenhouse issues as a separate item.

If we think, for instance, that we need to put some disincentives on the consumption of energy, then the way to do that is not to encourage inefficient production but, rather, to put some additional tax imposts on it or, in the case of water, if we want to conserve the use of water—as has been done in Victoria, and in parts of New South Wales, for that matter—to charge efficiently for the use of the water rather than just the ability to turn on the tap.

In Victoria, that would be having a very compelling effect on water usage at the present time. That does not mean to say that there is some kind of a reason there not to have competition. That is another issue, it seems to me, about competition of water policy. But environmental issues do not seem to me to be at all relevant to these considerations. They are another dimension and you address them as that other dimension.

Mr Hogan—Mr Chairman, I do not think our argument was with the fundamental goal of the initiative about more efficient production and allocation—

Mr WILLIS—That is the way it is coming across.

Mr Hogan—We are particularly concerned at the current time about how other goals—such as environmental sustainability, environmental protection, social equity, and consumer protection—are addressed in the reforms that are occurring. I would be a little concerned if they were conceived by the committee as being dealt with as separate matters.

I think one of the fundamental problems we would like to explore with the committee is, given the various considerations that are articulated in clause 13 of the agreement about public benefit and public interest, how those various considerations are actually weighed, balanced, calculated and interpreted.

CHAIR—Are we trying to clarify how you separate those out so that you do get the efficiencies while, at the same time, allowing other mechanisms as appropriate to deal with other matters? Is that not the point?

Mr Rix—As I understand what you are saying—and correct me if I am wrong—the use of particular mechanisms to achieve efficiency, if that has negative impacts, can be offset by having other processes or structures in place to offset those disadvantages. Is that correct?

CHAIR—Yes.

Mr Rix—I have no disagreement with that, essentially. But I do say that to simply concentrate on efficiency and, therefore, pricing goals may have unintended negative consequences. I have no debate with what Mr Willis has said, but it could be that I am not being clear in what I am saying.

CHAIR—No. What started this was that in your earlier submission you made a very clear statement that the introduction of competition into these markets—water and energy—will result in wasteful consumption of scarce natural resources. So you are modifying that earlier submission. Is that the way we read it?

Mr Rix—I would say we are clarifying the earlier submission.

CHAIR—As there are no further questions, I thank you very much for coming today.

Mr Hogan—Could I just say that I am not sure whether I made it clear but, by introducing a range of issues at the beginning, I expected we would be able to come back to elaborate on some of those and take

them one at a time and have some exploration of them. There are a couple of other points we would like to make, if that is convenient.

CHAIR—Yes.

Mr Rix—With the public interest and the public benefit, we noticed that the CPA refers to the weighting of benefits and of costs. Most of the papers that have been produced by the jurisdictions refer to the public interest.

To us, essentially, it would have been more helpful if there had been uniformity in language, preferably in the competition principles agreement. If that had referred to the public interest then that would have been better. There are two languages being employed here. One talks about the balance of benefits and costs and the other talks about the public interest.

I think it would be worth while to get clarification from the jurisdictions on whether there is a difference in meaning in those terms from their perspective, because none of the documents that has been produced by the jurisdictions, for example, talks about democratic values and the structures that may be in place under existing legislation that enable participation and the legislation that is being reviewed and the impact that that might have on the participatory value, which we would interpret as being a democratic value.

I think also that the NCC discussion paper on the public interest refers to the use of ACCC cases to clarify it. I would like to hand over to Mr Hogan to develop our argument on that point.

Mr Hogan—We gave some emphasis in our previous submission to the problematic nature of the processes for assessing costs and benefits and social impacts and for weighing of the various factors that are identified in the agreement in applying that test. We made a suggestion there that the committee encourage the piloting and testing of various methodologies to do that.

Now that we are a little further down the track, we wish to express some concern or disappointment that no further progress seems to have been made in that area. One would hope and expect that the NCC would assist various jurisdictions in articulating and developing how they will apply the test. Whilst the NCC does make reference to particular case law and provisions in the context of the trade practices legislation, we would hope that at this stage there would be some further guidance being made available as to how those methodologies are to be applied.

CHAIR—Okay. Does anyone have any questions on those points? We have taken them on board. I hope when we talk about democratic values that is one of the reasons we have the committee here today in a wider sense of the term.

As there are no further questions, thank you again for coming along. Thank you to everyone who has assisted today.

Resolved (on motion by Mr Albanese, seconded by Mr Latham):

That the committee authorises for publication submission No. 96 from the Australian Grain Industry Task Force and submission No. 99 from Professor Laird.

Resolved (on motion by Mr Latham, seconded by Mr Albanese):

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

Committee adjourned at 12.22 p.m.