

CHAPTER 3

THE FINDINGS OF OTHER REVIEWS

It would be ironic – and indeed unacceptable – if Australia was to achieve major competition reform only to find that Parliaments and Governments had indirectly diminished the customer focus of previous government enterprises which had seen this as their principal objective.....Underpinning the Hilmer reforms and our own work in this report is the fundamental tenet, which is that people must be the clear net beneficiaries. Unless the benefits clearly outweigh the disruption due to the changed process, and any loss of customer rights then the whole process will have been largely worthless.¹

Introduction

3.1 The broad, all encompassing and controversial nature of NCP has meant that a great number of inquiries have been conducted on various aspects of the policy and its implementation. The Committee has reviewed the findings of a number of other Committees and these are summarised below.

Senate Economics Legislation Committee

3.2 The National Competition Policy, the Competition Policy Reform Bill 1995 was referred to the Economics Legislation Committee by the Senate on 11 May 1995. The Committee received 26 submissions and held two public hearings. In its report, the Committee noted that there was considerable support for the Bill however a number of issues were raised:

General concern was expressed that competition policies were ‘being extended to a whole range of bodies and organisations which have never in the past been thought of as being subject to competitive legislation’. The legislation has the potential to be very far reaching and may have an impact far broader than originally intended. Concern was expressed about definitions within the Bill, and in particular about the definition of ‘business’ (which includes ‘not for profit’ businesses), and which government agencies would be subject to the scope of the Bill and which would not. The suggestion was put forward that unless the NCC very early on formulates policy in relation to definitions and to the proper role for government, there is a great chance that the courts will be defacto policy makers. In addition, because governments may find some of the outcomes

1 Standing Committee on Uniform Legislation and Intergovernmental Agreements, Competition Policy, Consideration of the Implementation of a National Competition Policy, Twelfth Report, Legislative Assembly Western Australia, (Hon P G Pandal, MLA Chair), 1996, p vii.

of competition policy uncomfortable, they will be forced to introduce a great many regulations to ensure that certain vulnerable sectors of the community are protected. This may place an undue burden on the business community.

The Institution of Engineers expressed concern about the impact of competition policy, and associated moves towards corporatisation, privatisation, outsourcing and breakup of government business enterprises, on the overall process of technological development in Australia and the education of future generations of professional people. In particular, the Institution highlighted the potential for loss of corporate memory through the breakup of major public utilities and the move of large numbers of individuals with extensive knowledge and experience into smaller private sector organisations. This breakup will also diminish the potential for public sector organisations to act as a training base for young professionals such as engineers, and will reduce the likelihood that government enterprises carry out long-term basic research relevant to their sector.....

The Australian Conservation Foundation (ACF) expressed the concern that where plans are made to corporatise or privatise public utilities they should be subject to comprehensive, independent and public review. The ACF further expressed the view that, with regard to water and energy utilities, it was inappropriate for private companies to be making management and policy decisions where such decisions have the potential to have impact on the natural environment.

The Communications Law Centre submitted that current discussion on competition policy reform concentrated too much on the supply side of the economic equation (that is, that efficiency and economic gains are the primary goals) and that insufficient attention was being paid to the demand side of the equation (issues such as access, equity, pricing, quality, standards and privacy).²

3.3 A number of the above concerns are now reflected some four years later in the current environment. The purview of the NCP has become increasingly broad and the perception is that attention has been focussed on efficiency and economic gains rather than access, equity, quality, standards etc. Concern is still being expressed about the lack of transparency of legislative reviews, lack of consultation, independence and comprehensiveness.

3.4 Concerns have also been raised with the Select Committee about the different definitions of public interest used by different jurisdictions administering NCP. There is a lack of uniformity, and there is a problem with inequity which arises between sectors where the policy has been applied more or less rigorously or more or less competently.

2 Report on the Consideration of the Competition Policy Reform Bill 1995, Economics Legislation Committee, Australian Senate, June 1995, p 3-4.

House of Representatives Standing Committee on Financial Institutions and Public Administration

3.5 The National Competition Policy Reform Act was passed in 1995 and during 1995 and 1996 further concerns were raised about the NCP and its implementation.

3.6 Following on from an earlier reference, the House of Representatives Standing Committee on Financial Institutions and Public Administration conducted an inquiry into the National Competition Policy in 1996. The Committee reported in June 1997 on the following terms of reference:

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

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

- (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- (b) for the merits or appropriateness of a particular policy or course of action to be determined; or
- (c) for an assessment of the most effective means of achieving a policy objective;

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

- (d) government legislation and policies relating to ecologically sustainable development;
- (e) social welfare and equity considerations, including community service obligations;
- (f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (g) economic and regional development, including employment and investment growth;
- (h) the interests of consumers generally or of a class of consumers;
- (i) the competitiveness of Australian businesses; and
- (j) the efficient allocation of resources.

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

- (a) existing government policies relating to community service obligations; and
- (b) options for the delivery and funding of these services.

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

3.7 Similarly to the Economics Legislation Committee, the House of Representatives Committee also found that although, there was some dissension about the policy, generally the view was that the progress of the policy was widely supported. However, of particular relevance to this Select Committee Inquiry, the House of Representative's Committee made a number of recommendations relating to what they felt were necessary components of the 'public interest' process. The House of Representatives Committee also made a number of recommendations in relation to Community Service Obligations and among others, recommended that the NCC adopt a more open transparent approach to its work and that all agencies involved in the NCP devote resources to ensuring community understanding and debate about the policy. A full list of the House of Representatives Committee's recommendations is at **Appendix 3**.

3.8 The NCC and the ACCC have attempted to address the concerns raised by the House of Representatives' Committee, particularly in relation to public education. For example, they have produced a range of newsletters and papers reporting the progress of NCP. However, evidence to this inquiry indicates that the community is still very much concerned about the issue. It seems clear to the Senate Committee that more needs to be done to educate and train the administrators of NCP.

3.9 The transparency of the work of the NCC and other jurisdictions would seem to be a perennial issue. Submissions to the Senate Committee and evidence taken during Public Hearings, claim that legislative reviews are still not open and transparent and that the contracting out of many public functions is putting them into the realm of 'commercial-in-confidence' and out of the scrutiny of the public. This issue is further considered in Chapter four.

3 Cultivating Competition, Inquiry into aspects of the National Competition Policy Reform Package, June 1997, Report from the House of Representatives Standing Committee on Financial Institutions and Public Administration, Parliament of the Commonwealth of Australia, AGPS, Canberra, pp xiii - xiv.

Productivity Commission Inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia

3.10 As a result of the House of Representatives' Committee Report, the Treasurer, the Hon Peter Costello, charged the Productivity Commission on 28 August 1998 with a review of the impact of competition policy reforms on rural and regional Australia. The Commission's Terms of Reference were:

The Commission's public inquiry should assess the impact (both transitional and ongoing) of the competition policy and related reforms introduced by the Commonwealth, State, Territory and local governments under the three intergovernmental agreements signed in April 1995 – the Competition Principles Agreement, the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms. These agreements followed an Independent Committee of Inquiry into national Competition Policy that reported to Commonwealth, State and Territory Heads of Government in August 1993 (the Hilmer Report).

In undertaking the inquiry the Commission should have regard to the established economic, social, environmental, and regional development objectives of Australian governments. Consideration should be given to other influences on the evolution of markets in regional and rural Australia, including the role of international trade, foreign investment and globalisation generally.

The Commission should specifically report on:

- (a) the impact of competition policy reforms on the structure, competitiveness and regulation of major industries and markets supplying to and supplied by regional and rural Australia;
- (b) the economic and social impacts on regional and rural Australia (including on small businesses and local governments) of the changes to market structure, competitiveness and regulation flowing from the reforms and the effect of these impacts and changes on the wider Australian economy;
- (c) possible differences between regional and metropolitan Australia in the nature and operation of major markets and in the economic and social impacts of the reforms promoted by national competition policy; and
- (d) any measures which should be taken to facilitate the flow of benefits (or to mitigate any transitional costs or negative impacts) arising from competition policy reforms to residents and businesses in regional and rural Australia.

3.11 The Productivity Commission undertook an extensive program of community consultation meetings throughout rural and remote Australia. On 18 May 1999, the Commission released a Draft Report – “Impact of Competition Policy Reforms on Rural and Regional Australia”. The Report formed the basis for valuable community

discussion and the Commission followed up the report with a further round of consultations. On 8 September 1999, the Commission released its final Inquiry Report with the following findings:

1. A large proportion of the fastest-growing country municipalities and smaller towns are located along the coast. Those experiencing falling population are predominantly in the interior or have economies dominated by a declining industry.
2. Many wheat and sheep farming districts often have a growing provincial centre or 'sponge city'. In part, the growth of the provincial centre is the result of the relocation of population from smaller towns and farms in the surrounding district.
3. Population growth in coastal regions is closely linked with growth in employment in the service industries, along with the number of older and unemployed persons. Other areas of country Australia are, on average, experiencing slower population growth than the rest of Australia, in part linked to slow growth or contraction in employment in agriculture and services.
4. In broad terms, Australia's development has followed the pattern of most developed economies. Notwithstanding the absolute growth of agriculture, mining and manufacturing, as shares of GDP the relative importance of these sectors have declined, while that of the services sector has risen.
5. Since the early 1980's both the level and variability of structural change has been greater in country Australia than the cities.
6. High rates of structural change in country Australia do not necessarily involve employment losses. Similarly, low rates of structural change are not always associated with high employment growth.
7. The long-term declines in the terms of trade for both agriculture and mining are major sources of structural change in country Australia. The agricultural sector has responded by boosting productivity and consolidating farms, resulting in greater output but reduced employment. The mining sector has increased output by increasing investment, in part to take advantage of new technologies.
8. The manner by which restrictions on competition may be considered under NCP is not well understood by many people. This is consistent with a wider lack of communication about, and hence appreciation of, what constitutes NCP and how it is implemented.
9. To date, relatively few reviews of statutory marketing arrangements have been completed and considered by governments. Consequently, it is too soon in the NCP legislation review program of statutory marketing arrangements to assess the overall effects of SMA reforms.

10. The range of conflicting views on the validity and effectiveness of statutory marketing arrangements reinforces the importance of the NCP in reviewing the efficacy of such arrangements from the perspective [of] the community as a whole.
11. Submissions and meetings across Australia indicated a widespread lack of awareness and understanding about the scope and application of competitive neutrality policy to the activities of local government.
12. Levels of awareness and understanding about the provisions and operation of the public interest test are often inadequate to ensure that inappropriate implementation of competitive neutrality reforms at local government level does not occur.
13. Competitive neutrality policy overlays and complements existing State government reforms designed to improve the efficiency and effectiveness of local government activities. In doing so, it reinforces the realisation of the benefits and costs of those broader reforms.
14. Changing social patterns, such as more flexible working hours, the increase of women in the workforce and single parent households, have resulted in decisions by governments to make shopping hours more flexible. More liberal retail trading hours have weakened the competitiveness of some retailers. At the same time, they have been of benefit to consumers and appear to have increased employment opportunities, including in country Australia.
15. Much of the legislation which restricts the sale of some goods and services to certain businesses is yet to [be] reviewed. The legislation review provisions of the NCP allow for the benefits to the community of restricting competition to be considered against the costs of such restrictions. To the extent that the benefits from these restrictions exceed their costs, restrictions on the sale of certain goods to specific retailers could be sustained.
16. If the benefits of competition are to be realised – and confidence and certainty in an access regime promoted – there needs to be a willingness not only to implement the reform, but to ensure the arrangements are not so complex as to deter potential competitors from using the access regime or discriminate against infrastructure owners. Any problems resulting from the multiplicity of regimes is best addressed by the NCC in the course of certifying the State-based arrangements
17. Infrastructure services represent significant costs for industries based in country Australia. NCP reforms affecting the provision of these services are producing productivity gains which have led to some employment losses but are also helping to make user industries more competitive and are benefiting consumers.

18. There would appear to be significant gains for the Australian community, and for country Australia as a whole, from implementing NCP reforms. The reforms are likely to have a more varied effect on country regions than in metropolitan areas, with implementation costs of some reforms being more evident in the former.
19. The effects on most, but not all, regions of the NCP reforms are likely to be less significant than those resulting from the broad economic forces which are continually reshaping economic and social conditions in Australia.
20. There may be a case for specific adjustment assistance packages where a concentrated adjustment shock occurs rapidly and is large relative to the size of a community. The decision to proceed with adjustment assistance will be influenced by the (direct and indirect) costs and benefits of an adjustment package tailored to a particular regional change relative to the costs and benefits of relying on general measures.

3.12 Based on these findings, the Commission made the following recommendations:

1. All governments should review in the year 2000 the information they provide about their National Competition Policy undertakings with a view to ensuring that it is:
 - accurate in terms of both its content and relationship to other policies; and
 - is publicly available and is provided to those implementing National Competition Policy reforms in a readily accessible form.
2. All governments should publish and publicise guidelines which:
 - outline the purpose and scope of the ‘public interest’ provisions of the Competition Principles Agreement; and
 - provide guidance on how the provisions should be interpreted and applied.
 - In the event that a common set of basic principles for application of the public interest test is developed jointly by governments, these also should be published and disseminated widely.
3. Governments should require major legislation review panels to ensure that their reports go further than simply determining compliance or otherwise with NCP principles. Reviews should be based on genuine public input, be conducted in a transparent manner and inform interested parties which and how reform, or maintenance of the status quo, will lead to superior outcomes and performance.

4. In the case of reviews of anti-competitive legislation which may have significant impact extending across jurisdictions, the benefits and costs should be weighed in terms of the interests of Australians as a whole.
5. The National Competition Council should no longer be asked to conduct legislation reviews.
 - 5.1 All benefit-cost studies of major new water infrastructure investments should be publicly available and should clearly identify the nature and magnitude of any social (including environmental) benefits.
6. There should be no across-the-board extension of the NCP target dates.
7. CoAG should give consideration to the formal extension of the rural water reform timetable for implementation of the water property rights and water allocation requirements.
8. If governments consider that specific adjustment assistance is warranted to address any large regionally concentrated costs, such assistance should:
 - facilitate, rather than hinder, the necessary change;
 - be targeted to those groups where adjustment pressures are most acutely felt;
 - be transparent, simple and of limited duration; and
 - be compatible with general safety net arrangements.
9. Governments should rely principally on generally available assistance measures to help people adversely affected by NCP reforms.

Western Australian Parliamentary Standing Committee on Uniform Legislation and Inter-governmental Agreements

3.13 The Western Australian Parliamentary Standing Committee on Uniform Legislation and Intergovernmental Agreements has also conducted a review of the NCP and its operation in that State. The Committee has produced two reports, the first tabled in 1996 and a further report in 1999. In the first report, (Chairman's Foreword) the Committee criticised the Hilmer report for not adequately dealing with accountability issues in relation to businesses with community service obligations.

3.14 The 1999 Report focussed on the progress on restructuring of State public enterprises and the impact of such changes on the provision of community services. The report concluded that 'governments at all levels throughout Australia and overseas have for years undertaken reforms such as deregulation, reform of

government business enterprises, and measures to prevent anti-competitive behaviour with explicit intention of improving economic performance by enhancing competition.’⁴

3.15 In accord with the findings of other inquiries, the Western Australian Committee found:

- a need for an integrated approach to deregulation taking into account social, cultural, environmental and political consequences;
- confusion about NCP because it has been introduced along with a raft of other related reforms such as competitive tendering, public sector downsizing etc;
- while there is general support for NCP, there needs to be safeguards to ensure that essential public services continue to be delivered at a standard and reasonable price;
- it is difficult to separate the impacts of NCP from those of other related policies, such as tariff reductions;
- the pace of economic change has created uncertainty and distress, most evident in rural and regional areas; and
- the benefits of NCP are poorly understood and the disadvantages are often exaggerated.

3.16 The Western Australian Committee made a number of findings and those of particular interest to the Senate Select Committee's inquiry are listed below:

- that the delivery of community service obligations should not be compromised by National Competition Policy. It is a matter for governments to decide the nature of community service obligations, which sections of the community they should target and the level of service to be provided from public funds. National Competition Policy does not require reductions in subsidised community services.
- that there was a misapprehension that National Competition Policy prevented the provision of community service obligations. This is not the case. There is nothing within the National Competition Policy principles that prevents the continued provision of community service obligations. It is a matter of openness and transparency for governments to reveal how much the service is being subsidised and to allow them to make considered decisions on such information.

4 Western Australian Parliamentary Standing Committee on Uniform Legislation and Intergovernmental Agreements, Competition Policy and Reforms in the Public Utility Sector, Twenty-Fourth Report, Legislative Assembly, Perth, 1999, p xiv.

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- that National Competition Policy does not necessarily require privatisation, the contracting out of services provided by the public sector to outside businesses or the need to make cuts in subsidised services.
 - that there were concerns by some sectors regarding the maintenance of uniform tariffs in a fully deregulated market. However, in some limited circumstances they can be justified.
 - that because of the infrastructure requirements and the range of subsidies that are required, overseas experience has demonstrated that it is better for the supply of water services to remain in public ownership, except in some isolated cases under special circumstances.
 - that the pace and direction of deregulation, and privatisation was of concern to some export orientated sectors of industry but that given time they have the capacity to accommodate change.
 - that there is a strong perception that rural and regional economies have been adversely affected by the reduction of services and contracting out of essential services.
 - that market forces are global, but the social fallout that policy makers have to manage are local.
 - that although competition policy espouses at the lowest cost, there are social costs which must be taken into account. There are also ramifications for professional standards in the future.
 - that with corporatisation, public utilities have been removed from the scrutiny of the Parliament and are now subject to corporate governance. They operate to increase profits and dividends without necessarily considering the public interest.
 - that there were doubts in the community about the economic and social benefits of outsourcing and privatising some services which are traditionally provided by the public sector.
 - that the pace of reforms has not been matched by a similar rate of change in the public's perception about the delivery.
 - that the privatisation of public utilities often raised questions of public welfare. The perception is often that even when precautions to ensure public benefit and the supply of essential services have been made a condition of sale, these may not, in some cases, be able to be maintained.
 - that National Competition Policy only requires that the operations of public utilities should be examined to ensure that services are provided to the public in the most effective and efficient manner and also that other providers can enter the market on fair and equitable terms.

- that downsizing, contracting out and tendering has sometimes had dramatic effects in some rural communities. It has had an effect on the social fabric of communities. As people once employed by the local shire leave the town, there are spill over effects in the schools, sporting clubs as well as the local businesses.
- that there existed a public perception about the lack of accountability, as well as questions about whether governments should outsource their community service obligations through contractual arrangements, thereby switching to private law accountability mechanisms.
- that it was commonly believed that there has been a tendency towards restricting information to the public since the outsourcing of services, owing to the private sector's reliance on confidentiality.
- that local authorities in regional and rural areas have with the implementation of contracting out and tendering initiatives been more adversely affected because the impact is much greater if jobs are lost in the local community.
- that there was widespread misunderstanding about the National Competition Policy.

3.17 The Senate Select Committee has heard similar concerns to the findings of the Western Australian Committee throughout its own inquiry.

3.18 The WA Standing Committee made a number of recommendations on the impact of National Competition Policy on Western Australian public utilities:

Recommendation One

That the Government develops a strategy of public information and consultation before it proceeds with the privatisation of public utilities.

Recommendation Two

That where a substantial Government asset is to be sold that this be achieved, where possible, by public float with preference given to Western Australian investors.

Recommendation Three

That consideration be given to the establishment of an independent energy industry regulator.

Recommendation Four

That because of the infrastructure requirements and the range of subsidies that are required, for the most part, the government retain water services in public ownership.

Recommendation Five

That the accounting and funding of community service obligations be made open and subject to scrutiny.

Recommendation Six

That the Public Accounts and Expenditure Review Committee should examine community service obligations in Western Australian public service delivery.

Recommendation Seven

That private sector service providers who provide services on behalf of the Government be subject to the same administrative law provisions as the public sector.

Recommendation Eight

That the Government consider reforming public and private laws to ensure that a contractor's decisions and actions are reviewable as if they were performed by a government agency, if they are performed on behalf of the Government.

Recommendation Nine

That the Government introduce processes for contracts with contractors who provide services previously provided by the public sector, that require the contractors to provide sufficient information to allow proper Parliamentary scrutiny of the contract and its management.

Recommendation Ten

That when contractors provide services previously performed by the public sector, that the Government require those contractors to provide sufficient information to enable the Auditor General to carry out a performance audit of the contractors performance under the contract.

Recommendation Eleven

That the Government provide a commitment to ensure a free flow of information where government services have been privatised and outsourced.

Recommendation Twelve

That the powers of the Auditor General be extended to ensure proper scrutiny of privatised and outsourced functions.

Recommendation Thirteen

That the Government consider the establishment of a Regulator General to investigate and resolve complaints about contractors who deliver services on behalf of the Government.

Recommendation Fourteen

That the Government consider whether it is practicable for recipients of services formerly provided by the Government and now provided by a private sector provider to obtain information under the Freedom of Information legislation.

Recommendation Fifteen

That the Public Accounts and Expenditure Review Committee undertake a review of the contracting out and outsourcing of services and functions previously undertaken by the public sector.

Recommendation Sixteen

That the Government constantly review the implementation of National Competition Policy reforms and address any adverse affects in Western Australia particularly in rural and regional areas.

Recommendation Seventeen

That the Government implement measures to ensure that the export sector of the Western Australian economy benefits from the implementation of National Competition Policy.

Recommendation Eighteen

That the Government as part of the National Competition Policy, reform government business enterprises, by restructuring them and making them compete with private businesses as well as monitoring prices where the government business retains a monopoly.

Recommendation Nineteen

That the Government undertake an educative role on the nature of National Competition Policy, specifically the nature of the reforms relating to the extension of the *Trade Practices Act 1974*, review of anti-competitive legislation, the restructure of public monopolies, the introduction of competitive neutrality, third party access to essential facilities and prices surveillance of government businesses.

Recommendation Twenty

That any commercial enterprise of Government be subject to the scrutiny of the Auditor General to ensure that the balance sheets of the business reflect the true costs of operations.

3.19 The Senate Committee is of the view that many of the findings and recommendations of the WA Committee are of relevance to its own findings and recommendations. In particular, the Senate Committee supports the recommendations to improve public information and consultation, transparency of funding of community service obligations, provisions for scrutiny of contracts carried out on behalf of government agencies, and to provide for free flow of information. See **Appendix 4** for the Committee's recommendations from its earlier report.

Senate Rural & Regional Affairs & Transport References Committee Inquiry into the Effects of Deregulation of the Dairy Industry (The Dairy References Committee)

3.20 On 23 March 1999, the Senate referred the following matters to the Dairy References Committee for inquiry and report:

(a) future domestic and international marketing conditions facing the Australian dairy industry and those factors which are influencing Australia's competitiveness in these markets;

(b) the pressures on the current industry regulatory arrangements such as the introduction of new technologies and competitor supplier countries such as New Zealand;

(c) the impacts associated with the removal of the Domestic Market Support scheme on:

- (i) the dairy industry and rural and regional communities, and
- (ii) state marketing arrangements; and

(d) measures which may be taken by government to facilitate the transition to a less regulated environment.

3.21 This inquiry was of particular interest to the Senate Select Committee on Competition Policy as the Dairying Industry is a significant one and the inquiry raised a number of serious issues in relation to the administration and management of NCP and deregulation processes.

3.22 The purpose of the inquiry was to investigate the domestic and international marketing and regulatory arrangements for the industry, proposals for regulatory change, the impacts of any change and measures to facilitate that change.

3.23 The Australian Dairying Industry has been subject to review and restructuring since the 1960's, however, the latest impetus for deregulation resulted from the legislative review requirements under the National Competition Policy. All State governments undertook to review, and if appropriate, reform all legislation that restricts competition by the year 2000. The dairy industry was identified as being one of the legislative regulatory regimes requiring review in each State. All States have, or will shortly have, completed reviews of their dairy industry regulatory environments.

3.24 The Dairy References Committee found that deregulation will affect all sectors of the dairy industry, but will have different effects depending on the region and the mix of market and manufacture milk produced within a State or by a dairy farmer. The References Committee noted, that there is very little support for deregulation outside Victoria, while within Victoria and Tasmania, where deregulation will have the least impact and potentially the most benefit, the issue has divided farmers. All but the Victorian reviews concluded that the timeframe for deregulation of the industry should be extended.

3.25 Of major import for the industry, however, is the belief that if Victoria deregulates, the commercial reality is that the rest of the country will be forced to follow.

3.26 The Dairy References Committee identified the beneficiaries of the retention of the current regulatory arrangements as:

- farmers;
- the consumer; and
- the regional economies which are heavily dependent on the dairy industry.

3.27 The dairying industry is the third largest rural industry, (behind beef and wheat) and the third largest exporter of dairy products worldwide, after the European Community and New Zealand. Dairying is Australia's largest rural industry valued at the wholesale level (\$7 billion).⁵

The world market for dairy products is characterised by trade in heavily subsidised product from Europe and the US and is treated as a residual market by most countries except Australia and New Zealand. While import barriers (tariffs and quotas) are a major impediment to the Australian dairy industry expanding its export base, other factors include world prices and competition from New Zealand in a static domestic market.⁶

3.28 The Dairy References Committee noted that deregulation of the industry would mean that it would be the only dairy industry in the world without Government legislative support. New Zealand continues to have significant Government legislative support through its single desk export facility. Australia is relatively unique in that its approach to the industry links domestic growth and profitability with international competitiveness. The Dairy References Committee noted:

The NCP guidelines are based on the assumption that competition is of benefit to the public; but that if restrictions are to be retained it is necessary to demonstrate a net benefit to the community as a whole. Under the test, governments are required to weigh up the likely positive and negative effects on areas such as access and equity, social welfare, economic efficiency, [social welfare [sic], employment and business competitiveness, with equal weight being given to economic and social considerations in the assessment. Responsibility for determining where the public interest lies is with the States and Territories.⁷

3.29 The report listed a number of concerns with regard to the proposal to deregulate the industry, including:

- the assessment of the public interest under the terms of NCP;
- the impact on farmers income;
- failure to address the issue of compensation for quota;

5 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, Executive Summary, pxi.

6 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, Executive Summary, pxii.

7 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, p 66.

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- the impact on rural and regional communities;
 - the absence of a thorough investigation of the national consequences of deregulation with State reviews being undertaken piecemeal; and
 - less than comprehensive assessment of the public interest in the reviews.

If deregulation is undertaken:

- an abrupt loss of income would result for farmers across Australia as farmgate prices are aligned;
- a reduction in the value of capital assets including quota entitlements;
- loss of countervailing market power by farmers who will be subject to the market power of the major processors and retailers; and
- the adequacy of the restructure package.

3.30 The Dairy References Committee was concerned that such changes are likely to result in potentially significant social and regional impacts, since the dairying industry is a major industry and any negative impacts will have multiplier effects on regional economies. The Dairy References Committee also expressed concern that there will be a transfer of wealth from rural producers to the cities – the effect of industry profits passing to the retailing and processing section will mean the repatriation of profits to shareholders, both within Australia and from overseas, whereas profits retained in the community in the form of income to farmers generally stays in the community. The Dairy References Committee's report highlighted the lack of any demonstrable or substantive gains for farmers or consumers.

3.31 The social impact on regional economies was an issue of major concern in submissions to the Dairying Inquiry and evidence taken at public hearings. Of particular note is the fact that few supported the prediction that consumer prices for milk would fall.

3.32 The Dairy References Committee noted that the reviews of the dairying industry regulations are typical of the concerns expressed in the Senate Select Committee's interim report namely:

- confusion about the application of the public interest test;
- a predominance of narrow economic interpretation of the public interest test due to the administrative ease of simply seeking to measure outcomes in terms of price changes and narrow cost/benefit analysis;
- differing interpretation of the policy between States;
- a lack of transparency of reviews; and
- a lack of appeal mechanisms.

3.33 The Commonwealth Government has recently announced a national re-structure package of \$1.25 billion to manage simultaneous orderly removal of the DMS arrangements and market milk regulations on 30 June 2000 following a proposal by the Australian Dairy Industry Council (AIDC) which took the view that deregulation is inevitable.

3.34 The purpose of the re-structure package would be to provide farmers with the option of either remaining in the industry and re-structuring or exiting the industry.

3.35 Despite this, the Dairy References Committee questioned whether the perceived benefits are worth the disruption and adverse consequences which will flow from the deregulation.

3.36 The Dairy References Committee expressed the view that farmers and regional economies will suffer under deregulation and, at best, the position of the consumer will not be improved.

3.37 Of further concern was its findings that the winners from deregulation in the short term are the two major co-operatives, other processor and manufacturing companies.

Many of the witnesses and submission have requested the Commonwealth Government to demonstrate some 'political courage' and take an appropriate leadership role by intervening in the deregulation process, in the interests of the dairy industry and the regional areas which are dependent on that industry.⁸

3.38 The Dairy References Committee recommended that:

- the Deputy Prime Minister and Minister for Transport and Regional Services and the Federal Minister for Agriculture, Fisheries and Forestry [Government][sic] call, as a matter of urgency, a meeting of State Agriculture and Regional Development Ministers to determine a framework, and a timeframe, for the co-ordinated deregulation of the Dairy Industry.
- that should administrative arrangements not be in place in time to make the first payments by 1 July 2000, that appropriate compensatory arrangements are factored into the payments schedules, in order that dairy farmers do not suffer any more financial hardship than is presently envisaged:
- that the States of Queensland, New South Wales and Western Australia consider the issue of quota entitlement and any form of compensation that may be appropriate for the resumption of quota entitlement, including the possibility of using NCP payments as compensation:

8 Deregulation of the Australian Dairy Industry, Report of the Senate Rural & Regional Affairs & Transport References Committee, October 1999, p 170.

- that regional adjustment packages for rural and regional communities affected negatively by deregulation be developed by States and Commonwealth Governments;
- that the Australian Competition and Consumer Commission in accordance with subsection 17(1) of the Prices Surveillance Act monitor costs and prices in the dairy industry so that dairy farmers are not unfairly burdened with the cost of the proposed levy;
- that an inquiry into the operations and accountability mechanisms of cooperatives be undertaken.

Report of the House of Representatives Standing Committee on Industry, Science and Resources *The Effect of Certain Public Policy Changes on Australia's R & D, August 1999*

3.39 The House of Representatives Committee was asked to inquire into and report on:

the effect of public policy changes, over the last ten years, in the areas of corporatisation, privatisation, outsourcing and competition policy reform on the matters listed below:

- *the amount of R&D being carried out in Australia;*
- *the nature of the R&D being undertaken (that is, basic or applied);*
- *the relevance of the R&D to the commercial needs of industry;*
- *the level of investment in research infrastructure and equipment;*
- *the scientific and technological skills base and the demand for scientists, technologists and engineers; and*
- *the education and training opportunities for future research staff.*

3.40 The House of Representatives Committee noted:

The inquiry was prompted by concerns that competition policy, privatisation and outsourcing during the past decade may have had an adverse effect on the R & D conducted in those corporatised or privatised public sector agencies (such as the energy utilities) now operating in a commercial environment.

The potential adverse effects include: a concentration on short-term rather than longer-term R&D; a downgrading of unprofitable "public good" R& D and data collection functions; uncertainty over the ownership of data; and

decreased R&D co-operation between corporatised/privatised agencies, as well as between those agencies and external R&D providers.⁹

3.41 The House of Representatives Committee found:

A difficulty with assessing the effects on R&D of the competition policy process is that it is being applied at varying speed to different utility sectors different organisations within sectors and comparable sectors in different States. Quarantining the effects of public policy changes on R&D is difficult, and accurate data is not readily available.¹⁰

3.42 It was suggested to the Committee that the corporatising of government utilities has encouraged an atmosphere of commercial secrecy around R&D. Nevertheless, the House of Representatives Committee found that:

There is no direct evidence that the energy and water utilities' total R&D spending has diminished – figures supplied by the Department of Industry, Science and Tourism (DIST) in fact suggest a substantial increase in R&D within the gas, electricity and water industries in the decade under review. However, it appears that those funds are being allocated to fewer projects. Analysis of company-level data shows that the commencement of a few large projects accounts for almost all of the increase in gas and electricity R&D.¹¹

3.43 A number of issues were raised with the Committee including:

- the need to identify public utilities' R&D activities – particularly “public good” R&D and data collection – before corporatisation or privatisation;
- the need to maintain public sector support for long-term research
- competitive pressures causing firms to cut their R&D and purchase “off-the-shelf” solutions, particularly from overseas;
- loss of ‘critical mass’ for R&D in sectors such as water and electricity as they are unbundled and therefore the need to provide mechanisms to encourage the ‘critical mass’ for effective R&D;
- decreased willingness of the new agencies to co-operate either with each other or with external R&D agencies;

9 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p vii.

10 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p 1.

11 The Effect of Certain Public Policy Changes on Australia's R&D, Report by the House of Representatives Standing Committee on Industry, Science and Resources, August 1999, Executive Summary, p xvi.

- competition policies have clearly led to a more management–driven focus with a resultant reduction in basic and long-term research, and concern that corporatised energy utilities’ reducing their interest in renewable energy research, for example;
- concern at the application of competitive neutrality principles to the research sectors such as CSIRO and various tertiary institutions;
- outsourcing of public sector functions including R&D has benefited tertiary institutions, however, there has been a shift to short-term projects away from long-term and a concern that policies such as privatisation have led to a loss of in-house R&D expertise;
- contracting-out hospital services appears to have had potentially serious effects on health research. The National Health and Medical Research Council (NHMRC) informed the committee that services and facilities previously made available through the public hospital system have been withdrawn, or only made available at high cost. One unintended consequence may be to undermine on-site clinical research;
- concern regarding the impact on employment - reduced employment in the public sector has meant the loss of some training opportunities. The research community is concerned about the implications of the sale of utilities overseas for employment opportunities and the change from permanent to casual and short-term contracting.

3.44 The House of Representatives Committee made a number of recommendations of relevance to the Senate Select Committee including:

recommendation 2

As part of ongoing reforms in the water sector, the government seek the agreement of the Council of Australian Governments on common standards for:

- *continued public access to water flow and water quality data collected by the former public sector water utilities; and*
- *ongoing responsibility, either through nominated public sector agencies or the new water service providers, for collecting such data and making it publicly available;*

recommendation 3

that the government propose to the Council of Australian Governments that a stocktake of the R&D activities of utility service providers be carried out, to quantify any substantial loss of such activities-particularly those with a “public good” component – resulting from the application of competition policy and like reforms to the electricity, water, gas and telecommunications sectors. A possible mechanism for such a stocktake could be a review by the National Competition

Council. Where functions of net benefit to the community are no longer being performed due to a lack of commercial incentives, those functions should be either:

- *performed by the new service providers and funded by the government in a manner similar to a Community Service Obligation; or*
- *transferred to an appropriate public sector research agency, again, with funding adjustments as required.*

that the government propose to the Council of Australian Governments that, in future, R&D activities undertaken by competition policy reform targets be identified at an early stage of the reform process. Where the continued performance of non-commercial 'public good' and longer-term research is deemed to be desirable, arrangements should be made as per recommendation 5;

that the government bare in mind the public good when setting the external earnings targets for Commonwealth research targets for Commonwealth research agencies.

Senate Finance and Public Administration References Committee Report on the Contracting-out of Government Services (Second Report)

3.45 On 4 November 1996, the Senate referred the following to the Finance and Public Administration References Committee:

- (a) how best to ensure that the rights, interests and responsibilities of consumers, contracted service providers and government agencies can be defined and protected; particularly
 - (i) whether contracting-out arrangements should be governed by written contracts between the government agency and the service provider in all cases;
 - (ii) whether contracts should contain standard clauses dealing with matters such as responsibility for record keeping; complaints and dispute resolution procedures; allocation of responsibility between the contracting agency and the contractor in the event of financial or other loss on the part of the consumer; and
 - (iii) definition of standards of service.
- (b) The adequacy of tendering procedures adopted by government agencies in contracting-out services.
- (c) Whether the jurisdiction of the Ombudsman's Act 1976 should be extended to ensure that it covers all contracted out government services.
- (d) Ministerial responsibility to Parliament for contracted out services, noting that in other parliamentary systems it has been argued that, with

regard to corporatised or contracted out government services, Ministerial responsibility extends only to policy issues and does not encompass questions of day-to-day management and operation.

- (e) Whether and to what extent claims of commercial-in-confidence should be accepted as limiting the right of Parliament to examine contractual arrangements between government agencies and service providers.

3.46 The Committee's Terms of Reference were extended to include information technology and this was the subject of a separate report. The Senate Select Committee confined its review to the general contracting report.

3.47 A particularly salient point is made in the introduction to the report:

The difference between good examples and unsuccessful examples of contracting-out will largely come down to the extent to which good practice has been followed from the initial stages of making a decision to contract out a service through all stages of the process. If this is not done, in the words of the Auditor General,

There is clear evidence that, if poorly managed, competitive tendering and contracting can result in higher costs, wasted resources, impaired performance and considerable public concern about the waste of tax payers funds.¹²

3.48 The Committee examined a number of successful and unsuccessful tender processes against the background of the requirements of the Commonwealth Procurement Guidelines and noted that with respect to tendering:

It is absolutely vital that the process be carried on with the highest standards of probity if that satisfaction [satisfaction of the supplier community] is to be maintained. Tendering can be an expensive process particularly for smaller enterprises. Its outcome can be crucial to a business's future development. It also involves direct and public comparison with a company's competitors. If unsuccessful tenderers are not satisfied that process is absolutely fair, or agencies cannot demonstrate that it was, then companies will be unwilling to tender for government business in the future. In addition, flawed tendering processes will undermine public confidence. This would undermine the potential benefits to be gained from competition among suppliers.¹³

3.49 The Senate Select Committee did not inquire into the effectiveness of the contracting-out of government services but is concerned at the evidence which it did

12 Senate Finance and Public Administration References Committee, Contracting-out of Government Services, Second Report, May 1998, p 2.

13 Senate Finance and Public Administration References Committee, Contracting-out of Government Services, Second Report, May 1998, p 13.

obtain in relation to the contracting-out of local government services and services in the social welfare area.

3.50 The Finance and Public Administration Committee examined issues such as accountability of contractors, privacy and protection of information and commercial confidentiality. These aspects were outside of the scope of the Senate Select Committee's inquiry.

Summary

3.51 The debate about the National Competition Policy in Australia and its relative costs and benefits has resulted in numerous inquiries. Australians have been asked to accept a vast array of economic reforms and social changes on face value, often without explanation and are called to accept that many of the basic services they have come to rely upon from government will be provided by private enterprise. Consequently, there is cynicism about the NCP, the motives for its implementation and its costs and benefits.