



## **SPARK AND CANNON**

Telephone:

Adelaide	(08) 8212 3699
Hobart	(03) 6224 2499
Melbourne	(03) 9670 6989
Perth	(08) 9325 4577
Sydney	(02) 9211 4077

## **TRANSCRIPT OF PROCEEDINGS**

---

### **PRODUCTIVITY COMMISSION**

### **INQUIRY INTO NATIONAL COMPETITION POLICY REFORMS**

**MR G. BANKS, Chairman**  
**MR P. WEICKHARDT, Commissioner**

### **TRANSCRIPT OF PROCEEDINGS**

**AT MELBOURNE ON TUESDAY, 7 DECEMBER 2004, AT 9.02 AM**

**Continued from 30/11/04 in Sydney**

**MR BANKS:** Good morning. Welcome to the public hearings for the Productivity Commission's review of national competition policy reforms. My name is Gary Banks and I'm chairman of the Productivity Commission. The commissioners assisting me on the inquiry are Philip Weickhardt on my left, and Robert Fitzgerald. The purpose of the hearings is to provide those who have an interest in the inquiry with the opportunity to present submissions in response to the commission's discussion draft which was released on 27 October. After these hearings in Melbourne we have hearings in Canberra next week, and then hearings scheduled for Toowoomba and Perth. We will then proceed to finalise our report to government which is due by the end of February 2005.

The public hearings allow anyone to have a say in person on the issues under consideration and for others to listen to those remarks and respond if they wish. We keep the hearings as informal as possible, but the act does require that people be truthful in their remarks and a transcript is made of the proceedings which we endeavour to place promptly on the commission's web site. I would remind participants, for the record, that all submissions need to be in by the end of the year to allow us to draw on them adequately in working through our final report.

I would now like to welcome the National Competition Council and ask its representatives to give their names and positions, please.

**MR CRAWFORD:** David Crawford, acting president.

**MR FEIL:** John Feil, executive director.

**MR JOHNSTON:** Alan Johnston, director, government business and legislation.

**MR BANKS:** Thank you very much for turning up this morning and for being the first participants here in Melbourne. The commission is also very grateful for the two substantial submissions that the NCC has made to this review and also, I should say, for the work commissioned by the council that's been made available to us. You might, just for the record, comment on that work and its availability. But apart from that I leave it to you to make whatever comments you would like to make.

**MR CRAWFORD:** Thank you very much. Perhaps if I just go through in general and then raise some of the specific issues that have been raised in our submission. In terms of the findings on NCP, the National Competition Council endorses those findings on the net benefit of national competition policy and agree that there are further gains on offer from continuing interjurisdictional reform program and that the continued reform is necessary due to domestic and global pressures.

I guess the forward-looking document that we presented on from the Allen

Consulting Group reinforces the need for a forward-looking agenda because of domestic and global pressures on competition and identifies some areas as yet where, according to some international benchmarks, Australia has some way to go. I will come to it in more detail, but in general the document does support the reform agenda that has been outlined. It does also identify those areas where continuing pressure is needed to be able to sustain our international competitiveness. The identified agenda - that was identified in the draft report of the PC - we agree in principle with and focus on health care, natural resource management, energy and water, competition and regulatory architecture, telecoms, education, training and workplace flexibility, urban planning and technological innovation.

I guess it's in the area of institutional arrangements which our submission talks mostly about and when we've reflected on why NCP has been successful and why other forms or other attempts at significant reform have not been successful, we tried to look at what caused it. I guess, in our view, it actually had three pillars to it. It was the fact that there was a broad and diverse agenda that had to be covered, but there was also an independent monitoring program which was backed up at the state levels by competition policy units within the state regimes, and then there were incentive payments. I guess we saw those three key pillars of a successful arrangement - so it was both the agenda and the institutional arrangements and they were very important in terms of the success of NCP.

We've tried to, in our submission, look at alternatives and I guess the ESD sustainable development program we've looked at and tried to compare its success, compared it to the success of national competition policy. We think it wasn't at the lack of the agenda level - of the broad agreed agenda level - that was the difference; it was actually in the institutional framework which supported it which caused what might be said was the success of NCP compared to the stalling of the program in ESD. So it's really the independent monitoring and program of the institutional framework and the incentive.

Obviously the PC recognised the importance of the institutional framework and we certainly agree the principles that have been established in the framework but I guess when we get to the further way in which we go forward we think we need to be a bit more specific about what the best approach might be compared to - of the potential ways in which things might go forward, whether it's a broadly based COAG program, whether it's a form of successor to NCP or whether it's a series of sector-specific programs.

There might be a preferred option for going forward. What are the pros and cons of those alternatives? What might be the likely outcomes that can be achieved under those? What are, in a way, the contingency plans in order to achieve the outcomes, if we don't have the strength of the three pillars? I should say that in this

context we're really talking about the institutional framework rather than particular institutions, and whether it should be the NCC or some other body that does the independent assessment is not the point of our submission; it's really about the institutional framework.

The council's concern is not about having expert bodies involved in the reform agenda, but where you've got a reform agenda and an assessment role it seems to us very important that the assessment role is separated from the reform-setting role and the reform-implementing role. The separation of that key part of the agenda, it seems to us, is very very critical. As we see it, that has been part of the success of NCP to date - has been the separation of the reform-setting agenda - and there are a variety of mechanisms that can be established for the reform-setting agenda. We've seen a number of models of those which we work with currently, but it is in the assessment role, I think, that we see the need to separate that out and be fairly specific about what the assessment role should be, and the extent to which it should be independent.

That also raises the issue about whether it should actually be a broad based assessment group, which looks at a whole-of-program approach as the NCP and NCC does, or whether it's an industry-specific or reform area-specific assessment role. It seems to us that there is a certain strength that comes from having a broad whole-of-program approach to the assessment role. Apart from the obvious expertise that develops, it's just the economies that can be achieved by actually looking across the programs that are attempting to be implemented.

So that's the first leg of it, I guess - or the second leg. The first is the reform setting and the second one is the institutional framework, the assessment role, the independence of assessment role and the need for a broad based whole-of-program approach. The third leg is the competition payments. Competition payments have been a big part, I think, of the success of NCP. I think it's fairly instructive in terms of looking at where we were last year in the reform agenda, and how competition payments - not even so much payment deductions, but even payment suspensions - caused a significant shift in the level of compliance to complete the reform agenda.

One might also say that of the jurisdiction where it's difficult to establish competition payments, which is the federal government; its relative performance compared to the states in reform areas. I think in the PC report the outstanding reform areas are still ones in which the federal government has got some significant input into.

So competition payments play an integral part of the success of NCP. They act as a carrot, because they focus the attention on the reform failures, they elevate the scrutiny of an already transparent process and they often allow - where it's difficult

politically to establish a program - that criticism to be deflected to the NCC, in our case, and say it's got to be done, because the NCC require it and there's money attached to it, and that becomes then the carrot to achieve it.

Again, in our submission we've highlighted some of what we think would be the backtracking that would take place in the absence of competition payments, and where certain politicians who have been subject to some fairly significant pressure have publicly said that if it wasn't for competition payments they wouldn't do it, and if competition payments aren't there they may well stop doing it. So it's a fairly important part of both providing the incentive, but also in some cases just the potential to withhold money causes the actions to be taken in terms of implementing the reform agenda.

In the submission we look at the ESD program and the NCP program and have tried to compare the two, and provide some guidance as to, in the reform agenda of the NCP, the important role that institution framework and the competition payments have done. So that's on the institutional framework area, which I think is a fairly important part of our second submission.

In terms of the proposed reform agenda, the candidates for the agenda are consistent with what's been done in the Allen study, and the areas that lie in the province of one government - for example, communications - are less critical, but they're nonetheless important. We reinforce that. We would like some consideration of the idea that, where there are a number of reform candidates, how you prioritise and just leave some for some other time; whether there's not scope for some programs to be reviewed over time and others to be fed into the reform program at a later stage, rather than to be, in a sense, left off the reform agenda; whether there's not scope to actually prioritise them more by a timing of when things can come on track rather than by leaving them off the agenda as such.

The consultants' reports, which we've also provided - the Allen Consulting Group, which was the one that looked at the micro-reform in Australia compared to other OECD countries - the summary of that is that Australia is performing well, but it must do more. There are a number of areas which it identifies as critical, but they're generally the same as has been identified in the PC report.

The Allen report is forward looking; what might we do in the future. The other two reports are ones that review some past activity, one in the grains industry and one in the dairy industry. In both of these there has not been, to our knowledge, any work done, and this was the first attempt to try and understand what had happened in those industries.

The grain deregulation one looks at the deregulation of the grain market,

particularly the barley and canola markets, and it forms some very important conclusions about what that has done. The key thing it's done is that it has delivered choice to growers. It has not been able to establish that there's been any loss of price premium as a result of deregulation, but what it has shown is that the choices that growers have in terms of not just price but the services that are offered to growers in terms of different pools, different ways of price hedging, have given growers greater choice, and it in fact has given benefits to growers in terms of timing of payments but also better chances to match their risks of their own business. So that's been a fairly important study on the grains industry.

The third report is on the dairy industry. This is probably the one where there's been most said and least work done, I guess, on what's happened to the dairy industry since deregulation. There was a fairly significant change across Australia - Australia-wide. From the dairy industry point of view it's fairly clear that the consumers have been significant winners in the dairy industry reform. Prices for standard packaged milk are lower than they were before deregulation of the industry. It also establishes in the dairy industry that in fact the dairy industry has to be an internationally competitive business because over 55 per cent of milk product out of Australia ends up in the international market, and so Australia has to compete on an international market, and that's what drives prices in Australia.

The report indicates that also it's been difficult in the dairy industry to assess some of the impacts because it's been overlaid - particularly in eastern Australia - by drought conditions, which has had the impact of decreasing production in some areas and pushing up input costs in other areas, so it's been difficult to separate out the specific aspects of deregulation of the dairy industry. But what's clear across the scene is that there has been a continuing trend towards farm exits. That was heightened by the deregulation, and it is expected that farm exits will steady to their much more normal pattern into the future as well.

Production per farm has increased significantly across all farms across Australia, and the adjustment mechanisms at the farm level have been very significant as dairy farmers have adjusted to the requirements of the market and as dairy farmers have adjusted to the need to adjust their product range and get the right signals for their product range to be able to compete in the international market, which is critical to the success of the dairy industry. So that's a very helpful study of the dairy industry, and they were released yesterday and available on the NCC web site for anybody who wishes to further pursue them, but also copies are available. Perhaps I'll finish there and let my colleagues, if I haven't covered anything, continue.

**MR FEIL:** Perhaps if I can just pick up a couple of elaborations on what David said. In your draft report you quite correctly concluded that the benefits to Australia

from national competition policy have been widespread and significant. I don't think any objective consideration of the policy's effect could come to a different view. But you also note that there were some areas where the benefits have been less and perhaps there were some losers from the process.

I think that raises an interesting question as to whether that looking forward would mean that you would need to be more refined about where reform was required or whether you address those so-called losers through adjustment processes. I think the council's view would be that it's impossible to identify potential losers before reform proceeds, but there's nothing inside the NCP process that prevents governments from addressing particular problem areas through adjustments, either by allowing time or through financial payments.

One of the things that I think has limited our ability in encouraging governments to do some of the adjustment processes on a more targeted and considered basis has been that there was a limited role in assessing adjustment processes; they were very much seen as a separate arrangement from the reforms themselves. I think with the benefit of hindsight there are a number of places where governments did initiate adjustment processes and payments, but sometimes did it in a way that actually reinforced inappropriate behaviour, where there clearly wasn't a need for adjustment in a sector.

In some ways, with the particular approach to adjustment assistance provided by governments, it actually insulated participants in that sector from the need for making reform. To be blunt, there are some industries where the payments supported people remaining in an industry, where clearly the direction that the market was driving that industry was to a reduction in the number of participants, along with the productivity improvements. I think that's one point.

Secondly, the three consultants' reports: very much at the beginning of this process the council identified that one of the great deficiencies - and we don't think it's a deficiency that the council is solely responsible for picking up - was that there had been relatively little ex post review, an analysis of what actually happened as opposed to anecdotes. The risk with anecdotes, they're either driven by the particularly good outcome or they're driven by the particularly adverse, and I think there's a real need for caution.

In saying that, a particular industry was devastated or for that matter completely preserved for the future because of one or two examples, and the council thought that there were a couple of areas where it would be useful for us and for the Productivity Commission and the public generally to commission those ex post reviews. We picked dairy and grains because they were topical for us; topical in the general discussion around national competition policy. We sought bids from a range

of consultants for each of these pieces of work, and I am pleased to say we got multiple bids in all cases, and we selected on the basis of who we thought had the best methodology for identifying the effects and, to a certain extent, price. We deliberately avoided picking consultants on the basis of what we thought they would say, because they were asked to provide us with a methodology but not a result in advance. So we think they are a fair reflection of what was told to the consultants.

I suppose the final report was the one that we commissioned, trying to see where Australia fits and how far reform had gone compared to where it might go. We saw the first report as a horizon report, where we tried to get someone to picture the horizon at a distance and then try and place where Australia was heading in that direction. I would commend all three reports to you.

The two ex post reports illustrated to me one particularly interesting thing, and that's the need to move beyond the simple assessment basis for assessing whether things were better. It's not a matter of whether prices have gone up or down, it's not necessarily a matter of whether returns have gone up or down compared to before reform; it's got to be a comparison of where the industry would be today if it hadn't reformed compared to where it is, having undertaken reform. I think the majority of the benefits identified in both reports are in responsive and dynamic gains to the industries. There are some incidental and additional benefits in terms of pricing, but the real lessons are around observing how reform has enabled an industry to respond to the pressures it would have faced inevitably.

I suppose the final thing we mentioned, as an annex to our submission, we've provided a document that tries to address particular concerns that governments had made about institutional arrangements. This review is not about the NCC, so we don't propose to go through that document in detail. We're more than happy to address any questions you have, but we think it's worth putting that material on the public record, but we don't want to take your time to divert off into that. We'll have those arguments with states and territories and the Commonwealth from time to time, and I think that reflects the role of an assessor that tries very hard to hold governments to agreements that they entered into themselves. We didn't invent the agenda, but we are anxious to make sure that the agenda is pursued aggressively.

**MR JOHNSTON:** The only other comment I would make is a footnote to the comments John made about the annex - that the material in there, I think, is important for two reasons. We looked at all the submissions from governments to the commission, and did address the concerns that the state and territory governments had about the current institutional framework, and I guess that's important looking forward. What are the lessons from the past decade if there is to be a robust institutional framework going into the future?



I think the second point is the annex at least shows that all the governments have addressed the three pillars that David spoke about earlier and, from that perspective, it's somewhat intriguing, I think, the way the commission has interpreted the terms of reference. Certainly parts 2 and 3 of the reference talk about the NCP arrangements in the broad. It is the case that the latter parts of the terms of reference are focused on agenda-setting, but they don't seem to rule out institutional frameworks, so that's, I guess, a comment.

**MR BANKS:** Thank you for that. I think there's plenty of food for thought and discussion in your submission, and we appreciate you raising these institutional issues and, indeed, the questions of the borders around this already wide-ranging review. So we're pleased to get that kind of feedback.

I should say that we agree with the points you make about institutions and processes being very critical to reform, particularly interjurisdictional reform, and I think one of the features of NCP and its success is the way it has managed to harness all jurisdictions in the same direction, and provide a discipline on that process, so we have a whole chapter, I think, as you would be aware, that draws on the lessons from the NCP processes, with the heavy implication, I suppose, that these are lessons for the future, in the design of any future reform program.

As you point out, we fall short of actually making recommendations about what the institutions should be for the future, including payments, because we did find those things absent from our terms of reference, and we typically try to answer the questions we've been asked, rather than the questions that are very interesting but that we haven't been asked. But as you say, there are areas of grey there in relation to the extent to which we build on our lessons from the past in terms of pros and cons of different institutional reforms for the future, so I think that is something that we certainly can explore.

I should say that in addition to the terms of reference, trying to focus us on the most fertile areas for reform - while as you say a number of submissions did address institutional matters - we didn't really get any reinforcement of that in discussions we had with different governments about them wanting us to go much further into institutional design, which we'd seen very much as a COAG responsibility, so we were very conscious of this report being an input to a COAG process which would have its own responsibilities, particularly in relation to institutional design.

I guess the other point - and I'm coming to a question in a minute - is that in a very wide-ranging program such as we have put forward, with a mix of environmental, social and economic areas, it is a moot point actually as to what would be the most appropriate institutional arrangement going forward. That's something I might come back to. However, in terms of us interpreting the terms of

reference, and your somewhat different interpretation, would you just like to comment on any sort of further information you have that would constitute evidence that we should really be saying more about institutional directions, rather than concentrating on the reform agenda?

**MR FEIL:** I think the notion we have tried to put in our submission of the three pillars - it's not three pillars that stand in isolation. They all mutually reinforce it. An agenda with no mechanism to see whether or not it's achieved would be a lesser result than one that has an agenda. An agenda and an assessor without some encouragement - payment is merely one crude method of doing that - would be less than all three. I think it's the mutually reinforcing nature of the three pillars that we think is important, and we're not suggesting, I think, that you should be coming out in favour of an NCC of X staff, with a secretariat based in Melbourne, or whatever. We don't think that's relevant at this point. We would totally agree that that's entirely a matter for COAG later, but we think it would be remiss to produce an agenda without going further as to how that agenda can be pursued. We're suggesting no more than that, in terms of expanding - well, not expanding the terms of reference, but expanding the scope of what you've said. So the three elements together and how they work to reinforce each other is quite important.

You have clearly started to put out a broad agenda that, as you say, involves environmental issues, social issues and what we might call more market business - economic issues. The existing agenda has significant elements of all three as well, and the council is not a group of experts on environment. We're not a group of experts on social policy. We might claim some expertise on economic policy, but an assessor's role is not to make the agenda. The assessor's role is to encourage an agenda that is filled out in a way that parties without specific expertise can assess whether or not progress is being made.

Without going into detail of criticism about the council, one of the criticisms that has been put up is that we're trying to substitute our judgment for that of a state government, or of state governments, in relation to the trade-offs between returning water to the environment and the social and economic impacts on particular communities. The council would say that's simply not so, because there's no basis on which we would be able to make that judgment better. What the assessment arrangements currently require is that there is transparency about how those trade-offs are made, and we say that where that's inadequate, then it's entirely reasonable for the assessor not to say that they got the judgment wrong, but that they don't meet the requirements for transparency.

While an agenda-setting probably needs to be driven by people with particular expertise, they need to - in my view, and I think the council's view - articulate an agenda that can be understood by non-experts, and then can be assessed by people

with expertise in assessment, but not necessarily specific expertise to second-guess the agenda. I think that that would lead me anyway to a view that an assessment body with as broad a range of activity as is reasonable is probably going to be more successful and less inclined to try and second-guess the particular expertise of the agenda-setting and the policy formation to achieve that agenda than one that was much more operating in silos where they would build expertise at a much more detailed level than is required.

**MR BANKS:** Is the critical thing the separation or the question of expertise - you know, generalist knowledge versus expert knowledge? For example, are you ruling out a silos-type approach as you describe it, which nevertheless would have separation between agenda-setting and assessment?

**MR FEIL:** No, I don't think we could at this point, and it might well be that you get a combination. There are some areas of the possible reform agenda that are large enough to support multiple parties, with an agenda setter, policy-makers and an assessor - perhaps within health, for example. It's a very significant sector, but there are a whole range of smaller items that clearly two bodies or multiple bodies would be hard to sustain. I think it's a trade-off of, is it big enough to sustain it in its own right, against the capture and other problems that arise if you've got a sectoral operator? I think that's probably a trade-off that the commission would be wise to identify. I don't think we would be asking you to resolve that, but I think it would help inform COAG's discussion with institutions if the pros and cons were more clearly outlined.

**MR CRAWFORD:** I reinforce that. I think that when you talk about what are the principles or the underpinnings to an institutional framework, the separation of the agenda-setting and implementation from the assessment role is a very very important underpinning of the institutional framework. How you do that assessment role - that's the important thing, is the separation. Then the effectiveness of how you go about it is the second issue. But I think in the current draft, where you have gone into some detail about what underpins an institutional framework, the separation of that role - of assessment from the agenda-setting and implementation role - is a very critical one.

**MR WEICKHARDT:** Can I just maybe pursue that a little bit further? In terms of your comment about the three pillars, which we accept and I think commented on in the report, what you've said about the sort of ex post assessment almost raises in my mind whether or not there ought to be a fourth pillar here. As some people have said, in reform it's a bit like peeling the onion or ascending a mountain: you go up one bit and then there's another summit to climb. I suppose there have been areas that the NCC have been involved in assessing, like energy, where ticks have been given against all the implementation, and yet lots of people have said the outcome,

however, is still totally unsatisfactory. We still don't have a national market, and yet all the states point at lots of ticks against the NCC and say, "We've done everything that's required."

I just wonder, then, how you see the sort of role of assessment of, "Let's just tick the box," in a reasonably sterile, sort of mechanistic way of, "Did you do what you said you would do?" versus standing back every now and again and saying, "Well, you know, has this reform process actually achieved what we want to achieve?" where you probably do need a degree of industry expertise, and yet on the other hand, your point about capture is an important issue too. So some comment around those issues, and how you see that, would be helpful to me.

**MR CRAWFORD:** Again, there is certainly a lot to be said for that, because our role is limited to normal process of the issue and not prejudging the outcome that was intended or expected. There is certainly a need for a continuous improvement program or whatever - a benchmarking program to sustain the effort in it. I don't think it's a role for the assessor to be doing that. I think it's a different role that has to be looked at because it's important that the assessor be seen as independent. If you go back to really in the early stages of the NCC, where the NCC was asked in its early stages to start doing itself some of the reports about what should be done - I think it was in the telecommunications sector that the NCC did the report - I think that started a conflict then within the NCC about the NCC setting the agenda and then doing the assessment as well.

That was one of the early conflicts that the NCC had to resolve and say, "No, the NCC will not start doing any of those reports. It will purposefully be the assessor in order to maintain its independence." I think we have to be very careful about establishing an institutional framework which made the assessor then, whoever it might be, again the further reform-setting organisation. But there is no doubt that there probably is a role for - having established the reform program and then got to certain steps, to say, "Well, having got there and assessed against these requirements, what are the next steps that need to be taken?" I think you've identified some of those in the draft report in rail and road, for example; certain steps have been taken in rail and road but there are now further steps in terms of competitive neutrality between the two that need to be taken. What are the organisations that take that through?

In some of the bigger areas, that certainly does need the sector-specific knowledge to it, but it also needs, I think, a broader input into it, because the benefits that come from that are not just sector benefits. They are actually national benefits that come from that, so you need that broader perspective rather than just the narrow industry perspective, in terms of continuing that reform agenda about what's the next most important thing to do. But to push it along is critical.

**MR BANKS:** Could I ask: you've made that distinction reflecting on the NCC's past and so on, but what are your thoughts on the assessor's role in relation to, I guess, reform advocacy or geeing up the reform process - in other words, a more removed, almost clinical assessment process versus getting involved in the debate?

**MR CRAWFORD:** Well, I think that the assessor cannot honestly be said to be able to do its job if it doesn't have an interest in the outcome - that is, that immediately implies an advocacy role; that you are assessing for a purpose. The purpose has been set very broadly in the sorts of reports that the Productivity Commission does, and in the sector-specific targets that have been set. I think there is a need for the advocacy role. The difficulty in the advocacy role is moving from a broad advocacy to trying to specify particular outcomes, and I think that's the difficulty that has to be avoided about, "If you're going to restructure or make a change, then this is the particular way it should be done." I think that's a step you've got to avoid taking, because there are a variety of ways in which that can be achieved. So it's more the broad advocacy of the need and the benefits that might flow if particular changes were adopted - sorry, yes, if particular industries, sectors, were subject to change. The particular reform model, I think, is a difficulty that you get into in the advocacy role.

**MR FEIL:** Clearly there's a fine line to be walked along in terms of an assessment role, and I think that the council does have - part of our mandate is to advocate reform. But I don't think it's our role to set agendas. I think we can and do comment on the adequacy of some of the agendas and the need for next steps - energy, for example. Last year's assessment, while generally I think we assessed progress as reasonable, we also said quite clearly, I believe, that the agenda needed to be fleshed out and taken further; that getting to where the existing agenda at that time prescribed Australia should go was not going to be the end of the matter by any means. That I think complemented where the Ministerial Council on Energy was progressing with institutions.

We'll have to wait and see what we've seen in this year's, but I think it's fair to say that, having made progress on some institutions in the last year, there's probably some room for what the institution should be trying to do to take it forward. So I think there's work around that. The two ex post reviews we did I believe were necessary but I actually don't believe they're something the council should have to commission that often. I saw these as illustrative of what can be done, and I think as it turns out they produced some important lessons about how you do these things. But the obligation and the undertaking of reform is something that the state and territory governments and the Commonwealth government do, and I would have thought anybody who's engaging in reform - having set an agenda, implemented the agenda, there's a third step of seeing what worked, what didn't, what more might be

necessary.

At the global area - NCP, 10 years of reform, Productivity Commission doing a review - that's a model, but it was the Commonwealth government that commissioned that review, not the assessor. So I think it was necessary and useful but I was somewhat surprised at how little ex post research and evaluation had been done by the people that are ultimately responsible for implementing the reforms, which is not us. Hopefully we can use this to encourage some more of that, because we had X dollars available and we'd love to have done more. But really, it's not our role.

**MR BANKS:** Although I should say, perhaps in fairness at least to the Commonwealth, that there have been a range of follow-up reviews in the infrastructure area, for example, as you'd be aware, beginning with rail and going through the national access regime and airports and - - -

**MR FEIL:** All of those demonstrate that reform is not a one-shot activity, because if nothing else, by the time you've completed a 10-year reform program, the world has changed and you need another one, and I think that's part of what you've come to in your report.

**MR JOHNSTON:** Just on the advocacy role - and I've trawled through some of the submissions to the commission - I wonder whether in part what's behind your question is that there are quite a few submissions that accuse the council not only of an advocacy role, but I guess moving into zealotry and then ignoring public interest evidence, because it's said not to suit the council's proclivities. All we can do is assure you that that's not the case. The council doesn't determine what the public interest is, that's up to duly constituted reviews, but certainly after the 2003 assessment, with the raft of penalties that came out of that time, the council was in a sense taking on a reactive role and then was dragged into some public debates, because there was certainly a lot of misinformation being peddled by some vested interest groups out there. The council reacted sometimes with press releases just to point out the benefits of reforms that had arisen in other states that had taken those steps.

**MR BANKS:** Do I take it, though, from what you're saying, that in some respects this nevertheless is tricky territory and that can backfire, or be a liability, depending on how far you get involved in that debate - or the assessor, if I keep it neutral?

**MR CRAWFORD:** Yes. At various stages, whenever you go out there, that is a risk - that you get your head above the parapet and you get shot at.

**MR BANKS:** While we're talking about the silo versus the more embracing,

systemic approach and so on, could I get your comments on this: is there a problem with an all-embracing assessor covering, for example, the sort of reform agenda that we put forward here and indeed, going further, the sort of agenda that you're saying should lie even behind that, in terms of just having the capacity to monitor - apart from the technical expertise, the capacity to monitor in detail what's going on in a range of areas like that? Is that too big a job for one institution? I'd just be interested in your comments on that. Some would say that it is hard for one institution, unless you created a mega-institution, and that creates problems of its own. Any reactions to that?

**MR CRAWFORD:** I think an amount of work has to be done irrespective of whether it's done in a silo or a big - it's a question of working in economies from either approach. I see more economies coming from a whole-of-program assessment, in terms of consistency of approach and also the level of expertise that can be brought to bear in terms of the cross-knowledge that comes. Even though they're sector-specific type programs, they actually provide to the organisation a capacity to actually address the similar issues that might be faced across them, and identify where those similar ones are.

So I don't have a feel that it is necessarily too difficult to do, and I think the most recent one we have been through is the water assessments, where NCC has had responsibility for water assessments; and they were a big job in the NCC and they will be a big job for the National Water Commission when that gets established. But I don't think it was such a big job within a broader organisation like the NCC that its work suffered in any way, and I do think there were benefits that came from the interaction of water, the knowledge about water to knowledge about other areas of reform activity, in terms of common issues that might be faced.

**MR BANKS:** I suppose one area, reflecting on our own work, that we just find eats up a lot of time - but necessarily so in our own work, anyway - is public consultation. Do you see a role for public consultation in the assessment process, in terms of understanding what's happened and who is affected, and indeed maybe some of the public interest dimensions to that?

**MR FEIL:** I think it's possibly a lesser role than in your case because the decision about what reform involves and what's to be done is one that lies with the implementer: with the state government or the territory government or the Commonwealth, or a multiple of those. We think effective public consultation is part of a good review process and a review that didn't have effective public consultation is unlikely to get a particularly favourable treatment when we assess it. We have, and we try and operate as transparently as possible, because the assessment process essentially involves identification of an assessment framework and promulgation of that to states and territories.

We also make that public, so that parties with a particular interest - and in water there have been a number who do write to us and make submissions beyond that. But the principal response to that framework lies with the state and territory governments, and in most cases we have allies within those governments in the form of the competition policy units, so it's not just us. So in response to that framework, each jurisdiction produces an annual report which is normally a reasonably weighty document that says where they've got to, where they're going, how they're doing it. That, plus the individual reviews that make up the reform process, gives us a good basis of knowledge, and then we conduct the assessment with at least one or two bilateral discussions with each jurisdiction to identify questions and answers and work through the issues.

You make a judgment about which ones of those you pursue. You couldn't have a lengthy dialogue on every solitary line item of the reform agenda, and reasonably, I think, well through the process there was also a decision made to identify what were priority matters and what were less priority, and the non-priority matters get relatively modest review now. We concentrate on the more important ones, and that's a judgment you make after the process has begun, with some experience. The ability to make that judgment across a broad range of things is quite important because we want to focus on matters of major import. So if you look at our assessments, there's a volume on water, whereas there's another volume on everything else, essentially, because water was a relatively important particular matter that was still at relatively early stages of development; whereas some of the things, while they get a high public profile, probably only actually got two or three pages of the assessment document.

We can't control the topic that the media picks up out of each year; in fact, they invariably pick up one that none of us ever thought they'd have the slightest interest in. Some I guess you expect, but that's driven partly by the response of particular interest groups. There's nothing wrong with that, but it doesn't necessarily reflect the priority we've given something. Taxing deregulation is almost iconic in competition policy; it really doesn't absorb an enormous amount of analysis in our report, but you can't get away from talking about it when it gets in the public domain.

**MR WEICKHARDT:** In regard to your third pillar on competition payments, you've talked about the fact that the assessor inevitably has some interest in the outcome, and therefore you occasionally venture into the area of advocacy. I guess advocacy or criticism has been the only tool you've had to influence the federal government, and you've commented that the federal government have been slow in some reforms, and yet last year, by your table, they've made a fair bit of movement.

I guess it comes back to the question of how philosophically should this issue



of competition payments or incentives be looked at in the future. There were economic arguments that justified competition payments in the case of redistributing money back to the states. In the future, in certain reforms, that might not be the case. Do we simply conclude that even where self-interest applies that bribes have to be applied to induce people to do things, or can self-interest and advocacy and criticism from an independent assessor work?

**MR CRAWFORD:** Our submission argues that the chance of success of relying on two pillars rather than three is significantly diminished if you don't have the third pillar in there, and the way you design the incentive to achieve that is very very important in doing that. We have tried to raise instances, as I said before, about where people are saying that if there isn't a financial role in there, then we're just simply going to stop doing it or we're going to undo what we have done. So that's the further evidence to us of the importance of having the third pillar in there. In some cases, some people have argued, in terms of state government revenue, it is really only a relatively small proportion of state government revenue: why is \$2 million or \$2.9 million or \$3.5 million in terms of the state budget such an important issue?

That demonstrates in part that it doesn't have to be that big to have the effect, I guess, like most budgeting. It's that last marginal dollar that matters, and the chance to get that last marginal dollar is the next program that could be included in the budget-setting parameters. That demonstrates to me they don't have to be very very large, but they do have a significant impact at the margin, but also that they may not seem big in state budgets. But in terms of the ordinary groups that are talking, they are big numbers to ordinary groups - that if this will result in a loss of revenue of \$3 million to a small group, that does seem like a significant amount of money. So it's the leverage that not only the assessor might be able to leverage over a state government, it's the capacity for the state government to then use the leverage on particular groups that they have got to work with in trying to get the issues through.

**MR WEICKHARDT:** But you'd advocate, even if there was no economic rationale, you'd still have that incentive payment.

**MR CRAWFORD:** I think it's a very strong element to it, yes.

**MR BANKS:** Is there a danger that the payments and talk about the payments and debate about the payments can swamp the underlying rationale for reform? I think I observed this in some of the scuffles that have occurred in recent times where in the end the sole rationale that gets sold to the public is, "If we don't reform, the Commonwealth is going to hold back some money and penalise us," rather than, "If we don't reform, consumers will be worse off or our taxpayers will have to pay more." Is there a danger in simply following a bribery route that, in the end, as

opposed to a more in-principled recycling of a tax dividend route, you could end up with a situation where you really created a counterproductive situation in terms of informed public debate about reform?

**MR CRAWFORD:** I think there is a risk in that and part of our advocacy role is for us to counter that. In the current system, by the time you get there it's generally the public interest argument that has shown that a certain set of reforms is in the public interest, then someone doesn't do it and they get a penalty. The argument can be that we're doing the reform because we don't want to suffer the penalty, but it is the case that we have to revert to that public interest case that has established that the reform is worth doing. There is a risk, but I think it is a risk in terms of how you present the argument. It's not a risk of substance in not having it there.

**MR BANKS:** Could I venture that the third pillar in a sense is broader than incentive payments and it really includes the perception of gain to the jurisdiction concerned and to what extent there's a strong perception of gain, because for example in health, we have got a lot of jurisdictions who would see gains to their own jurisdictions from reform there regardless of what payments might flow. I wouldn't rule that they would consider that out, but what about that notion of the third pillar being a broader concept of gain?

**MR CRAWFORD:** I guess it's the extent to which it acts as a carrot and the extent to which it acts as a stick as well, and that's the element. I certainly think if you argue the thing of gain, you've got the carrot part of it. There has been an element of a financial penalty when there has been a clear public interest case that has been established and it simply hasn't been done. You can argue that all the gain to that is clearly demonstrable; that the gain to that is a large advocacy at the jurisdictional level for the gains to be done and it simply hasn't been done. Then I think you do need, in that sense, to have the other side of the monetary package which is a penalty.

**MR FEIL:** I think it's also important to note that the vast majority of the reform proceeded without - the first significant use of penalties was in what I unkindly describe as on the third deadline for completion, so the majority of the reform process had occurred without, I think, a serious contemplation of significant penalties. But I think the biggest surprise a number of the jurisdictions got last year was the quantum of the penalties. Previously, the biggest penalty had been something of \$250,000, while last year they were potentially larger than that, but I think that reflects a need to use them as a way of breaking through to give that last bit of momentum in what are the last two or three years of the existing program.

I think it is unfortunate where you see someone saying, "We wouldn't do this reform but for \$3 million loss of penalties." But the alternative might have been the reform didn't happen, and there is no reform being driven by the NCP and the

penalties that doesn't have the public interest justification behind it, or in some cases there are suspensions in place where the reform process hasn't been done. So I don't believe any jurisdiction is in a position where they are doing something that is actually not a positive reform. In fact, there is no situation where a jurisdiction is feeling obliged to do something for \$2.9 million when it harms their community.

There are some where it harms loud and very effective interest groups for the benefit of the general society, but no-one should be driven by (indistinct) it should be driven by the positive outcomes and reforms, but the penalty amounts did focus attention very significantly on issues and brought them to the attention of senior ministers and premiers in states and territories, whereas four paragraphs of reasonably hard rhetoric in previous assessments possibly never had actually filtered up much beyond the premiers. Premiers receive the assessments directly every year. As you know, they are reasonably significant volumes.

I suspect that few if any would read them cover to cover, but I guarantee all of them read table 1 and probably follow up the items that appear as a penalty in table 1, and that has got to be positive in terms of bringing it to the right attention. As I say, there are no examples where a state is being obliged by penalty to do something that doesn't have a public interest justification for proceeding with it, or I guess an absence of anticompetitive effect for no good reason. There's a risk but I don't think that the existing program has provided for that, and I think the council has a role in judging penalties in a way that that doesn't happen. It would be wrong to impose significant deductions where there was some suggestion that it was in the public interest to continue regulation. If that case can be made, then it should be.

**MR BANKS:** Part of the problem is the notion of penalties, I suppose, because I think you have used the more neutral term "deductions", which is probably more suitable, because in effect it's withdrawal of a dividend that wasn't created because the reform didn't take place. So in a sense it does have an internal logic to it. But would you agree, nevertheless, that once the question of payments or deductions comes up, often that colours the debate, and the public interest rationale for the reform is often really sort of suppressed by that?

**MR JOHNSTON:** It can work both ways. I think the point you're making has occurred, but so have the counter cases. For example, the penalties for failing to deregulate trading hours in Western Australia: the initial headline is the penalty, but then the editorials and the opinion writers start saying, "Why is it that the rest of Australia can shop and we can't?" So there are pros and cons either way. I guess the other less obvious benefits of the payments are - and when you consider the success of NCP, the National Competition Council is, I guess, the high-profile face, but as we've mentioned earlier, there are competition policy units in each state and territory that are working hard to progress reforms.

Competition payments allow them to punch well above their rate. I think without the payments they probably would not be as well resourced, would not have the access to ministers. There are a number of other benefits too, I think. We spoke earlier about the ability where a government is facing extreme pressure from a powerful lobby group: rather than advocate the benefits of the reform, it's often easier just to blame the NCC or the NCP - "We have to do this or we will be penalised." Again, harking back to the Western Australian example, the penalties can lead to, I guess, the situation of transparency plus. Sure, the penalties grab the headlines but it elevates the nature of the issue and escalates the opprobrium faced by the government.

**MR WEICKHARDT:** Can I have one last bit of the cherry, please. Your submission refers to the sort of lack of progress on ESD and I think draws the conclusion that perhaps that was because you didn't have a third pillar of competition payments, and yet it seems to me maybe there's another lesson from that that's relevant to our call for health reform. It seems in the case of national competition policy, there were a lot of steps that had already started. There was a lot of reform that had already started and it was reasonably obvious what needed to be done, and yet in some of these other areas like ESD where it is sort of more aspirational, and yet the first practical steps are less obvious, that actually getting reform started is more difficult. I would be interested in whether or not you feel that was part of the problem with ESD and whether there's a lesson there for other reform areas as well.

**MR CRAWFORD:** I will start, and I will let others comment, but it seemed to me that what the ESD didn't lack at the initial stage was a fairly well-defined agenda, but the general point is true: before you start doing an assessment role as to having a payment role, you have to have a very very clearly identified agenda, and it has to be a very very specific agenda. It can't be a whole series of motherhood statements about what you want to be the aspirational stuff. It really has to be a very very detailed agenda; very very clearly defined; clear objectives; set clear time lines. I think that's what you have outlined in this as well.

It was my view that ESD didn't suffer from that lack of the agenda-setting program; that while there was a strong sort of objective involved, it was supported though by some very very specific outcomes that were being sought.

**MR JOHNSTON:** In the submission where we address this comparison between ESD and NCP, we're drawing essentially from the environment management literature. We do acknowledge in the submissions that one of the other reasons the authors attribute to the success of NCP was that economic reform had centre stage in the early 1990s, whereas I guess ESD-type issues didn't quite have that centre stage at that time. The other point is that ESD was based on one pillar. It wasn't just the

absence of competition payments, and what the authors highlight in the environmental literature is that probably the prime reason was that it didn't have an institutional framework akin to that in NCP.

Other than that, the parallels leading up to NCP and ESD are quite similar. There is COAG involvement, there are intergovernmental agreements and the like, but there really just wasn't the institutional support to carry it through, of which payments was one element. Certainly the authors of that particular literature tend to focus on institutions rather than payments per se.

**MR BANKS:** I was going to just ask a little bit about your second-tier agenda notion and explore that a little bit. In a sense, you talk about the notion of a staggered-form agenda and we've already put forward an agenda that contemplates that because in some areas, including health, we don't think they are anywhere near the point of actually delineating the detail of the reforms that need to occur. The question of identifying reforms and so on is really the horse before the cart of exactly how you would institutionalise that, and so on.

The second point that's implicit in your proposal is that the question of whether indeed you would want to encompass all reforms within a national framework or whether you see some role - I mean in a federation - for competitive federalism. The answers aren't always clear, nor are the answers necessarily uniform in how they should apply. I think one of the strengths of the strategist federation - and there are some negatives - is that jurisdictions can learn from each other. Indeed, jurisdictions can do different things that suit their particular economic or environmental circumstances in different ways. I just thought I'd get you to respond to that because you would have noticed, in some of the submissions, there was also a concern about one size fits all, or national templates in every area. We ourselves, I guess, thought there were some areas of potential reform where it might be appropriate to go on an individual jurisdictional basis.

**MR CRAWFORD:** The Allen group came out with, in broad terms (indistinct) general reform areas, except they would have put a higher priority on education and training. I think any reform agenda must have the capacity to elevate and slow down, according to the circumstances at the time. Some of that's true, and in our experience it has been the case in some jurisdictions as well, about what is a priority. Our purpose was to say, "How do you have a mechanism that will allow some things to be accelerated and some things that might not otherwise have been on the agenda, should the circumstance arise, for them to be on the agenda?"

To do that you actually have to have then a fairly broad scope to be able to assess where they should be and where they shouldn't be. That was more the general principle: what is the process of keeping those ones which currently may be of a

lower priority under review so that should circumstances change they can actually be elevated to a higher status and a faster track on the reform program? That was really just the general principle. In our experience, with the way we've gone through the reform program, that was a very very critical part of achieving the success of the program that NCP covered, which was the capacity to slow down in some cases, and reprioritise, and speed things up across different jurisdictions.

**MR WEICKHARDT:** Can I ask a question about the grains area and reform in the grains area? You've done a report on that, which I look forward to reading. It would appear that the case studies like that indicate there have been benefits, where reform has taken place, to farmers. Farmers, it would seem, have every reason to want to back their own self-interests, yet some farmer groups are still absolutely and strenuously convinced and advocates for retaining single desks because it would appear they've said the mantra often enough - that single desks are important - that they believe in it.

How do you believe that that issue should be addressed? At the end of the day the political realities would appear to be that the politicians want to continue to do things that farmers will see as being in their own self-interests and yet it would seem that they are cutting their own throats.

**MR CRAWFORD:** It's a case where there is a continuing need for the advocacy because I think in the end it has to be driven, as you say, by what growers believe to be in their interests. One of the benefits that this grain document brings out is that a lot of the argument that currently it talks about is simply about price - "It protects our price." A lot of the benefits that go to the growers are about non-price benefits - quality of service, timing of payment, management of risk; a whole range of non-gross price optimisation or maximisation.

The more that other sectors of the grain industry, as there are more of those options available to growers in one section of the industry - I mean, the grain industry is regulated under a variety - apart from some being regulated at state level and different ones being regulated at different state levels compared to we at a national level - as growers begin to see what they can do in one area that they can't do in others, then maybe that just becomes a case where the continuing advocacy is necessary to focus on the non-price issues around it and just the example of what's going on in other grains which aren't regulated. I don't underestimate the difficulties when there is such a strong view amongst a lot of growers. I must say there is an equally strong view amongst the very big growers as well about what benefits they would achieve by having some of the benefits that growers have in some other products in some other areas.

**MR BANKS:** You will see that in our report we talk about the legislative review

program and argue that existing programs should be completed. In terms of where we go forward, we argue that there would be advantages in having a more prioritised kind of focus for the legislative review program in the future, which would by implication mean that some of the so-called tiddlers would not be systematically brought within the review program. Do you have any comment on that?

**MR CRAWFORD:** I think that's consistent with what we - I mean "we" in ourselves - the way that the NCC has worked in its legislative review program have tried to establish a priority of the important issues. We are mindful again of the cost benefit, and various submissions from various states have said that it's a lot of work and you've got to make sure that the potential benefits you are going to get justify the assessment. Certainly we've tried to be very mindful of keeping in perspective where the major benefits are likely to accrue and also, in terms of those lower priority areas, the other ways in which they can be tackled.

For example, they don't all have to be done at a state level. You could look at what has been done in another jurisdiction. Some of them just simply do them; they don't actually require a review to be done. I think the principle of establishing the priority and keeping a focus on what's important is critical in the program and what's important and where it is going to be expected where the benefits will exceed the costs.

**MR FEIL:** Could I just add to that though, at the risk of disagreeing slightly with my president? It's one thing to accord a matter a low priority or effectively no priority, and clearly there has been that in the process. I'm a little more reluctant about actually not including it in the program. It's one thing to say that everything is in but there needs to be a judgment made about what you spend any time on, as opposed to, in advance, deciding that some sectors are not in because in advance it's awfully hard to tell what should or should not have been in.

It was well into the legislation review process that the decision to divide the 1800 pieces of legislation into 800 priority and 1000 non-priority was made. That didn't mean that an awful load of effort went into the non-priority things, but if you had never included the 1000 you might not have got any reform in those areas at all. For the 1000 matters we essentially accepted that desktop reviews doubled in departments was entirely appropriate, but they did get reviewed. I think that reform was worth having.

If you can come up with a way of identifying objectively non-priority matters in advance, that would be fine, but the temptation would be for vested interests, or interests - whether they are departmental or particular political areas - the way out of reform would be to give it a non-priority label. I think that that would mean some objective pushback in the process, otherwise everything that was too hard would go

into non-priority. Certainly I can think of a few things on the remaining agenda that are significant but I would like to give them a label of non-priority so that we don't have to deal with them every year, but that would be wrong.

Clearly there should be a mechanism to triage matters of importance from matters of relevantly little importance, but I think that should be built into the process; I don't think there should be a priority in advance, a segregation of matters that never get brought up. They might get lifted up, looked at and put down very quickly and scheduled for no further action.

**MR WEICKHARDT:** Who does that triageing, John?

**MR FEIL:** To date, the triages have been done jointly by the jurisdictions and the council, and I think that's an entirely appropriate way. That's what I would suggest, in terms of going forward, was an appropriate way of doing it.

**MR WEICKHARDT:** So the assessor should be involved in the triageing?

**MR FEIL:** The assessor should be involved because otherwise I think it would be awfully tempting to say that the retailing of pharmacy ownership was a non-priority matter, and I don't think it is.

**MR BANKS:** We've ruled that out by identifying it as a priority matter.

**MR FEIL:** True. There are a few who would suggest it's not.

**MR BANKS:** That, for some reason, leads me on to liquor, where we have the Liquor Stores Association of Victoria appearing later on this afternoon. I wonder whether you might want to comment on the reforms that have occurred in Queensland and New South Wales. The Victorian liquor industry is basically suggesting that the smaller independents have been disadvantaged by the process, almost regardless of what has happened, in a sense. They have been seen as being disadvantaged in Victoria where, in a way, they've had to sell out to the big chains. They have been disadvantaged in New South Wales and Queensland, where they haven't had a look-in. I don't know whether there is any comment you want to make on how reform has progressed in that area.

**MR CRAWFORD:** There are a few things about liquor, in general - the issues that the NCC faces. Again, it's a question of that which is due to anything that the council might do on that, which is just simply due to the changes that will occur in the industry by consolidation, from an industry that really grew up as another corner shop. which is, I guess, what the independents were. That's a form of retailing that hasn't been successful for very long in most other types of retailing; those sorts of



changes that are going on from the regulatory framework within which they work. From the regulatory framework within which they work the issues that we have faced generally have been about the harm minimisation - how do you balance out the competitive element that's necessary with the harm minimisation, which is an important objective to have in any of that policy?

From council's point of view, that has been the major issue that we have tried to address, about how you can still maintain the harm minimisation role but not do it in a way that favours one particular competitor in the market over another competitor, and we haven't tended to get them in. That has been at one level of the liquor industry and that has probably been the most challenging part of it for us. At the next level, around that, generally there has been: how does that harm minimisation get translated into a realistic competitive policy? There have been a variety of ways in which it has been done and which we think could have been done significantly better in terms of not restricting access for one competitor, or what has generally been the needs test in most legislation. So that's my broad scope to it for the particulars.

**MR FEIL:** I think where liquor and, to a reasonable extent, gambling become difficult is where you start getting the public interest smeared into issues of favouring one type of outlet or one group of owners from another. I think where harm minimisation objectives are clear, liquor regulation isn't all that problematic. But there's next to no examples where a pure harm minimisation objective has been operating and, even where we now hold states compliant, there is still a smearing of those objectives. Regrettably, there are a number of rationales provided for regulation that essentially favours one form of outlet or one group of outlets over another, claimed under the harm minimisation and the council. The reviews that have been done in a number of jurisdictions have found some difficulty addressing that.

There is no problem under national competition policy with restrictions on competition directed at harm minimisation from alcohol, gambling and a range of other social activities. That doesn't cause a difficulty. If government could keep that objective clearly separated from other ones, whether they are of particular interest of incumbents or the revenues that come to the state from some of these activities, particularly gambling, that would be nice, but it's where those objectives get smeared across that harm minimisation sort of starts to look remarkably like favouring one outlet form or giving them a competition-free day, because it's not the council's role to knock these things back, it's the reviews that have been undertaken just find it awfully difficult to justify those restrictions.

We not infrequently find jurisdictions articulating very carefully and very sensibly harm minimisation objectives, but it's awfully hard to see the regulatory

restrictions actually having any impact on that at all. You know, if there is a harm minimisation restricting availability of alcohol, then that might well be entirely justifiable, but how it can be justifiable when it's from one group of outlets as opposed to another doesn't reduce the availability, and I think that the issue is being bedevilled by a variety of restrictions that still remain in place; not simply needs tested, but a whole range of disadvantages.

I think it's fair to say that some of the reform that has occurred in particular states may well have had entirely perverse outcomes, not necessarily around harm minimisation but around adverse effects on small business. If you raise the costs of obtaining a licence, then concentration of that industry is going to become much more problematic than if you had a relatively open arrangement, because then you do run the risk of large firms coming to dominate and then be able to extract rents later, because there is an entry barrier in the form of several hundred thousand dollars worth of costs to get a licence, whereas if you keep the cost modest you would think that there's not much point in trying to dominate that industry because someone is going to come back and re-enter.

So there are some perverse outcomes in that area, but a lot of them have got to do with a lack of a clear differentiation between harm minimisation objectives and other small business inadequacies in trade practice law type of arguments that people have run. The real remedy for abuse of market power lies in the trade practice law, of the Trade Practices Act and if that's not up to scratch then that's something that should be considered. But you don't regulate to restrict competition in order to deal with those sort of issues, because you'll end up harming the consumers significantly and probably won't achieve what you're trying to do anyway.

**MR BANKS:** As you know, we did a report on gambling and it raised a lot of these issues, but they're quite complex areas actually to regulate, but that's for another day. I just had one last question and it was really picking up on your comment about adjustment assistance and so on. As you know, in our report we've argued that in terms of reviews it's very important to be thinking about the adjustment and distribution implications up-front. Now, I'm not sure that I heard you right, but you seem to be saying something different to that, and that was there's not much point doing it up-front because you can't identify who the losers are going to be, and therefore it was better to do it in a reactive way after the reform, but have I misread what you said?

**MR FEIL:** I may have misspoken but, no, I would have thought that if you - and you probably can identify where the adjustment is going to be most difficult up-front in a sectoral review, and you should make sure that that is where you're addressing the issue otherwise you're going to smear the cost of adjustment across everybody, including those that might well be the beneficiaries of reform. So I think where you

can, you should.

I think the most common adjustment arrangement is a transition period. The council has on a number of occasions accepted transitions that last quite a long time, but there's a difference between a transitional arrangement and putting off the evil day. Not undertaking reform until five years has gone by is not a transitional arrangement. So we frequently had some difficulties with, "Yes, we'll do it, but we'll do it in five years' time," particularly in the last couple of years of the program that's been running 10 years. So some jurisdictions, by not acting until the last minute, have lost some of the flexibility we would have otherwise had around transition timing.

Monetary payments: the competition payments come intact. Governments can choose whether or not they want to identify any adjustment payment until the competition payment or not; that's entirely up to them. But you would hope that the adjustment - if there is going to be an adjustment payment - is one that actually is pushing in the same direction as the reform, not in the opposite direction. I think there has been some risk in industries where the clear need was for a rebalancing of supply and demand by supply being reduced, the adjustment payments being used to increase capacity by the marginal operator, and one would have to wonder whether that was such a smart policy.

**MR BANKS:** Good. We've detained you long enough. It's been a very useful exchange, I think. Thank you again for attending this morning.

**MR CRAWFORD:** Thank you very much.

**MR BANKS:** We'll now have a five-minute break before the next participants. Thank you.

---

**MR BANKS:** We'll recommence. The next participant is the Law Council of Australia. Welcome to the hearings. Could I ask you, please, to give your name and your position.

**MR WILLIAMS:** My name is Philip Williams, I'm a member of the Trade Practices Committee of the Law Council of Australia.

**MR BANKS:** Thank you. Thank you very much for attending the hearings. You've provided, I think, a draft of a number of the points that the Law Council would like to make and I'll give you the opportunity to perhaps go through those briefly.

**MR WILLIAMS:** Okay. I'll speak as though I'm speaking on behalf of the Law Council, but the Law Council hasn't actually gone through the document, so as long as you understand that. I don't know that it will change very much.

**MR BANKS:** All right. You've got that on the record now, so people will be aware of that. Thank you.

**MR WILLIAMS:** Yes. The Law Council feels that there is some work still to be done so far as the national competition policy agenda goes, so we welcome the continuation of the national competition policy agenda. We support the retention of competitive neutrality regime. We did notice that the National Competition Council suggested that universities weren't perhaps properly covered by the competitive neutrality regime. My experience as an academic was that competitive neutrality impinged on the function of universities rather dramatically, and I thought to no good effect at all. That's why there was a little remark there about universities.

In particular my own personal experience in filling out grant application forms and whatever was that you have to get clearance of a number of what seemed to me absurd matters in order to satisfy the demands of competitive neutrality, and I didn't know whatever this had to do with national competition policy. That's just a personal remark; I thought it was ridiculous. I'm quite happy to be questioned on that, if you like.

**MR BANKS:** Well, why don't we just pause on that. Isn't there also the issue of universities being involved in, I suppose - particularly in science and technology research, consulting services and so on - that there is potential there for non-neutralities?

**MR WILLIAMS:** Yes. You'll see this reflected also elsewhere in the document, in particular on the legislation reviews. I think there are some good things in competitive neutrality, and some of these legislative reviews obviously have been

beneficial. But one problem, I think, with some of the reforms of national competition policy was that it's led to a lot of work being done going through the motions, if you like, and I think this is the problem; say, in grant applications where academics are forced to fill out all these things about competitive neutrality, where you'd think competition issues really hardly arise, I would have thought, but that a lot of work goes into going through formal steps.

It's the same with a lot of the legislative reviews, and that's why I think it's a very good idea having much more targeted legislative reviews, because I think one of the big problems has been the legislative reviews. Because the jurisdictions were confronted with this whole mass of stuff they just had to get through, there was a lot of routine undertaking of tasks without much commitment to achieving good outcomes. I think a bit of that goes on with competitive neutrality as well.

**MR BANKS:** Okay.

**MR WILLIAMS:** The legislation review program: certainly we support the remarks in the draft report, and I think much more focused, fewer but less perfunctory reviews would be very desirable. Government businesses and the Trade Practices Act: we're not sure that there is a big problem. Certain submissions have raised it as a problem. There is some ambiguity at the margins as to what is covered and what isn't, but the recent High Court decision in Northern Territory Power seems to lend some clarity to that.

I haven't read the case about the defence procurement but it did seem, on the face of it, rather odd. When we put in our written submissions somebody will have read it and will make some remarks about that, but it just seemed to me, if government bodies do their job correctly and buy in the best interests of the state, it's hard to see how competition issues would arise. It's not obvious to me that the definition of "government business activities" needs to be extended. That's just off the top of my head; I'm not quite sure that there is a big problem there.

**MR WEICKHARDT:** Can I just make a comment there. We had a submission by, I think, the Australian Consulting Engineers of Australia in the Sydney hearings. You might like to read the transcript of that and their submission, because that was a particular area that they focused on. This won't do justice to their full case, but they felt that governments used very heavy-handed approaches to insert unreasonable clauses into contracts and, because they were basically sole purchasers, they had no recourse - under the Trade Practices Act anyway. You might like to read that before you want government procurement to be subject to Part V, if that's an issue.

**MR WILLIAMS:** Okay. We'll have a look at that before we make a submission.

**MR WEICKHARDT:** Thank you.

**MR WILLIAMS:** On regulation of access, we in particular make some remarks about basically the machinery of the act. There are lots of anachronisms, as I'm sure the Productivity Commission is aware, but it's almost alarming. If what I presume will be still a draft bill is presented to the parliament for the Dawson reforms, and direct access to the tribunal on merger authorisations is possible, that will introduce yet another, if you like, anachronism. There are real problems, I think - well, I'm sure other members of the Trade Practices Committee would agree with me - in the tribunal as an appeal body, because it's not really an appeal body at all.

Of course appeals go from the commission and indeed the council on Part IIIA recommendations to the tribunal, but the commission and the NCC don't feel themselves bound by decisions of the tribunal in the way that a court would feel itself bound by decisions of higher courts. So we have a very long history in Australia of the tribunal saying what I think are perfectly sensible things consistently, and these being disregarded by the commission and the council.

I'll give you two instances. One instance: the tribunal has never to my knowledge explicitly favoured or counterweighted dollars that go to consumers above dollars that go to producers, but there are a number of cases where the commission in its authorisation decisions has done that. So the approach on the assessment of public benefit in the tribunal has, I would have argued in written documents, not been adopted by the commission.

Another recent example actually is in market definition. The tribunal consistently adopted a rather, shall we say, generous approach to market definition, thinking that standard legal issues or liability issues shouldn't be decided when deciding questions of market definition. So, for example, when they considered the Davids composite bio-grocery merger in 1995, they said, "Look, we'll consider the market as competition Australia-wide" or on the east coast of Australia but probably Australia-wide "among supermarkets" where in supermarkets you consider both the retail and the wholesaling activities of supermarkets all wrapped up as one.

Apparently in their recent consideration of liquor mergers in the liquor industry, the ACCC - and all we have is their short reasons for decision - considered the liquor industry suburb by suburb. So it's not that there's a clear legal precedent, but the general approach of the tribunal is very very different, and the commission doesn't seem to consider that in any way it has to take what the tribunal says overly seriously.

**MR BANKS:** Would another example of that be the AGL merger case here in Victoria - - -

**MR WILLIAMS:** Indeed.

**MR BANKS:** - - - where there obviously seemed to be an issue of difference?  
I don't know whether you were involved with that. Perhaps you should say whether you were involved in that case.

**MR WILLIAMS:** I was involved, giving advice to AGL.

**MR BANKS:** Right.

**MR WILLIAMS:** So I make it clear.

**MR BANKS:** I think I know what your view would be.

**MR WILLIAMS:** But I think it is clear, we do refer at the end of our submission to some, if I may say, rather alarming remarks that the Productivity Commission makes in its draft report about the AGL case and the need perhaps to reconsider the criteria by which mergers might be assessed in electricity. It seems to us - well, certainly to me - that that's not well advised at all. Indeed, the AGL decision is just perfectly standard so far as the jurisprudence of the Trade Practices Act goes.

The judge hearing that case is one of the most experienced and respected judges of the Federal Court, with very very long experience in trade practices. Basically he rejected the arguments of the ACCC on the grounds that the jurisprudence of the Trade Practices Act has always been that you have to have a long-term view of competition, competitive processes don't work instantaneously, and to concentrate on differences between pricing margin or costs that might last a few hours or a few days is just not the sort of problem - if it is a problem - that the Trade Practices Act is designed to remedy, and so he dismissed their arguments and found in favour of AGL.

Now, anybody who is familiar with the longstanding jurisprudence of the Trade Practices Act, either in the Federal Court or the tribunal, would know that if they got a judge who knew what they were doing - and certainly French J does - they'd get that decision. So I don't think it was surprising at all that that decision came down in the way that it did. People have said that AGL was very brave in taking on the commission in applying for a declaration. I don't think it was particularly brave. Of course, you might get a bad judge or things might go wrong in the court case, but it was not an overly brave thing to do on the part of AGL.

**MR BANKS:** I think in our report, too, we don't express surprise at that judgment; it was just a question as to whether there were some unresolved issues that needed to

be looked at - I mean, in that case, as you rightly say, of market power being exercised only on a few occasions in a year. But you could, nevertheless, in economic terms have considerable disruption if the market price peak was high enough at those times. The end result could be the same in a kind of economic outcome sense, as to whether prices were a bit excessive all through the year or incredibly excessive on a few occasions in a year.

**MR WILLIAMS:** I'm afraid, with respect to you, that market processes work in a very rough-and-ready way; prices are just not of course always equal to marginal costs, and short-run positions of market power arise. That's just the way markets work. If, say, the generators were able to sustain prices above - let's call it - long-run incremental costs for any sustained period of time, then what the judge found is that entry would defeat it. So really the only issue - and the ACCC basically put their case this way - is very short-lived deviations of price from marginal costs and I think the Trade Practices Act is just powerless to fix that. Indeed, I think any reliance on the Trade Practices Act to try to deal with very short-lived positions of market power is just designed to - well, it can never work.

**MR WEICKHARDT:** While you're on that topic then, can I just say we don't have the time to get into a long debate about that specific issue, but nonetheless there are people who take a different view to your own and, indeed, state governments have sort of started to say, "Well, if the federal government doesn't fix this, we're going to fix this on a state basis." Do you have a view as to which is the lesser of two evils - either that there be a sector-specific sort of regulation in the Trade Practices Act or that there be some state overriding legislation that affects mergers in the electricity area?

**MR WILLIAMS:** I fear either outcome. I mean, clearly electricity needs to be regulated. I'm not arguing against any industry-specific regulation of electricity needs if markets do require regulation, but I fear either type of regulation. It just seems to me the test in section 50 is a perfectly good test and, of course, courts sometimes get it wrong, but I don't think the judge in that particular case got it wrong. So I would be alarmed at having industry-specific control of mergers in electricity. I'm sure the Law Council as a whole would - the Law Council has consistently argued for general applicability of the Trade Practices Act, not for industry-specific regulation or mergers or whatever.

I guess states going their own way in controlling mergers may not be actually so harmful as industry-wide because - certainly in east coast states they have tried to regulate mergers - within its own state boundaries it probably wouldn't have much effect. So on the grounds that state legislation with respect to the mergers may not do much harm, it probably would be better to have state legislation than federal legislation.



**MR WEICKHARDT:** Thank you.

**MR WILLIAMS:** Obviously another anachronism that we have, so far as regulation of access, is the lack of appeals under Part XIC of the telecommunications provisions. You might have noticed recently the mobile companies are getting around that by lodging their own access undertakings and that way getting to the tribunal. But to be denied access to the tribunal under Part XIC is, I think, undesirable and I'm sure the Law Council will put that in their final submission.

The idea of an inquiry into the relationship between the consumer protection provisions, or perhaps all of Part V and Part IV, seems to me, or seems to us a very good idea. It's a very big and difficult issue. I'm not saying it's an easy issue, but over time what has happened is that more and more things are being lobbed into Part V and, whereas I think in its initial construction, Part IV and Part V had complementary roles to play, the extra provisions, the unconscionability provisions and whatever in Part V, clearly have very important implications for the workings of Part IV.

We're only just starting to get case decisions with respect to those unconscionability provisions, but to the extent that Part V is being lumbered with these extra provisions - and I'm sure they're there to stay; unfortunately there's no getting rid of them now - I think the issue of how these things relate to each other is really something that does need to be considered. But it's not just a trivial matter; it's obviously a very big matter.

The final remarks we make are with respect to international trade, and it has in the last decade been - as you are undoubtedly aware - a big issue. It's been discussed at many conferences, the relationship between international trade and reforms of international trade by the WTO and whatever and competition legislation. For all the conferences and papers and discussions, I'm not sure that we actually have made terribly much progress in all that, and I guess all we remark is that perhaps the Productivity Commission is just reflecting that in the - it's very hard to know what can be said about this. There obviously are relationships but whether one can say anything that's very helpful or interesting about that, I'm not sure.

**MR BANKS:** Clearly one area of these preferential trade arrangements which does directly impinge upon competition matters is the antidumping provisions. I know this remains intact with the US obviously, but have been removed and generalised within the competition regime with New Zealand, for example, which is a different way to go.

**MR WILLIAMS:** One possibility might be to reform the institutional

arrangements and have the antidumping regime brought within, say, the ACCC or something. That might make it less liable to abuse. But certainly in Australia it has, I think, been used by people with substantial market power to protect that market power. Clearly the Productivity Commission would know more about that than I would.

**MR BANKS:** Views differ on these matters and, as you know, it is an issue that we've raised as unfinished business from a legislative review program at the Commonwealth level, so - - -

**MR WILLIAMS:** Sorry, the other matter we do mention - talking of unfinished business - is the Ergas report and I'm not sure that the amendments to 51 that he recommended are good amendments. It does seem very odd that the government has announced that it will implement the recommendations, most of the recommendations of the Ergas report, but basically nothing has happened. I don't quite know what's going on there. It's a bit odd when the government says it's going to do things and people are waiting for legislation and nothing happens and no announcement is made.

**MR BANKS:** Yes.

**MR WILLIAMS:** Some years ago - I don't know how many years ago; it must be almost five years, I guess.

**MR WEICKHARDT:** Can I clarify a comment in your draft submission I was a bit confused about. On page 2 under the Government Businesses and Trade Practices Act you talk about the multilayered process currently available with the review of access matters, where the ACT can review decisions by the ACCC.

**MR WILLIAMS:** Yes.

**MR WEICKHARDT:** But you then go on to say - well, I'm confused as to whether or not you support that process, because your comment in parentheses in the last sentence suggests that you do but you then imply you want a review of the matter, so exactly what you're trying to communicate I'm confused by.

**MR WILLIAMS:** The problem is this was drafted by a few different people.

**MR WEICKHARDT:** I see.

**MR WILLIAMS:** In a bit of a hurry. I suspect that the Trade Practices Committee of the Law Council would be divided on this issue. They were divided on the issue as to whether there should be direct access to the tribunal on authorisation of

mergers, although eventually in their submission to the Dawson inquiry that went through - that they were in favour of direct access to the tribunal. There was in its original conception in the Trade Practices Act in 1974 a very nice arrangement in logic to what was there, and a lot of members of the Trade Practices Committee felt that treating the tribunal as, in effect, a trial court would create further confusion of roles of the various institutions under the Trade Practices Act.

The Law Council has, I think, a lot of respect for the work of the Australian Competition Tribunal and so most people would say it's good to have it there as a constraint on the - or an appeal body from the commission. The real issue is then whether you have it not just as an appeal body - which I'm sure everybody would support - but whether you also have it as a body which you can access first up. There are certain decisions that go to the ACCC, and indeed to the NCC, where the applicants know in advance that they're not going to get what they want from the commission or the council.

So in applications for access under Part IIIA - although we haven't yet seen the recommendation of the council in the Sydney Water matter, I think we pretty much know what it's going to say and it won't be favourable to Sydney Water, for whom I've been retained. I'll give you another example: about five years ago the commission considered an application for authorisation by the Australasian Performing Rights Association. It became very clear early on that the Australasian Performing Rights weren't going to get authorisation for the rules for which they'd applied, and they'd be going to the tribunal. In cases like that it's hard to see that much purpose is served by spending months going through the motions with the commission or the council when everybody knows what the decision is going to be, and you're going to eventually end up before the tribunal.

So there may be a ground, in certain cases - it would obviously - I'm not saying that we would advocate this immediately, but there may be a ground for certain cases, now that the tribunal is going to have its own original jurisdiction, to allow parties in cases like that to have direct access to the tribunal.

**MR BANKS:** Yes, I see. I hadn't quite picked up what you were saying there in the submission. I had the impression that you already wanted to get rid of appeal rights, which didn't sound right to me.

**MR WILLIAMS:** No. I think it would be whether in certain cases parties should have direct access - apart from the merger provisions - a bit like going through, but there are other cases, given that the tribunal is going to have its original jurisdiction in certain areas where that shouldn't be extended to say Part IIIA appeals from the minister's decisions, or in the case of Part IIIA matters, or in authorisation matters, that clearly the parties are not going to get the authorisation for which they've applied

and things just seem to be held up.

**MR WEICKHARDT:** So in that case, do they have a further review if they don't like what the tribunal says?

**MR WILLIAMS:** No, I think they'd have to risk their arm.

**MR WEICKHARDT:** That's a final - - -

**MR WILLIAMS:** Yes. This is one particular member of the committee, but I guess I agree that it's not the view of the Law Council - I should say.

**MR BANKS:** Right. Your comment about the tribunal not having a sort of precedential role in relation to the ACCC or the NCC I think is interesting. I mean, it is presumably designed in that way not to have that role, but why in effect or in practice isn't it having that role in the sense of, you know, here we go again and they are going to be overriding a decision of the regulator? You'd think that would start to affect the way the regulator called the decision in the first place.

**MR WILLIAMS:** I'm not sure that it is built into the legislation, except in this way: that the tribunal decisions are always hearings de novo - that is, the reconsideration of the whole matter - whereas a court appeal is basically a reconsideration on the basis of the materials that were before the trial judge. So if a decision is overturned by an appeal court the appeal court is, in effect, reprimanding the trial judge for doing the wrong thing in some way; either for deciding wrongly on the basis of the evidence before them or messing up the law. So an appeal when it's an appeal in a court process is regarded as a reprimand to the judge, and sometimes appeal courts use quite strong language, criticising the judges in the lower courts.

In the case of the hearings of the tribunal, because it's a hearing de novo, sometimes they don't even remark about the decision that the commission or the council has made. They will talk about submissions that have been made by the commission or council, they may talk about the earlier decision; but they don't, if you like, sit in judgment on that earlier decision, and the decisions of the tribunal never read like that. They just say, "We've considered it and this is our decision." So because it's set up as a hearing de novo, there's not this feeling of somebody sitting in judgment on me, and that may be the reason why you have the commission and council not taking too much notice of what I think everybody would regard as the very good work over many years of the tribunal.

**MR BANKS:** Would you say that that work was also consistent in its approach, and predictable, and therefore that each decision, in a sense, is accumulating case history in a way as to how it will behave?

**MR WILLIAMS:** Well, it certainly was for about 20 years, when John Lockhart and Maureen Brunt were the tribunal, basically. The three members of the tribunal were all there basically for a long while, and there was a great consistency of decision. I think that even since that time there has been a lot of consistency in the decisions of the tribunal, because the Federal Court has, since the John Lockhart time, always put on the tribunal judges who are very experienced in trade practices matters and who have worked in that area as advocates. So I think most people would say that the tribunal has still kept quite a consistent attitude, and I think that can be distinguished from the work of the commission and the council, whose personnel change quite a lot. We do observe quite quick changes in their attitudes to different things, which doesn't really help the people who are having to make business decisions on a day-to-day basis.

**MR BANKS:** Could I just ask briefly, in relation to the council and this document and the committee, how the committee actually comes to a view? Is it a majority view or does it have to be consensus before you can finally sign off on a document?

**MR WILLIAMS:** The way it always works is this way: the issue is discussed, if there is a government inquiry or a request for some feedback, and as a result of that discussion some people are nominated, or offer, to sit on a small subcommittee. In this case three people were on the subcommittee but a fourth actually joined in the phone conversations. We had a phone conversation and drafts came in and then there was a little bit of toing and froing, and then this document was prepared. This document that was forwarded to the Productivity Commission is merely the draft document that then goes to the meetings of the actual committee.

The actual committee meets in each state and so the meetings for December are being held this week - lunchtime today I'll be going to the Melbourne meeting - and then there will be some discussion and perhaps some amendment to this document. But there are rarely very strong divergences of opinion and, if there are, usually there won't be a vote taken. So usually the view is more or less a consensus view. Just occasionally there are divisions, but if there are, then that usually won't be reflected in the submissions. So usually it's fairly much a consensus view.

**MR BANKS:** Good. That's helpful.

**MR WEICKHARDT:** Can I just clarify your comments under consumer protection and small business. I'm a bit confused as to what your real objective is of trying to sort of roll small business into this consumer protection review.

**MR WILLIAMS:** Well, the small business lobby consistently pushes for - I think I can speak my mind, anyway - amendments to what used to be regarded as the

consumer protection provisions of the Trade Practices Act, and they've been remarkably successful over many years. I think it's also fair to say that the Law Council has fairly consistently opposed most of the amendments that are proposed by the small business lobby; not as some people say because the Law Council represents the big end of town, but rather because these amendments, we feel, are contrary to or counter the objectives of the Trade Practices Act, which is the promotion of competition rather than the particular interests of a particular segment of the business community.

However, the small business lobby has consistently done this and what happens is they get one amendment to what used to be regarded as the consumer protection provisions, and then they set about lobbying for the next amendment. So we've had a series of amendments to what used to be regarded as the consumer protection provisions of the Trade Practices Act in Part V, and so now Part V is a bit of a mishmash of consumer protection provisions and small business protection provisions, and it is very hard to see how those things are related to each other and how those things - now that Part V includes a lot of small business protection - how that's related to Part IV.

It's a bit difficult to disentangle. There's an issue about whether any inquiry would be just the consumer protection provisions of Part V and their relation to Part IV - that is, some disentangling of the small business protection and the consumer protection - or whether it's going to be the whole of Part IV and the relationship to the whole of Part V.

**MR WEICKHARDT:** If you could just elaborate slightly on that point in your submission, I think that would be helpful.

**MR BANKS:** I think we've run out of questions, so thank you very much for that.

**MR WILLIAMS:** Thank you.

**MR BANKS:** And we look forward to the final submission, which hopefully would come when?

**MR WILLIAMS:** Probably in a week or two.

**MR BANKS:** We'll just break for a minute, please, before the next participant.

---

**MR BANKS:** Our next participants this morning are from the Australian Grain Exporters Association. Welcome to the hearing. Could I ask you, please, to give your names and positions.

**MR OSBORNE:** Yes. Alick Osborne. I'm here in my capacity as president of the Australian Grain Exporters Association.

**MR GREEN:** Robert Green. I'm here as a director of the Australian Grain Exporters Association.

**MR BANKS:** Good. Thank you very much for taking the time to attend the hearings this morning and also for the submission that you provided back in June when we were preparing our report, which we found very useful actually. As discussed, I'll give you the opportunity to make whatever remarks you'd like to make and then we'll have some discussion.

**MR OSBORNE:** Thank you. As is detailed in the submission, the Australian Grain Exporters Association members are largely international companies that have operations within Australia, but also service grain markets all around the globe. Our member companies are, in fact, substantially underinvested in Australia relative to the types of investments that we have in other parts of the world and relative to the size of grain production in Australia.

Our submission has sought to highlight the consistency of findings in the national competition policy reforms that have been conducted into single desk for grain marketing around the states across a wide range of different types of grains and, federally, in wheat - namely, those submissions have largely been unable to identify net public benefits resulting from the restrictions on competition and that, where benefits were discovered, they were typically small, uncertain, difficult to quantify. Certainly also, the majority of submissions did not find that this was the most efficient way of capturing any benefits that may have been described. In fact, that was largely, in a number of the reviews, not really looked at closely.

One of the other objectives of our submission was to reinforce the fact that the legislation relating to single-desk grain marketing should be part of the terms of reference of national competition policy. We've seen recently claims from organisations such as the South Australian Farmers Federation and the Western Australian Farmers Federation that single-desk grain export marketing should not be under the gamut of national competition policy. We would argue that it definitely should be, on the basis that it restricts competition for the provision of export marketing, risk management, freight logistics, services within Australia. The single-desk monopolies are effectively the only ones who can provide those services to growers producing grain surplus to domestic requirements.

We also would point out that a monopsony situation exists where, because of those single-desk powers, the incumbents or the holders of those powers become effectively the only buyer of the grain that's part of the legislation. Certainly they're the ones who set the price for grain, Australia being largely an export market. We noted that in its draft report the Productivity Commission, in our view correctly, made wheat a priority area because it is an outstanding issue from the review conducted in 2000 and also because it's holding up reform in other areas. In Western Australia, for example, the legislation there refers to the fact that should the single desk for wheat go, then the powers given to the main export licence holder in the grain marketing legislation in Western Australia would also cease. That, I think, concludes the opening remarks I'd like to make.

**MR BANKS:** Thanks very much. You spoke there of the wheat marketing review. There has been that recent review in 2004. I don't know whether you'd like to comment on the outcome of that review. Some have seen that in a sense as vindicating the existing monopoly arrangements.

**MR OSBORNE:** One of the very strong recommendations coming out of the 2000 NCP review was that the 2004 review should be conducted under national competition policy parameters and that it should be a final test as to whether the arrangements for wheat marketing delivered any net public benefits or not. I think, from memory, the committee that conducted that review, although they couldn't find significant benefits, argued that the legislation at that time was relatively new and there should be time to see whether AWB Ltd in its revised or current format did deliver any benefits, or AWB International as the operator of a single desk.

In the 2004 review, however, the terms of reference there specifically excluded review of the single desk and the use of national competition policy frameworks for doing that. We don't agree with the fact that it vindicated it; we would argue that the 2004 review was prohibited from investigating the issue.

**MR BANKS:** Have you been able to see the report of this review, this most recent one? I've only seen it myself - an eight-page - - -

**MR OSBORNE:** That's all that has been made publicly available, to the best of my knowledge. It has been termed, I think, a growers' report and I believe the full report has gone to the minister for agriculture, but I'm not aware of it being made publicly available.

**MR WEICKHARDT:** Do you understand why such a large report has been restrained from public view?



**MR OSBORNE:** Not fully, no. I've heard the reasons about the information being commercial-in-confidence or sensitive or something like that, but most of the submissions, I guess, that were made, were public submissions. If the organisations provided that information, I'm not sure where the commercial-in-confidence nature arises.

**MR WEICKHARDT:** Have you yet seen the report that the NCC commissioned from ACIL Tasman into grain?

**MR OSBORNE:** I've seen the executive summary. I haven't read the whole report.

**MR WEICKHARDT:** Okay. I guess it and other reports and investigations suggest that the farmers have benefited from the single desks being deregulated in the cases that have occurred, and yet there are some farmers in South Australia and Western Australia who still adamantly proclaim that the world will end if single desks are abolished, in wheat particularly. The government currently seems to support that stance. Do you think your group have done a good enough job in terms of explaining to farmers the benefits of deregulation, or is there a reticence to do that, in that I guess your members are also trying to do the right thing by your shareholders and make sure you're not appearing to be a benevolent organisation yourself?

**MR OSBORNE:** It is a complicated issue. The growers are quite rightly focused on producing grain and that's where they see the best bang for their buck, or the greatest return for their labour and intellectual capital. Many of them are quite happy to abdicate responsibility for marketing their grain to other organisations. There has been a pattern established for nigh on 70 years, where in many cases that has been their experience of marketing grain: someone else goes ahead and does it. It's definitely a large task to go and change those impressions the growers hold. What we do know is that a significant number of growers, albeit potentially a minority on head count, do want different marketing services than are currently available, or certainly choice in which marketing services they're able to avail themselves of.

Certainly our member companies are looking to become more involved in the marketplace, but I think as the ACIL Tasman report correctly identified, it has been the series of reviews that we've had and the reforms towards deregulation that have brought the delivery of new services to growers. We would argue that, had it not been for that competitive pressure, the provision of new products and services would not have come along as quickly as it has.

**MR WEICKHARDT:** I've been told, but I'm not sure whether you can verify, that near the Victorian border there are South Australian farmers who vote with their feet and sell across the border rather than use the single desk in South Australia. That

would suggest that there are enough farmers who perceive that it's in their self-interest to avail themselves that way. Is that the case?

**MR OSBORNE:** Yes. I believe that is the case and I believe that the example in Western Australia, where special export licences have been granted in the last two seasons for feed-baling in particular, and growers have availed themselves of the services being provided by the special export licence holders, would illustrate the same thing.

**MR BANKS:** If we think about perhaps the way forward on wheat, would that provide a reasonable transitional mechanism with respect to wheat as well - to have those sorts of provisions that have applied in WA?

**MR OSBORNE:** I think one of the failings of the current Wheat Marketing Act is the lack of independence of the Wheat Export Authority where, in the case of bags and containers, it has to consult with AWB on the issuing of export licences and, in the case of bulk, it has to have the consent of AWB. It seems very unusual to me that the regulator has to seek the permission of the regulated party in order to go about its job. I would contrast that with the situation in Western Australia where the Grains Licensing Authority is much more independent of the single desk in that state and has been far more active in issuing licences. It would certainly be, from our point of view, progress relative to the current position. We would, however, argue that would still represent - and we do argue this in Western Australia - a restriction on competition that is not warranted by any net public benefits that have been identified in the work done on those areas, nor do we feel it's the most efficient way of capturing any that are perceived to exist.

**MR BANKS:** What about the arguments that we've heard - again, I think, in the press - justifying the single export desk; that if you've got a single buyer, then you need to have a single seller to maximise returns?

**MR OSBORNE:** If we can use the example of wheat, there are a number of Australia's current customer markets which have single buyers. Some obvious examples would include Japan, where the food agency has control over the activities of the trading houses that import the wheat; in Indonesia there is a major flour mill conglomerate and they're a large buyer. But in many other markets there are a number of small, medium size, large buyers, but a range of buyers. There are a large number of markets that are not currently being serviced by AWB International in their exports. I personally find it a little incredulous that one organisation can efficiently service every potential buyer of Australian wheat in the world. There are plenty of mills that might take 4 or 5 hundred tonnes only of Australian wheat per year, but they may place a very high value on that wheat. Whether those markets are being serviced - I would argue that they're probably not all being serviced.

**MR GREEN:** If I can just add one thing to that as well. You see where the incumbent is currently trading other origin grain around the world through an offshore office, it says that they're seeing it as a commodity as well and you wonder how much value there is in one person marketing the grain - in other words, they are acting more like a commodity trader from multiple origins.

**MR BANKS:** Where would you see the biggest gains coming from deregulation? There is a lot of talk about price, but are there other dimensions that you think are important that need to be emphasised?

**MR OSBORNE:** I think the aspects of storage and handling have been fairly well canvassed in the 2000 review with those submissions from the joint industry submission group, which grain exporters were a large part of; more recently by reports such as Cross and Accenture on behalf of the grain growers in New South Wales. Those are already documented and we think there would be gains there. Presently AWB Ltd is the sole supplier of virtually all of the services to AWB International and the operation of a single desk, and we believe that a number of those services could be opened up to competition. Another area that we can look at is in terms of market signal; so not pricing in its absolute sense of, is it a high price? Is it the maximum price? Grain is an asset and it has a value because of the revenue stream that can be derived from processing it into flour or into stockfeed, or whatever its end use may be. It's also something that has a value over time, and that is not clearly reflected in the Australian market.

A market that is short in supply will typically be in an inverse situation whereby the price today is higher than the price for that grain at some point in the future. It's a signal from the market that the grain is in demand today and that in 60 days or 120 days alternate supplies can be acquired from another origin, which is harvesting at a later period. When a market is in oversupply, the price today will typically be lower than the price in the future. In saying that, the market is saying, "I don't need your grain today, but save it for me and I'll pay you some return for holding that grain." Those signals do not come clearly through in the Australian market because the pool is a great averager of price. A grower who delivers grain in January will get the same price if he delivers grain to the pool in March or May, and the effect of that is to not indicate to the Australian market whether grain should be stored or whether the best opportunity is to sell it now, in relative terms.

It doesn't indicate to the users of Australian grain, the domestic buyers, be they stockfeeders or flour millers, whether the market perceives there is an adequate supply or an inadequate supply, so they're not able to clearly see those signals from the market and make purchasing decisions accordingly. We think there's a fairly significant cost there, which has not been addressed in much of the work so far, but

that's an example.

**MR BANKS:** Okay.

**MR WEICKHARDT:** I see the minister is quoted today in the Financial Review - and whether he said this or not, I don't know - that wheat is different because it's national and barley is state based. Do you see any reason why there are any differences to think that the single desk on a national basis in wheat is materially different in terms of what might be expected if there were deregulation of that compared to what has happened in barley?

**MR OSBORNE:** I think if we believed the quotes attributed to the agricultural ministers around Australia we would find out that each of these single desks is different and special, but the wheat, barley, canola, sorghum, the main grains produced in Australia, have all been marketed around the world for many, many years. I don't accept the fact that wheat is national makes any difference to this debate. It may make a difference to the agricultural minister sitting in Canberra and the politics of the subject.

**MR BANKS:** I guess if we drop down to the state level, in your earlier submission you made some comments about South Australia. You might have picked up a little bit of radio traffic after our report emanating from South Australia, in particular arguing that that jurisdiction was quite different to Victoria and that lessons from deregulation in Victoria didn't apply to South Australia. Again, I would seek any comment you might have on that - in relation to barley, I think it was, in particular.

**MR OSBORNE:** Yes, in relation to barley. Barley is the only commodity covered by the legislation in South Australia. The reasons described for South Australian barley being different to Victorian barley are that Victoria has a larger domestic consumption base. So that's a fact. The population of Australia is in the south-east. That's where the consumption of the grains are in the domestic market largely, so we don't argue that fact. We do argue, however, the interpretation of it. When Victoria has a surplus of barley, a surplus above domestic requirements, then it becomes an export market and it takes the world market price for the grain.

As I said, the evidence suggests that Australia is price-taker for its grain exports, and I think that makes sense, given our share of the total world market in most of these grains. The Victorian market, when there is a situation where production is deficit to domestic demand, we will see prices rise above export parity in order to retain that grain in Australia for the domestic market. You can well understand that the cost of importing grain to Australia is significantly higher than export parity and that is, in many cases, prohibitive to the users of that grain. South Australia is less able to capture that domestic premium when it exists. For

South Australia to capture a premium above export parity, prices in the domestic market have to rise to a sufficient extent to divert that grain from South Australia, and the freight component from South Australia to Victoria is greater than from Victoria to Victoria.

So I think we can see the economics of domestic markets and moving grain there, but the underlying factor in South Australia is the same as the underlying factor in Victoria: when there is an exportable surplus, the market trades at export parity. The point is, the effort should be to give the producers in the marketplace the best estimate, the competitive estimate, of export parity. One of the problems with a pool is that it tends to be the average of various markets for export parity and that averaging process, and an innate conservatism, I would argue, means that the pool sets prices a little lower than the true value of export parity. Then cash prices are set relative to the pool. People logically try and make some margin to buy for cash if they are going to then deliver into the pool.

**MR GREEN:** Just to add one thing onto that: I've heard argued that if you are focusing on the export market you will not put the resources into managing that export, and I don't see the export market being any different than the domestic market. If you know it's there and you have access to the market, you will effectively starve that. You will put an infrastructure in place to originate and trade that grain, handle that grain, whether it be into the domestic or export market. So it's the case of, do you try to differentiate between how the export market would be serviced in South Australia relative to domestic? I think that's flawed.

**MR WEICKHARDT:** Given that there's, if you like, a huge gap between the position you've got and the position that I would say the South Australian Farmers' Federation have, and yet farmers have every reason to, if you like, vote with their feet for their own self-interests, what do you see as a sort of process of a transition that would work, that gives the free-market environment a chance to demonstrate to farmers that it has got real benefits, and yet doesn't so frighten the farmers who believe that going from a monopoly that they have grown in and liked to being embraced by six global gorillas who they distrust and fear might not be so bad.

**MR OSBORNE:** Specific to South Australia?

**MR WEICKHARDT:** No, on a national basis.

**MR OSBORNE:** The Grain Licensing Authority in Western Australia has gone some way to doing that, and growers who are interested to avail themselves of those services have been able to do so. Any system of transition needs to have, at its base, an independent body that can consider the applications for other exporters to enter the market on their merits. I think that some of the flaws in the Western Australian

system are the fact that it talks about price premiums, where none have been clearly identified, and that's in the work by the GLA and the organisations like Farm Horizons who have provided reports to them. So if a decision on an export licence is to be made on the basis of whether there's price premium or not, and no premiums have been found to exist, then that makes it difficult to implement the objectives of the legislation.

I think also that one has to be careful that the legislation does not seek to protect the incumbent simply because they are the incumbent, and that's something that we would argue has tended to be the case. The licensing authorities, even those that are independent, erring on the side of conservatism, have done what is best for the single desk in terms of protecting the operator of that single desk, rather than fully considering the benefits that may accrue to growers through alternative prices, services, et cetera.

**MR GREEN:** I was going to say, just to follow on from Alick as well, it's probably not our preferred option, but just sort of the semblance of opening up a market through the licensing is, we think, favourable. Then you at least have a chance to show what your wares are, what you've got, what price. People can make the choice. The system now, whether it be from the federal legislation through to state, they don't have that choice in all cases and it's up then to the farmer to make the decision of whether he supports X or Y marketing option.

**MR OSBORNE:** In the case of Western Australia, conceptually the licensing authority could grant licences for, let's say, 150 per cent of the production in Western Australia. If the main licence holder was the best at doing their job, they would still get 100 per cent of the production. If the growers had that choice and knew that the combination of service and price offered by the main export licence holder was superior then they would not lose any business whatsoever. So if they are up to their job then they shouldn't miss out.

**MR BANKS:** Thank you very much for that. We will just again break for a minute, please, before the next participants.

---

**MR BANKS:** The next participant this morning is the Australian Council for Private Education and Training. Welcome to the hearings. Could I ask you, please, to give your names and positions.

**MR SMITH:** My name is Tim Smith. I'm national executive officer of the Australian Council for Private Education and Training.

**MS MOSS:** My name is Julie Moss. I'm chair of the board of the Australian Council for Private Education and Training.

**MS STACKPOOL:** My name is Juliana Stackpool and I'm national policy officer for the Australian Council for Private Education and Training.

**MR BHOJANI:** I'm Sitesh Bhojani, formerly a commissioner with the ACCC and now working as a barrister and consultant. I've been commissioned by ACPET to assist them in this matter.

**MR BANKS:** Thank you. Thank you for coming in force. As I said, sorry we didn't provide more accommodation, but thank you for that. You've provided a submission which is still in draft form, which we haven't had a chance to read yet, but we'll give you the opportunity to go through the main points and we can pick up on some of the issues after you've done that. Thank you.

**MR SMITH:** Thank you, chair. I'm appearing here today with Ms Julie Moss, the national chair of ACPET. Julie is the managing director and joint proprietor of the Photography Studies College Melbourne, a registered training organisation operating as a commercial private provider. Julie and I, on behalf of ACPET, appreciate this opportunity to attend before you to discuss the commission's draft discussion report on the review of national competition policy reforms. As you would appreciate, our concerns regarding national competition policy reforms relate to its application to, and implementation in, the education and training sector of the Australian economy.

As you may be aware, ABS statistics for 2003 suggest that the education sector of the Australian economy comprises 4.3 per cent share of Australia's GDP. That is not far off the 5.8 per cent for health and more than the 2 per cent for communications. ACPET's concern in particular relates to the post-compulsory education and training sector. ACPET is the national industry body representing the private post-compulsory education and training sector in Australia, with over 700 members delivering higher education, vocational education and training, and English language or ELICOS programs. ACPET's core objective is to enhance, support and further the business success of its members, help to meet the nation's skill needs, and ensure Australian and international students enrolled in private provider colleges receive high-quality education.

The number of students being trained by private training providers has increased from 23,000 in 1995 to more than 200,000 in 2004, an increase of 700 per cent plus. 70 per cent of the international education market in VET, or vocational education and training, is delivered by the private sector. ACPET members employ some 15,000 teaching and administrative staff nationwide. The private post-compulsory education and training sector generates a gross turnover in excess of \$1 billion. The commission has recognised in its draft report that education and health services are an example of an administered market arrangement where governments have traditionally determined what and how much to produce through specific budget allocations and that, unlike competitive markets, administered market arrangements often fail to provide strong incentives for efficiency, to respond to changes in consumer needs and facilitate innovation.

ACPET believes that stronger competitive arrangements are necessary now in the higher education sector and VET sectors, because they offer a tremendous opportunity for going into the Australian economy, in terms of human capital development and enhanced export opportunities in a competitive international environment. ACPET also has some concerns as to how some of the current national competition policy arrangements have been implemented regarding the education and training sector; in particular, competitive neutrality arrangements and some noncompliance with legislative review obligations. ACPET considers it as essential that competitive neutrality legislation review processes of national competition policy are implemented with rigour, transparency and appropriate review mechanisms.

In the light of the learnings from nearly a decade of NCP implementations, ACPET considers it as essential that opportunities are made available to revisit some areas where the processes of competitive neutrality and legislation review may not have been as effectively undertaken as they could have been. ACPET therefore believes the commission should recommend to COAG a firmer time frame and clearer path for inclusion of education and training services to be part of the coordinated - and potentially a national priority area for reform - that is, education and training, or at least the post-compulsory sector, should formally be a part of ongoing national competition policy reform.

Chairman, we have tabled a draft of our submission to the commission's draft report and will be submitting the final version of that for the commission's consideration by the deadline. The reason for submitting it in draft form is to give you an opportunity to peruse it today, and we've also left with the secretary an information leaflet on our association.

**MR BANKS:** Thank you very much. I guess some of the detail will no doubt be in



your draft, but to give you the opportunity to elaborate on that, the points you're making in relation to competitive neutrality arrangements and some noncompliance with legislation review obligations, would you care just to elaborate on where the problems have been in particular?

**MR SMITH:** First, chair, sometimes it's very difficult in our industry to actually identify areas of noncompliance with competitive neutrality because of the nature of the industry, and I'm talking here about public providers, providers who are established by government, by acts of parliament or ministerial orders. We're talking here public universities and TAFE institutes who not only have a public mission to provide education and training for Australians, both young Australians and mature-aged Australians and for which there are moneys appropriated by parliament, but also, increasingly, public providers are operating in a fee-for-service market. That fee-for-service market is both in the domestic market - and that is especially so in the domestic market in the higher education arena - and in the international market.

Universities and TAFE institutes are right into it when it comes to the international market, and in terms of my comment about the difficulty of indicating whether they're not complying with competitive neutrality is the very nature of their infrastructures. There's substantial anecdotal evidence and individual cases where universities and TAFE institutes use their publicly funded or taxpayer funded infrastructure to operate a full commercial regime in the overseas market, and set a fee regime, amongst other things, which makes it very difficult for private providers, who have to meet all the costs and pay tax, to compete; because in some cases the universities and TAFE institutes set a fee regime which is unrealistically low. As a result, private providers have to set their fee regime underneath the university and TAFE fees if they're going to compete effectively.

**MR WEICKHARDT:** If I may just follow that up, when you say they're unrealistically low, every competitor thinks that their competitor that prices under them is being unreasonable, but presumably some of those organisations do have benefits of scale that some private providers probably don't. Is it just that they're bigger and more efficient, or is it genuinely that they're not being competitively neutral?

**MR SMITH:** Economies of scale may apply in the case of the larger public universities. It certainly doesn't apply in the case of the small, regional universities and the TAFE institutes around the country when they compete in the international market; and I'm talking here, commissioners, about the international market. More often it is the fact that they can use the taxpayer funded infrastructure to operate in the international market. One example: the South Australian auditor-general remarked in 2003 in his audit of the international education activities of several

TAFE institutes in that state that they had made - I think the total profit for their institutions was \$3 million, but it cost them \$4 million to make that profit; in other words, an effective net loss of 3 million. One assumes that that's because they're operating effectively in an uneconomic way.

**MS MOSS:** If I can just add to that. In the domestic market - because Tim was talking about the international one particularly - it's a little bit more problematic because the funding of course goes to the public sector, so they're offering places that are government subsidised. So there is no real opportunity to compete for the private sector, because the private sector don't get funding. So you're looking at a particular course: in the public sector of course that's been funded or subsidised heavily by the government. In the private sector it's not, so you can't actually really even talk about any sort of opportunity for real competition in that area.

I think that's been made worse incredibly through the last decade with the introduction of things called training packages, which are part of the ANTA - I mean, your draft report talks about ANTA and ANTA's role. ANTA actually, under the training package regime, if you like, have really - it's dictated, what you can and can't teach in the VET sector now, through these training packages. So if a training package exists in a particular industry area, then it's very difficult for a private provider, who may have had their own course tailored to a particular industry, to deliver that course any longer if a training package has moved into their area.

It's specific to our industry, if you like, but in reality what's happened is that this had also had a great impact on private providers' ability to compete, because they have to actually deliver a course that's mandated in a particular industry area. And worse, quite typically, they may not get government funding to deliver that course which has been mandated. But in the public sector there's government funding for that. So in the last decade it's made it increasingly difficult for the private sector to compete in this area. This may be going off - we've sort of gone down a tangent - but it's an important element that I just need to put into the pool.

But if I can just come back to the legislative review question which I think, chair, you were asking about. The thing I'd like to say there is that it's actually very difficult again for us in the private sector. The lack of transparency I think has been the big issue for us, in understanding when a review has happened in our area, which is education and training. Given that we're a national organisation and we do have representation on a number of bodies around the states and territories, very little to no involvement in any sort of legislative review that's impacting on our sector; very difficult for us to really report in any detail on how it's been reviewed and how extensive the review has been. That is of concern to us, and I guess our question back is really, how is this review monitored? How are these reviews monitored in our area, because it is very difficult for us to get information about it?

**MR BANKS:** So these clearly weren't public reviews, or at least sufficiently public for you to know about them?

**MS MOSS:** Well, no. In some areas they are, but I think in general - and I think we've been trying to get information, Juliana, haven't we, for a particular review - - -

**MS STACKPOOL:** A few states I've tried to get the results of their reviews, a report on it, and I haven't had any luck.

**MR SMITH:** And in fact if we look at page 6 of the draft submission that we tabled with you this afternoon, paragraph 20, under the heading Competitive Neutrality, we in fact refer to the NCC report in relation to the Western Australian government. I take you to the section that says, in the final sentence, "However, the government has decided that competitive neutrality will not apply to WestOne" - which is the commercial arm of TAFE in Western Australia - "and TAFE International and certain activities of other TAFE colleges." TAFE International is the international education arm of the TAFE public provider system in Western Australia and competes in overseas markets in South-East Asia, in Europe, against our members. There's the direct evidence that competitive neutrality principles don't apply to it, and yet it's competing in a full fee-for-service commission market.

Also at paragraph 26, as Julie indicated before, we're currently trying to obtain material to better understand the circumstances of the NCP compliance breaches in various states, but particularly in relation to the WA government, and Julie and I met in fact with the senior official in charge of TAFE in Perth only two weeks ago, and we were unable to get a satisfactory answer.

**MR WEICKHARDT:** Can I just clarify: you quote that 70 per cent of the international education in the VET market is delivered by the private sector. If you look at the total VET sector in Australia, how much of that is delivered by the private sector?

**MR SMITH:** You mean including domestic students?

**MR WEICKHARDT:** Yes, international and domestic - of the whole pie, how much is delivered by - - -

**MR SMITH:** There's not a lot of quantifiable evidence available, but I guess the most recent information is a survey undertaken by Queensland government in that state, and I think the results of that survey can reasonably be expected to be extrapolated around the country. The situation there, in a survey conducted by William Buck and Co, accountants and business advisers for the Queensland

government, with our cooperation, looking at the nature and extent of the delivery of accredited training by providers in that state, in Queensland, as I recall, 45 per cent of the delivery of accredited training, both government funded and fee-for-service training, was delivered by private providers, both commercial and enterprise registered training organisations, and 70 per cent of that was on a fee-for-service basis. So they're significant figures. That's 2003.

**MR WEICKHARDT:** That's 25 per cent?

**MR SMITH:** Sorry?

**MR WEICKHARDT:** What was the percentage?

**MR SMITH:** Remember, it was taken from a sample, so that you could extrapolate from the sample, but the auditors concluded that up to 45 per cent of delivery of accredited training in the state of Queensland was via private providers. But the more significant feature of that was that 70 per cent of that training was on a fee-for-service basis. So someone is paying, other than government; usually parents or students themselves.

**MS MOSS:** Individuals, yes.

**MR WEICKHARDT:** Right. In terms of total education, you've said it's about - what did you say? - 4.3 per cent of Australia's GDP, and private post-compulsories about a billion dollars in turnover.

**MR SMITH:** Yes.

**MR WEICKHARDT:** That, I think, makes private education and training about 4 per cent of the total education pot. Does that sound about right?

**MR SMITH:** Total post-compulsory?

**MR WEICKHARDT:** Well, you've said, "The education section of the Australian economy is 4.3 per cent of Australia's GDP." I'm just trying to get a feel for the sort of size of this. The terms of reference pointed us to things in terms of national significance, so there's clearly a huge amount of reform that we could have looked at, and we had to focus on things that had a high degree of national significance. Now, clearly education has lots of leverage, it can't be quoted or looked at only in terms of the dollars spent in that area. I'm just trying to get a size of materiality here.

**MS MOSS:** Yes. If I can just add to that comment. I think the difficulty is that states and territories don't collect data on the education and training effort that they

don't fund, which from our point of view as an industry organisation means that it is quite difficult sometimes to quantify the amount of effort, and we obviously do that ourselves. We've actually been arguing that nationally this does now need to be done and it needs to be done urgently.

This is why really, when you look at it, you can actually underestimate it enormously from a national perspective, because the statistics that generally people have access to are just what is funded by the government. I mean, in a particular state or territory, they might argue that only 10 per cent of the effort is happening in the private sector, and it's just not true. It may well be they're funding under very limited user-choice arrangements; they're funding 10 per cent in the private sector, the rest of it is being funded either in the community sector or in the TAFE sector. So it's a big issue for us in our industry, because the figures are actually misquoted all the time because they're not quantified and they're not understood.

**MR SMITH:** But in terms of the data that we've submitted today, that 4.3 per cent share of Australia's GDP is obviously the total education - primary, secondary, post-compulsory. Our interest is post-compulsory. Our estimate - and that's all it is - is that, with a multiplier effect, the gross turnover or contribution to the Australian economy of private providers is in the area of a billion dollars.

**MR WEICKHARDT:** That's got a multiplier effect on it, has it?

**MR SMITH:** Multiplier effect, yes.

**MR WEICKHARDT:** What multiplier have you used?

**MR SMITH:** I'd have to take advice on that.

**MR WEICKHARDT:** Okay.

**MR BANKS:** In terms of the bottom line of your submission, which I'm reading on page 8, I guess you're taking a bit of exception to the commission's placing of education as a somewhat lower priority than health. We spelled out those reasons and we said in our report that they are judgment calls, and part of this process is to reassess those judgments, but I may just give you the opportunity to elaborate on that bottom line of yours in relation to the importance of elevating education and training into the COAG domain.

**MR SMITH:** Certainly, and in no way should our comments be taken as any deprecation of the importance of the health sector, and we understand why you see that as important, but we think that education is equally important. In terms of the reasons that the commission gave for suggesting that we basically don't need to take

a rapid pace in looking at education, with respect, we believe those reasons are deficient. As I recall them, in relation to universities, there was the acknowledgment that there was change, there is continuing change, and I suggest the implication was, well, we should just let that take its place.

**MR BANKS:** That we let the dust settle, I suppose.

**MR SMITH:** Let the dust settle, yes. But in the meantime of course the universities - and our concern about universities is not so much the domestic arena - although they are now very much into the full fee-for-service courses at degree level and above for Australian students, as a result of government policy - but the area in which the universities compete in the overseas market and are able to, I guess, out-market us because they can use their taxpayer funded infrastructure, is in the international market.

In fact, our submission, gentlemen, refers at paragraph 22, under the heading Competitive Neutrality, Prof Guthrie has just done a review for the Commonwealth Department of Education Science and Training of the implementation of the national protocols which apply to the delivery of higher education. The national protocols effectively set the quality assurance rules by which both public providers and private providers have to operate. Guthrie makes the observation - I'm looking at paragraph 22:

Some non-self-accrediting higher education providers argue that under this protocol they were subject to a much greater level of scrutiny than universities, for which CRICOS registration was more or less automatic.

Then we comment that Guthrie made no further comment on this claim. That concerns us, because in fact there was more than just a few higher education providers made that point. There is basically a lack of a level playing field when it comes to the overseas market. CRICOS, which is the Commonwealth register for courses - and if you're not on CRICOS you can't get student visas - before a private provider can get listed on CRICOS they're put through the mill, appropriately so, by the regulating authorities, who are state and territory authorities, who then make a recommendation to the federal government.

With universities, more often than not it's simply they write in and advise the department they wish to change their CRICOS listings or add a listing, and are not subject to audit. Usually the only cases in which they will be subject to audit - or by inspection - will be if it's a university proposing to operate out of state, and that will go to state and territory jealousies and difficulties more than anything else.

In relation to the VET area, I think the commission suggests that the VET area

- and I don't have the quote in front of me, but it says things seem to be going along - - -

**MR BANKS:** There's a framework in place.

**MR SMITH:** Well, in fact there is certainly a policy in place. As to whether there's a framework, that's another question. But the implementation of the policy is just zero. The decision on user choice and contestability for government funded training, taken by all ministers in 97, has been progressively whittled away both in terms of closed markets on a state basis - or closure to existing providers only - the ability to be involved in that area has been diminished, and in fact the pool of funding available has reduced and that money goes to the TAFE directly. I'm referring here, gentlemen, to paragraph 14 in our submission. In effect, we would refer you to the ACCI submission made to you at an earlier stage, and we support absolutely what ACCI says.

**MS MOSS:** That's actually quoted on page 274 of the draft discussion paper as well - - -

**MR BANKS:** Yes.

**MS MOSS:** - - - noting that there's been a freeze. If I can just add to that a bit. The question between health and education, I just reiterate that we support the notion that health is obviously a key priority. Our view is that we don't compete for patients, we compete for students, if you like, and we actually believe that the potential gains that this sector can deliver are enormous, and I do think that we are suffering from a lack of being quantified, so I think that does impede, and I can understand how that would impede the view that might be formed about whether or not this is an area that needs further attention.

If we can just urge you to say that we believe it does need attention, we believe it's a very vital and vibrant sector, both public and private, but that the private sector has actually been left out of the loop enormously. Our concern, if this isn't addressed - if it's just seen that, well look, there's already some reforms or some policies in place, let's see how they go - is that in the passage of time the gains that were commenced in the 90s, which we've now seen starting to diminish, will actually diminish; they will continue to diminish if we're not doing something to really put the spotlight back on them. I think there's a complacency there - the potential is for complacency.

Yes, we've got these policies in place, they're in place, so everything's okay. But our view is that they've got great potential, they really need to be put back in the spotlight. We would call for a review on them, or at the very least that there's some

procedures in place over the next 18 months that really call them back into attention and into view, to monitor how are they going, what is really happening here. We would be greatly concerned if it was just left, and certainly our industry would be because it's a vibrant industry, with lots of potential to be very flexible, to respond enormously to the needs of industry in Australia, to contribute enormously to skills development. In all the states and territories there's much talk about skills shortages, and our members can provide skills development in very diverse areas, and because they're not enough on the radar they still get left out of government policies. So I guess this is the plea, for you to just perhaps consider the importance of this sector even though perhaps it isn't as adequately quantified at this point, but for the Australian economy it delivers enormous benefits and has the potential to deliver a lot more.

**MR WEICKHARDT:** Do these reforms, in your view, have to be tackled on a sort of national basis or can they be tackled on a state-by-state and jurisdiction-by-jurisdiction basis? Is there need for national coordination in tackling some of these areas?

**MS MOSS:** We would argue there is, because we've got a national training framework, we've got a national training agenda, so it really does need to be coordinated nationally, we believe, because also even within our own - even if you look at the industry it's operating across jurisdictions, both in the public and the private sector. We would argue that it does need to be nationally coordinated.

**MR BANKS:** What's your view on the demise of ANTA? Do you have one?

**MS MOSS:** I've got a number of views. It depends in what - - -

**MR BANKS:** Will you see that as changing the landscape in ways that will adversely affect your sector?

**MS MOSS:** I think at this point it's a matter of negotiating with the people involved in the changes, and it's a little bit too early to see what that might mean for us, but certainly we believe it's very important to be involved in the change process that's currently being undertaken as things go back into the department.

**MR SMITH:** A supplementary comment, commissioner, is that one thing that might come out of the changes of the Prime Minister's decision to abolish ANTA and move those functions within DEST is that it does provide an opportunity for a fresh look, and that's why we are here today asking for a fresh look at some of these things. Our industry is essentially small businesses. Job outcomes for our students are 100 per cent, because otherwise we'd be out of business, but more often than not students are taught by people who are actually working in their industries part-time.



There's a high degree of sessional staffing in our colleges. There was an impression that ANTA was all about big business and meeting the skills training needs of big business, so possibly the changes will allow a much closer look at the needs of small business.

If I could just give you one example of where we're particularly agreed in terms of the lack of a competitive playing field between public providers and private providers in the international market, is at page 16 of our submission. We draw attention to the ESOS Act, the Education Services for Overseas Students Act. If you want to be in the market, in the overseas students game, you have to comply with that act - both universities and TAFE institutes, and private providers. But within that act, section 22 requires in effect private providers to be members of tuition assurance schemes. In fact ACPET operates the largest tuition assurance scheme in the country which gives an absolute guarantee that if a business closes, or was unable to continue delivering courses to students, that those students would be relocated, and we've got a very good track record for doing that. But universities and TAFEs don't have to be in a tuition assurance scheme.

One would think that that is sufficient consumer protection, but on top of that the government has imposed on the private sector a fund called the National Assurance Fund or the ESOS Fund - that's section 24 of the act - by which we have to make additional contributions to a government fund, over which we have no control or input, other than we have to make subscriptions to it - universities and TAFEs don't. That's obviously going to affect the fee regime. That's an additional cost that universities and TAFE institutes don't have and yet we're all competing in the same market.

I notice in passing a submission that the National Tertiary Education Union put to the commission in relation to this review at an earlier date, in which they talked about consumer protection, and they refer to closure of private providers and the need for consumer protection. But in fact in place already in the system is a tuition assurance scheme which guarantees 100 per cent consumer protection for students. The ESOS Fund, or the National Assurance Fund is an imposition on our sector. It drives up costs and it's totally unnecessary.

**MR BANKS:** All right. Thank you. You've certainly brought these matters to our attention and it's the right time to do it, as we're thinking of what we need to do to take this to our final report. We do appreciate that and this draft will be replaced by a final submission in the next couple of weeks?

**MS MOSS:** Yes, it will.

**MR SMITH:** By the deadline.

**MR BANKS:** Thank you very much for that.

**MS MOSS:** Thank you for the opportunity.

**MR BANKS:** Thanks. We will just break for one minute with the final participants before lunch.

---

**MR BANKS:** We'll move on to our next participant, the Maternity Coalition. Welcome to the hearings. Could I ask you to give your name and your position to that organisation, please.

**MS JOHNSTON:** Thank you. I'm Joy Johnston and I appear on behalf of the Maternity Coalition. My official role in that organisation is that I'm a member of the executive management committee and editor of the Birth Matters Journal, which is a quarterly national journal.

**MR BANKS:** Thank you very much for attending and also for making the submission. Perhaps I might just ask you to comment briefly on this organisation and who it represents and then leave it to you to make whatever remarks you want to make.

**MS JOHNSTON:** Thanks, Gary. Maternity Coalition is a grassroots consumer advocacy organisation and we are a national organisation with branches in all states. It's totally consumer driven. There is very small infrastructure and it's mostly done by email, and everyone in it is a volunteer. I need to clarify with you that I do have a potential conflict of interest in what I'm saying, because I'm also a midwife, but all the presentation today is on behalf of, and is predominantly written by, other members that I'm working with who are the consumers within the Maternity Coalition. So we're very pleased to bring this all to your attention and what I'm saying now is consistent with our written submission to the review and we will be putting in a comment on the discussion paper.

We do consider that there is an urgent need for reform of legislation that impacts on the provision of maternity care in Australia and all of our comments are representing consumers of maternity services in this review. The issue we want to draw to your attention is that there is a monopoly of provision of maternity care by the medical profession which effectively prevents women from accessing the same basic service, if it's provided by a midwife. Maternity care is unique within the whole spectrum of health services in that it's not related predominantly to an illness, although there are considerable nasty illnesses that can happen, and there would be no question as to the need for medical services there, but I will sort of enlarge on that a little bit more.

This monopoly of the basic maternity care has been developed and maintained by exclusion of midwives from any rebate under Medicare or similar funding and the subsidisation of private obstetric care through private health insurance rebate under the Medicare safety net. This has all been developing in past years as well as the situation that has been there. We became interested in the national competition policy reforms about 10 years ago when there were state legislation reviews done under the state's obligations in competition. State legislation regulating midwifery

has tended to maintain this strict restriction of midwifery practice to virtually working under medical arrangements and supervision, whereas we know from other countries and from other places that this isn't necessarily in the interests of best outcomes and it's certainly not in the interests of consumer choice.

So basic maternity services are essential for all women in pregnancy, all mothers and babies during childbirth, and these are well within the scope of a midwife's practice in all Australian states and territories. The medical monopoly that exists restricts consumer choice and doesn't result in any improved health outcomes for mother or child, and this monopoly can only be supported in those minority of cases that do require specialist medical care. There are about 250,000 births in Australia annually. This is an example of what you have talked about as the longstanding structural problem that prevents the Australian health care system from offering the consumer a reasonable range of basic care options.

We contend that care should be delivered from a consumer perspective with the mother and child central rather than from the general health illness related to the fragmenting of care, so we do know how many babies are going to be born, we do know how long that care is going to last, and we've seen examples. We have put in our submission examples in other countries where that basic care which everyone needs - the woman has the choice of who provides that care, whether it be a GP or a midwife. Other countries restrict access to specialist care to those who actually need specialist care, whereas Australia has more or less pushed women towards specialist care, which is a far more expensive option.

Pregnancy and birth are not an illness. In the majority of cases, the midwife needs referral pathways to specialist medical intervention when it's needed, and that's what we will be developing in our submission. We found from your discussion draft that you did draw attention to health care, and the Australian health system is beset by structural problems that require a nationally coordinated approach. An independent review of the whole system is needed to provide a road map for reform. You brought up in the discussion draft these recommendations that are more targeted: program of legislation reviews should be put into place to reform any areas where anticompetitive legislation is likely to be of significant net benefit to the community, and we say, "Yes, we can put a tick on that."

Competition-related measures will only be a small part of what is required to deliver better outcomes in health care and, yes, we very much agree with that. Integrated health services reform program with an agreed national framework would add much needed impetus to addressing longstanding structural problems, and I've touched on that, and that the COAG should initiate independent public review of Australia's health care system. You haven't specifically spoken in the discussion draft about maternity services. However, it is clear that the need for reform fits in

these principles and driving the recommendations for reform in health care or generally. The commission has noted that the scope to achieve better outcomes is indicated by variations in performance of the same service across jurisdictions.

You mentioned the differentials in infant mortality rates in one set of statistics, and that is given as an example. There are similarly many examples of variations in performance and health care outcomes across a range of maternity-related services, not just between jurisdictions but also between neighbouring hospitals. So if a woman was having her first baby in Melbourne and she had the care in a private hospital under a private obstetrics system, she has a significantly higher chance of having a caesarean and all of the inherent complications that are possible with that than she does if she is cared for within, say, a birth centre which is across the road. So this could be a woman with exactly the same health indicators at the beginning of her pregnancy and the beginning of her labour, but there are huge differentials in the care that is provided.

The commission has also explicitly acknowledged the importance of giving consumers of health services the ability to exercise choice, and this is a huge issue that it's not just choice of mere service provider location and mix and type. The choice has to be a fundamental choice and not just, "Which hospital would you like to go to?" Women are becoming progressively more well informed about these issues of health care, and particularly as surrounds their giving birth. It is a very huge significant moment in a person's life, and with the increased availability of information through web based information, we're finding that women are asking very, very significant questions about this, and our Australian health system is putting them into a mode of care that says, "Doctor knows best" and "Do what you're told."

In many instances, the doctor's skill and knowledge is very, very significant and important, but at that basic-care level, these options of care, we feel very definitely that the reforms are needed. You were asking about sort of where this sits on the national health budget, and I don't have the resources to tell you proportions or anything like that, but what we understand is that maternity care is a very significant aspect of health services and responsible for a greater number of hospital bed days than any other condition across health annually. Maternity care also takes a great deal of Medicare for the pregnancy-related check-ups that are all put through Medicare, or most are, and then there is also the scanning and the testing and this sort of thing. So we're talking about a very great area that claims a lot of budget dollars.

Maternity care is an area that we believe requires scrutiny under the terms and conditions of this review and we urge you, the commissioners, to conclude that national competition policy reform of basic maternity funding is in the interests of consumer safety, access and choice and is needed within the government's health

care reform agenda.

**MR BANKS:** Thank you. I think you have made a very coherent case. Clearly we have identified the general area of health care as being very important, and even the point you make about bed days in relation to scarce hospital facilities, I think, is an important one. I might just get you to think a little better or respond to the question of why things are as they are and persisting as they are in Australia relative to - I think you have referred to New Zealand in this submission there, and also just to reflect on the question of consumers' choice and what happened in New Zealand when consumers were given the choice and, by inference, whether that would also happen in Australia.

**MS JOHNSTON:** Yes, and I think that the reform of health care is an ongoing process, and there's no one time or issue that put us in the situation that we're in now. The legislation that governs midwifery practice has been updated here in Victoria and in most states around Australia to remove a requirement that the midwife be supervised by a medical practitioner. That used to be a requirement, and that had come through from - historically, I think, the early legislation was in the early part of the 1900s, and it was in our Victorian legislation until the 1990s. However, that has been removed; I will just say, removed in response to clear evidence that there was no benefit in it, and that it was an artificial restriction and, of course, this is the ongoing questioning as to, "What do we do and why do we do it?"

In New Zealand there was a huge consumer movement in the 1980s, I believe it was, that culminated in complete sort of changing of their legislation around midwifery practice, and it came from a very grassroots consumer issue in that the health minister at the time, who was Helen Clark, was very supportive of women's rights to choose what sort of services they received, and the biggest issue was funding. The legislation that was brought in said that doctors and midwives would receive the same rebate for the same services. I sort of remember when I was young, we had that little debate about do men and women get the same pay for the same service, and that hasn't filtered through to maternity care; so what a doctor can be paid through the health system is different from what a midwife can be paid.

What New Zealand has done is set up a system, more or less a voucher system, that if a woman is pregnant and that's confirmed, she gets a choice of who provides her care throughout her maternity episode, and it's the same fee whether it's provided by a doctor or a midwife or a group of people, so it's very much centred on the woman and the pregnancy. How did it happen? Well, we wonder and people tell us that it's this federal-state divide in Australia that keeps on preventing us from moving things on, and I personally see this competition issue as a very central issue. It would be very hard for us to prove under that section in the Trade Practices Act that someone was actually setting up an anticompetitive monopoly, one service against

the other. But under this competition policy review it seems that it's an endemic structural thing within Australian funding, rather than any group or person who's trying to prevent the other from entering a competitive market.

**MR WEICKHARDT:** Can you give us a feel for, given the choice, what percentage of women in New Zealand have chosen to use a midwife as opposed to a doctor?

**MS JOHNSTON:** All right, yes. I've seen figures of approximately 70 per cent of women have a midwife as their lead maternity carer.

**MR WEICKHARDT:** 70?

**MS JOHNSTON:** Yes, 70. Now, this doesn't mean any sort of radical difference from what they had received previously. What it means is that in New Zealand you have to declare who your lead maternity carer is and that can be the general practitioner or the midwife. Each midwife or group of midwives then provide the service for the women who they book into the system, and then those midwives or doctors basically contract to provide a series of care episodes throughout the pregnancy, the birth and the postnatal care, with articulation into other services if they're needed.

So most of these births occur in the hospital, although in New Zealand the woman has the choice to have her midwife attend her in her home if she wants to. New Zealand's birth outcomes have by no means been in any way disadvantaged through this care - this issue of continuity of care, that a woman chooses who provides the care throughout the episode rather than having prenatal care in a GP's rooms and then acute care in the hospital and whoever comes along. So this has made a big change in the way hospitals are run in maternity care too, because all the hospital needs to provide is a skeleton staff who manage the hospital side of things and when a woman comes into labour her midwife arrives with her, or if she's under the care of a GP, the GP has midwives who work as subcontractors for that care.

Maternity care is very difficult to staff for labour because if you're doing rostered staffing in hospitals you're actually providing for the quiet times as well as the busy times, and it's a very unpredictable event, which of course has probably led on to a fair bit of the induction of labour, that can lead to a cascade of interventions if things aren't quite ready.

**MR BANKS:** That's a good point, to sort of make it convenient for the provider rather than the consumer.

**MS JOHNSTON:** That's right, yes.

**MR BANKS:** The incidence of caesareans I think is quite interesting in your submission. Again, is that provider driven or consumer driven? Is the consumer in that situation seeing the caesarean as a good option?

**MS JOHNSTON:** Yes, there certainly has been some consumer-driven caesarean on demand, more or less, but it's a complex consumer submission and not taking any role for what is a natural event. Many of the caesareans that take place are the culmination of a whole series of events, that basically the woman isn't able to give birth and needs someone to rescue her, and other women will say, well, where to cut off, where to make that decision is a big question.

Now, I could compare that with my own private practice, and I attend a case load group of women, and some women do need caesarean, but the rate is well under 10 per cent, and this is for women of all ages and stages - so some who are in their 40s when they have their first baby and some who have had previous caesarean and that sort of thing - so under 10 per cent compared with the national average of around 30 per cent, compared with, as I mentioned, some little pockets of very very high caesarean rates.

**MR WEICKHARDT:** So in New Zealand, if you look at the total outcomes, do you have any cost comparisons and outcome comparisons?

**MS JOHNSTON:** I don't have a good cost comparison. I'd love to have that just to hand over to you. New Zealand doesn't have anywhere near the good perinatal data collection systems we have. I've already got the 2003 perinatal data from the Victorian Health Department and I think nationally the health departments are really doing very good work on that, whereas New Zealand tends to be little pockets of information but it's not the national statistics that we would like to see. Certainly New Zealand has lower national caesarean rates than we do, and all we can say - because you're not really comparing like with like - is, there seem to be no worse outcomes than anything that we are able to show up.

**MR BANKS:** The only other question I had was when I read page 3 of your earlier submission you made the point - which you've made again today - that of course if the midwife is the primary carer in the situation, or the lead carer, then that person can refer a client for specialist obstetric or other medical services if and when the need arises. A question arises as to whether you already need a bit of medical training to know when there's a problem that would require further medical intervention.

**MS JOHNSTON:** No, that is very much part of the definition of a midwife, that the midwife is able to assess the wellness of the mother and the baby and is required



to refer if complications arise. So if we set a picture of: this is the normal process progressing under normal criteria, and if anything goes outside of that due to diabetes or any of these other things, then there is a requirement for medical collaboration as well as the passing on of cases, because even the sickest woman needs to have a midwife there working with the doctor, collaboratively, at those times when birth is happening.

But this group of women who haven't experienced complications - which is, under anyone's measurement, at least 60 per cent; some people will argue it's higher than 60 per cent. So at least 60 per cent of women should be well within the scope of the midwife's ability to manage that care autonomously and to make that decision as to whether a referral is required. The Australian College of Midwives have published a set of guidelines for consultation and referral and of course there are good clinical practice guidelines already in place.

**MR BANKS:** Good. Thank you very much. I think that's been very useful. You'll be aware that at the last COAG meeting there was a decision to have a review of health workforce issues in the broad, which may provide another opportunity for you to raise some of these issues. Certainly we appreciate you bringing those to our attention and thank you for attending today.

**MS JOHNSTON:** Thank you.

**MR BANKS:** We will now break for lunch and we are to resume at 2.30.

(Luncheon adjournment)

**MR BANKS:** Our next participant today is from Governing Ethics. Welcome to the hearings. Can I ask you to give your name, please, and your position.

**MS KERSHAW:** Ruth Kershaw, director, sole practice.

**MR BANKS:** Thank you for attending. You have a submission which we've actually not seen, but we'll get you perhaps to go through the main points and we can respond to them after you've done that. As I said, perhaps you might just like to tell us a bit about your organisation first.

**MS KERSHAW:** I'm a sole proprietor. The web site outlines the objectives and the missions. Basically, the organisation is not representing anybody with any interest in the outcome. The purpose of the organisation is that it's a boutique advisory firm for economic analysis advice, with an emphasis on customers that are seeking ethical outcomes.

**MR BANKS:** So it's a private organisation that consists of you, basically.

**MS KERSHAW:** Yes.

**MR BANKS:** Good, okay.

**MS KERSHAW:** Sorry. I should probably point out that I have a background in treasury and have been employed in treasuries and economic policy departments of state governments, which is where I and the organisation gain the expertise to comment on the review.

**MR BANKS:** Have you specialised in any particular area of economics? I mean, the ethical dimension is an interesting combination. Are there areas where you particularly focus; the community welfare sector or others?

**MS KERSHAW:** No.

**MR BANKS:** Okay. I'll hand over to you to make the main points.

**MS KERSHAW:** I'd like to thank the commission for having the hearings. I felt it was important to respond to this submission because of the potentially grave economic and outcome consequences of this report. As an economist going through it and one that's previously worked for government organisations and purchased reports containing economic analysis, my finding was that the analysis contained in this report was not sufficient to support the recommendations, in particular in relation to the terms of reference of the review.

As the summary that I've given you points out, the quality of analysis does not substantiate its conclusions, particularly in relation to health and human services delivery in accordance with the terms of reference, which were quite clear: that the report was intended to demonstrate the impacts of NCP or related reforms and to demonstrate their expected benefit to the Australian community. I think that the review in respect to human services and these recommendations fails to demonstrate that there is any clear evidence of significant or potential gains from the reform objectives proposed. The quality of the data, which I presume the commission still has time to look at before its final report - - -

**MR BANKS:** Mm'hm.

**MS KERSHAW:** - - - is in many cases several years old and is only commenting on impacts within a year or two of the commencement of NCP. There are also questions about the selection of that data and how relevant they are as comparators, and particularly as predictors of efficiency.

**MR BANKS:** Are you now speaking generally or in the services area?

**MS KERSHAW:** I'm speaking in particular to the human services area, but all the information that informs it. My submission will concentrate more particularly on chapter 7 and chapter 10. I've got 10 points there which I'll go through just quickly, but it's just to draw the commission's attention to areas where I believe additional expertise appears to be required in order to ascertain the type of evidence and the type of analysis that needs to be undertaken before there can be any credibility from a body that is recommending wide, sweeping reforms. But I'll go over those briefly.

**MR BANKS:** We're happy to do that, but perhaps just for the record, in terms of what we're recommending, it's really a process of further review, which would provide opportunity to look at a range of things, including potentially a role for competition; otherwise we wouldn't have had it on there - but also a range of other things.

**MS KERSHAW:** Yes, I can understand how you've come to that conclusion, based on the evidence that's contained in the report. However, I believe if you were given better advice, that the range of options and the clarification and scope of those options could be accompanied with advice that better protects the gains to the Australian economy and the Australian people. I accept what you're saying about breadth of the scope, and that's one of the concerns with the recommendations: that there's a lack of demonstration about what ought to be included or not included in the future reforms, based on either any analytical or empirical evidence of where you expect the gains to come from. So, yes, I'm just hoping to inform your recommendations on those grounds.

In relation to health services, which is the major concern, the report hasn't managed to demonstrate that it's understood significantly well enough the determinants of health expenditure. So the picture that's portrayed about, in particular, the ageing population doesn't necessarily bear the best association with where the true determinants of health expenditure in the future are likely to come from. It is a concern that none of those factors were looked at. I'm aware that the commission didn't have access to the OECD 2004 statistics when this was drafted, potentially, but that at least some appreciation or recognition of identified determinants of health expenditure ought to be looked at. The reliance on the ageing population figures is, I think, misleading.

**MR BANKS:** Just on that briefly, you realise that we put out a separate report, a whole report, on the ageing population and its implications for expenditure?

**MS KERSHAW:** Yes, I did, and that's one of the reasons that I found it, is that your own report found, and I quote, that:

Overall, while macro-economic studies are not universal in their conclusion, in general they do not find ageing as a significant determiner of health expenditure.

**MR BANKS:** Then we go on to show why those studies have got methodological problems. They're international, cross-sectional studies.

**MS KERSHAW:** Yes, and then assumptions are made about why that might not be the case, and those assumptions are modelled; but what I'm asking for is that the commission demonstrate in empirical evidence, or at least with the use of more than one of your own modelling experiments, really what you expect that impact to be and how you expect your reforms to address those.

**MR BANKS:** As I said, we've got a whole report that does that, but if you want to make comments on that other report, that's also a public document and feel free to do that.

**MS KERSHAW:** No, I'm happy with that report's findings that there is no universal conclusion, according to economic studies, that there's a significant determiner for health.

**MR BANKS:** No, we didn't say that. What we said is the econometric studies, which are cross-sectional and international, haven't found that, but there are methodological problems with those. We then go through a whole set of other time series and other analysis which shows a very strong link between ageing and health

expenditure in conjunction with technology and demand drivers.

**MS KERSHAW:** Yes. No, I'm happy to comment on those in more detail in my submission.

**MR BANKS:** Please treat that other report as something that you can respond to as well, because it's obviously related to your concerns about that aspect in this report.

**MS KERSHAW:** It's an example of my concerns with the report, yes. I think even to be matched with that report, the evidence of the distribution and total numbers of people in poverty have stronger empirical links to determinants of health expenditure, and that the report fails to look at the distributional impacts by quartiles, and how the impact of poverty is going to affect health determinants is a fairly major shortcoming, I think, of being able to comment on the distributional impacts of the report, and future reforms.

**MR BANKS:** Are you talking about the impacts of national competition policy on income distribution, or the effects of income distribution on health expenditures?

**MS KERSHAW:** I'm talking about the impacts of NCP on - any evidence of the distributional impact, and in particular poverty. What's happened within the population, you know, within the five quintiles that are available for analysis; the fact that they haven't been contained means that there isn't an appreciation of the potential impacts of the consequences for low-income people, and how that bears its relationship to determinants of health. Does that make sense? I think that the report could be improved in this fashion. The health expenditure cost benefits: again, I think the report is really lacking in both its appreciation of a cost-benefit relationship between achieving greater efficiencies where there's not a clear demonstration of the inefficiencies, and that again, I refer the commission to OECD data to understand the trade-off in terms of outcomes in any indicators, or the primary indicators of health across the country.

**MR WEICKHARDT:** Can I just try and get on the right wavelength here. At the end of the day there were two planks to our terms of reference: one was to look at NCP and its impacts, and the second was to comment on issues that might help improve the efficiency of the Australian economy as a whole. I think all we've said about health is it is a large sector of the economy. I assume you don't dispute that.

**MS KERSHAW:** Pardon?

**MR WEICKHARDT:** I assume you don't dispute that health is already a large sector of the economy.

**MS KERSHAW:** No, I don't dispute that.

**MR WEICKHARDT:** Okay.

**MS KERSHAW:** What I do take issue with in the report is the extent to which the evidence refers to public sector expenditure without a breakdown of the health and human services sector and the participants in it, and the role for competition policy.

**MR WEICKHARDT:** But I don't think we said anything about the role of national competition policy in regard to health. I think in summary, really, what we said was, "Health is a large sector of the economy; there are issues to do with the efficiency of spending in health, because of the way that sector operates, with divisions between jurisdictions and responsibilities; and if you were going to tackle issues that relate to improving efficiency of Australia as an economy, health is an area that needs a long, hard look at." I mean, that's in summary what we've said.

**MS KERSHAW:** Yes.

**MR WEICKHARDT:** Do you disagree with that as a concept?

**MS KERSHAW:** As a concept it is limited: you cannot assume that reduced costs and expenditure per se are a benefit to the Australian community or the economy.

**MR WEICKHARDT:** I don't think we've suggested it's an issue of reducing expenditure. We've just said if you can improve efficiency, the way money is spent in health, Australia has got to be better off.

**MS KERSHAW:** Yes, and I don't think anybody would refute that.

**MR WEICKHARDT:** Okay. I think that's all we're trying to say. If we haven't said that clearly enough, then we'll look at it again, but that's all we've tried to say.

**MS KERSHAW:** So you're happy to consider specific recommendations where you've stated your opinion to the role of NCP in driving those efficiencies.

**MR BANKS:** No.

**MR WEICKHARDT:** There's no link between health and NCP.

**MR BANKS:** That's why if you look at the structure of the report, we talk about NCP related matters in the earlier chapters in terms of the impacts, and then in terms of the agenda that Philip's talking about, we talk in chapter 8 on economic infrastructure, then chapter 9 talks about the regulatory environment generally,

relating to economic activity.

**MS KERSHAW:** Yes.

**MR BANKS:** And then chapter 10 is the one where we then talk about - putting NCP to one side, and economic infrastructure - what other areas of the economy and society would potentially offer scope for beneficial reform in a nationally coordinated way. That's where we get into human services on the one hand and environmental issues on the other. So we're not saying that these areas should be driven by NCP: quite the contrary. If you have a look at the way we've introduced that chapter, we're saying that these are areas where you wouldn't want to use competition as the default driving mechanism, because there are equity and access issues and a range of complexities that may well take precedence over that. So we have made that separation. Now, some of your criticisms may still apply, but you shouldn't criticise us for simply lumping those areas into the NCP basket.

**MS KERSHAW:** If, as you're stating, they are really not in the NCP basket, then it is a question why the efficiency in interstate relations is given such a feature in this report, when it's not in the terms of reference - - -

**MR WEICKHARDT:** Well, it is in the terms of reference. If you read the terms of reference they are in two parts. They suggest:

The commission is to report on (a) the impact of NCP and related reforms -

et cetera -

and (b) at the Australian state and territory level areas offering opportunities for significant gains to the Australian economy from removing impediments to efficiency -

et cetera -

including, through a possible further legislative reform program, together with a scope of the expected impact of those related reforms.

**MS KERSHAW:** But I'm saying that there's nothing in this report to demonstrate that the impediments to efficiency in the health sector have been demonstrated, other than your argument of sheer size, and this goes back to the heart of my critique, which is that there is insufficient evidence for you to draw that - - -

**MR WEICKHARDT:** Okay. So you don't accept that there are any impediments

to efficiency in the health care sector, because that didn't seem to be a contentious issue with most of the people we spoke to.

**MR BANKS:** Especially people in the health sector.

**MS KERSHAW:** No, but there's no evidence of significant potential gains from anything cited in this report, other than the sheer size of it. Look, if you will allow me to continue, then perhaps you will understand why it's deficient insofar as efficiencies relate to effectiveness as well. There are no measures of effectiveness and without those measures of effectiveness it's a redundant recommendation.

**MR BANKS:** Yes, well, again, we've talked about efficiency and effectiveness and, indeed, equity as three very relevant concepts. The separate stream of work that you will be familiar with, which is put out by the Government Services Review in the so-called blue books, has a catalogue of indicators of efficiency, effectiveness and access and equity.

**MS KERSHAW:** Yes.

**MR BANKS:** And indeed shows quite a variation across jurisdictions in how they relate to those indicators. So there's quite a body of information. What you're saying is, or is it, that we haven't quantified the efficiency pay-off in dollar terms?

**MS KERSHAW:** Yes. The extent to which you've provided evidence of even potential benefits from efficiency gains, from the data provided showing cross-jurisdictional differences between outputs and expenditure, the indicators themselves are so deficient in their ability to imply that, both from the limitations of the indicators themselves - and if you look back to their original resources and read, including your report, the caveats referred to, then the reader, and perhaps yourselves, would have a greater understanding of how this fails to demonstrate the relationship between relative efficiencies in jurisdictions. In particular, if you look at the public housing occupancy rates and the Australian Office of National Assessments observations about the comparability of the data, they say quite clearly they found that:

Performance indicators are not based on comparable data collections and methodologies between the states. As a result, many indicators state report performance information using different definitions and assumptions leading to variations between jurisdictions and variations over time in jurisdictions. The comparability of this data is therefore greatly degraded and casts doubts on whether any data can be used for national performance indicators.



Now, I would expect the Productivity Commission to at least have the expertise, or undertake the analysis, to determine the appropriateness of the data that is contained, and the extent to which there are limitations in those data, whether or not they do in fact inform you of implied dynamics and recommended outlook of ways to proceed into the future. I mean, does the commission have a problem with providing the explanatory data to its performance indicators, and seeking indicators and data that are recent and relevant?

**MR BANKS:** No, we certainly don't do that. Perhaps I should draw a distinction that a lot of the performance indicators work that the commission does, we do a secretariat for all governments, for the nine jurisdictions in the report that that steering committee puts out once a year. There is a process involving not the commission but officials from all states and territories and the Commonwealth government that goes through that. I only mentioned it, because it's just one window on the potential for improvements in efficiency and effectiveness, because we are seeing such variation across jurisdictions. It's not something that has been a critical underpinning of this report.

**MS KERSHAW:** And I can see how you could possibly construe some of your recommendations, based on the limitations of that data. That's why I request, and do so formally in my submission, that the quality of the data really matches the questions that you are looking at - - -

**MR BANKS:** Could I just raise - - -

**MS KERSHAW:** - - - and where they are not it's referenced appropriately in the report.

**MR BANKS:** Yes, okay, we will, certainly. That is what this process is about - to try to do a better job in our final report. But apart from those databased issues we have identified in our examination of health, as Philip said, a number of problems that occur in terms of coordination of health care and interface issues across jurisdictions, within services and so on, that prima facie are evidence of a system that could benefit from, at the very least, a review, and we have not recommended specific reforms. But do you not think that there are problems in the way the health system operates that would at least benefit from a more sort of national review, because of the extent to which they are problems that go across jurisdictions?

**MS KERSHAW:** Look, reviews are an ongoing entrenched component of the health system and the health sector that we have got, and I don't think anyone would disagree that reviews at various levels, looking at various cost indicators, looking at measures of efficiency, are not useful. What is being questioned here is the commission's focus only on the budget sector without looking at the evidence of

efficiency or outcomes in the broader sector, or for the Australian people. No, I don't necessarily agree that a review at a COAG level will be the best way to drive, or even oversee, the areas of where health inflation is more determined by evidence to be occurring. So, for example, the report does not make clear the number of players, the NGO players, and the level of private sector expenditure which is already in the human services area.

I think that COAG and the existing government do have an incentive to reduce short-term recurrent expenditure, and that they have incentives through that process, through the COAG process, to potentially make deals that are not beneficial for the future of the country. I think this is where the commission has an obligation to use the evidence available to ensure that their prescribed direction is really the best direction. Part of my critique is that there really is insufficient evidence to suggest that that's the level or an alternative to the existing national reviews and some national reviews that are happening, and the fact that there were no other reform processes, reform options or the development of a process which is more inclusive of the entire industry, and people who do have an interest which extends beyond the term of a government.

What you are suggesting is that these major decisions are potentially being left in the hands of people whose interest in Australia's economy and wellbeing are much more short-term than the interests of Australians in general, and the relationship between that and the risk of reducing the current budget expenditure and worsening health impacts and economic impacts in terms of where any of that expenditure is picked up, either households or NGO expenditure, is almost unconscionable.

**MR BANKS:** Well, "unconscionable" is a big word.

**MS KERSHAW:** It is a big word, but part of the reason I was motivated to be here is because it's a very politically-driven process, it's not a democratic process, and what you're advocating is an extension to that. Perhaps, as you are saying, per se there are no problems unless you have an understanding of the health sector, its cost impacts and potential future outcomes. They are at risk through the process that you're looking at, without accounting for the short-term interest of the persons in that process.

**MR BANKS:** Thank you.

**MR WEICKHARDT:** I would just encourage you to read pages 242 and 243 of our report again, which I think suggest that we understand a number of the issues you are talking about. We're certainly not encouraging any short-term expedient measures here: quite the contrary.

**MS KERSHAW:** Yes, I've got pages 242 and 243 in front of me. Sorry, what did you want to refer me to?

**MR BANKS:** I don't think we require you to read them now - - -

**MR WEICKHARDT:** No, I'm not suggesting you do. I just invite you to - - -

**MS KERSHAW:** No, because I have a particular concern with 242 and the commission citing again only recurrent expenditure by governments. If that's enough evidence to inform you of the sector and wellbeing, then I'm not sure you do have a full understanding.

**MR WEICKHARDT:** I think you misunderstand us. Anyway, thank you for your comments.

**MR BANKS:** Were there any further points you wanted to make?

**MS KERSHAW:** No, I'm happy to make them in the submission. I appreciate you letting me come here and present. I hope you will consider.

**MR BANKS:** We certainly will. So I take it that you're going to make a further submission building on this one?

**MS KERSHAW:** Yes.

**MR BANKS:** What status does this have?

**MS KERSHAW:** That has no official status.

**MR BANKS:** No official status.

**MS KERSHAW:** That was just for discussion.

**MR BANKS:** All right. Thank you for that.

**MS KERSHAW:** I will give it an official status as a - - -

**MR BANKS:** As a submission. We will then put it on the web site as we do with our other submissions.

**MS KERSHAW:** Then I will provide you with an attachment to go with that then, thank you.

**MR BANKS:** Thank you very much. We will just break for a moment, please, before our next participants.

---

**MR BANKS:** Our next participants today are from the Liquor Stores Association of Victoria. Welcome to the hearings. Could you please tell us your names and the capacity in which you're here today.

**MR WILKINSON:** I'm Peter Wilkinson, former president of the Liquor Stores Association of Victoria, recently retired as president but committee member of the association and the delegate by the committee to present before the hearing today.

**MR BANKS:** Thank you.

**MR O'BRIEN:** Tony O'Brien. I'm secretary of the association and I extend an apology for Philip McGrath who is the president, who we had listed but is unable to attend today due to commitments.

**MR BANKS:** Thank you. We appreciate you coming along today and also for the two earlier submissions you made and the one given to us in response to the discussion draft. So why don't I hand over to you to outline the main points you want to make.

**MR WILKINSON:** Thank you very much, Mr Chairman. There are three points I'd like to make, first of all concerning the application of national competition policy and the way it's been implemented. I'd like to also speak on reform of the Trade Practices Act, which we see as the other side of the coin, as it were, in national competition reform, and I'd like to also talk about the place of the consumer in terms of national competition policy.

Our concern is essentially to do with the liquor industry and specifically with the packaged liquor industry, which our association represents here in Victoria. I should add that the membership of our association here in Victoria consists of independent liquor store operators only. Neither of the major chains, Woolworths or Coles Myer, are members of the association, the essential reason being that they do not go along with the policy perspectives that the current committee of management believe in.

With regard to policy application, I think it's fair to say that we see the implementation of national competition policy to our industry in the various states of the Commonwealth has essentially not been about policy to a large extent but rather about politics. We see the implementation of NCP as being inconsistent in the way it's been applied throughout the Commonwealth. The application of NCP to our industry began in 1997, I think initially in South Australia, where there was a first but only partial review of the industry, and very little change took place in that state.

The next state to be affected was Victoria, where a substantial review,

undertaken under the chairmanship of Haddon Storey, made a number of recommendations, most of which were accepted, with the exception of the 8 per cent rule, which was a piece of legislation that applied specifically to the two major chains to hold them in check.

One of the recommendations of the Victorian review was that the needs clause be removed. The needs clause was essentially a clause that at the outset was designed to restrict the growth of the chains within the industry, but became ineffective and then was supplemented by the 8 per cent rule. But essentially it was to stop the proliferation of licences in particular communities, so that if the administrators of the legislation believed that the current licensees were serving the needs of the community well, and that there was no need for further licences to be placed in the community, then they were able to refuse an application for a licence.

As time went on, various interpretations of that clause came in. It was used by some people as an economic device to stop competition, and legislation was reviewed to ensure that no economic factors could be considered in the application for a new licence or in the objection to a new licence. Essentially over time, and with the competition review, that clause was gone.

Once that clause had gone, then there were effectively no barriers to entry to anybody who wished to participate in the liquor industry. The cost of application for a licence was negligible, and generally I think both the industry and the community were satisfied it was something that was beneficial in terms of competition. Subsequent to that reform, the contentious issue became the 8 per cent cap which applied specifically to the chains, and if that was to be removed it would give the chains an unlimited number of licences.

Our association objected to that, but one of the chains was able to manipulate the situation in such a way that it was impossible really to maintain that piece of legislation, and under pressure from the National Competition Council the 8 per cent cap was removed, or is progressively being removed, and will be effectively gone by the end of 2005, which is next year, and both of the major chains then will have access to an unlimited number of licences.

One of the arguments put in Victoria and later in the other states was, if there was to be an unlimited number of licences, what effect would this have on the prime objective of the Liquor Act - namely, the harm minimisation. Now, harm minimisation both in Victoria and in all the other states and territories is the prime object of the Liquor Act, and there has been a lot of contention in all the reviews about what effect deregulation would have on harm minimisation.

One of the conditions that we put on the Victorian government in negotiating

the reforms was that the Victorian government should undertake a serious piece of research looking at the density of liquor licences in particular areas and the relationship of that density to harm minimisation, particularly in regard to youth. Although that promise was made in writing to us and we have spoken to the government several times since asking them to follow up on that pledge, nothing has yet taken place. However, the number of licences in Victoria, both packaged liquor licences and other licences, has proliferated to an enormous extent.

In one of our magazines published earlier this year we note that the total number of licences since February 1999, when the first reforms came into place, has increased by 35.55 per cent and the actual number of licences has increased by 4088. I did a quick calculation this morning on the number of licences - that was in September 03 - the total number of licences was 15,585. As at 31 October this year the number of licences is 16,545, so another significant increase in the interim, approximately another 1000 licences. Again by my estimation, currently in Victoria there is one liquor licence or liquor permit for every 296 citizens, whether they're infants, youth or mature age, and assuming that around about a third of the citizens of the state are under 18, that's about one liquor licence for every 200 persons. So I suppose before very long one can assume that obtaining liquor will be about the same as obtaining a packet of M and Ms.

Now, we don't believe this proliferation in liquor licences in Victoria is good, but there is no evidence to show definitively whether it is a factor in causing harm minimisation or not causing harm minimisation. The verdict is unknown because the research is not there. However, in almost all of the reviews that we have seen, this is brought up as a major issue, and certainly the premier of New South Wales, in his deliberations with the Commonwealth on the reform of liquor licensing in his state, has stated emphatically that one of the reasons why he's not keen on implementing national competition policy in his state, the same as it was in Victoria, is that he doesn't want to see a proliferation of liquor licences.

Similarly, in the Queensland review, one of the considerations there was the proliferation of licences and if the number of licences was increased it was believed that that would create easier access to alcohol, particularly by youth. But as I say, there is no significant data, no significant research evidence that categorically proves that there is a direct relationship between the density of licences or the number of licences and harm minimisation.

**MR BANKS:** I'm interested in that, because I headed a review we did into the gambling industries in Australia, you might remember, back in 99.

**MR WILKINSON:** Yes.

**MR BANKS:** That issue of access, or "density" as you put it, and problem gambling was one that we did research on and others had done quite a lot of research, and indeed there had been a bit done in the USA, which enabled us to draw a conclusion about that, and indeed in that case we drew a conclusion that there was a positive relationship between access and problem gambling which, for a lot of people, would be commonsense, I suppose. But I'm a bit surprised that in this area of liquor there's been no research on that issue. Are you saying there's been no research on that issue of the relationship between availability and harm?

**MR WILKINSON:** Not in Australia.

**MR BANKS:** None overseas?

**MR WILKINSON:** Overseas, yes, there is evidence. The evidence from overseas studies would indicate that there is a relationship between density of licences in a community, however that's defined, and harm minimisation. Certainly some of the studies by people like Anne Roche would tend to indicate that there is a relationship, but we've spoken to the Victorian government on this, and one would be left with the impression that the Victorian government are certainly not convinced that there is a relationship and continue to issue licences on almost a daily basis.

As I said, from last year to this year there have been a further 1000 licences issued and they continue to be issued; not of just packaged liquor licences, but a variety of licences - both restaurants, hotels, restricted licences, BYOs and so forth. It certainly indicates that there has been a cultural change in Victoria, which is not replicated in the other states.

What we also see is further liberalisation taking place. I think you may have read in the newspapers recently that one of the major chains is about to apply for two of its major supermarkets to be able to put liquor on the shelves with the groceries. At the same time, the Victorian government has put before the industry a code of conduct that in some ways is reregulating the industry and making it more difficult for retailers to go about their business. So on the one hand the government is seeing the need for more liberalisation in the way alcohol is made available in the community; on the other hand I think they're saying, "Look, we are concerned about the youth of the state and we want the retailers to be ever more vigilant and ever more careful in the way they serve the alcoholic products."

The point I'm making is that in Victoria that has been the approach - a very liberal approach; an approach that's consistent with the way the policy has been interpreted by the National Competition Council. However, in other states, particularly in Queensland, the approach taken by the government in that state has been, "We don't want anything to do with national competition policy. We don't



want anybody except hotels to be able to serve the product, and we don't want supermarkets to have the product. We don't even want the packaged liquor industry as an industry to be able to operate in our state."

The net result of that is that the two major chains, who have a significant supermarket presence in Queensland, have not been able to have their supermarkets licensed, have not been able to get packaged liquor licences as they have in any other state or territory in the Commonwealth. So what they've done is they've bought hotels and, with the hotels, they not only get the hotel site but they also get access to three other sites within a 10-kilometre radius of the hotel. So for the price of one, they get four liquor outlets, and what that has done is that, while keeping independent packaged liquor operators like ourselves out of the state, they have been able to set up a whole infrastructure within a state without any competition from their normal competitors as they find in other states; and this to us is a significant inconsistency in the way the policy has been applied.

Again, while it is the culture in Victoria to be able to purchase alcohol in supermarkets, in other states such as Tasmania and New South Wales and South Australia it is not possible to be able to purchase liquor in supermarkets. In New South Wales - and I'm sure you're aware of what's been happening in that state - what is being proposed there is the introduction of a social impact assessment statement. Now, while that is one way of approaching the problem, one of our concerns is that that assessment is going to cost a very large amount of money. From two very credible sources, we've been informed that the cost of conducting one of those social impact assessments is probably going to be in excess of \$100,000, and with no assurance that the outcome will be a positive one.

If that is the case, what small business operator who wishes to enter the industry is going to outlay that sort of money on the off-chance that he or she may obtain a packaged liquor licence? So it seems to us that the only people who are going to undertake that sort of a social impact assessment undertaking are those that can afford it, and they are the two major chains. Under the Competition Principles Agreement, clause 5, sections (7) and (8), it states that:

Where a review issue has a national dimension or effect on competition (or both), the Party responsible for the review will consider whether the review should be a national review.

Now, if ever there was a case for an industry to be reviewed from a national perspective, as provided for in that clause of the Competition Principles Agreement, we believe it must have been the liquor industry, because we're talking about the same product. All the states and territories have the same prime objective under the objects of the act - namely, harm minimisation. I think if a national approach had

been taken - and maybe it's still not too late for a national approach to be taken - then it should have been the liquor industry. In fact in our respectful submission to the Victorian government back in May 2000, section 1.6, Summary of LSA's Position, said:

The Liquor Stores Association of Victoria is convinced that to achieve orderly industry development and fair and equitable involvement of small business in the packaged liquor industry, a national approach is required. In our view this approach is the only one capable of meeting community needs, preserving a place for small business, and satisfying the requirements of national competition policy.

We still remain convinced that that is the case, and it's that lack of a national approach to this industry that I think has caused this inconsistency in the application of the policy and in the implementation of the policy.

**MR BANKS:** Coming out of a national review, which would you see as the model of the three jurisdictions you've just described?

**MR WILKINSON:** Well, after the resolution of the Victorian situation, we met Mr Graeme Samuel, who was still at that time the president of the national competition policy, and I think in our submission to you we summarise his words to us at a meeting we had with him one night. He said to us, unprovoked and unsolicited, that he believed that the outcome of the Victorian legislation was in his belief a model outcome, both for the liquor industry in all the other states and also for other industries as well. Now, we have never believed that the outcome was what we desired. We believe that we were to a certain extent - because of the pressure by one of the major chains and I think the lack of will of the Victorian government to tackle the issue, we always saw the outcome as not the perfect outcome.

We accepted national competition policy. We are not afraid of competition and we believe that, provided we have a Trade Practices Act that ensures fair competition, we can compete very well, and we remain convinced of that. We are concerned at the degree of the liberal attitude of the Victorian government and its refusal to research that issue that I spoke about before - the density of licences; the relationship between the density and harm minimisation. We certainly are fully supportive of the objective of the act - namely, that there should be harm minimisation. We are fully supportive of the government's determination to ensure that underage persons do not have access to alcohol, but we believe that we were to some extent sold out and that the major beneficiaries of the reforms in Victoria have, and will be progressively, the two major chains.

**MR BANKS:** So in a sense a theme of your submission, as I read it, is that small

business was disadvantaged in Victoria.

**MR WILKINSON:** Yes.

**MR BANKS:** But also in New South Wales and also in Queensland.

**MR WILKINSON:** Yes, we do.

**MR BANKS:** All three jurisdictions having quite radically different approaches to the same issue.

**MR WILKINSON:** Very radically different approaches, yes.

**MR BANKS:** But all of which disadvantage small business.

**MR WILKINSON:** That's right, and that, we believe, has been the outcome of national competition policy. Small business has been further disadvantaged because the other part of national competition policy reform which is fundamental to fair trading in Australia and real competition is the Trade Practices Act, particularly section 46, the abuse and misuse of market power. We believe that subsequent to the decision of the High Court in the Boral decision, the ACCC is not prepared to proceed with instigating the cases of predatory pricing, because the way the act has been interpreted by the High Court, it's not the conduct of the predator that is looked at but rather the size of the predator.

It's like, as it were, a truck runs a bicycle off the road, off the highway, and the bike ends in the ditch, and somebody comes along and says, "What happened?" and he says, "Well, this truck did this nasty act and drove the guy into the ditch and he's crippled for life," and so forth, "and his bike is mangled and he'll never be able to use it again," and the question is, "Look, I'm not interested in his running him off the road. What's the size of the truck? Is it a 4-tonner or a 10-tonner or a 20-tonner? If it's under 20 tonnes, not interested." It's only the size of the truck that matters, not the anticompetitive conduct, and that's the quandary that we in small business find ourselves in: that until the Trade Practices Act is reformed, as suggested by the recent Senate inquiry, we're not going to get anywhere. Therefore, the predatory pricing that we see day in day out in the marketplace will go on unabated; if anything, accelerated.

**MR BANKS:** I suppose in fairness to the High Court, which I think gave a certain amount of deliberation to this, they were saying that it's quite difficult, when you see a low price, to know whether that's just a healthily competitive low price or an unhealthily predatory low price, and they said one way of judging the difference between the two is the market power that the predator or potential predator may

have; so hence your truck analogy. But I think it wasn't just size but rather the things that bear on market power - in other words, if a player wasn't in a position to benefit from predatory action in the longer term, they took a view that predation was unlikely to have occurred. But the point you make is that anyway, there are amendments to the legislation that will address that in part.

**MR WILKINSON:** Well, at the moment nothing is happening and the only thing that is going to happen that we see is the introduction of some reform in terms of collective bargaining, which we welcome and find very encouraging. But the reform of section 46 of the act as we see it at the moment is not going anywhere and we will continue to strive to have that addressed by the current government, and we hope that perhaps you might give it some impetus in your report. I should also just mention that I found it very interesting that, on page 16 of the Senate inquiry report, there's a quote by Woolworths chief executive officer Roger Corbett, who said that:

We suppose you could say that we ruthlessly compete with those competitors to protect our business and ensure our customers are never disadvantaged. But we are, I hope, scrupulously careful in not targeting small players, for example in country towns. If we find a small operator that is going below us with a particular item, we then will not go below him. We will match his price but never go below it as a matter of principle.

It's fascinating to see that testimony before the Senate committee, and then in last week's paper in an advertisement by Dan Murphy, who is owned by Woolworths, we find the headline:

Nobody beat Dan Murphy's at Christmas time or any time. No matter how low our competitors go we beat their advertised prices every day and if, by some miracle we are not cheaper, show us the competitor's current advert and we will beat them. Not match them. We will beat them, guaranteed.

**MR WEICKHARDT:** Can I just test whether or not you see this environment as one that actually the consumer is benefiting from.

**MR WILKINSON:** No, and that's the other point. What we see is that once the competitors are out of the picture, then you introduce the notion of recoupment, or the lack of competition.

**MR WEICKHARDT:** Have you seen any evidence of that starting?

**MR WILKINSON:** Yes, and I wish to present this. This is, again, a recent

publication called Foodex, October 2004, issue 4, pages 28-29. This is a study undertaken of two communities here in Melbourne, two suburbs, one in Prahran and one in Malvern. In Prahran there are three supermarkets, an Aldi, a Coles and a Safeway. So the two majors are competing against a third competitor. In Malvern there are two supermarkets only, the Coles and a Safeway. The same basket of goods was purchased from all five stores - - -

**MR WEICKHARDT:** Is this food and liquor or just - - -

**MR WILKINSON:** Food and liquor, but the items here are food only. The basket purchased in Aldi Prahran is taken as the base price and the basket ratio to the Aldi basket is given as 100 per cent. This is in Prahran. In the Coles Prahran the basket in relation to the Aldi basket price is 112 per cent; that's 12 per cent dearer. In the Safeway Prahran the basket price in relation to Aldi is 110 per cent; 10 per cent dearer where the competition is. In Malvern, where there is no competition, the same basket price in relation to Aldi for Coles is 136 per cent - 36 per cent higher - and in Safeway Malvern the basket price in relation to the Aldi price is 128 per cent or 28 per cent higher. So where you don't have the competition, I think this sort of evidence shows that the prices can rise and can rise quite significantly.

**MR BANKS:** Would this also imply a pretty good business opportunity for Aldi?

**MR WILKINSON:** Yes, and obviously they are taking advantage of that. At the same time, what we would also like to say is that Aldi is not an Australian company and are there Australian independent companies that are able to go into these situations where there is a duopoly, start a third operation and be able to survive? That's a question I don't know, but under national competition policy I believe that the policy, as it's implemented, should ensure that that is able to take place and, where there are existing competitors, those competitors should have a Trade Practices Act that ensures that fair competition - not protection of a business, because I think as Dawson said it is not the business of the Trade Practices Act to protect competitors.

It is there to ensure that the competitive process is maintained. But you can't have competition if you don't have competitors. So we would argue that the Trade Practices Act should ensure that the legislation in place is in place to ensure that anticompetitive conduct or behaviour is outlawed, and that the competitive process can take place in a fair trading environment.

**MR WEICKHARDT:** Yes, I hear what you say, but provided the barriers to entry are low the competitive environment is one where people come and go. That has been the case in every industry where there has been a competitive marketplace. Do your members complain that the prices they are selling at at the moment are too

high? I mean, are consumers being screwed at the moment, do you think?

**MR WILKINSON:** I think that it's the last three words in your sentence that are important, "at the moment". At the moment the consumers would probably say, yes, they are doing fine, but once the competition is removed then "at the moment" becomes a different moment, and we don't know what will happen when that moment comes. But if this study here is any indication, when that other moment comes they may well be screwed and they may not be advantaged, because then there is no diversity of competition in the marketplace and, without that diversity of competition, you don't have competition. You have a duopoly that can easily become lazy, as we see in this study here, and take advantage of the lack of competition.

**MR BANKS:** You don't see a third gorilla emerging? I mean, you spoke about this morning's newspapers and some entry that we already see occurring. You don't think there's a possibility of a third major player coming in. I mean, Aldi is one but, as you say, it's a foreign-owned company - - -

**MR WILKINSON:** It's a foreign-owned company.

**MR BANKS:** But from a consumer's point of view they don't probably pay too much attention to that.

**MR WILKINSON:** Certainly there is another newcomer that has arrived in Queensland. That's the American company Cosco; again, only from newspaper reports - and if you would like me to leave this here there is a significant article in this magazine on Cosco and its operations, and how effective it is - certainly if that company sets up all over Australia, which the indications are that it will, it will be a fierce competitor to both the major chains. But the point again that I make is it is not an Australian company, it's an overseas company, and what has happened to the Australian competitors? In our industry all the serious competitors are now gone, and the last of the serious competitors ALH, is also gone. So any small or minor retail chain, liquor chain, that ever existed in Australia is now defunct, gone, eaten up, swallowed.

**MR WEICKHARDT:** But there are options, aren't there, that are now opened up to people because of Internet ordering, phone ordering, remote ordering. I mean, you can ring up an establishment in New South Wales and get, the next day, wine delivered to your back door.

**MR WILKINSON:** Yes, you can. Yes, and I think if you read today's Age, in the e-commerce section there is a large article on a colleague of mine who operates a business like that, and there are possibilities. What tends to happen though is that

those people get gobbled up.

**MR WEICKHARDT:** I understand what you say. I think it's the eternal dream of every big gorilla that they can gobble up the last of the small competitors, and the small competitors keep emerging. But I understand your concern. We all want to see a competitive marketplace.

**MR WILKINSON:** That's right, a fair competitive marketplace, not an unfair one.

**MR WEICKHARDT:** Well, fairness is in the eyes of various beholders.

**MR WILKINSON:** It is indeed, yes.

**MR WEICKHARDT:** In the Olympic Games, probably when you get beaten you don't think it's particularly fair, but provided people aren't on drugs then it's rough and rough and you've got to be the best to survive.

**MR WILKINSON:** That's true, and I think perhaps if the model for fair trading in business was similar to the Olympic Games, we would be doing very well.

**MR BANKS:** In other words, we're finding out recently a lot more have been on drugs than we thought.

**MR WILKINSON:** That's right, yes.

**MR BANKS:** Thank you for that. I don't think we have any more questions. I suppose your bottom line in a sense is to say that there has been inconsistency and is it that a national review would have avoided such inconsistencies - in other words, is there a recommendation coming out of your submission about where we go from here?

**MR WILKINSON:** Again, I don't know whether politically a national review of the industry is possible or not. I don't believe it's too late. I think a national review would certainly address some of the inconsistencies that we've perceived in the way the national competition policy has been applied to our industry. We certainly don't like it, as an industry, that we are excluded from one state while our two major competitors are able, through a back-door method, to operate in that state. We see that as a major inconsistency in the way the policy has been implemented.

**MR O'BRIEN:** And if I can just add to that, "inconsistency" means that the consumer in Queensland is denied the diversity and the choice that the Victorian consumer can get from the independents. It's the independents that are the key to the niche growers, producers, small ones, to provide a mechanism for them to get their

product onto the market, which they can't do through the chains because of their uniqueness. To deny, say, consumers in Queensland, Western Australia or elsewhere that which is available in one state, which was brought about due to national competition policy reform, and to deny it elsewhere, is totally inconsistent from that point of view.

**MR WILKINSON:** That is a follow-on effect I think of the growing duopoly, in that the flow-on effect is onto the winemakers and the smaller viticulturists that as the duopoly grows in size and strength, what is the place of those small boutique winemakers and viticulturists in the liquor industry that is coming into being? There is an article here by Tony Love in the Adelaide Advertiser, 25 November. He remarks:

The concentration of power in the wine retail marketplace already poses a great danger to the viability of this state's viticulture and winemaking industries.

Simply because of the size of the two major chains, and what will be an ever-decreasing number of package liquor licences, as they really start to exert their power and influence in the marketplace the difficulty that many of the smaller winemakers will have in getting their product into the two chains I think is a very serious and contentious issue.

**MR WEICKHARDT:** Well, if Cosco arrive and replicate two-buck-chuck here it won't help either, will it?

**MR WILKINSON:** It probably won't.

**MR BANKS:** Okay.

**MR WEICKHARDT:** Thank you.

**MR WILKINSON:** Thank you very much. Shall I leave some of this - - -

**MR BANKS:** Please, yes, if you could leave that with us we can copy it and get it back to you. We will just break for a moment before our next participants, please.

---



**MR BANKS:** I now call Prof Richard Harper. Welcome to the hearings. Perhaps you might just begin by telling us the capacity in which you're here today.

**PROF HARPER:** Thank you. I'm a cardiologist. My current position is director of cardiology at Monash Medical Centre in Southern Health. I've worked fairly extensively in both the private and public system. I'm an interventional cardiologist and that's my main work, but I have had an interest in health economics and I've thought of ways of improving the Australian health system.

I did publish an article in 1998 in the Medical Journal of Australia on the basis of a new health system, which did arouse some interest, but I didn't push it at the time because my main duties were running a busy cardiology department. But since then the health costs have risen, and I was interested to note that this is one of the areas that the Productivity Commission is looking into, and therefore I was keen to make a submission.

**MR BANKS:** Thank you. I'll let you go ahead and outline the proposals that you're putting before us.

**PROF HARPER:** On page 4 of the pamphlet I've given you, you can see that in 2002 and 2003 Australia spent roughly \$72 billion on health, which is 9.5 per cent of the gross domestic product. In 1961 the figure was .6 billion dollars, which represented 4.4 per cent of gross domestic product. In 1998 the figure was \$48 billion which was 8.5 per cent. So since 1998 the health costs have risen roughly at 8.5 per cent per annum, which is clearly much higher than the rate of inflation and higher than the growth in GDP, so that as a percentage of GDP, health costs are rising.

In good economic times maybe we can afford this, but obviously if the costs continue to rise at this rate, that's going to put a tremendous strain on our economy, which I don't think is sustainable. At the moment the 9.5 per cent is pretty high amongst other countries; it's higher than the OECD average of 8.4 per cent, for example. It's lower than America, where health costs are crippling, particularly as many companies pay health insurance premiums and it affects their productivity.

So obviously this is a problem that's been well identified and there have been various measures to try and reduce health costs, such as reducing technology - which I don't think is likely to work. From the government's point of view, 69 per cent of that expenditure is government expenditure. The government has encouraged private health insurance, but that is not going to reduce - in fact, if anything, that would increase - overall health costs, as per the American experience.

Encouraging more specialists to introduce competition amongst specialists

doesn't work because the system is so elastic that specialists can always think up work to do: if they're not doing procedures, they're reviewing patients, where patients like to be reviewed by a specialist rather than a GP, et cetera. So I think some of the measures that have been suggested will not materially alter this rise in health costs.

There has to be structural change, and the best structural change would be to introduce true commercial forces into the health system, because at the moment it is an extremely protected industry, and the consumer can spend as much in a sense as they like on health, with very little personal expenditure, and the provider of the services obviously benefits, so that is a recipe for high consumption.

If we look at other systems around the world, the system that really stands out is the Singapore health system. Singapore is a developed country that has a high standard of health, the same life expectancy as America or Australia, it has access to high technology, yet it only spends 3.7 per cent of GDP on health, a quarter of what America spends. Now, how could this be so, with the outcomes to all intents and purposes very similar?

**MR BANKS:** Are these outcomes disability adjusted?

**PROF HARPER:** It's hard to get exact data. They actually have a better life expectancy than in America - slightly better, as a crude measure of health outcomes - but I don't know of any other way of reliably getting outcomes except that around the world Singapore is not regarded as a country where health is neglected or people are living unhealthy lives. The feature of the Singapore system which is so striking is that it's a very hard-nosed health saving system, and what this means is that if you're employed, a percentage - between 6 and 8 per cent - of your income is put into a health savings account and the employer contributes the same amount, and that health savings account can only be used for health expenditure; it can't be used for anything else. But if you run out of money, you have to pay for it yourself, and if you don't have employment then obviously you don't have any means of putting money into a health savings account, so you then have to rely on charity. Health insurance covers catastrophic illness and extras.

I think the important element is that because it's a health savings system, consumers are reluctant to spend money, or more reluctant to spend money unless they feel they're getting value for money for their health expenditure. Now, this element is not present in the Australian system, and it leads to excessive consumption - not fraudulent overservicing, but a lot of unnecessary visits to the doctor, visits to specialists, specialists seeing patients when GPs could see patients, excessive tests being done - all of which, if there was a consumer interest in how much money is being spent, would introduce an element of control.

But how do you produce such a system that is acceptable to the Australian public which, quite rightly, regards universal health coverage as basically a political right? What I've tried to do in the system that I've devised is to introduce a health savings system, but which does allow universal coverage. If you skip to about page 32, it describes the proposed system. Basically the system that I suggest is that at the moment the government spends \$2500 per person on average every year for health. In 1961 it was less than \$65, and it's rising every year.

It doesn't have to be exactly that amount, but suppose if every citizen had a health account in a Commonwealth health bank and that amount was put in each year, or an amount that's a predetermined amount is put in. Now, I think it would be a good idea to index this for age so that in younger ages there would be lesser amounts, in older ages when health expenditure is higher, the basic health amount put in each year would be increased. So each citizen has a health account, and they can use that health account for predetermined health services or for ratified health services, so that when they go to a doctor the scheduled fee can be deducted from that amount.

The doctor can charge more than the scheduled fee, in which case that has to be met from the - so there's no restriction on people charging fees, but there would be a scheduled fee for each medical service, as there is now, determined by a Commonwealth health advisory committee, and people could deduct from their health savings account.

Now, what happens if they've got bad luck, get a lot of illness? Unlike the Singapore health system, you could run up a negative account. If the account was negative, then if you were earning above a certain income your taxation rate would be slightly increased, but if you weren't earning - and that would be a threshold, it might be in the order of 50 or 60 thousand dollars a year, for example, or it could be less, but the principle is that if you're not earning much money you wouldn't have your taxation increased, but on the other hand, if you could afford to, then your taxation would be increased until the account was back in the red.

On the other hand, if you were a disadvantaged person that had no source of income, then you can run up a negative account, so you would be able to go to a public hospital where you would be charged - if you had a particular illness - a casemix fee, which is what public hospitals do now, and if you had a lot of illness you could run up a negative account. But on the other hand, if you were a disadvantaged person who looked after their health and had a positive health account, you would get a small dividend each year as an incentive to try and maintain a positive balance. Now, if you were disadvantaged all your life and you ran up a negative account and you died, then the government wears the cost, as it does now,

except that if you had an estate then the first call on the estate would be to pay off the health account.

So with this way, it still allows universal health cover for disadvantaged people, but there would be an incentive to maintain a positive health balance and, if you died with a positive health balance, you can will it to a relative. Now, perhaps there should be an administration fee of 10 per cent of the amount to the government or something like that, but you can will it to a relative, so it's an asset that can be passed on. But the health account can only ever be used for health purposes and the amount deducted can only be related to the scheduled fee, even though people can charge more.

In this way, for example, a non-insured patient could decide to have his hip replaced in a private hospital providing he was sure that the private hospital was only going to charge, say, 20 per cent or 15 per cent or whatever above the casemix fee for that particular diagnosis. Obviously private hospitals could not charge excessive amounts and expect to have patients, unless they provided extreme extras, so this would start to introduce competition between hospitals. With hospitals, there would be one source of funding that would be via the Commonwealth health bank, so it would take away the usual state-federal government sort of health wrangles, and hospitals would actively compete against each other for patients.

**MR BANKS:** Public and private?

**PROF HARPER:** Public and private, and within private hospitals, within public hospitals, and a lot of the inefficiencies associated with public hospitals, because public hospitals would get a limited amount - if they do too much work they get penalised, if they don't do enough work at a time they get penalised, and there's an enormous bureaucracy involved in that. This would be a much simpler system.

So I guess what I'm really proposing is a way of introducing some commercial reality into the health system. It wouldn't achieve the savings that Singapore does because it's not as hard-nosed, but it would produce in my opinion very substantial savings, without interfering with introducing high technology et cetera, which sometimes is cost-efficient, sometimes it isn't, but that would sort itself out in the competitive system.

**MR BANKS:** Where does private health insurance fit into this? In terms of a gap, would that have to be covered by private?

**PROF HARPER:** Yes, I think private health insurance - you could insure against catastrophic illness so that you didn't deplete your health account, and you could deduct - if your health balance was positive - premiums from your health balance.

They could offer a range of extras. They could say, "We will pay for up to 15 per cent more than the scheduled fee," or whatever. But I think you would allow private health insurance to develop their own products, but I would see catastrophic illness as probably the most attractive to the consumer.

**MR WEICKHARDT:** I'm fascinated by this, although I must resist the urge to burrow too deeply, because this is not a report into the best way forward in health; rather for us simply to point out that there are a lot of issues - and you have raised a number of them - that do need to be looked at systematically. One of the interface issues that has been raised as a problem is the interface between the health care system and the aged care system, in this basis: when people get to the stage of having to move into aged care or nursing care, what would be your process?

**PROF HARPER:** I haven't really developed that, but at the moment people who are going to aged care, their pensions are basically used to - I haven't really, but you are right, there is a clear interface between health systems and aged care systems. At the moment, according to my system, the aged care would be as it is now, where people's pensions or life savings would be used to pay for aged care. Whether those payments could be deducted from a health savings account, there would be probably positive things and negative things related to that. I must admit I haven't really developed that. It's a weakness.

**MR WEICKHARDT:** The Singapore example is a fascinating one, given the numbers, although we've got to remember Singapore is not a democracy of the sort that we're used to. If there were a vote on that program in Singapore, do you understand whether it's generally liked in Singapore by the citizens of Singapore, or whether it's regarded as tough, hard-nosed and harsh?

**PROF HARPER:** My wife comes from Singapore, although she left many years ago. I don't have personal experience, but from what I know, it's not a system that's widely criticised. Whether that's because people are scared to criticise, I can't be sure. I think it is too hard-nosed for Australia, even though it's clearly a very efficient system. But that's why this system is really designed to cover the disadvantaged and to provide - I think you can only provide universal coverage, rather than with an employed based system, or a taxation based system, which is what this system is.

**MR BANKS:** Implicit in this is your perception that currently we spend too much with the kind of regime we've got, and I guess there are some good arguments in that direction.

**PROF HARPER:** But no-one can measure that, because no-one goes around measuring how much is truly necessary and because it's completely devoid of

commercial reality. I could have a headache and see three neuro specialists if I wanted and, you know, if they're only charging the Medicare rebate, for example, I wouldn't pay a cent, or I'd pay very little if they were charging a bit more. I could have an MRI scan and no-one measures how much, and no-one can measure how much of that goes on. But all you can say is, "Here's a health savings system where it's 3.9 per cent. Look at the American system where it's 14.6 per cent of GDP."

**MR BANKS:** Yes, and what you're saying is at least life expectancy is pretty good there.

**PROF HARPER:** There is no suggestion that the health outcomes in Singapore are worse - the health of that nation - by any measure; not that it's an easy thing to measure - is any worse than any other country.

**MR BANKS:** Yes. I think their nutrition is a lot better than that of Americans probably on average.

**PROF HARPER:** It probably is. The one thing about this health system is that it encourages preventative medicine, which our current system does not do - in other words, people who look after themselves, who take health seriously, will be rewarded. They will have a positive health balance. They will have their health dividend. They will have reassurance that they can use that, they can pass it on; maybe they've got someone in the family whose health isn't as good, and it can be passed on.

**MR BANKS:** Is there also a dark side of that - that is, there may be an incentive for the whole family to reduce the use of the fund?

**PROF HARPER:** Yes, that's the criticism - if people won't use - but I think the positive side probably outweighs the negative side. Preventative medicine is neglected under the current health system, or not rewarded - put it that way; it's not rewarded in terms of dollars and cents.

**MR WEICKHARDT:** Is there a dark side of the kids not taking granny to see the doctor and deciding that the positive balances are worth preserving instead?

**PROF HARPER:** Yes, I'm sure with human nature there will always be that sort of thing, but I don't think you can protect against that sort of thing in any system. That is a potential disadvantage, and I guess it presumably goes on in Singapore as well.

**MR WEICKHARDT:** Have you seen the article that I think we cite in the report by Michael Porter and a colleague looking at impacts of competition in the United States in the medical system, where he argues that competition has actually been

historically applied in the medical system there inappropriately and has only applied sort of cost shifting, and risk shifting, and he's suggested really where competition would have benefits - and I think this is sympathetic to the points you make - is where the consumer has a real choice of understanding that, "If I go to this hospital (a) that's the track record of this hospital and that surgeon, in terms of the number of people they kill and the number of people who survive, and that's the cost," and that the competition should be by the consumer being better informed about the cost-effectiveness of the service that they're going to get.

**PROF HARPER:** I think the consumer will take the time to make him or herself better informed, if there is a financial incentive to do so. If there's not, then not many people will actually take that opportunity.

**MR WEICKHARDT:** They might in terms of effectiveness, but not for cost.

**PROF HARPER:** Not for cost. Yes.

**MR MERCURI:** It becomes a user-controlled system and the user is the person that makes the selection, and if you publicise the fee structures and percentage effectiveness of practitioners - you know, margin over above percentages et cetera, then all of a sudden it becomes a different landscape all over the place and it becomes a much more realistic and commercial endeavour, especially for the institutions concerned and the practitioners concerned.

**MR BANKS:** Sorry, could I just get you to give your name, just so it will help with the transcript.

**MR MERCURI:** Sorry. My name is Joe Mercuri. I'm the business manager for the cardiology department at Southern Health.

**MR BANKS:** Thank you.

**PROF HARPER:** I think another advantage of this scheme is that the general practitioners' role will be enhanced. At the moment general practitioners believe they do lots of paperwork, they just are basically gateways to referral to specialists, and the general practitioner will be the person saying, "I know this guy does a good job, and he's value for money," type of thing. And, "Yes, I think it's worthwhile spending and having these procedures or these sets of investigations." I think one way for the government to introduce the scheme would be to upgrade general practice by perhaps considering the relevant value study as a way of setting prices. General practitioners are undervalued compared to specialists and I think in this system they would have a greater role to play.

**MR WEICKHARDT:** Can I ask, apart from getting hate mail from various constituents when you published this - and maybe some of your colleagues - what was the sort of reaction, and has anyone to your mind raised fatal flaws with what you are proposing?

**PROF HARPER:** When I published it quite a few people said they didn't fully understand it but they thought it sounded like a good system. I presented it at a couple of forums where I got a lot of questions. At the time people didn't think it was a great necessity. There was always the quote, "We've got the best health system in the world. Why do we need to do anything about it?" The fatal flaw, I don't think anyone has pointed out - to my opinion - a fatal flaw, but obviously a negative health account dying and the call of the estate, which is like death taxes, is not a popular thing, but I think it's an essential part of this system. It wouldn't work if people could just willy-nilly run up, without taking any considerations, a negative health account.

**MR BANKS:** It would be a moral hazard.

**PROF HARPER:** There would be moral hazard problems. There are aspects that would not be popular, but really our health system will continue there - I don't see any way of restricting the rising health costs that I've seen anyone suggest, using our current health structure. It's so elastic. It's so full of ways of overcoming things that are put in its pathway. If you have 20 orthopaedic surgeons, they're not going to really compete amongst themselves. Some will just do after care and some will do this and that, but the work expands to fill the number. You can't really introduce competition in our system, in my opinion.

**MR BANKS:** Would there be any incentive operating through this for the government, I suppose, to try to minimise the allocation, the annual contribution?

**PROF HARPER:** If costs came down the annual - there would have to be an actuarial working out of what is going to keep the system viable. But it's a very, in my opinion, good way of the government funding the scheme without suffering the disadvantage of the state-federal constant bickering. Yes, if it does truly save costs, then the amount that the government spends each year will be - actually will not grow at the rate that it's - at least it won't grow at the rate it's growing now.

**MR MERCURI:** Even if you ignore savings as such, you look at the capital investment required to bring key facilities up to an acceptable level, all of a sudden even the hospitals have got the predetermined fee-for-service type of income and even the public hospitals have to work more like a commercial operation, and they can't go cap in hand, looking for bits and pieces for this, that and the other. It's all in their own backyard. Therefore, the delivery of service that they offer the public will



influence the number of patients that come through the front door as well. You can sort of make sure that there's a fixed mix in regards to the procedures offered, so that they don't pick the eyes out of the marketplace, and again, not supply the services necessary to a lot of patients. But at least it gives them some type of flexibility to control their own destiny and they can't hide behind any bureaucratic issues, I suppose.

**MR BANKS:** You say on your last slide under "miscellany of other advantages". There is greater access to the private hospital system for the general population and you put in parentheses there "shorter waiting lists". What's the source of that shorter waiting lists? Is it that there's unused capacity, professional capacity in the private system, or is it that demand would be reduced, therefore allowing the available capacity to be used?

**PROF HARPER:** I just think of a person waiting for a hip operation, and you can get a hip operation in private tomorrow, if you want it, or next week at any rate, but you can't in the public system. So okay, this person hasn't got private health insurance but he's got some money in his health savings account. He inquires from private hospital X that, yes, they will charge the casemix fee, plus 20 per cent. They have to charge that virtually irrespective of what happens. So, yes, he says, "Well, look, I can afford that, or my - you know, can chip in and pay that extra 20 per cent. I'll go to the private hospital and therefore not wait for my hip replacement."

On the other hand, some public hospitals will find that they've got an extremely good team of surgeons and they can do hip replacements and make a profit - quite a significant profit compared to the casemix fee - so they'll gear up to do more hips. There will be competition basically. At the moment, for example, the government has tried to deflect some of the cost by encouraging people to take out private health insurance. What does that do?

We did a study that showed that if you had an angioplasty and stent in a public hospital, the costs were just about covered by the casemix fee. If you went to a private hospital, you got the charges from the various doctors, the tests that were done, the theatre fees et cetera, and it added up to almost twice as much. By the time the government paid the 30 per cent and the professional fees, they were paying as much for a procedure in a private hospital as they would have if the patient hadn't been insured and gone into a public hospital. What's more, because the patient had private health insurance, they were more likely to have the procedure recommended than if they were in a public hospital.

So that's not the way, because it's not a competitive system, in that the private system is not competitive, it's not subject to the commercial forces that if you go down the street and want to buy a car or something like that, that you're subject to.

Until you bring that into the health system - because it's been so protected over the years - then health costs will continue to rise.

**MR WEICKHARDT:** Given that our recommendation is that this is big, a really important area, for a whole variety of reasons - it's a big part of the economy, it's pretty important to individuals and stakeholders and, as you say, it's pretty important to governments in terms of capacity to pay in the future, that somebody needs to have a look at the whole thing - given all those different stakeholders and their different motivations - the medical profession has got one motivation, private hospitals and public hospitals, governments and individuals all coming at it from different directions - have you got any comments on how one might recommend such a body was best constituted to get the best likely outcome from all this? I can see a risk that such a holistic view results in a huge number of divergent views being put forward, and no clear way forward.

**PROF HARPER:** Exactly. That's what I feel in some ways is my strength and weakness. My weakness is I'm an individual. I don't owe any affiliation to the AMA or private hospitals or public hospitals or whatever, I'm trying to look at it as independently as possible rather than as a vested interest. My weakness is, I don't have any political clout, but I think you need an advisory - I would hope that the government would set up an advisory body that would take submissions like this and then make recommendations to the minister. There is a three-year window of opportunity perhaps to reform the system because of the control of the Senate, or both houses, by the current government.

I would very much appreciate an opportunity to present this system to a body that had some sort of power to at least make a recommendation to government or to at least consider it, and so I'm hoping that you will say that at least it's worth looking at a different way of structuring health that still allows universal coverage. That's the way I look at this.

**MR WEICKHARDT:** Of course it wouldn't just take a federal government to change the system; it would take every jurisdiction in Australia really, wouldn't it?

**PROF HARPER:** It would, but I don't think state governments like health all that much. Their role in health in this system would be to monitor standards in their public hospitals, but the funding of public hospitals would be via this Commonwealth health bank. But nevertheless, they would have to produce quality control; they would have to have a complaints system, the same sort of system they have now; they would be responsible for the standards. I mean, New South Wales wants to hand over their public hospitals to the government, and I don't think that's an insurmountable issue.

**MR BANKS:** Could you see a move towards privatisation of public hospitals in this kind of funding context?

**PROF HARPER:** Well, in a sense it is private. The only thing that would distinguish a public hospital from a private hospital is, they will be obliged to accept a patient and charge only the scheduled fee. So that's, if you like, the lowest common denominator. Now, that scheduled fee would have to cover the costs of that hospital, but they would try and minimise their costs so that it would do so. So in a sense it is privatising the public hospitals, but you have to have a system - you know, you can't have public hospitals refusing to at least see people in the accident and emergency department, and the consumer would know that they would be subject to the standard costs.

**MR MERCURI:** I suppose if you use the wording that public hospitals become commercialised rather than privatised, it's a better representation, because again it would be a fee for service. Even coming in today, Rick and myself, we had discussions on, "If you started it tomorrow, how would you start it?" et cetera. There are a lot of issues attached to the concept, but if the underlying objective is to have a service that increases in regards to the service provision and doesn't deteriorate over time, all the other issues can be addressed as they come along. Currently the system is not working, so you've got to do something.

**MR WEICKHARDT:** At the moment I guess the government - although they don't publish it too much - limit expenditure simply by not creating enough supply to meet the demand. In your system, you're suggesting that demand would actually be limited by individuals exercising more control?

**PROF HARPER:** Yes, and people would say, "Would that truly happen?" and all you can do is say, "Well, look at the Singapore system." But even if it turned out to be much the same, it's a more acceptable way of doing it, to the general public. Yes, governments do say, "This is your fixed budget. We'll fund you WEIS points, but if you go over that, stiff, you're doing too much work," and they try and limit it that way and then say the waiting list problem isn't their fault, it's the public hospital's fault, and that's a horrible situation. This would get rid of that, but at the risk of saying, well, everyone will just want service after service, I think the health savings restraint would more than counteract that. But how can I prove that? I can't, except referring to the Singapore system.

**MR WEICKHARDT:** No other country has tried this?

**PROF HARPER:** I think Singapore is the only country that's tried the health savings system. The system that I've devised, which is the sort of taxation rather than employment based system, no other country has tried it. When I looked up the

literature, I was pretty sure that was the case.

**MR WEICKHARDT:** Okay.

**MR BANKS:** We really appreciate you taking the trouble to bring this to our attention. I do recall from the review we did with the private health insurance system back in 1997 that the Singapore system was being - medical savings accounts were being discussed at that stage, and I don't know whether you're familiar with that report we did, but we canvassed that among a number of other broad directions for the health system, but in the end - that was the one recommendation of our review - we had 35 recommendations. The one that didn't get picked up was for a broader review of the health system to contemplate some of these kinds of systemic reforms. Anyway, we've still got that bigger systemic reform issue on the agenda, so we're grateful for your contribution.

In terms of submission, we have this - the slides you have provided today. Are these also the ones that you have copied in the material you gave to us a little while ago?

**PROF HARPER:** They're just up to date. I have the 1997-98 figures in the original slides, so this one has the latest figures.

**MR BANKS:** Okay. Would it be possible for you to send that to us in the form you've sent the previous set?

**PROF HARPER:** Yes, I will.

**MR BANKS:** Could you do that, and then we'll update the submission.

**PROF HARPER:** Yes. You can keep that copy, but I'll email this to you.

**MR BANKS:** Thank you very much.

**MR WEICKHARDT:** Putting it on our web site, it would be more user-friendly to have it on multiple slides to the page.

**PROF HARPER:** Yes, we'll do that.

**MR BANKS:** Thanks very much. We'll just break for a moment.

---

**MR BANKS:** Our final participants today are from the Victorian Council of Social Service, VCOSS. Welcome to the hearings. Could I ask you, please, to give your names and your positions.

**MS SMITH:** Yes, I'm Cath Smith. I'm the CEO of VCOSS.

**MR BANKS:** Thank you.

**MS SHARAM:** Andrea Sharam, policy adviser.

**MS ATKINS:** Carolyn Atkins, policy analyst.

**MS WRAGG:** Cheryl Wragg. I'm the energy campaign officer.

**MR BANKS:** Thank you. Thank you very much for attending today and for the submission, which I think is in draft form, that we've got before us. You put in a joint submission with the Brotherhood of St Laurence back in June, which was useful, and I understood that you may be talking to the earlier ACOSS submission or representing an ACOSS view.

**MS SMITH:** We were going to be but I think that hasn't eventuated in practice.

**MR BANKS:** All right, so you'll be speaking as VCOSS.

**MS SMITH:** Yes, we'll speak as VCOSS, and I think what ACOSS was planning to do was get something in for the written submission deadline, but I don't think they were resourced to.

**MR BANKS:** All right. As we discussed, I'll leave it to you to present the main points.

**MS SMITH:** Great. Thank you, Gary. In general, we welcome the review of NCP. We think that this is a good opportunity to develop a model that gives us a more satisfying concept around the public interest test in particular, and thinking about the diversity of organisations that together with government promote and support wellbeing in society. So from a VCOSS point of view this is an important review that's going on and we say that it's timely and has the potential to be useful. We've probably got six or eight main headings but I won't go into all of them in detail. Certainly in terms of the way in which the public interest test is conceived, we support the view in the report that effective public interest is essential. Now is the time to make that test more comprehensive and meaningful, and to redefine it, the way it's conceived, to ensure it encompasses a broad definition of sustainability and includes the importance of the role for government - and that relates back to a

previous submission - and should be evidence based.

So I'll talk a little bit more about a couple of those things: in particular, we feel the importance of encompassing a broader definition of sustainability that incorporates social, environmental, cultural as well as economic sustainability. Competition by itself with a sole focus on economic growth is not enough to deliver the kind of outcomes certainly that VCOSS is wishing to see and we believe governments wish to see. Sustainability across social, environmental, cultural and economic measures are crucial in any reconceptualisation of NCP arrangements. So we'd see a clearer, more proactive role for governments as a key element, and a responsibility for the federal government to provide an appropriate institutional framework in which private markets can work with other players.

One of the things that we feel has shifted in the last few years is that there is now probably more of a range of ways to define and monitor sustainability beyond economic; perhaps that some of those indicators and processes were not available in years past, but we now certainly, in areas of social sustainability, are aware of a range of different ways to set indicators and targets and to be able to monitor the social sustainability which goes beyond economic measurement. It is possible and we feel that it is an important element of any redefinition.

Community service obligations: acknowledging that funding for organisations hasn't kept up with price increases. I think again the question here is outcomes and effectiveness of community service obligations, so that it's not just about funding; it's about the actual effectiveness and outcomes, and looking at how processes can signal indicators and outcome targets, not just quantum of funding. When markets are viewed as the decisive means of redistribution with a minimal role for government, then we feel that social and distributive justice becomes lower down the priority list.

Maybe using an example around human services reform, we agree with the commission that the importance of most human services extends beyond their economic significance; that they're not homogenous products to be sold at the cheapest possible price, but rather deal with the physical and emotional wellbeing of individuals. We agree that these objectives add to rather than detract from the need for the community to receive best value for money. However, like our New South Wales colleague, NCOSS, VCOSS shares the view that funding systems and funding adequacy are central to the quality of services and the achievement of outcomes. So in terms of achieving better value for money, it doesn't absolve governments from responsibility for providing sufficient funding.

In terms of the right criteria for the application of purchases-provider models, I think this is where we would disagree with the argument of the commission. We would endorse the view of NCOSS that this set of criteria is rarely applicable to

complex human service environments, particularly in delivery of outcome among disadvantaged population groups and communities; it's not about the most efficient price or the most efficient purchaser-provider contract arrangement. There's going to be a range of other factors around that which are going to lead to the successful outcome for the community.

Just one very current example: we're very involved down here in Victoria at the moment with discussions around a child protection outcomes review and changes to machinery of government to deliver better outcomes for children, and at one point the department was seriously looking at writing into the legislation the need for service networks. Because a lot of children's services are outsourced from government to the community sector here in Victoria, the government was looking at actually legislating to enforce collaboration and involvement in service networks, because it was seen to be so important to have collaboration between service providers; which has a resource component to it, and is not about direct efficiency, the number of casework hours with particular clients.

It's about a broader perspective on what's going to deliver outcomes for the community, particularly here in Victoria where we've had the experience of purchaser-provider models going on for some time during the 1990s. What we've seen is, if you like, an intensification of a silo based approach to delivery of community services, with competition encouraged between service providers; and that's directly worked against the need for collaboration which is now recognised as paramount in delivering outcomes for the community. So I think it's more than the right criteria. I think we've actually got an issue here where competition or any kind of competition policy actually directly works against principles of collaboration which we're trying to grow and engage with.

So I guess it's the issues around exposing the human services sector to full competition. Whether that's children's services, whichever area of community service you look at - disability service, child care, whatever - exposing the human services sector to full competition runs the risk of negating the distinctive roles that these organisations are able to provide, particularly where encouraged and facilitated to collaborate rather than compete.

**MR BANKS:** Could I just pause there. Are collaboration and a purchaser-provider models fundamentally separate things or could you imagine - and this is where I wish I had Robert with me - arrangements whereby you were able to combine those and have purchaser-provider models but making provision for collaboration where that was effective?

**MS SMITH:** I think you can have effective contract management arrangements, where government does outsource services to nonprofit community service

providers, in our examples, and you can have effective contract arrangements where issues around price and issues around respective responsibility are clarified in the contract. I don't think we'd be speaking against that, but I think it's more that if the determination around who gets to run which tender, if that's determined purely around price, then you've got a major problem because there's a range of standards and a range of outcomes that we're trying to achieve.

What does tend to happen a bit is where organisations that need to be collaborating in one service network, around education or around children's support, if they're also competing for tenders for a drug and alcohol program, that can actually disrupt the collaboration on other projects. It's quite complex, particularly for multi-service community service orgs that are running a range of different programs; I think you get yourself a complexity where you're really trying to drive a competitive market in terms of efficiency when what you're actually wanting to achieve is effective outcomes. Did you want to add something to that?

**MS ATKINS:** I think particularly from the Victorian experience in the 1990s, when it was that purchaser-provider model and you did have different community sector organisations competing with each other for the same contracts, it did seriously undermine many of the relationships that had been built up among those organisations, and I think it would be very difficult to conceive of a model where you could have various different service sector organisations applying for contracts to deliver the same service. It's undermining the basic trust and the key elements that those collaborations are built on, around trust, willingness to share information outside that which is confidential to perhaps clients using the service. I think that competitive model undermines a lot of those key elements that you need for strong collaboration, and I think the Victorian experience very clearly demonstrates that there was a quite massive failure around that.

**MS SMITH:** With the current partnership arrangements between the Department of Human Services and the funded sector here in Victoria, there's been some really interesting highlight projects around open book contracts and open book collaborations that have occurred between the department and a range of funded organisations. Eastern Region Homelessness Project would be a good example, where collaboration and client outcomes have been enhanced dramatically through open book approaches, so that people can see who's got which amount of resource to put into this project. It's not just been about government resources; it's been a range of nonprofit organisations' resources.

By having a collaborative approach and an open book approach to budgeting, rather than a more traditional, "I'll make my profit margin and you make yours," it had quite a measurable impact on the success of that project and on the success of client outcomes coming out of it. So there's a range of interesting models that are



emerging that are starting to demonstrate the positive impacts of a less traditionally competitive approach.

**MR WEICKHARDT:** You were saying the Victorian government had been almost moved to legislate to encourage collaboration. I'm not sure legislation is actually going to do the trick.

**MS SMITH:** They're not going ahead with that, as it turns out, because they're not going to legislate for the resources to assist people to collaborate, but I think it just demonstrates the importance of collaboration as it's seen in terms of delivery of social and community outcomes currently at the moment.

**MR WEICKHARDT:** But you said that you disagreed - and I know NCOS made the same point - about the criteria that we specified that could work for a purchaser-provider. Now, of course, the criteria start with some fairly aspirational points which might be difficult to totally satisfy in each case. The first one is, "The desired program outcomes can be clearly identified." Of course, if the desired program outcome is that there is collaboration, well, it's all very well and good to say that, but you then move on to, "These outcomes can be largely specified in quantitative terms." Of course, it's very much more difficult to get to that stage. So I guess it would be interesting if you had some input into how those criteria might be modified, because we're striving to get the best outcome in an efficient way, and there are some examples, clearly, where competition actually does encourage that, but it has its collateral damage in other areas.

**MS SMITH:** Some of the more emerging collaborations, if you like - and this is starting to develop collaborations often from overseas jurisdictions, because there's quite an interest down here in what the Blair government has been doing in the UK; a range of collaborations where the outcomes may be defined, and they can be defined quite broadly in terms of the UK Sure Start model and things like that, where it's actually, "Well, what are we actually trying to do in this community?" What we're trying to do is some longer-term outcomes.

The indicators and the accountabilities and the flexibility around different pots of money that go into that - the whole point of that is to have a level of flexibility, and there are a number of those projects where the whole point is to have flexibility so that perhaps, rather than having a family support worker working X number of hours a week and seeing this number of families, you might actually put the money through some sort of educational resource project. There's a range of different sorts of options. You have as few players as you can control in order to make sure that you can really tightly contain and manage the balance sheet of the project, if you like.

Certainly, it's a conversation that's worth exploring further, and I know sector colleagues who would be very interested in having - because there was a session run here in Melbourne, I think it was about 96 or 97, about competition in the human services sector, and I'm told by colleagues that it got a very high level of turn-up and there were some very interesting discussions about it. They've been saying that maybe we need to run the same thing again, now that the business environment is a bit different, to further explore these issues. Our basic premise is that we've got a conflict there and that you can't assume that competition in the human services area can be the kind of driving force for positive change that it might be in some other areas.

I won't talk about equity because we're going to run out of time. What I might do now is hand over for some discussion about utilities, in particular, and ask Andrea to speak to our comments about utilities and energy.

**MR BANKS:** Thank you.

**MS SHARAM:** I'm going to speak to three little areas. They will be much more expanded on, of course, in the submission. I'm going to talk to electricity pricing in Victoria, some of the impacts on security of supply and prices and actual competition in Victoria, being the lead state for competition. In regard to pricing, I'd like to urge the commission to approach the issue with a good deal of caution, because there have actually been very few studies and most of them have been quite limited - for example, they often exclude important data like rural prices. If you only count metropolitan prices, you're not getting the full story and it alters the average price outcome. Indeed, most retail prices are not publicly known, so there's a difficulty in obtaining the data in the first place. Important considerations don't go in there, such as price is only one-half of the equation. We must also look at price structure, because it's delivered in tariffs, so volume of consumption makes a big difference to the end outcome.

If we want to assess it from an economic efficiency point of view, we really do need an in-depth analysis of the losses and benefits to each customer class in electricity, to see who won, who lost, add it up and see if the winners outweigh the losers. That's actually never been done. It's a huge task, in fact, to undertake.

Changes in prices must also be considered from a market power perspective. In Victoria, half of the domestic customer base is actually avoided by retailers. 1 million customers are not subject to any competition, and it's no coincidence that that's those customers are with rising prices - rural and off-peak customers. So we need to be very cautious about assuming changes in prices reflect efficient economic outcomes. They may actually be reflecting the worst outcomes, which is the abuse of market power.

I can give some examples. I've done an analysis of the percentage change and cost to users, asking, "Are you a low-volume user, average or high?" and that sort of stuff. Some low-consumption users are paying nearly 14 per cent more in 2003 than they did in 1991, which is the appropriate base year. That's the year before the Kennett government came in and started the changes. The only winners really are high-consumption users, and this is domestics we're talking about.

If you go to people who also have off-peak tariffs, some of these customers are 24 per cent worse off than they were back in 91. We need to be very careful about what methodologies are used to determine those prices, because we have a lot of domestics who are much worse off now than they were in the early 1990s and a lot of the social supports that were around then have also disappeared.

The second point is about the impact on security of supply. The current regulation of the distribution businesses - and, indeed, the market structure - encourages growth in consumption, which has been a very big issue around the nation, particularly for summer peaking. We have regulated businesses going to regulators and seeking vast sums, but regulation actually encourages consumption. It does that because the only way they can increase their profits is by getting a larger capital base, from which they get their regulated rate of return. The fastest way to do that under the current regime is to encourage domestic airconditioning growth, and they are out there actively encouraging it. You can get interest-free loans to get airconditioners in Victoria; no problem.

We need to consider that that's really a market failure that's occurring there. If we see it from the perspective of price caps, what is the purpose of a price cap? If you're anxious about security of supply, which the Bracks government certainly is - you may recall that in the summer of 98-99 we had blackouts because we had a shortage. The strategy is to guarantee a revenue stream to generators to bring plant online earlier than the market would normally do, if the market would do it at all.

Our price caps are high. They have a high headroom excess in there, and that's going straight through to generators and they are bringing plant online, because in market generation - and it's the nature of electricity; it has to be instantaneously produced and used - it's always going to lag behind demand, so we are always going to have this sort of periodic crisis in peak summer times. This is mainly a result, of course, of airconditioning use at the moment, and we lack pricing signals. Domestic customers do not receive - indeed, do not pay their way. We have no form of user-pays for airconditioning use, which is causing all these calamities around Australia.

Research that has been done indicates that, for someone who doesn't have an

airconditioner, they could be saving \$200 a year, because those with airconditioners are being heavily cross-subsidised, perhaps as much as - some real customers with real data were used - \$1000 a year just on the poles and wires, without the energy prices, so huge cross-subsidies sitting there that have not been dealt with or addressed by the reforms. It's certainly one area where the contribution of market pricing could be very valuable. But, indeed, governments and regulators have been very slow to put those market mechanisms in there.

The Essential Services Commission, for example, brought out a decision on interval metering, which is the means by which it can be manually read; ridiculous decision. It doesn't advance us at all; spends a lot of money but doesn't advance it. We need real-time communications so that choice can actually be provided in a real fashion. That kind of system is being used overseas, in places like Sacramento, with great success.

Of course, the sovereign risk for security of supply remains with government, and the industry has been very clear about the fear of intervention. That is, in a sense, why we have these price caps. But if we remove price caps there's no guarantee of investment and generation at all. What we can always have a guarantee of is profiteering, so I think there needs to be more sophistication in looking at how the market dynamics work within electricity, because it's far from being a standard economic commodity.

Finally, because I realise we're very short of time, I want to take you into a completely different dimension here in full retail competition. I want to talk to you about BOZOs. I'm not sure if you've heard about BOZOs.

**MR BANKS:** Depends how you spell it!

**MS SHARAM:** As it sounds; sitting ducks and HVCs. This is the new literature coming out across a whole lot of service areas. It involves corporate strategies to acquire and shed customers, and this is very important when we talk about essential services. We're not just talking about electricity or gas or water. In fact, it goes into insurance, banking, telcos and even human services and hospitals - you name it - anywhere you have customers who do not really choose to use a product, where it's non-discretionary use, because you always have the issue of market power in that case.

BOZO stands for bringing only zero outcomes. These are the customers that the providers do not want. They would like to be about to shed them. HVCs are high-value customers. This is the attractive part of the market. Sitting ducks are those customers who you know you can exploit. You know that they have no discretion and you have the opportunity to lift the amount they pay without them

deserting, because they've really got nowhere to go. A classic sitting duck, in a sense, is the customer of a pay-day lender. No-one voluntarily goes out and pays several hundred per cent in interest on a loan willingly. They do it because they have no choice.

I've done research, and in all deregulated markets we're seeing the emergence of segmentation; whether it's in finance, whether it's in telcos or whether it's in electricity. So we see the rise of attractive customers and we see a pushing down on unattractive customers. Unattractive customers are getting assigned to what we call the residual market, where they lack purchasing power and where they are subject to market abuse. So our BOZOs end up being excluded or red-lined, as it's called in some areas, and our sitting ducks end up going into this exploitative residual market.

What we can say is that competition within essential service areas actually results in simultaneous competition and simultaneous monopolies. If we want to talk about competition, we need to think about that. We need to think about how we have a safety net or a community service obligation. We have to think very hard about how we get around this dynamic that occurs in the market, because if you've got people who are subject to market abuse at one end you clearly need a CSO which is far stronger in order to protect them. You might actually say that it's more efficient not to provide them under a competitive regime at all, because you're going to have some people locked out who you'd prefer not to have locked out.

I'll say one thing for price caps: they do work to inhibit market segmentation. Customer inertia also is inhibiting it. In Victoria, the market is not working. Customers, in effect, are rejecting it. My research - my PhD - shows that there are very strong attitudinal issues involved with the market. People don't trust it, and they're not likely to change in a hurry on that. We have a big question about how much it has cost to go to full competition, because it's billions of dollars nationally, to how many outcomes we're getting. We need to be really careful about that, and governments need to be very careful about the kind of safety net, because the safety nets we've seen in Victoria are discriminatory. They, in effect, create this residual market. They, in a sense, exploit the people that they're supposed to be protecting, because they're the ones stuck in there. They're going to pay a higher price than is supposedly achievable in the market.

It's very complex. It's quite new thinking, but there's been very good research coming out of the UK and the US, where this stuff is kind of all now just coming together, to be very new, to understand. Certainly, I know there's literature within the competition law area about defining what is submarket and what is market segmentation, and people are appreciating that this is a very new phenomenon really that did used to happen very crudely but happens now with great sophistication because of advances in IT and data mining and data warehousing.

**MR BANKS:** What you're saying there, when you talk about exploitation, is that people are being charged more than it costs to provide. Is that what you're saying?

**MS SHARAM:** They're being charged as much as they can bear really, and some in distress.

**MR BANKS:** But that can be a good thing, in a sense. If they can't bear much cost, then they will presumably be charging less and those that can bear more, because they're well off, will be paying more.

**MS SHARAM:** Then they become excluded from the market. If you can't afford to pay the asking price and there's no other provider, then they'll end up being excluded.

**MR BANKS:** Again, does it come back to them not being able to afford what it costs or not - - -

**MS SHARAM:** I think the issue is not thinking about what is the cost of the service; it's about what the service provider, through its market power, can charge.

**MR BANKS:** But hasn't the NCP had as a major objective to reduce market power, and therefore to create competition? So in a sense you're saying that it's failed on that most basic tenet.

**MS SHARAM:** I'm saying that there's a failure to recognise the operation of market power. If you have customers who have very little purchasing power in a market and have no choice but to consume - I mean, people don't say, "Oh, well, I'm not going to consume electricity this week." They just don't do that. They don't say, "I'm not having my appendix out this week." They will be forced to pay, if necessary.

**MR BANKS:** Yes, but retail contestability is something that I suppose is trying to address that. Retail contestability was never based on the premise that everybody would move every day, but rather that there would be contestability, at least at the margins, so that the retailers would be on their toes.

**MS SHARAM:** Well, we have price caps at the moment, so in a sense everyone's - most of the market is just sitting where they are because frankly they are mostly disinterested in that. Market prices are shadowing the price caps and, of course, they're going to do that. Why would you charge much less? There's only competition at the fringes, and that's the same as in the UK, and they engage in third-line discriminatory pricing and that type of thing. What was the example?

**MS SMITH:** I was just thinking of the example in terms of if you had real competition, it would be different. We don't actually have that because we've got a number of large providers who have got a certain approach that they're wanting to expand in terms of national marketing strategies and national structure, so you end up with the larger companies potentially - because of the ownership arrangements, potentially you'll have smaller new entrants into the market being bought up and closed down by the large operators, and where the small operators are actually bringing in or suggesting measure that may actually be more customer-friendly or more flexible, the buy-up and close-down principle will mean that they won't get the chance to actually expose those to the market anyway, and given we've only got 20-odd per cent - - -

**MS SHARAM:** There's one example of a community based aggregation scheme, which was supposed to be about giving them the purchasing power in a market. That aggregation group had a contract with one of the big three companies, and they specifically wrote into their contract, "There shall be no discrimination. You shall not credit reference. Anyone who wants to be in, shall be in." Now, the company just ignored that contract condition. In fact, the contracting parties were so unequal that the small party couldn't even think about taking legal action on that, take on a huge corporation. So they did want to exclude those customers.

We have an obligation to supply, and that's the main reason why people are choosing - you know, they still get electricity. As soon as that obligation goes, we will see quite a different environment in Victoria, but the government has got legislation in the house at the moment to extend the obligation until 2007.

**MR WEICKHARDT:** To extend - sorry?

**MS SHARAM:** To extend the obligation to supply for electricity and gas.

**MR WEICKHARDT:** Right.

**MS SHARAM:** If there's no obligation, it will just be like housing - people who can't afford houses are excluded from owning houses. People who then have to have a house, they have to pay high rents because they can't avoid it. If you want the thing, you have to somehow - you will be economically exploited.

**MR WEICKHARDT:** Given that obligation to supply, I'm sort of missing the point somehow about how safety nets exploit some people.

**MS SHARAM:** The government's obligation to supply is linked to specific tariff, so if you can't get a market contract you have to go to the safety net tariff. The safety net tariff is the most expensive price in the market currently because it contains what

they call the "headroom", which is in a sense the competition premium. It's deliberately set high as an incentive for customers to get off them, because the intention was to get everyone off these initial tariffs and for there not to ever be a safety net tariff - that was the original conception. So they're trying to get people to move. But of course politically it hasn't really worked out that way, and when I talked about the security supply issue, there are other matters that come into consideration here. So government doesn't want most of its household population exposed to very volatile and high prices, and price caps work for everyone concerned, in effect.

**MR BANKS:** But as you say, it makes it rather hard to then get sensible market operating in relation to airconditioning equipment and so on, because it's sort of homogenised pricing.

**MS SHARAM:** But I would put that airconditioning issue as one that's not necessarily about market as about choice. You can have choice without just having it thrown open to the market.

**MR BANKS:** So how would you get rational use of airconditioning equipment?

**MS SHARAM:** Well, your provider needs to give you the option of user-pays or behaviour change, so you have a choice about which way you want to go. If you want your airconditioning in summer 24 hours a day, then you simply pay it, but if you don't want to pay that then you have to modify your behaviour, so it's about that kind of choice.

**MS SMITH:** I guess what we've seen in Victoria is block tariff arrangements being introduced around water, and I think that's an interesting one in terms of working through what does block tariff mean, in terms of gas and electricity use and how you deliver a community's service obligation, obviously for low-income larger families that need more power or can't get access to energy-efficient appliances. But to actually internalise some of the environmental and social issues into a block tariff - we haven't yet seen the result of this with water because it's only just come in in Victoria, but I think it's a really interesting one in terms of you can actually integrate environmental and social into your price path.

**MS SHARAM:** Yes. We have no pricing principles whatsoever. What we've seen, in the 1980s there was huge reform orientated to providing equity and environmental principles, which meant low standing charges and the more you used, the more you paid. That was all turned upside down with the reforms. So we have now very high standing charges and we have these incentives to consume more, and people are indeed incentivised, in that they're consuming a lot more. Partly it's the change of lifestyle, of course. I'd say the thing about that change is that high supply charges



give a guaranteed revenue stream.

We were told back in 93 when Kennett doubled the supply charge that it wiped out all the cross-subsidies to households, yet every year our prices go up and we're told it's about economic efficiency; it's washing out all the cross-subsidies. You can't have your cake and eat it too. It either did or it didn't, and my opinion is it washed them out, and now what we're seeing is companies using their market power, because there's no-one on the other side trying to rein them in. The regulator, for example, quite blindly uses the rationality that if prices are going up it clearly reflects efficient outcomes. So he's only looking at one criteria instead of looking at - there's two major criteria.

**MR WEICKHARDT:** Sorry, say that again: the regulator?

**MS SHARAM:** He believes that if prices are going up, it reflects the washing out of the cross-subsidies.

**MR WEICKHARDT:** I haven't heard any utility who in Victoria who thinks the regulator is a sort of pussy cat. Most of them think the regulator is big, bad and ugly, so the regulator has presumably been convinced in some ways that there is still further rebalancing required.

**MS SHARAM:** We don't have strong advocacy in any utility areas. I mean, our distribution businesses get \$60 million just to review the regulation around the poles and wires. We have, you know, maybe \$100,000 once every five years. So there's a big asymmetrical regulatory bargain here. If we don't have the data, neither does the regulator, really.

**MR WEICKHARDT:** Really?

**MS SHARAM:** Those are very traditional issues in utility regulation but the industry always says "big, bad wolf", and we'll always say "big, bad wolf". But the reality is that there is public documentation saying those subsidies were washed out by these public actions, so how can price rises be equated to those subsidies? If they wanted to say, "Well, it's peak pricing," then we accept it, but it's always put in terms of, "It's about washing out subsidies."

**MS SMITH:** Moving on now, the other one I was going to ask Cheryl Wragg to speak to here was issues around regional and rural impacts, because we felt this was one where we've got something to say. So Cheryl, I might let you do this.

**MS WRAGG:** Given the short amount of time available to prepare for today and given the density of the review report, what I thought I would do is contain my

comments to page 101, box 5.7, entitled The Adjustment Experience of Gippsland Victoria, in the report. I just want to say as an opening comment that from a Latrobe Valley, Gippsland perspective, this review is immensely important, and it's not just about - from a Gippsland perspective - confirming whether politicians and policy makers got it right or wrong; it's about real impacts on real communities. Given that Victoria was the lead state in terms of corporatisation and privatisation of our utilities, I would have thought that Latrobe Valley, Gippsland, actually provides an opportunity for a litmus test on the effectiveness or otherwise of national competition policy. How many people travelled down from the Latrobe Valley today to participate in this hearing?

**MR BANKS:** I don't know.

**MS WRAGG:** How many people over the history of this review, this particular review, have come from the Latrobe Valley? Just a guess. Benchmark?

**MR BANKS:** Sorry, how many?

**MS WRAGG:** How many people over the process of this review have come from the Latrobe Valley?

**MR WEICKHARDT:** I don't understand the question, sorry.

**MS WRAGG:** How many people are presenting from the Latrobe Valley on the contents of this review?

**MR WEICKHARDT:** I don't think anyone specifically has come with, if you like, a Latrobe Valley hat on.

**MS WRAGG:** I think that that's a real problem with your process, and I'm going to help you today because I'm from the Latrobe Valley. I'm from Moe.

**MR WEICKHARDT:** Well, one is the answer.

**MS WRAGG:** But seriously, very important, you should be taking this review down to the Latrobe Valley. I think in terms of the case study contained in box 5.7, I ask you, why didn't you write that with reference to the public interest test criteria? You had a great opportunity to do so, and more than that, I believe that the Productivity Commission has the responsibility to do so. The public interest test is sitting there to be used, and if you want it to be taken seriously, you have to start using it. You have to start applying it. The Latrobe Valley provides not only the possibility and the opportunity but I think you have the responsibility to start assessing what the real impacts of national competition policy, corporatisation,

privatisation, were and are on the Latrobe Valley region. And you haven't done that in this report, in my view. So a key recommendation: put in place a process that takes this down to the Latrobe Valley so you can find out and start making a real assessment instead of what appears in page 101.

Now, as your case study is currently written, not only does it ignore the criteria of the public interest test, the language in this description actually neutralises the environmental, the social, the historical, the political and the ethical dimensions of the so-called adjustment experience in Gippsland. It's neutralised. You get to the end of this case study and you think, "Oh, well, everyone down there must be happy now," because in the last paragraph, "These initiatives have facilitated adjustment." Problem fixed. No. Wrong. Factually incorrect. Just going back to the importance of this review, there are expectations about the quality of the research and the process that the Productivity Commission uses, and the first comment - apart from referring to page 101 - I refer you to the references at the back. You really haven't got very much in there about the Latrobe Valley at all, other than this little doozy of a document called Latrobe Valley Ministerial Task Force, which is really not worth the paper it's written on, although it's quite interesting too; and I'll refer to that later.

I'm going to refer to some documents like this one. The Productivity Commission needs obviously to be reminded that the Latrobe Valley region is one of the most studied regions in Australia. The baseline data is already sitting there. This report entitled Latrobe Valley Employment and Training Study is one of a series of six that was done in the 1980s, commissioned by the Victorian government. These kinds of reports set the baseline data for what the economic situation was in the Latrobe Valley. If you know what it was, then you're in a better position to start assessing what the impacts were.

**MR BANKS:** Has that study been followed up with subsequent studies of that degree of detail?

**MS WRAGG:** In the last 10 to 12 years, to my understanding - and I'll refer to this later in my presentation - unfortunately one of the things that has happened is that there has been an absolute dissolution of the processes, the committees, the fora that existed in the Latrobe Valley to produce these kinds of things. They were all taken away as well. So we lost the Latrobe Regional Commission, we lost the Latrobe Valley Consultative Committee; Gippsland Trades and Labour Council basically became defunct for 10 years. So those bodies that were responsible for feeding into government process in terms of planning - social planning, economic planning - decision-making in the region, disappeared. So who's going to do the reports for you?

I do understand that the CFMEU commissioned Bob Birrell from Monash

University, who was involved in these earlier reports, to undertake an impact assessment, and that research is available. I have contacted the CFMEU and my understanding is that they have contacted the Productivity Commission and will be making a submission to you on the basis of their more recent research, which was done about three years ago. It's very very important, because as you would all be aware, privatisation, corporatisation, was an ideology. The people are looking to justify that ideology, and one of the ways that they justify that is (a) ignoring the impacts in the Latrobe Valley, and then subsequently glossing over it. Not right. It needs to be fixed.

I think that when you fix that, when you start addressing these problems, these issues, these impacts, accurately and honestly, then you actually provide yourself a basis to assess whether or not national competition policy is working or not, against a public interest test where the public is defined as the community of the Latrobe Valley for that purpose.

**MR BANKS:** Just on that, clearly - it comes out in our modelling work as well - the Latrobe Valley has been the region where there clearly has been a negative effect from those reforms. Is your point that that would preclude reform that would have such an impact, or is your point that the adjustment process in Latrobe Valley wasn't adequately addressed?

**MS WRAGG:** There wasn't one. These sorts of reports were written to try and guide planning and adjustment into the future of the Latrobe Valley before we had national competition policy - you know, this notion of it's an immensely important region in terms of the economic underpinnings of the whole state, and therefore what happens there is important to the rest of the state, so we'd better get it right. Now, that kind of thinking disappeared because it turned into a rape and pillage and plunder. You transfer the wealth out of the Latrobe Valley, the wealth creation out of the Latrobe Valley elsewhere. That's one of the transfers that comes out of privatisation and national competition policy. So we lost that ability for proper planning in the area, and that's one of the impacts.

For reasons of brevity, I'm just going to give you some other economic indicators which are not mentioned here, from a local perspective - not mentioned really in the report at all. Just looking at the first dot point, this opening comment, "to meet these other economic indicators", I don't actually understand what the commission means by that dot point 1, starting, "The commission's modelling projects", "the negative effects of reforms", blah blah, "were fully offset". What does that mean? Does that mean the lights didn't go off, that the gas kept coming and the forests kept falling; that the outputs from the valley kept continuing; it didn't really matter what you did in the valley, the lights stayed on? Is that what you mean by that? Because I don't really understand that first dot point appearing in the report.

The second dot point seems to suggest that, "Oh, gee, there might have been a bit of unemployment as a result." A bit of unemployment, you know, might actually impinge on the notion of public interest test, and really, those two dot points start unscrambling I think completely in the third dot point, where you start getting into some real numbers. The real numbers that are mentioned in the third dot point are that there were about 4400 jobs displaced in the Latrobe Valley. Let me say to you that that figure is categorically wrong, absolutely wrong, and should not appear in this report. In fact, the total job loss out of the SEC Latrobe Valley was 7000, and if you use the previously determined ratios of how many jobs one SEC job carries in other industries in the Latrobe Valley - there is a job multiplier effect from SECV jobs - every one SEC job had a multiplier effect in the wider economy, creating 2.6 jobs. Already substantiated; proven. In fact this report goes through each of the industries in the region and shows what the multiplier effect is.

**MR BANKS:** Could you tell me who authored that?

**MS WRAGG:** This was authored by people from Monash University but it was done for the Ministry of Employment and Training and included considerable consultation right across the region at the time. So it goes through and it can tell you how many timber, milk processing jobs, how many other jobs are related to those jobs in the wider regional economy. What it says in here is that you find the greatest multiplier effect when the region is using resources, natural resources found in that region and transforming them into products in that region and then shipping them out. That's where the wealth is created. That's where the wealth is generated. More labour-intensive sectors like retail, human services and so on, don't create that wealth. They pick up on the wealth that is created from the transformation of those natural resources at the local level. Right?

**MR BANKS:** We did pick up the aggregate reduction which is very significant, a 12 per cent decline in total employment in that region between 91 and 96. I should say, I get the impression from your remarks, that you think we were just trying to put a really positive spin on this.

**MS WRAGG:** Absolutely.

**MR BANKS:** That certainly wasn't our intention and if you have information that will allow us, within the confines of the amount of space that we were devoting to that - we don't pretend that it's a full case study, but if you have information that will help us with that, we'll certainly take it into account.

**MS WRAGG:** Absolutely. Look, please understand what I'm expressing to you is some frustration, but if you went down to Latrobe Valley you would hear a whole lot

more frustration because over the years we have seen, over and over again, glossing over what the reality is. People are quite desperate to actually start breaking through and get to the reality of it. Just on the job point, if you use the multiplier effect, if we're talking about 7000 job loss, multiply an additional 18 and a half thousand jobs lost in the region. So total job loss around 21,000 in the region.

**MR WEICKHARDT:** Having noted all that, you said the public interest test should have been designed around the public in the Latrobe Valley, but I think the public interest - - -

**MS WRAGG:** No.

**MR WEICKHARDT:** - - - test is meant to look at the welfare of Australia as a whole.

**MS WRAGG:** No, please don't misinterpret me. What I said was that I think the Productivity Commission should, as an important part of this review, apply the public interest test to the assessment of the adjustment experience in the Latrobe Valley, where the public is defined as the community of the Latrobe Valley for that exercise.

**MR WEICKHARDT:** Right.

**MS WRAGG:** Because it's never been done.

**MR WEICKHARDT:** But if there were, hypothetically - and I don't know what the answer is - a demonstrable benefit to Australia as a whole, but a very big adjustment to the community in the Latrobe Valley, do you accept that it would be legitimate from an Australian total welfare point of view still to go through the process but have a much better adjustment package for the people in the Latrobe Valley?

**MS WRAGG:** No, I don't, because I think that the rest of Australia is in turn connected to what happens in our utility sectors. I would argue, for example, that the apprenticeship training loss out of the SECV - and this has also been researched recently - of around 300 apprenticeships per year, which took place, that loss took place at the same time as we also lost, for example, electrical apprenticeship training because of the privatisation of our public transport system. SEC and public railways were the two biggest trainers of electrical apprentices in the state.

Victoria University of Technology undertook research in 1999 to examine whether there is a skill shortage developing in electrical trades areas, right? And they found, and couldn't pin it down to any national change or changes in the

national economy, that the direct result of state government getting out of apprenticeship training has put Victoria in the position where we now have - to bring us up to the state average of other states in Australia, you'd have to employ an additional 570 electrical apprentices per year. Now, it's not very far from saying what happened in the valley, what happened in terms of privatisation generally, has actually undermined the skills training of Victoria and this is actually becoming the engine room for the development of skill shortage right across Australia.

**MS ATKINS:** I think that point highlights that the way the public interest test is currently conceived is very narrow. In our first submission, in our joint submission, we argue that that public interest test needs to be broadened so that it's not just focusing on economic measures, but you do look at those broader social, cultural and environmental measures. If you start looking at the public interest test with that sort of framework, you will pick up those broader impacts, whereas currently a lot of those will be missed.

**MR BANKS:** I guess that's the fault of the way it's been applied, because it does enumerate a range of social, environmental and other impacts.

**MR WEICKHARDT:** And indeed, it's not prescriptive. I think it doesn't disallow those carrying out the review to consider other factors. Of course, you might point out that it doesn't prompt them to consider other factors, and there were modifications suggested, for example, to include regional effects and things of that sort, which haven't yet been formally written into the public interest test but were suggested as improvements. But I guess the point Gary was alluding to was that some people have said the problem has not been, if you like, the public interest test itself, or the philosophy behind it, but more the way it was not applied or - - -

**MS WRAGG:** Exactly. I concur with what my associates are saying, but I also believe that it wasn't actually applied; that this whole policy push was driven initially by ideology - here in Victoria, absolutely. It was a big experiment, a great experiment which was picked up by the feds and became a federal grant experiment and in fact it's not a long bow to say that national competition policy is now the engine room for skill shortages being experienced across Australia. People might end up with a little bit of extra cash in their pocket that they've saved on their electricity bill - maybe - but that isn't going to help them if they can't get an electrician in to fix their house, right? Because that's where we're up to.

The Victorian University of Technology research - and I was on the team at the time it did that research for the industry - found that not only was there no big players in apprenticeship training left in this state but the private sector didn't pick up where the public sector left off. Of 23 labour hire companies that we interviewed across the state, not one had an apprentice on, and none of them had apprentice

training facilities. The big companies are not picking them up. In fact, you know who we are dependent on in this state for electrical apprenticeship training is family-owned electricians who have a personal commitment to training a son, daughter or nephew. That's it.

**MS SHARAM:** I would add that this is also a consequence of incentive regulation for regulated businesses. The businesses are not rewarded for operations and maintenance. They're rewarded for capital investment, so they let stuff fall over and then buy a whole new unit. So they're not rewarded, they don't get a rate of return on employing an apprentice and, indeed, that's an area targeted for cuts. Right across the electricity industry there is a problem with skill shortages. It's a very ageing sector. There is a crisis to come. We've been to the regulator and said, "There's a market failure here. You need to have responsibility." We're trying to import these workers now, except that every nation that has done this - especially if you've got English as a language - has gone through the same problem. So these are now workers who can command quite substantial wages, but for an end user that means prices must go up. It's better in the longer term to have a steady training regime than to go through periods of prices where you can't get workers, and they're very very expensive.

**MS WRAGG:** You can't employ a boilermaker for the award rate at this stage - you cannot. They can ask whatever they like because there simply aren't enough boilermakers around; ditto electricians, ditto fitters and turners. In addition to the VUT research that was done for the Electrical Contractors Association and the union, the ETU, I understand the Engineering Skills Training Board in Victoria at the same time did similar research into all of the metal trades in Victoria with similar results. And you want to pin that back, you want to find what the source is. We did it at VU, we tried to find what it was, and we pinned it down conclusively. It was government no longer participating in apprenticeship training; no longer SECV apprentice training our next - training 300 apprentices a year; no longer public railways training electrical apprentices.

The average age of line workers back in 2000 was 53 years of age. We found 40 line worker apprentices in the state. Who is going to keep the distribution system going if you don't have a trained workforce to do that? That is what we are facing. With the attrition, people are retiring because they're older and you can't stay in there forever, particularly this very heavy manual work - big problem. As I say, in the Latrobe Valley, you start there in your assessment and it gives you the full litmus test. Right? It gives you an opportunity to start tracing through what are the larger ramifications of this.

To move on, some other economic indicators: region unemployment is still 15.5 per cent in Moe, around 15 per cent in Morwell - three times the national



average. It's been that high for 12 years at least. Average income in Latrobe Valley: household basis, \$30,000 per annum. It's not very much money. Youth unemployment: I don't have the figure, but I imagine it's much, much higher than the adult unemployed figure; it usually is.

A friend of mine in Moe did a walk around the shopping centre a couple of weeks ago before I knew about this commission, and just did it because that's what you do in Moe. You walk around and see how many shops are empty. We all know that of 130 shops there are 60 sitting empty. They've been like that for a long time. In fact, I'd say the shopping centre in Moe is at that critical point where if we lose too much more, we're not going to have a viable shopping centre left in the town.

One in five families in Latrobe Valley is a single-parent family and that reflects in part the ongoing practice of the state government to engage in welfare dumping into our community. It's been going on for a long time and when the economy was bubbling along quite nicely we could absorb and look after those people. Well, we don't have an economy left in Latrobe Valley basically, so how are we going to look after these families that are dumped into our region? They're put there because of the availability of public housing, and they are destabilising neighbourhoods where there are more elderly residents who are starting to get a bit worried about security issues, because these people have got no work and no job prospect.

Something that's not talked about very often is the absolute collapse of regional housing and property prices during the 1990s, and that's absolutely logical when you think about it, when you've got over 21,000 people without jobs and trying to escape the region and they put their houses on the market. What happens to property prices? What happens? My family home in Moe, one of the nicest streets in Moe, we front on to 75 hectares of beautiful, beautiful bushland; the house was renovated in the 70s, three-bedroom, landscaped gardens and my family home was valued five years ago at \$33,000. It wasn't enough to get my father into a nursing home. That was his asset. That was it.

You talk about real impacts here. The house five doors up, renovated with gas central heating, spa bath, on the market for three years; couldn't sell it. Owner finally took \$60,000. Our street has only got 13 houses and this is what people in Latrobe Valley do, they watch their assets disappearing. That's what you do. We all know. Two doors up, the house, four-bedroom, on the corner, bushland, two fronts, extensively renovated upstairs, everything done - everything done - on the market for a year. Finally the owner took \$70,000. He had to take \$70,000 because he couldn't afford to carry the cost of the renovation any longer without some sort of return.

At the same time all of this was happening, talk about national competition policy, the interactions with state government policy has been an absolute disaster

because the Housing Commission, state government decided it would offload some of its older Housing Commission stock at the same time as the real estate market and property values collapsed. How much did they sell the houses for? The house next door, \$22,000. So what do people do? I heard of cases in the mid-1990s where families were so desperate to get a job that they locked up their house and they walked away. They left their only asset and they went. They had to go. They couldn't sell it. Couldn't get a job; couldn't sell their house. What are they going to do?

I notice in the case study that there is no mention of the suicide rates. Do you want to know about the adjustment experience? Start talking about suicide rates that came out of the adjustment experience in the Latrobe Valley.

**MR BANKS:** Could I say this: I notice you've got a number of pages there. Would you make those available to us?

**MS WRAGG:** Yes, I will, but I really think you need to start getting to the heart of what's happened down there. The Latrobe Valley Ministerial Task Force just to finish - nonsense. Lies, deceit, window-dressing - right? At least 50 per cent and probably 75 per cent was recurrent projects that were put under the banner of Latrobe Valley Ministerial Task Force. The bigger projects like the Lurgi gas plant demolition, which was characterised as a key adjustment project, was contracted out of the valley. No jobs for valley people in that project. The Fast Train Project - not a valley project; state project. Not very many jobs for valley people down there. I know because they've got the people they shipped in to do the job living in portables next to the railway station in Yarragon. Not valley people - right? Justice precinct? That's all right, build a courthouse and a few more new police stations and lock people up. Rubbish. We'll leave it there.

**MR BANKS:** Thank you.

**MS WRAGG:** It really makes me angry.

**MR BANKS:** No, I do understand that and, indeed, perhaps we were asking for it by trying to indicate in a brief way some of the sort of more aggregated information.

**MS WRAGG:** You people are in a very important position. People in the valley rely on people like you to do your job properly so that our story gets out there and so we can get the structural readjustment programs that we need and that are owed to us. Right?

**MR WEICKHARDT:** Have there been any good structural adjustment stories in the Latrobe Valley; anything you could build on and say, "We need more of that"?

**MS WRAGG:** No.

**MR WEICKHARDT:** Nothing?

**MS WRAGG:** No, not one. Nothing.

**MR WEICKHARDT:** So apart from sort of wishing it all hadn't happened, what would you recommend is done that would actually be a positive?

**MS WRAGG:** One of the problems with this process is you lose your community based advocacy planning thinking about how this thing should look. You lose the Latrobe Regional Commission, the consultative committee, the GTLC. When various governments say, "Well, how do we improve things?" then what you get is street beautification. That's what you get, because the community has lost the capacity to come up with and articulate what it needs. So you need to put a few of those community planning processes back in place and fund them, because when the SEC got shut down the advocates lost their jobs. Who is going to fund advocacy?

The place is so shut down; if you open your mouth you don't work there any more. I can talk to you like this because I don't have to work down there. I work across the road here at VCOSS. If I worked there I wouldn't be sitting in front of you today, because if I go back there and people find out what I've said, I don't have a job any more. That's the reality. So how can you get sensible, forward-looking community advocacy that is focused on planning for the future of this region where people are too frightened to speak?

So step one is start looking at that and step 2 might be to start looking at some of the industrial relation problems. Talked about IR problems before and they are big IR problems now, because again if you open your mouth you get the sack. Right? Put some jobs back into the valley. I think the state government has got to start employing apprentices again. Someone has got to.

**MS SMITH:** This is really an enhanced description around a particular rural and regional impact which is of particular importance to the state, and in terms of the broader economy. As well as really analysing and evaluating and looking at the longer term impacts, I think it comes back to the thing about putting in some of those broader - and really validating and, if you like, privileging some of those broader indicators which are not just about economic impacts. I mean, it's a project that People Together was very active on during the 1990s.

There is a lot of work being done in Victoria on that, around looking at how else you measure wellbeing. There is a really useful range of work - one we'd be

very happy to provide some references to the commission around - around social indicators and some of the longer-term social impact assessments, which is not necessarily just about how do we deal with this issue right now, but what are the likely impacts and what are the likely implications over time and, therefore, how will that impact longer-term?

In terms of all that triple bottom line, I think time makes it a quadruple bottom line because it's not just the social, environmental, economic now, it's actually the time which we'd say is now something that is demonstrable in Victoria because of some of these things. So you can actually look at that quadruple bottom line issue, if you like, and you've got a number of living experiments in this state that would help demonstrate those issues.

**MR WEICKHARDT:** As you would have seen in the report, we've suggested that adjustment issues need in the future much stronger consideration. What we're trying to do is see a way forward which doesn't stop useful reform and it's inevitable that all sorts of reform change will produce some people who get disadvantaged. The question is can we envisage a better way of handling that, still so the whole community, the broader community, of Australia is better off, but so that individuals don't get sort of damaged in the process?

**MS SMITH:** I guess part of the reason why we have focused very heavily on utilities and energy is for historical reasons, and there is a range of other human service and transport issues which we'll talk about in our submission, but I think one of the dilemmas we find ourselves in is being told that something is a fait accompli. Obviously where things are to do with inevitability of globalisation of particular industries, Victoria is a major manufacturing base. There is a range of discussion to be had around that and whether something is inevitable or not.

I think quite often we feel that we have to respond to things with a view that, "Well, this is inevitable; change is going to happen. Now let's try and ameliorate the result." But for us there isn't a real rationale for change because the rationale for change is based purely on economic bottom line, not on a broader assessment of the rationale for change. We end up being caught up in the amelioration processes, rather than on actually having it demonstrated to us that there is a real rationale for change.

**MR BANKS:** They're going to turn the lights off in a minute. Before we close and we have been here a little while, one point you didn't raise was health and what your views might be on the way forward there: in particular, just any comment you might have on our notion that this was (a) an important issue; (b) that it was something that COAG could perhaps most profitably advance.

**MS SMITH:** Yes, we do support the view that COAG is a suitable forum. We think COAG is a very suitable forum for coordinating national reform. Carolyn, did you want to speak to where we're aligning ourselves in terms of the NCOSS view around competition?

**MS ATKINS:** I guess we have some concerns, yes, around how those potential costs and benefits are going to be played out and think there needs to be careful consideration of those. But we think if the process can be established through COAG, those can potentially be worked through in that way.

**MR WEICKHARDT:** So you accept it's an important area that should be looked at?

**MS ATKINS:** Yes.

**MR BANKS:** We've had submissions made to us that COAG may be excessively short-termist in its approach.

**MS SMITH:** The trouble is that, with health, it's the classic one where you've got all layers of government involved. So, yes, there is always the risk of short-termism, but you couldn't have a process that was either local, state or federal driven; it has to be something that has got some level of intergovernmental. How you actually make that work to avert the short-term thing is probably another question, but given the key players are from all levels, I can't quite see how you could do it without using that forum.

**MS ATKINS:** There are the discussions at the moment - I mean, hints. Minister Abbott is sort of giving strong hints that the Commonwealth would like to take health completely out of the states, but until that happens I think, yes, COAG is probably one of the better forums.

**MS SMITH:** And because it's not just about hospitals, acute health, if you're looking at the major projections and planning that needs to occur around the ageing population and that scary fiscal gap that we see on those projections, that's where it's really important to take into account issues well before the acute health crisis issue that - you know, A and E waiting lists, which is the thing that policy-makers seem to be responding to in the last few years. We really need to move beyond A and E waiting lists to crisis issues, around ways of structuring and planning for effective services; certainly things such as choice to be able to remain at home and the related services that are required to support people to remain at home, rather than shifting the cost into the acute health system.

That's something that really does entail quite a few players and it really needs a

process that does involve those players because of the issues on carers' issues: the range of cost-shift issues that we see every day around that sort of very demand management driven approach around acute health only and seeing it as a very clinical medical model which is not actually about services for an ageing population.

**MS ATKINS:** Yes. Given the number of players, I think if you went down the path of applying competition to health, you'd need to be very careful that those issues that we were talking about at the beginning, that competition didn't undermine the collaboration, because within health, particularly where you have people moving from acute to subacute and then back into community based services, it is critical that all those agencies talk to each other. If you set up competition between them, you are very likely to undermine the care that person is going to receive.

**MS SMITH:** And the resulting cost when resources are diverted from people that do not have acute issues. In order to demand-manage the acute, you will then end up with a cost because you're not keeping another group altogether out of the health system 10 years from now. So I think it's the long and short-term issue.

**MS ATKINS:** Yes. With monitoring the short-term, in the paper you talked about the implementation of the competition policy will need to be monitored and closely followed. I think a key question will be who will be doing that monitoring and keeping an eye on what those impacts are? That will need some very clear thinking through.

**MR BANKS:** All right. Thank you very much.

**MS SMITH:** You've given us well over an hour.

**MR BANKS:** We've given you a very good hour, I think.

**MS SMITH:** You have.

**MR BANKS:** We've had a very useful discussion. We'll look forward to receiving that additional material, including the material on the Latrobe Valley. Thank you very much. That concludes our hearings in Melbourne. We'll adjourn the hearings now and we're recommencing in Canberra on Monday morning. Thank you.

AT 5.53 PM THE INQUIRY WAS ADJOURNED UNTIL  
MONDAY, 13 DECEMBER 2004

## INDEX

	<u>Page</u>
NATIONAL COMPETITION COUNCIL: DAVID CRAWFORD JOHN FEIL ALAN JOHNSTON	110-135
LAW COUNCIL OF AUSTRALIA: PHILIP WILLIAMS	136-146
AUSTRALIAN GRAIN EXPORTERS ASSOCIATION: ALICK OSBORNE ROBERT GREEN	147-154
AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING: TIM SMITH JULIE MOSS JULIANA STACKPOOL SITESH BHOJANI	155-166
MATERNITY COALITION: JOY JOHNSTON	167-173
GOVERNING ETHICS: RUTH KERSHAW:	174-184
LIQUOR STORES ASSOCIATION OF VICTORIA: PETER WILKINSON TONY O'BRIEN	185-196
MONASH MEDICAL CENTRE: RICHARD HARPER JOE MERCURI	197-208
VICTORIAN COUNCIL OF SOCIAL SERVICE: CATH SMITH ANDREA SHARAM CAROLYN ATKINS CHERYL WRAGG	209-234