

THE AUSTRALIAN PSYCHOLOGICAL SOCIETY'S
RESPONSE
TO
THE PRODUCTIVITY COMMISSION'S
REVIEW OF NATIONAL COMPETITION POLICY REFORMS
DISCUSSION DRAFT
(CANBERRA, OCTOBER 2004).

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INTRODUCTION:

The Australian Psychological Society (APS) welcomes the opportunity to respond to the Productivity Commission's Discussion Draft and its accompanying documents. The APS is the national body representing Australian psychologists and has over 14,000 members.

Our members work across a number of fields and levels of analysis and action. They function in various industries and types of organisations, not just in mental health arenas or with individual clients. Many work in a close interdisciplinary or multidisciplinary way, with other professions and disciplines such as engineering, economics, education, sociology, management and administrative "theory", medicine (including psychiatry), physiology, biology, occupational therapy, social work, and so on.

Throughout all this variety of scientific and professional work runs a common theme of commitment to scientific theory-building and "evidence-based" applications, as well as to ethical use of professional knowledge and methods in active pursuit of improvements in the human condition.

PRELIMINARY OBSERVATIONS AND QUESTIONS:

We note that the Discussion Draft is the centrepiece of a second stage of a substantial (but not comprehensive) consultation process, being preceded by the dissemination of an Issues Paper and consultations with some specific groups such as those with regional and remote interests. Before proceeding to comment on the substance of the Discussion Draft, we wish to reflect briefly on and raise questions about the nature of the Productivity Commission's immensely difficult task of reviewing NCP reforms, the evaluation methods applied, and the forms of consultation adopted. Our reflections may at times be critical but are intended to be of value to the Commission as feedback generally, and especially when it converts the Discussion Draft into a final report to the Council of Australian Governments (COAG).

Too large and complex a draft:

We appreciate the enormous amount of thought, time and effort that the Commission has put into the preparation of the Discussion Draft and its accompanying documents.

However the very size and scope of the Discussion Draft (353 pages), with its supporting documents (notably the 44-page Draft Research Report "Economic Implications of an Ageing Australia" and its 100-page Modelling Supplement) make it a difficult document to digest and respond to meaningfully. For some individuals and smaller organizations, the staffing, financial and other costs of downloading, printing, digesting and preparing responses to these documents would constitute a real barrier to making a considered submission.

Such is the length and complexity of the Discussion Draft that it is not possible to comment on it in detail (as the Discussion Draft invites, on p.XLIV) without replicating its length - indeed possibly taking longer – thereby perhaps reducing the chances that the submission would be fully considered. We have therefore opted for a selective and relatively short response, to those topics and issues in the Draft about which we consider that we can make an expertise-based contribution. This selectivity should not be taken to imply endorsement (or rejection) of the remainder of the Discussion Draft.

Is the Discussion Draft really open to amendment?

The Discussion Draft is written in a very detailed and apparently almost final form. Presumably this form was adopted in order to allow potential contributors to see as much as possible of what was to be the final report to COAG, which understandably will be large and complex. However the appearance of virtual completeness may have sent a strong (if hopefully wrong) message to many potential contributors that its views and recommendations were already determined and were unlikely to be open to any substantial amendment whatever the arguments in this round of submissions.

This message has probably been reinforced by the Federal Government's recent enthusiastic (albeit premature and probably pre-emptive) welcoming of the Discussion Draft as if it were a concluded report, and by the media's simplistic and stereotyped portrayal of some of the issues covered by it, especially the ageing of the Australian population.

Nonetheless we have proceeded with our submission in the hope that the Draft is still open to amendment and is not by now a "done deal".

Will the final report be about a scientifically conducted evaluation exercise or an "armchair" review?

We note appreciatively the statements by the Commission of the purposes and scope of the review, within the Terms of Reference established by the Treasurer but also taking into account such issues as the legislative bounds on the Commission. The detailed exposition of how the Commission has determined to proceed with the review, provided in the early pages of the Discussion Draft especially pages 3 and 4, is valuable. However this exposition is complex and diverse, and appears at times to be self-contradictory, such as that the review has taken a national and community-wide perspective, but has "*tailored its proposals to the nature of individual activities*" (sub-heading used in p.4). Some attention ought be given to simplifying (and shortening) these statements (e.g. through more use of figures showing process pathways), and clarifying and resolving apparent ambiguities and contradictions in them.

We wonder whether the Commission can really attempt to evaluate scientifically the impacts of National Competition Policy reforms (as its Terms of Reference imply), if it does not have the power and capacity to test and reject the fundamental concepts and directions of NCP where the evidence demonstrates their inadequacy or inappropriateness? In particular, if the Commission is required to accept, or itself does

not wish to contest, the underlying “theory” and ideology of competition, has no power or will to challenge fundamental propositions and assumptions, and must or chooses to restrict itself to looking at outcomes and processes from an “economic rationalist” competition perspective (as seems to be implicit in some of the Treasurer’s terms of reference and questions and in its own statements of review directions), it may be able to answer the Treasurer’s questions, but how well?

Defects if a scientific evaluation exercise:

The Discussion Draft states (p.3) that the Commission “*has endeavoured to disentangle the impacts of NCP initiatives from the many other policy and general economic factors that have influenced outcomes in areas targeted by NCP*”, and noted that “*precise attribution has ... proved difficult*”. This statement (with others) suggest that a scientifically-run evaluation exercise was to be undertaken.

It also notes (p.3) that the impacts to be assessed (according to its Terms of Reference) are not only those on the Australian economy but also those affecting “*the community more broadly*”. The latter phrase clearly means that *non-economic* impacts must also be canvassed.

Such a task (disentangling many social, economic, political and other influences and outcomes of both a local and an international character) is massively difficult as the Discussion Draft repeats in various places. It would require a complex and detailed evaluation research program of the highest order, by a multidisciplinary team, or teams, of expert researchers over a substantial period of time (as the Senate Select Committee 2000 on Competition Reform urged).

The Discussion Draft reveals that such a research program, using multidisciplinary researchers, was not undertaken, although the Commission has gathered and used to some degree reports from other bodies as well as some research papers, economic modelling, and policy analyses from its own staff. These documents are economic in focus and apparently their writers are predominantly if not solely economists. The statement is made in the Discussion Draft (p.47) that “*the Commission is not aware of any rigorous empirical basis for isolating the impacts of NCP reforms*”.

These documents also focus heavily on competition. *Cooperation* (such as characterises “cyberspace”, but also finds expression in the work of such major institutions as United Nations bodies and the OECD, and indeed COAG itself) gets little attention at any level. As we shall argue further below, in many fields and activities productivity is likely to be more enhanced by cooperation than by competition. Indeed a blinkered insistence on competition may impede necessary and/or valuable cooperation, for example when university staff have been disciplined for or warned against passing research ideas on to colleagues in other universities, because of administrators’ concerns about loss of commercial advantage.

The Commission has also considered issues raised by and on occasion discussed with individuals and organisations responding to the earlier Issues Paper. Apparently there was relatively low representation by bodies with “social” rather than “economic” interests in this earlier consultation process. Hence “social” issues get relatively short shrift (even in Chapter 5 “*Social, regional and environmental impacts*”), and then

mainly from an economic and “competition” perspective (as we show in more detail later in this response).

Perhaps as a consequence of this approach, the Discussion Draft reads not as a scientifically-conducted evaluation report but as mainly a set of impressionistic reflections of an “overview” kind about NCP reforms - an “armchair” economists’ review rather than an active multidisciplinary search for data that would assess the direction and magnitude of expected NCP reform effects, and test the NCP “theory” about those effects.

To be more specific, the evaluation approach used by the Commission does not adopt and follow conventional standards of evaluation design, in the following ways.

- It does not gather specific empirical evidence to test properly-formulated hypotheses about the cause-effect relationships and the directions and magnitude of the impacts of NCP reforms. Despite lengthy exposition of NCP “theory”, clear and precise hypotheses about expected causal relationships and NCP reform effects are not stated at the outset, or elsewhere except occasionally by implication.
- The evaluation data are not organised in terms of such hypotheses.
- Data are not always presented in appropriate detail. Indeed there is relatively little use of actual data, and where there is, it is primarily macro data drawn from ABS or similar actuarial sources, not data gathered specifically to test evaluation questions.
- Submissions from interested parties are of some value, of course, indeed may be immensely valuable, but are often narrowly focused on sectional interests and specific issues, perhaps biased in some (probably unknown) way and lacking in specific data. They do not substitute for good evaluation data although some may add to the pool of useful data.
- The data that are cited in the Discussion Draft are (understandably, recognising their nature) not subjected to the kinds of statistical analysis such as multiple regression methods that are essential and commonly used in situations where the influences of multiple factors are being teased out.

An “armchair” economists’ review, narrowly focused on competition issues, may be sufficient for the Treasurer and indeed perhaps for COAG, but many others in the Australian community will predictably be disappointed by this level of evaluation of such a crucial issue as NCP reform effects – especially those wedded to “evidence based” policy development and policy decision-making, and concerned about the non-economic impacts of the reforms.

What definition and measure of “productivity” was used?

This question is vital, as the concept of “productivity” is one of the central concepts in the review. We note from the footnote to Figure 1 on p.XXVII, that “GDP per hour” (the common base for productivity indices expressed in terms of *hours worked*, i.e. Productivity = GDP per hour worked) is calculated in “purchasing power parity” terms. How does this index compare with “real GDP”?

If the conventional macro-level U.S. “accounting” definition and measure was used (*real* GDP per hour worked), it ignores (*inter alia*) intangible corporate investments, which changes the “productivity” picture dramatically – and thereby seriously affects the conclusions that analysts may draw about links between productivity and other factors, and international comparisons of productivity levels over time. The use of “purchasing power parity” as the index of GDP does not, so far as we can establish, overcome this problem of the exclusion of intangible corporate investments.

To quote from McGrattan and Prescott 2004 (from the Reserve Bank of Minneapolis):

“ignoring corporate intangible investments gives a distorted picture of the post-1990 U.S. economy. In particular, ignoring intangible investments in the late 1990s leads one to conclude that productivity growth was modest, corporate profits were low, and corporate investment was at moderate levels. In fact, the late 1990s was a boom period for productivity growth, corporate profits, and corporate investment.” (p.1.)

Moreover, intangible corporate investments include non-capital R and D investments. R and D investments are a crucial stimulus for new fields of activity (as the Discussion Draft recognises) wherein productivity gains are much easier to obtain (after an “establishment” period) than in long-established fields where the productivity “squeeze” has already occurred many times over (such as manufacturing). To fail to consider them is to miss entirely their likely major impact on future activities and productivity levels.

At a more micro level, and especially with regard to the ageing of the Australian population, there is great difficulty in reaching agreement about how to measure “shop floor” productivity. Since the Discussion Draft uses US productivity levels as a benchmark for estimating the impact on productivity of workforce ageing in Australia, we have tried to establish how those US levels are measured.

To quote the Minnesota Department of Human Services website (Monday, November 22, 2004):

“Productivity of Older Workers: The Facts

There is a general lack of data to provide direct evidence on the productivity of older workers versus younger workers. Many employers do not track measures of productivity. Those employers that do track this data do not report it (Committee for Economic Development, 1999). This may be largely due to the disagreement that exists over the reliability of productivity measures.

There is a tremendous diversity in jobs, the tasks needed to fulfill those jobs, and the skills of individual workers – whatever their age. These factors make it difficult to uniformly measure productivity across workers and industries. Additionally, there are huge variations in the skills, work experience and productivity levels within the older workers group.”

This commentary, we consider, applies equally in Australia.

The macro index of GDP per hour worked is of course inappropriate in measuring or generalising about shopfloor productivity. Thus the extrapolations in the Discussion Draft and the Draft Research Report about the potential impacts of an ageing workforce on productivity, which are based on macro-level comparison against the USA's productivity levels, may be dubious. We shall pick up these points later in this submission in our specific comments about Australia's ageing population.

Defects in the Draft's composition:

The composition of the Discussion Draft also has some flaws (many flowing from the "armchair" review approach). For example specific supporting references for major assertions are missing, not only in the summary boxes but also in the detailed chapters. Sometimes loose terms are used such as "a number of analytic studies" (specific studies not cited) and "have not withstood analytic scrutiny", to support statements of central importance and reject alternatives. Which studies? And whose "analytic scrutiny" was "not withstood"? On what data?

In the particular instance above of loose terms, on page xvii of the Draft and on p.47 (asserting that "*observed productivity and service price changes in these sectors have of course been influenced by reforms other than NCP (such as industrial relations)...*"), there is strong contradictory evidence and conclusions to rebut part of that assertion (about a strong link between productivity and changes in industrial relations), such as in Isaac and Macintyre's book "*The new province for law and order: 100 years of Australian industrial conciliation and arbitration*", especially Chapter 4, "*Economic and social effects*" by Keith Hancock and Sue Richardson. We elaborate on their arguments shortly in this submission.

Statements such as (p. XX) "*some road and rail transport reforms have enhanced road safety*" read as bald assertions without requisite specificity and evidence. We do not doubt the impressively detailed account given of the various reform efforts made in the transport fields, but we doubt the asserted link to safety improvements. For example, many factors contribute to improved road safety: freeway construction, "black spot" programs with intersection and other improvements, better road maintenance, signage improvements, vehicle design improvements including air bags, the introduction and expansion of road safety awards, more focused driver education including innovative programs such as RADD (Radio Against Drink Driving), fatigue warning programs (especially for long-distance drivers), and the work of the traffic accident authorities, Monash's Accident Research Centre and other research bodies, to name only some. To untangle these multiple contributions to road safety would be a very difficult task.

The Discussion Draft's claim of a major (if unspecified) link between NCP reforms and road and rail safety serves only to diminish the credibility of the document as a proper evaluation report. The Discussion Draft focuses, when it does give some detail, on broad *governance* changes in *rail, ports and airports*, not *road* (e.g. Box 2.3 on p.15), and offers little argument about how those changes might bear on safety. The governance changes are very varied in nature and underlying conceptualisation about possible effects, within and across the three transport modes, and also vary over time as different governments have modified their governance arrangements in light of (sometimes negative) experience. The specific reference to road transport in Chapter 5

(p. 111) lists changes in vehicle emission standards, cleaner fuel standards, and restrictions on air brake usage, issues more related to environmental quality than road safety.

From an evaluation design perspective, we note that it is entirely possible that the demands to introduce, monitor and amend these competition policy and other reforms actively distracted attention and resources from more direct safety-improvement efforts. Without specific data, this possibility (unrecognised in the Discussion Draft) will go quite unexamined.

Also there seems to be an unfortunate tendency not only to fail to state hypotheses in advance in a testable form but also to use, as a substitute, “flip-flop” retrospective explanations whereby both favourable and unfavourable outcomes can be selectively interpreted as desired and desirable outcomes of the reform process. *Could any “theory” or assertion about the review process ever be disproved when this approach is used?*

The approach also conflates the expected with the desired and the desirable (the latter being judgments not capable of empirical testing). In the final version of the report to COAG, we think it important to avoid giving the impression of “cherry-picking” from the impressionistic data, actuarial data, and first-stage contributors’ comments to find support for pre-existing expectations about the reform outcomes.

Conceptual narrowness underlying NCP reform planning and evaluation:

Nowhere does the Discussion Draft appear to reflect awareness that the planning and evaluation of the NCP reforms are driven by a narrow “classical economics” view of and assumptions about Australia’s socio-economic systems, institutions and organisations as desirably “economic-calculative”¹, i.e. that they will function best if treated as primarily economic in nature, whose internal and external relationships are in essence or ought to be “calculative” (one example of which is “mutual obligation”). The existence and qualities of alternative types of systems, institutions and organisations with quite different values and reasons for existence – “moral-persuasive” and “coercive-authoritarian” (the first term referring to the basis of membership, and the second term to the nature of internal relationships) – seem to be entirely out of awareness. We suggest that some consideration be given to how imposing NCP thinking and actions on these alternative systems has affected or will affect their functioning.

To elaborate briefly, the dominance, indeed imposition, of “economic-calculative” thinking, and uncritical acceptance of its worth and alleged near-universal application (reflected in such unqualified statements as in section 2.1 on p.9, that the Commission has made “*an explicit recognition that, in most cases, competitive markets deliver better outcomes than administrative (or heavily regulated) systems of service delivery*”) have led to such reform distortions as the corporatisation or privatisation of prisons, churches, universities, hospitals, public services, and so forth. In “moral-persuasive” systems such as universities, the erosion of the ethos of altruism, cooperative and collaborative effort rather than competition, caring for the weak and

¹ Part of a classification of systems developed by the sociologist Amatai Etzioni (Etzioni 1964).

powerless, inquiry and theory-building for their own sakes rather than for their material value, and similar other “non-economic” orientations, in pursuit of economic goals and imperatives, has been of incalculable damage socially and intellectually. Introduction of costly fees has seen a shift of student socio-economic status at post-graduate professional studies level, towards the “upper” end of the socio-economic status scale, with major implications for (*inter alia*) the future nature of professional services likely to be offered by such a mix of graduates. Research funding now rewards the successful and large research teams, to the detriment of individual researchers or small research teams. It also favours instrumentally-valued research topics. Fundamental research and theory-building, especially if esoteric or novel, is downgraded and unfunded or underfunded, despite the historical fact that many inventions and other major theoretical and practical innovations came (often unplanned) from such basic research and theory-development.

Solely economic views such as those dominating the conceptual structure of the Discussion Draft would never recognise these damages, let alone capture them quantitatively, or even qualitatively. Hence it is not surprising (although still deeply disappointing) to find that the Discussion Draft is silent on them.

Effectiveness and efficiency

We note that the Discussion Draft emphasises “efficiency”, to the neglect of “effectiveness”. It is not sufficient or appropriate to argue that some economic definitions of efficiency indirectly incorporate effectiveness. Nor do notions such as “community obligations” and “externalities” adequately capture the concept of “effectiveness”. Effectiveness is a separate concept from efficiency, and in any sensible theory or set of expectations about socio-economic functioning, effectiveness must be treated as a necessary precursor to efficiency, not a sub-set of it. *To put it simply, there is little point or merit in efficiently producing wrong outcomes.*

The importance of cooperation:

It is also disappointing that the Discussion Draft is silent on the matter of cooperation *as a necessary although not sufficient pre-condition for competition* as well as *a valuable and productive activity in its own right*. Certainly the Discussion Draft repeats the NCP stance that competition is not an end goal but is a means to the end of a better society. *But (like the NCP expositions) it then goes on to act as if competition is indeed the be-all and end-all in government policy terms.*

Alternatives to competition in pursuit of a better society are given little if any attention. In the Discussion Draft, for example, competition is contrasted only with “administered market arrangements”, and certainly not with “cooperation”. The drafters appear not to have thought it necessary to examine the issue of the importance of cooperation among the participants *as a crucial pre-condition in any field where enhancement of competition is sought*. Effective competition and appropriate regulation (aims of NCP) must depend on the existence of a fundamental agreement in that field about the nature of the field, its boundaries and entry conditions, its types of participants, the rules of engagement by those participants, and other essential “ground rules”. Regulatory attempts that fail to appreciate these cooperative foundations may disturb those foundations and create various serious problems.

Perhaps pro-competition writers see cooperation as too close to, or too facilitative of, collusion and other forms of anti-competitive behaviour to be a readily embraced concept. To do so would be to mistake the essential pre-condition of cooperation for a form of later-stage aberrant competitive behaviour. Collusion is not a form of fundamental cooperation: it is a form of competition designed to use alliances for gain, and indeed often threatens fundamental cooperation. To use a football analogy, participants must agree on the geographic and other boundaries, and the ground rules for organising and conducting a competition before specific forms of competition can commence and be appropriately undertaken and regulated. *Without that level of cooperation there can be no competition.* Such cooperation should not be confused with collusion by some participants to (say) allow one team to win.

We raise this issue because in many weakly-structured and emergent fields (such as many basic research fields, and some Internet and other electronic communications areas) the pre-condition of cooperation is often not met, and enhancement of competition in them is a pipedream. What defines the field, where are its boundaries, who are the participants in it, how to develop agreement to cooperate, on which issues, when and how, may be much more crucial questions, in those fields, than how to enhance non-existent competition. Premature attempts at imposing competition (such as has happened with claims about intellectual property rights in emerging research and theoretical fields) may prevent fundamental cooperation being achieved, retard the development of the field, and forestall the emergence of genuine and helpful competition *at an appropriate time*. From this perspective, the vision of ensuring “*cost-effective mechanisms...to address market failures in technological innovation, including appropriate intellectual property protection*” (Discussion Draft p. XXVII) could be a dysfunctional one.

The Discussion Draft refers (in Box 2.1 on p.10) to research and development as an instance where competitive markets are not possible due to “significant externalities”. As a solution it proposes “*well designed regulatory interventions that modify market place behaviour*” rather than encouragement of cooperation. Regulatory interventions appear to us to be inappropriate and likely to be dysfunctional in research and developmental work, whereas cooperation is vital for mental stimulation and other valuable interactive processes. *One cannot command or control genuine innovation processes.*

Parenthetically we note that where the Discussion Draft refers to “innovation”, it appears to mean low-order “new applications” rather than genuine new conceptualisations, inventions and associated innovative uses. (See for example Box 4.5 on p.67, which lists as “new and innovative product and service options” common billing procedures, bill smoothing, specialised tariff structures, and loyalty and encouragement rebates for direct debit bill payments.)

Also parenthetically but importantly, it is difficult to reconcile the Commission’s views and the actuarial data about the importance of R and D as the basis for eventual productivity gains, with the Australian Government’s withdrawal of funding for R and D activities, the rationale for which has not been adequately explained so far as we can establish.

The virtues of and indeed often critical need for cooperation have been recognised in many modern economic treatises such as (for “cyberspace” developments) Peter Kollock’s *The Economies of Online Cooperation: Gifts and Public Goods in Cyberspace* (in Smith and Kollock 1999). Kollock makes many valuable observations about the surprising extent of cooperation in “cyberspace”, without obvious rewards, certainly not those of a monetary gain kind.

The outcomes of this cooperation has been many “gifts” to the world by way of (for example) free new computer programs that greatly improve the use of computers and productivity-enhancing applications. A very recent example is the agreement between Google and some universities (including Oxford, Harvard, Stanford, Michigan and the New York Public Library) to develop a free major electronic library. (Reported on p.3 of the News section of the Melbourne Age, 15.12.04.) *Competition theory is at a loss to explain such freely-donated sources of productivity and their underlying motivation.*

In policy terms, stimulating the development of weakly structured emergent fields through enhanced cooperation and the other steps outlined above is likely to be much more productive (predictably in the medium term rather than immediately) than trying to squeeze the last ounce of productivity out of mature fields through even more intense competition and work intensification.

Assertions for which there is contrary evidence:

The Discussion Draft makes some assertions that not only lack evidence but are contradicted by evidence known to us. For example the statements on p. xxiii about the positive value of the flexibility afforded jurisdictions, transparent and independent monitoring of progress and outcomes, and financial incentives, are in our experience (relating to legislation reviews and changes in the regulation of the professions) simply not true as either general empirical descriptions or sound explanations of cause and effect, as is outlined in detail in a later section of our submission entitled “Some Specific Dysfunctional Aspects Of The National Competition Reform Thrust”.

In Box 2.1, “contracting out” is referred to positively as a market-based incentive to improve efficiency in “administered markets” (in which the Discussion Draft includes health and education). In our profession, the use of “contracting out” of services in the public sector, and the associated destruction of the professional structures and systems that were earlier in place, have typically been very dysfunctional. The Discussion Draft notes the significant losses in public sector employment but does not consider their implications for the people and services affected. This shortcoming should be rectified in the final report.

Organisational decision-making, when put into the hands of the administrative bureaucracy by the loss of its professional employees, is relatively defective due to their lack of professional expertise and understandings. The quality of professional services has generally been sadly diminished in various ways:

- Organisationally important professional functions such as continual validation of selection tests have disappeared due to the fragmentation of professional

work by its having been "contracted out" to various "providers", thus losing the integrated quality of the selection/training/job performance system. Also non-professional decision-makers have not understood the gains that come from on-going validation (including major savings from fewer training failures, enhanced productivity, fewer supervisory problems, and lower turnover).

- There are insufficient psychologists in the one organisational unit to have the "critical mass" needed for professional innovation and staff development;
- Removal of a valued career structure and job security, with greater anxiety about income and/or employment, fosters compliance and low risk-taking (and often departure to more secure employment elsewhere), hardly conducive to innovation and professional productivity.
- There is loss of professional supervisors in the immediate work environment and their "quality control" functions.
- An absence of structured as well as informal Continuing Professional Development activities leads to loss of change and growth staffing benefits.
- Resources previously available to the professional team (such as collective access to the latest psychological tests, or to information and computer facilities for undertaking essential applied research work that helps drive professional innovation and enhances professional productivity) are lost or at best reduced.

There are also problems for or with the private-sector take-up of some of these previously public-sector professional services.

- Some important services disappear, not being compatible with profit-making operations and private-sector competitive values and capacities (e.g. cross-institution collaborative applied research).
- The private practitioner is forced to focus on financial survival, sometimes with the temptation of reducing service quality, especially for clients without the expertise to recognise the difference between barely adequate and high quality services. Investment of time, effort and money into practice development and innovation, and personal growth professionally, may be ignored, having no immediate payoff.
- Loneliness, professional and social isolation, and work overload with consequent disruption of family relationships, and stress are often experienced by professionals in private practice.
- Some of our members have experienced demands from employers doing the "contracting out" to have access to professional files, for the psychologist to re-write reports and recommendations in order to better suit the employer's or a third party's interests, and to do other such unethical and unprofessional acts, on pain of losing the "contract".

The law as it stands gives no assistance to a psychologist who resists such demands and loses work and income as a consequence, whether the psychologist is a "contractor" or in paid employment.

Projected changes to the unfair dismissal provisions of the Workplace Relations Act and associated legislation and regulations are likely only to diminish the now-tenuous

avenue of redress they currently offer for an employed psychologist who is dismissed for refusing such employer demands.

Since the authors of the Discussion Draft did not canvass these issues (or any others) with us, of course they were no doubt not aware of our very different experiences. Again, the issue arises of inadequate data for the Discussion Draft. (We appreciate that the Discussion Draft does refer to “some aspects of the procedural arrangements” being “found wanting”, including non-independence of reviews and their lack of transparency. But this reference does not materially alter our critique.)

Absence of focus on the costs of regulation

The Discussion Draft provides an impressive amount of information about regulatory mechanisms set up as part of the NCP and broader competition-enhancement thrusts by governments. But it gives no data relating to the costs (which must be very substantial) and evidence-based (rather than hoped-for) benefits of those regulatory mechanisms.

The “proselytising” tone of the Discussion Draft:

In parts the Discussion Draft reads like a marketing blurb, in making statements such as “...the benefits will be ongoing” and “*This will facilitate continuing productivity improvement and provide a platform for future wages growth and increases in living standards*” (pages xxii and xxiii). These may be expressions of genuinely held beliefs, expectations or ambitions, but they should not be offered as scientific evaluative conclusions.

Nor is the claim (on p. xxiii) that NCP provides “*a solid conceptual framework and information base to guide policy prescriptions*” accurate. Its conceptual base is not well explicated (despite much having been written about it, mainly of a promotional and persuasive nature), and is in fact limited in conceptual scope², theoretically superficial in many respects, and contentious even among economists. Its “information base” is patchy and unrepresentative of the full range of fields, institutions, organisations, groups and individuals affected.

² For example the comment in Box 2.1 on p.10 that “suppliers have strong financial incentives to produce at the lowest cost, to provide the mix and quality of goods and services required by consumers and to innovate in order to achieve a competitive edge” ignores past research and long-established theory that shows that cost reduction as a competitive strategy tends to make unachievable the other two strategies of quality enhancement and innovation, due to deprivation of necessary resources (including time to think, investigate, discuss, plan and test). Also it often creates a negative organisational climate with hidden and serious costs that eventually swamp the gains of the early press for economies. (See as an example of the long-established nature of these insights Likert and Seashore in Hampton, Summer and Webber 1973.) Its “theory” of human motivation is essentially simplistic (individualistic “fear and greed”) with little understanding of cooperative relationships that do not have a direct “payoff”. The Discussion Draft’s uncritical endorsement of organisational and individual performance measures overlooks the well-researched issues of (deliberate or unintended) misuse and perverse effects of those measures.

Competition “theory” may have a useful place in policy formulation, but only the ideologically-committed would consider it to be the sole or primary basis, to the exclusion of other perspectives, or one without shortcomings and contention.

NCP reform is an experiment - a bold, very complex, wide-ranging and generally carefully planned one, but still one that from a scientific perspective must be considered in parts poorly designed and sub-optimally managed. It has ignored, for example, the evidence gathered by economists overseas about the important links between economic development (of which productivity is one element) and socio-political forms (e.g. democratic versus other forms) and maturity of institutional structures (of which the Australian legal and industrial conciliation and arbitration systems are examples). Its assertions about improving productivity by eroding the industrial relations system under the heading of “greater flexibility” are inconsistent with conclusions reached about the key role of *stable and protective* institutional frameworks in encouraging investment and risk-taking likely to lead to new productive business activity. (See for example Tabellini (2004).)

Consequently the alleged effects of NCP reforms are almost impossible to disentangle *post-hoc* from those of other influences and developments such as and notably technological advances (widely recognised as the single most important contributor to the “productivity surge” occurring in most countries – see Hancock and Richardson 2004), and international social, political, economic and other changes. While the Discussion Draft recognises this serious problem, it nonetheless goes on to attempt to make causal inferences, giving the impression of trying to “make a silk purse out of a sow’s ear”.

How valid are the “lessons learned”?

In Box 3 of the Discussion Draft an effort is made to state the lessons learned from the review process. Unfortunately each of the lessons learned can be challenged.

For example the statement (dot point 4) that “*Reform is likely to progress more effectively where commitments are specified in advance and there is prioritisation of the reform task*” implies “top down” imposition of government-desired changes, or at least of the process that will hopefully lead to those desired changes, and seems to leave consultation with stakeholders and “bottom up” methods of involving stakeholders in change processes (including having input about the goals of change) to play only a secondary role (if indeed any role). The descriptions of the NCP reforms offered in the Discussion Draft suggest that they comprise what Dunphy and Stace classify as a “dictatorial transformation” (Dunphy and Stace 1990, p.82). No trial has been made of alternatives to the “dictatorial transformation” approach such as “bottom up”, participative approaches. Thus this “lesson” cannot be said to be “evidence-based”.

In this and the other “lessons learned” statements, there is clearly room for improvement in conceptualisation and testing of better ways of carrying out the reform process, especially in the area of socio-emotional and attitudinal changes³.

³ The Commission may not be aware of such new thinking about the role of economic and accounting performance measures as that offered by Craig and Amernic 2004, Miller 1994, and Schwartz 2002, wherein such measures are often misused in pursuit of CEO or organisational “narcissistic fantasies”.

Conventional economic theory (“economic rationalist” or otherwise) does not provide a sound basis for such conceptualisation.

The assertion (“lesson learned”?) in Box 3 that the support from all governments for the NCP reforms (assuming it was deep, not superficial) reflected “...*effective political leadership*” has no place in a genuine evaluation report. No evidence could have been adduced to test such an assertion or to describe it as an evidence-based “lesson learned”. The statement is a politically congratulatory one, out of place from an evaluation perspective (although a separate cover note expressing the Commission’s gratitude for governmental support for this enterprise would not be inappropriate).

Failure to identify that nothing much has changed since the Senate Select Committee’s Report on NCP reform in 2000

It is disappointing to re-read the Senate Select Committee’s 2000 Report on NCP reform and to note that most, perhaps all, of the problematic aspects of NCP reform remain to this day – confusion about the “public interest” and “public benefit” constructs and measures, doctrinaire application by jurisdictions that go beyond NCP principles to incorporate local agendas, inadequate recognition by proponents of NCP reform of the non-economic impacts of the reform process, and so on. Yet the Discussion Draft reads as if all these problems had now been resolved or had vanished. A sense of continuity and progressive improvement in the competition policy *evaluation process* is sadly lacking, even though the historical linkages with broader reform efforts such as “structural efficiency” are well described.

SUMMARY:

The Discussion Draft reads as an “armchair review” that is narrowly “classic economics” in its thinking and perspectives and (by contemporary evaluation standards) technically deficient in design and data-collection. While a genuine scientific evaluation, so long after the beginnings of NCP reforms, would be at least very difficult if not impossible to conduct, the presentation of data here smacks of selectivity to support the value of NCP reforms, and the underplaying of defects and harms, rather than rigorous testing of hypotheses. It has failed to recognise that many of the implementation problems that were identified by the Senate Select Committee in its 2000 report on NCP reform continue to this day, at least as reflected by reformist behaviour in the reform of the legislation for the regulation of the professions, but also more generally.

We accept that at this stage fundamental revision is almost certainly impossible. Nonetheless some of the defects identified in the Discussion Draft could be beneficially addressed.

The report to COAG also should ideally be followed by considerable additional evaluative work. This work should be done by a genuinely independent and multidisciplinary group that has the conceptual and other resources to look beyond the narrowly economic to the vast array of non-economic issues and outcomes that deserve closer consideration. The need for a multidisciplinary approach to evaluation

was strongly commended by the Senate Select Committee 2000, and we stress it again. *We note that the Commission is planning to undertake further research. We hope that in doing so it will consider our recommendation about improved evaluation design and multidisciplinary research work and teams.*

“AUSTRALIA’S BIGGEST FORESEEABLE CHALLENGE: THE AGEING OF THE POPULATION”⁴

From our reading of the Discussion Draft, it (unlike the Draft Research Report Overview) presents the ageing population primarily as a burden, particularly economically, and as a looming crisis (despite its assertion that it is not, *at this time*). It seems to ignore or make little use of submissions such as that by Richardson 2004 (Professor of Health Economics at Monash University) who argued cogently that the effects of ageing *per se* on health costs are likely to be small. Moreover, generally it does not present positively enough the many valuable economic and non-economic contributions made by older people.

The Draft Research Report Overview is, in our view, more considered, more comprehensive, more balanced, and more positive about the ageing process (although perhaps still not sufficiently cognisant of Richardson’s lines of argument). The Draft Research Report Overview points out clearly that:

- (a) population ageing is not a crisis;
- (b) it is “predominantly a reflection of beneficial trends”;
- (c) rather than blame the “baby boomers” for a future “burden”, it should be recognised that “the main effects of the baby boom have been to defer population ageing in Australia....the real drivers of population ageing are the long-term declines in fertility and increased longevity.”

The stronger “burden” and “crisis” emphasis in the Discussion Draft appears already (judging by recent newspaper, radio and TV commentaries) to have reinforced the worrying divisive tendency with some media commentators to portray and implicitly to blame the ageing population as an imminent, major and unfair drain on the younger-generations taxpayers, and also may reinforce ageist discrimination in employment and elsewhere. It is likely to do so by over-emphasising the *projected* health costs of the older cohorts. This over-estimate is contraindicated by the analytic conclusions reached by Richardson and others. Further, the Discussion Draft should have warned that cohort projections must not be confused with individuals’ health status and health future. Also it should but does not reject negative stereotypes about ageing and older workers’ competencies that unfortunately still abound, including among employers. Worse (as already said) it is likely only to reinforce those prejudices.

⁴ Quotation from the Discussion Draft.

The need for a more positive view about the ageing of the population

We consider that the ageing of the population has many positives that should be recognised more prominently, especially socially but also in economic terms such as workplace productivity, innovation and change management, and older persons' investments in various industries. Older people must be seen and portrayed in this report to COAG as a very valuable resource, able to continue contributing economically as well as socially, even though they may have increased health care needs that may be more expensive than when they were younger (due to factors such as technological developments in diagnosis and treatments as well as their health care needs).

Thus we would like to see a change of focus and emphasis by the Commission in its report to COAG – and if necessary by COAG - about this matter, towards a much more positive view of older people (of whom there is not just one or two categories about whom valid generalisations can be made). We strongly endorse the term “positive ageing”, which is well explained in the Council on the Ageing (Victoria) Submission to the Inquiry into Positive Ageing, by the Family and Community Development Committee, Parliament of Victoria, 1997.

Certainly there are good grounds for the Commission's concern about increased demands on health and aged care systems, which the Discussion Draft presents in a clear and compelling way. However it should recognise more clearly that future aged populations will be much healthier than hitherto, and extrapolations based on the past may overassess the level of demand, as the Draft Research Report Overview has been at some pains to do. Also it should make the kinds of caveats about the predicted reduction in labour force participation that are made in the Draft Research Report Overview (including that this predicted reduction does not contemplate trends and options whereby the projected level of reduction in labour force participation may not in fact occur and/or may be muted significantly). In the latter respect, the final report should, we suggest, note more clearly that its projections are based on a “do nothing” government policy position in a “steady state” economy, assumptions most unlikely to be met⁵.

There are various ways in which older people (post-65 years of age) do and/or may make a positive contribution to Australia's economic health and growth. No doubt the Commission is well aware of them, but the Discussion Draft does not adequately canvass them. They include:

- (a) Directly, through continued participation in the workforce. With more sensitive employment policies, especially in regard to part-time and casual employment practices, and greater acceptance by employers of “working at home” arrangements (greatly enhanced by modern computer and communications technology), a significantly higher proportion of older

⁵ We appreciate that for modelling purposes some degree of known validity and reliability of trend data is very important, and that for new trends and future-action options such data may not be available. However that should not prevent the making of appropriate caveats about projections based on past trends that are expected to change in predictable directions if not degree, or that are likely to be amenable to government, institutional, organisational, group or individual actions. Nor does it justify virtually ignoring Professor Richardson's analytic conclusions about the lack of statistical linkage between ageing *per se* and health system expenditures.

workers may be able to continue working, either in their existing roles or in new roles shaped in part to their current capacities, wants, and circumstances. This will be even more so as the trend away from manual and physical work continues, and towards the “mental”, for which older workers may remain very well suited providing that some low-cost adaptations are made where necessary to work environments and technology (such as improved illumination levels for work where visual acuity and visual discrimination are important), they are given appropriate training for new tasks (a highly desirable practice too often overlooked in pursuit of short-term cost reductions), and supervisors and managers are themselves given proper training in handling older workers. There is great opportunity to maintain and indeed enhance the involvement of older workers through job redesign, work technology and staff management improvements, using psychological knowledge and skills, and those of related disciplines (e.g. about “human factors” in the design of work equipment and processes). The greater attention to OHS issues in work settings over recent years has also provided a very useful multidisciplinary springboard for making better provisions for older workers. Parenthetically but importantly, we emphasise that efforts of this kind would be quickly eroded if some employers attempted to take unfair advantage of their older workers, by offering them degraded remuneration and terms and conditions of employment (such as no recreation or sick leave), and unstable short-term contracts of employment that diminish the previously positive relationship between the older employee and the employer, and by ignoring OHS and potential workers’ compensation issues in “at home” and other “off-site” working arrangements (ultimately to the employer’s own disadvantage). The Discussion Draft makes many, but not all, of the above points.

- (b) Indirectly, by their investments in the economy, through superannuation, allocated pensions, shares, etc. Many have greater liquidity of capital (apart from that associated with their residence), and more disposable income, than the younger cohorts, yet are not generally seeking quick gains financially and are reluctant to gamble their hard-earned capital. Thus they provide investment stability and a form of loyalty to corporations in the share/managed funds market, reflected for example in acceptance by many of them of sub-optimal returns in the short run as long as they retain confidence in the longer-term reliability of the corporation and stable investment returns.
- (c) Also indirectly,
 - through their greater employment stability (they are less likely than younger workers to go elsewhere) with consequent savings in induction and training costs,
 - their greater capacity (if used wisely by employers) to act as valuable role models, on-the-job trainers and mentors,
 - their more established and wider networks of communication and influence,
 - their deeper knowledge of the history of the organization (important for all employees’ sense of employment identity, their identification with the organization, their understanding of “why things are done this way” in this organisation, and their trust in it as a good place to work), and

- their capacity to adjust and contribute to the change process (particularly if that process is participative, incremental and “bottom up” rather than radical, and/or driven from the “top down”). Often they hold positions of influence and leadership in the informal social structure of the organization, which can be used to advantage in change processes, but may (if they are ignored and alienated) prove to be a substantial barrier to successful change.

Employers who followed the recent fad of replacing older workers with younger ones can attest to the major organisational dislocations and losses that occur when these kinds of resources are suddenly lost.

Social contributions of great importance include:

- (a) their key roles in family support systems, which serve many valuable functions for all their members, some of which functions have economic or productivity implications. This is so even in our allegedly more “individualistic” society. Kinship systems remain important even though they are not as extensive and close-knit as perhaps used to be the case. Family functions include but go beyond child-minding that enables the child’s parents to discharge their employment responsibilities and allows the employer to avoid the costs of temporary staff replacements or simply putting up with the effects of their absence. For example employees may remain in jobs that have some disadvantages or offer less pay than could be obtained elsewhere, simply because geographical proximity to the family is so important. Families also provide support in times of stress, as well as informal advice about stress-coping mechanisms. Of course there are dysfunctional families and bad advice that may add to rather than ameliorate stress, but this fact should not obscure the generally very positive picture of how families contribute to employees’ health and welfare, as the military (for example) is only too well aware.
- (b) Their substantial contribution to the community by way of voluntary and charitable contributions, financially and by service. Many charitable organizations rely very heavily on unpaid volunteers, as do community services and local government services. The growth of numbers of older persons able to make such contributions, and the benefits flowing from it, appear to have been overlooked in the Discussion Draft, even though the Draft Research Report looks quite closely at this issue and has attempted to quantify the substantial value of “volunteering”.
- (c) Their use of health (including fitness maintenance and rehabilitation), recreation and tourism facilities, services and products, for which they pay, has not been adequately factored in, although the Draft Research Report Overview does recognise them albeit with the caveat that they are not incorporated into GDP, hence do not flow into productivity assessments. There are, as the Commission no doubt knows, whole new industries and product lines of these kinds, heavily reliant on older people as consumers. The productivity and profitability benefits of this use (including enhanced job markets) need closer consideration or at least more explicit exposition in the Commission’s review.

We urge that revisions to the Discussion Draft accommodate these points.

SUGGESTED HEALTH SECTOR IMPROVEMENTS

Box 5 (p. XXXII) summarises suggestions made in detail in later chapters of the Discussion Draft for “*harnessing competition to improve human service delivery and natural resource management*”. Our response focuses on the suggestions about human service delivery.

“Performance benchmarking” is of value if chosen and used wisely. Unfortunately too often the indicators used for benchmarking are accounting ones rather than criteria of professional service delivery, which as often as not distort rather than improve service delivery. They may dominate management thinking and become administrative control devices such that key goals and characteristics of good service delivery become secondary to meeting the accounting benchmark standards. For example, measures of costs may lead decision-makers to decide not to allow the use of particular methods (such as the latest psychological tests) because of their expense rather than their professional value, leading to inferior assessment of psychological conditions.

“Performance-based funding” and “competitive-tendering and contracting out” runs the real danger of destroying the integrated systems needed for effective and efficient service delivery (as we said earlier in this submission). Integration of systems appears to be a concern to the Commission and to competition theorists, judging by the Discussion Draft’s analysis of and implied support for the breaking up of vertically integrated transport systems elsewhere in the Draft. But for professionals who have an affinity to “moral-persuasive” systems that are characterised by cooperation, coordination and collaboration, there is little appeal and much to worry about in the use of “economic-calculative” tools that presume individualistic competition, materialistic motives, and a human tendency to abuse cooperative relationships in pursuit of personal gain and advantage, and that treat organisational integration as a likely negative rather than as necessary for good organisational functioning.

“Signalling to providers the value which users place on the services and discouraging wasteful consumption” is, to put it bluntly, pie in the sky for psychological services, especially those in the mental health but also other areas. While the goals are worthy (who wants to see wasteful consumption?), the notion as expressed above is fanciful and also dysfunctional. The view is unsustainable that “users” (patients or clients) place objective monetary value on “services” (beyond knowing what they are charged), read and understand “market signals”, are free to choose their services and service providers, and act on completely rational grounds.

Health systems are complex and function very differently from the relatively simple “business” systems on which competition theory has been founded. There is much “information asymmetry” (as the Discussion Draft recognises), and users of *public* health service services are in no position to make completely rational choices about many issues. Often they simply have to accept (or reject) the treatments offered. Nor indeed are users of *private* systems better placed in most respects. For example, a very ill patient in either system may not be in any position (nor her/his relatives) to know what services are appropriate, to assess their monetary value, to read their “market signals”, or to make a completely rational choice. Choices are made, usually under stress, and largely on health needs, and emotional and access grounds (e.g. choice of

specialist is usually made on the recommendation of one's GP but influenced by the specialist's availability and the urgency of obtaining treatment), with costs of treatments (to the client/patient) an imperative in some contexts but not in others. Quality of treatment more often than not cannot be assessed prospectively by the patient/client. Moreover, at some times or for some people, it is paralysing to be faced with more options and more complex choices. *The simple "competition theory" assumption that "the more choices the better", is contraindicated by research into human choice behaviour.* (We are able to provide useful references on this point if the Commission is interested.)

Certainly health systems might benefit from some stringent examination of their functioning, from a NCP framework but without that framework dominating the evaluation agenda or results. For example, some arrangements among practitioners may appear to verge on collusion, "third line forcing" and other anti-competitive practices, but they may not be so, depending on matters such as the information given to patients/clients and the degree of emotional and financial pressure and stress imposed on them to accept such arrangements. Professional ethics are opposed to such arrangements, e.g. require multiple rather than single referrals, and ban payments by practitioners for receiving referrals ("spotter's fees").

The Commission could usefully investigate whether the move towards "business cultures" in health systems and non-professional ownership of private service delivery companies has increased the incidence of reduced service quality, breaches of professional ethics and anti-competitive behaviour such as "spotter's fees".

Productivity gains in the health labour market

It is not clear why the Commission chose to write so much about industrial relations changes and labour market reforms when they are explicitly noted to be outside the scope of the review (in its introductory statement).

The Discussion Draft appears to lose the emphasis in the Draft Research Report on the health sector as the main locus for labour productivity gains. Instead, it seems to generalise to all sectors of the labour force, and to tie productivity gains to further systemic industrial relations changes (most notably in Chapter 10, section 10.5 "*Labour markets and tax policy reform*").

In doing so it at times draws a very long bow, as is evident from Hancock and Richardson's chapter in Isaac and Macintyre (2004). They examined the correlation between changes to the industrial relations system and productivity over the 20th Century, and found no credible association. They wrote: "*Whatever explanations for these variations (in productivity over time) may be found, it would be very difficult to ground them in the industrial relations system.*" (p. 196).

However there may be gains to be had from improved flexibilities in the health sector specifically, as both the Draft Research Report and Professor Richardson's submission argue. We can suggest at least one such improvement: the greater use of psychologists in the delivery of mental health services, as a substitute for or in more effective conjunction with drug treatments offered by general practitioners and psychiatrists.

The cost savings from doing so can be substantial. It has been shown through a series of studies, auspiced by the Department of Health and Ageing and in collaboration with the Victorian Department of Human Services and a group of epidemiologists, that public-sector psychology costs run at about one quarter to one third of that of public and private sector psychiatrists. These specific cost savings arise principally from lower labor costs, and do not take account of cost savings associated with more effective and efficient therapeutic outcomes. The same studies have identified significant lower disability costs related to more effective therapeutic interventions, which are commonly managed and provided by psychologists.

A more detailed presentation of this form of service "substitution" and greater flexibility in the use of "professional labour" in the health sector, with specific respect to mental health, was made by the APS to the Australian Government in association with the Senate Select Committee Inquiry into MedicarePlus and in a follow-up submission to that same Inquiry. Both these documents are available from the Senate, or from us on request.

Wage cost implications of the ageing population:

If the projections in the Discussion Draft about workforce age composition actually come to pass, there will be both a general shortage of labour and specific skills shortages in many occupational areas, as the Discussion Draft notes, including in health systems. In such a scenario, the "flexibility" offered by Australian Workplace Agreements (AWAs) in place of awards (which the Discussion Draft appears to commend) may prove to be a double-edged sword for employers, leading to wage cost blowouts as employers are forced to make higher wage offers to attract or retain staff, adding to inflationary pressures, and (because of the private nature of AWAs) leading to loss of comparative information about movements in remuneration levels and terms and conditions of employment.

That the award system has generally contributed significantly to wage control at times of serious inflation is well illustrated in Isaac and Macintyre (2004), especially Chapter 6 by David Plowman as well as by Hancock and Richardson (Ch. 4). In outlining how employer associations changed their views about arbitration mechanisms from initial "reluctant acceptance" to intermediate "qualified support" to finally championing arbitration, Plowman writes: "*Economic buoyancy and the shift in bargaining power was a major cause of this transformation*" (p. 253).

The removal of award (and registered certified agreement) controls through wage norms and conciliation and arbitration processes for determining collective wage increases - that removal to be achieved through much greater use of AWAs - in this current period of economic buoyancy and labour shortages could well prove to be a major negative for employers, as well as for poorly educated and low-skill workers who have limited bargaining capacity.

The required referral of AWAs to the Employment Advocate (E.O.) would not appear to provide an adequate substitute for the industrial relations system's controls over wage blowouts or wage inequalities. The E.O.'s role is restricted to ensuring that there is "no disadvantage" in a particular AWA. There is no proactive capacity for the E.O.

to object to extremely large salaries, or to intervene in setting general or minimum wage standards for AWAs. Nor does the E.O. have any power to deal with AWAs collectively rather than individually.

Since enterprise bargaining agreements are not included in the awards to be used as reference points for the “no disadvantage” test applied by the E.O., the remuneration and other employment standards flowing from AWAs will not be directly comparable with the award/EBA combination. For staff in demand AWAs could be superior to the latter, but they could of course be inferior, not only in remuneration and other terms and conditions of employment, but in other ways. These comments may apply in particular to some older workers, although many of them are highly educated and experienced, and capable of negotiating superior remuneration and other terms and conditions. Thus serious “wage inequality” may well develop both within the older worker population and between older and younger workers that (with AWAs) would be difficult to identify, monitor or correct. The potential for such inequalities and unfair wage discrimination is at least as high in the health sector (with many women employees and many impermanent employment conditions being offered) as in any other.

The Commission may and should be aware that awards EBAs have provisions and protections for employees that are inherently absent from AWAs, as Justice Finklestein of the Federal Court of Australia observed in the case of *Finance Sector Union V Commonwealth Bank Of Australia [2000] FCA 1372*. Assertions by employers that AWAs provide conditions equal or superior to awards EBAs are, he indicated, deceptive and misleading unless they spell out the loss of these other provisions and protections.

Observers such as Colvin and Watson (1998) have expressed concerns about the potential for a too-paper-intensive process in the E.O.’s role, such that “*the costs of time and money will act as a disincentive to the use of (AWAs) and see the favouring by employers of collective agreements..*” (p. 265.) We might add the substantial legal and administrative costs of preparation of AWAs to ensure that they will “pass muster” with the E.O., as well as be acceptable to the employee.

The Discussion Draft ought to reflect these complexities and potential problems and be modified in its uncritical reference to “flexibility” in employment conditions (e.g. on p.37) and use of AWAs as a basis for increased productivity.

STRENGTHENING SOME CHAPTERS

Chapter 3 on Australia’s economic performance especially productivity is perhaps the strongest part of the Discussion Draft, but even here we have some concerns, based on statistical issues and research findings in organisational and industrial psychology rather than economic theory.

One concern is about the international comparisons made in section 3.2 (“Australia’s recent economic performance”). Comparison of countries by ranking them on a common index of performance at two different times and noting their apparent correlation over time, runs the danger of mistaking statistical artefacts, particularly

regression to the mean, for real and meaningful economic movements. Hancock and Richardson (2004) provide very helpful material on this and related points.

In table 3.2 (showing changes in multifactor productivity growth in OECD countries, from the period 1980-90 to 1990-2000) the use of “average annual percentage point change” – as a summary of a country’s productivity performance, averaging across many very different organisations - seems to us to be a statistic to be treated with much caution, for various statistical reasons. These reasons include that the table is dealing with very small differences (most less than 1% change) in an essentially crude index. That index is susceptible to “outlier”, “regression to the mean” and other artifactual effects. Also, even assuming its meaningfulness, one can make various interpretations of its import. For example, European countries with high taxation and strong welfare systems occupy most of the “top” places, defeating any interpretation of productivity increases as being due to competition reforms or broader “economic rationalist” policies.

On p.36, reference is made to a fall in the unemployment rate. Unless such trend data are corrected for changes in the definition of “unemployed”, comparisons of unemployment at different times appear meaningless.

The comment on p.36 that the *“trend towards part time employment ... largely reflects strong service sector growth and relatively high demand for part time and casual employment in that sector”* needs to be modified to reflect survey findings that consistently report strong demand for full-time and stable employment by those people who are employed part time or casually.

Desperate unemployed people will of course take part time and casual work, and this may appear as “demand” in an economic measure, but it does not reflect preferences. We are particularly aware that the casualisation of the academic workforce in universities as a cost reduction measure (required because of cuts to universities’ funding) has been very unpopular with staff, leading to such difficulties as having no income between the end of the second semester (approximately the end of October) and the resumption of classes in late February or early March.

On p.37, the Discussion Draft notes that *“the number of jobless households remains relatively high, with some 15 per cent of children living in households where no person is employed”*. No further comment is made about the social significance or consequences for the children and their parents of this very harmful situation. Had a multidisciplinary team undertaken this review, a longer assessment of those “human consequences” would surely have been made.

The view expressed on p.38 that exchange rate depreciation did not lead to an outbreak of inflationary pressures because of (in part) markedly increased competition due to NCP and other reforms is plausible but only one possible interpretation of a complex set of forces. Certainly no statistical analysis is presented to back up this interpretation. The view may be defended as an “expert judgment” rather than the result of a statistical analysis, but the difficulty with that rationale is that other experts may (and probably do) have different views.

On p.40 there is a reference to “specialisation” as a form of “better organisation of production” that will enhance productivity. This comment ignores a vast amount of research into manufacturing and other production systems showing that excessive specialisation (leading to very short work cycles, movement repetition, individual rather than team effort, and worker boredom) can be a lead weight on productive effort, and that other forms of work organisation involving longer work cycles, task variety, team work, and multi-skilling of employees, serve the organisation much better in productivity terms and other ways.

Parenthetically we note that classical economic theory as applied in Australian governmental thinking and policy development appears to assume simple linear relationships, such as “the longer the hours worked, the greater the output”. This assumption is false: output is non-linear with human performance, where fatigue reduces overall output, increases work errors, in many contexts is very dangerous, and contributes significantly to workplace stress and consequent compensable claims.

Allowing too much employer “flexibility”, to increase working hours dramatically beyond the point of the onset of fatigue (which has been occurring for the Australian workforce “across the board” in recent times), may be very counterproductive.

Chapter 4

The comment on p.78 that the “*adverse impacts on households from increases in the prices of some of these services would have been partially offset by price reductions for other goods and services*” does not take into account that individual households may not have access to some or all of such offsets. For example, the alleged price reductions in professional services (alluded to later on p.78) and “*the marketing of some agricultural commodities*” are unlikely to offset additional household expenses arising from the increases noted in residential water and urban transport. Even if there is some offsetting, for families struggling to survive and just keeping their heads above water financially any additional expense may be intolerable. This concern is reinforced by the analysis in Chapter 5 regarding income mal-distribution, whereby low-income groups do not share equitably in the benefits of NCP.

The reference to evidence of price and quality benefits in professional services (p.78) needs to be qualified. The evidence is weak. The benefits are probably limited to a few professions and their charges to businesses. Negatives have also occurred, some of which we have already outlined for psychological services. Certainly clients of private practitioners (in a number of regulated professions) are expected by governments to bear at least part of the substantial registration fees charged to the practitioners.

Chapter 5

We have already alluded under other headings to the lack of real attention to “social” impacts of NCP. This Chapter, whose title (“*Social, regional and environmental impacts*”) promises much, but fails to deliver. The scope of “social” is very limited, and the treatment is very largely economic.

The fourth dot-point key point on p.79, conceding “*unanticipated negative effects on the environment*”, also alludes to “*better environmental outcomes in the water sector*” as if there was some linkage and counterbalancing effect. In addition, some of the positive outcomes cited are contentious in the water quality field, and the outcomes generally refer to processes of agreement about rights and water distribution rather than impacts on water quality and the health of the ecosystems concerned including fish, river gums and so on.

The logic underlying the comment in the last dot-point (that “*The costs experienced by some individuals or communities are not sufficient reason to forego reforms that are of substantial net benefit to the community as a whole*”) is seriously flawed. Certainly some kinds of costs, even if they apply only to one person, would be grounds to forego a course of action whatever the net communal benefits. The lack of logic is not repaired by the recognition of the need to take action on negative “*transitional and distributional impacts*”.

On p.80, the Discussion Draft appears to underplay the significance of the many negative impacts raised by bodies such as ACOSS and VCOSS in the first round of submissions. Its statement that “*many factors have affected observed changes in income distribution over the 1990s and it is far from clear that NCP and related reforms have played a significant role*” smacks of a too-ready rationalisation, and stands in stark contrast to the Draft’s willingness elsewhere to claim positive NCP effects despite the presence of other complex factors.

SOME SPECIFIC DYSFUNCTIONAL ASPECTS OF THE NATIONAL COMPETITION REFORM THRUST FOR PSYCHOLOGISTS

The Discussion Draft alludes to many positives arising from the NCR reform thrust. Negatives are rarely mentioned, even though they were mentioned in such submissions as that by Professions Australia⁶, and that by ACOSS.

Those negatives that are mentioned in the Discussion Draft in regard to the reform of legislation are process defects (from the reformists’ perspective, not from that of the professions and other recipients of the reforms). In this section we outline a number of negatives from the recipients’ perspective that we hope will be reflected in the final report to COAG. *Such reflection may help to overcome the impression that the “good news” about NCP reforms is overemphasised in the Discussion Draft and the “bad news” underemphasised.*

(a) MISCLASSIFICATION OF THE PROFESSION OF PSYCHOLOGY BY THE NCC AND GOVERNMENTS

In the science and profession of Psychology, there have been major dysfunctional outcomes from the NCR thrust, *arising from the National Competition Council’s inaccurate description and classification of Psychology as a “health profession”.*

⁶ The business name of the Australian Council of Professions, a body covering CPAs, engineers, management consultants, and some other professions, many of a “private practice” kind.

It is not clear whether the NCC meant to imply that Psychology was “wholly or mainly a health profession”, **or** intended only to say that some parts of the profession of Psychology were health-related, and (by implication) some were not. *However it was apparently taken by the States and Territories to have meant the first (“wholly or mainly a health profession”). Around 50% of the APS members do not work in any health field. The part was mistaken for the whole, to the profession’s and the public’s grave disadvantage.*

Thus a false view and consensus emerged among those driving the process of reviewing the legislation regulating the Psychology profession that it was only or mainly a health profession, and could be accommodated within “template” (sometimes termed “omnibus”) legislation whose objectives were “to regulate the health professions” and which was to cover a number of “health professions”.

The mistake has been translated into dysfunctional legislative changes⁷, and despite the profession’s repeated objections, the changes have not yet been able to be undone. The APS has been obliged to spend very considerable time, effort and money on trying to have the legislative changes flowing from the NCP reviews amended to acknowledge that Psychology is not wholly or mainly a health profession.

Some State and Territory governments have responded to our concerns by saying that all kinds of psychologists can be registered under the newly revised “template” legislation even though they are not health psychologists, by fiddling with the wording of the subsidiary regulations. One of our primary worries is that, because the “template” legislation has as its objectives to *regulate the health professions*, inclusion of non-health psychologists (or any other non-health professions) under it appears to us to breach the principle that legislative provisions must be read down from, and not go beyond the scope of, the objectives. To allow such inclusion would open the door to the inclusion of any other profession or occupation, leading to their regulation by stealth rather than explicit Parliamentary intent.

Thus, to include non-health psychologists in health-specific legislation is, we fear, invalid legally. At least there is sufficient uncertainty that our non-health members are left in a precarious legal position, as are members of the public served by non-health psychologists.

We believe that there is a relatively simple solution – to retain the separate acts regulating psychologists, with links to the new health professions’ acts for those psychologists who do work in the health arena by the simple mechanism of a register of such persons, to be maintained by the registration board. It is not clear to us why the various governments have not shown interest in this solution, nor why they have persisted with the original mistaken classification of our profession.

In summary, the NCC’s accidental misclassification of Psychology as only a health profession (done without consulting the profession and maintained in the face of the

⁷ In this legislative approach a number of professions are wrapped up in a generic piece of legislation as well as some generic systems and procedures (especially investigatory and disciplinary regarding complaints about unprofessional behaviour, and requirements regarding Continuing Professional Development).

profession's strong objections) has led to much unnecessary and continuing waste, costs, conflict and unresolved legal conundrums. Despite our initial support for many of the goals of the NCP reform process regarding reviews of regulatory legislation, the actual experience of that process has been and continues to be an unhappy and very counterproductive one.

(b) MISUSE OF THE “USER PAYS PRINCIPLE”.

We also consider that professional registration boards (apparently on the instructions of the relevant State/Territory Government) are misusing the “user pays principle”, saying that it is the rationale and justification for the charging of fees to registered psychologists to cover all of the costs of the regulatory system including legal action against non-psychologists offering psychological services illegally.

Registration boards' fees are in fact an impost or levy on the profession, charged by the “state” to alleviate the costs of discharging the state's function of protecting the public from charlatans or incompetent or unethical practitioners. The impost on psychologists varies across jurisdictions, but is generally high and intended to provide “cost neutral” regulation for the government concerned. *For some qualified practitioners it may act as a disincentive to enter into or continue in professional practice – an issue effectively ignored in the NCP legislation review process*. (We note parenthetically but importantly that not all other professions – e.g. lawyers in Queensland - are expected to pay regulatory fees, or where they are charged fees, not at the level necessary to recoup all government outlays on their regulation.)

The notion of “user pays” inherently includes:

- (i) Choice about whether to use the particular product or service. Psychologists have no choice about whether to be regulated: it is mandatory, if they wish to practise.
- (ii) Choice of service provider. Psychologists have no choice of registration board: each jurisdiction has a monopoly regardless of the quality or costs of its services.
- (iii) Receipt of services. Psychologists are not the receivers of regulatory services – the public are. Psychologists are not “purchasers” (nor indeed are the public). Psychologists have no way of influencing the scope, quality or costs of those regulatory functions.
- (iv) The opportunity for the user to recover the costs of the “user pays” system from their customers. Only a minority of psychologists are in a position to do so. Most are not in private practice, but work for universities, government departments, private sector organisations, etc. Even in private practice, the opportunity to pass on costs to clients is limited by the often-parlous financial position of clients.

In our view, regulatory costs are the “business of government” (akin in some respects to “community obligations”), and ought to be paid from consolidated revenue, not by the professionals being regulated. There is arguably a case for some partial payment by the professionals, where it can be established that some benefits accrue to them from the regulatory system. However the NCC has argued against accepting that regulatory systems should even consider potential benefits for those being regulated,

as this acceptance may open the door to undue influence by the regulated over the regulators. We tend to accept the NCC position on this matter.

We do not seek direct intervention by the Commission here, but *do ask it to note the misuse of the notion of the “user pays principle”* in regard to these “state” imposts, thereby drawing the misuse to COAG’s attention.

(c) POOR QUALITY (“QUICK AND DIRTY”) REVIEWS:

Our general assessment of the reviews of the Psychology profession is that they were not of the standard of rigour, conceptually and in process terms, that the NCC sought and promised in documents such as *“Reforming the professions”*, by Deighton-Smith, R., Harris, B., and Pearson, K. (May 2001) (published by the NCC and available on its website).

Examples of important issues for the profession that were overlooked or given scant attention are given below.

- The important “public interest” issues of privacy and health records ownership and security as part of their reviews of professional regulatory legislation⁸.
- Recent legal and legislative developments concerning professional “duty of care” (e.g. joint and several liability) and professional liability/indemnity including in regard to unregistered persons being able to offer quasi-psychological services in an unregulated and unaccountable way.
- The NSW legislature’s broadening of privilege to encompass communications between non-psychologist “counsellors” and victims of sexual assault⁹, and the implications of this development (especially its definition of “counselling” in comparison with the work of psychologists) for the regulation of the Psychology profession.
- Looked beyond the myopic “health” perspective to that part of “the public” which is outside the health field in regard to the nature of public interest and benefits issues. (Even within the health field, a myopic perspective dominates, restricted to the medical model wherein the individual practitioner does “expert” things to passive, inexperienced patients, ignoring the biopsychosocial models in which the client is active and self-responsible, makes the key choices, and works with the practitioner in a collaborative partnership in a personal problem-solving mode.)
- Issues of competition enhancement, and of barriers to entry into and Continued Professional Development in the profession (except for attention to the matter of academic qualifications).
- Restriction of psychological testing. Apparently the only review group to consider it concluded (without considering the full range of “public interest” and “public benefit” issues, especially privacy, expertise, accountability and ethical concerns) that such testing ought be unregulated.

⁸ For details, see the Victorian Law Reform Commission’s very recent Workplace Privacy Options Paper.

⁹ R v Norman Lee [2000] NSWCCA 444

- Emerging changes in professional work and their regulatory implications, save for a cursory examination by some of the issue of electronic means of professional service delivery and psychological testing.
- The implications of the Free Trade Agreement, especially its section on Professional Services.

In general, the processes followed were superficial. Consultation was mostly brief and, where it occurred, largely tokenistic. Members of the psychologists' registration boards did not have much if any opportunity for input, especially about fundamental assumptions including that Psychology was only or mainly a health profession.

The assumption seems to have been made by the relevant government ministers that the reviews ought to be conducted separately in each jurisdiction, leading to wasteful duplication of effort, and irrational differences in approach and conclusions. The APS's calls for a national coordinated review were not supported by the separate government ministers. Those governments that were declared by the NCC to be tardy seemed to be more interested in completing the reviews as soon as possible and obtaining the withheld sixth tranche of Australian Government funds than with undertaking careful and rigorous reviews.

Thus the monetary rewards for completion of the reviews seem to us to have stimulated some governmental effort initially on the legislation reform front, but to have been ultimately dysfunctional, encouraging only superficial conformance with NCC goals, cutting corners, and perhaps embarrassing some State/Territory Governments and undermining their support for the NCP process.

COAG ought to develop a more sophisticated approach than a too-simple "carrot and stick" one to the issue of incentives for participating governments to implement COAG policies.

(c) INADEQUATE NCC OVERSIGHT:

Our impression has been that the NCC did not oversee or evaluate the professions' legislation review processes in any meaningful way. There was little or no evidence of a NCC presence during or after the reviews, in the health professions at least. There was no discernible effort to ensure adequate education of the public about the NCP review process (admittedly a difficult task given the diffuse nature of "the public") or about key elements in it such as the widely-misunderstood public interest and public benefits constructs (as the Senate Select Committee of 2000 urged).

We know of no NCC evaluation of any of the reviews. If there were, the Discussion Draft's calls for greater transparency and public accountability would appear to be applicable in this context.

FINAL COMMENT:

The NCP reform experiment may well have stimulated many productive developments in the Australian economy, but whether it has, if so the extent and locii of those developments, and what among its many components actually worked, cannot be confidently asserted because of insufficient rigour in the evaluation design and analysis.

That is perhaps a harsh criticism, taking account of the almost impossible nature of the evaluation task, long after the NCP experiment had commenced. *But it is a necessary one, to temper the enthusiasm with which proponents of NCP may want to assert that this evaluation exercise legitimises NCP as the dominant policy reform framework for the future.*

Thus, for example, who can tell whether the NCP reforms, if effective, were so because of the collective government energy and effort behind them rather than the application of NC Principles? Or was productivity (whether macro or micro) mostly a reflection of other changes such as the dramatic advancements in computer technology? Productivity improvements may have been equally well or more successfully achieved had a “cooperation” rather than a “competition” conceptual framework been used, and had the same level of government and bureaucratic support, enthusiasm and diligence been provided to it. Or they may conceivably have been achieved with no governmental effort at all (if other forces drove them).

Nonetheless the Discussion Draft, with appropriate re-wording, could provide a valuable, comprehensive history of the NCP reform effort, a detailed articulation of its underlying rationale, and a set of “considered judgments” by the Commission’s members and staff about its likely impacts. It could also provide a major (but not the sole) basis for more thoroughly conceived and structured evaluation programs.

The latter should seriously canvass the non-economic impacts, to the same level of conceptualisation and detailed examination as has been given to the economic impacts of NCP reform efforts. A multidisciplinary conceptual approach and multidisciplinary evaluation projects, methodology and teams should be employed.

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