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# **Submission to the Productivity Commission Review of National Competition Policy Arrangements (2004)**

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## **Submission to the Productivity Commission Review of National Competition Policy Arrangements (2004)**

The Australian Council of Social Service (ACOSS) is the peak council of the community services and welfare sector in Australia and the national voice for low income and disadvantaged people. The primary interest of ACOSS in the application and impact of National Competition Policy is in relation to:

- improvements or deterioration in the lives of low income and disadvantaged Australians
- improvements or deterioration in the circumstances of community agencies seeking to support low income and disadvantaged Australians.

### **Overview**

There are a series of basic assumptions which underpin the philosophy and practice of NCP in Australia. These include that the competitive market place provides the most efficient means of producing and distributing goods and services; individuals can participate and meet their needs within the market; services provided or funded by governments should be priced to recover costs; and governments, through regulation, have intervened too much in the operation of markets and are generally inefficient managers.

In theory, NCP aims to maximise social benefits for the community as a whole rather than supporting competition for its own sake. However in practice, the failure to adequately evaluate the impact of competition policy to date and the unrealistic expectations of community involvement in its review processes have limited the effectiveness of the achievement of its social objectives.

While mechanisms such as the Public Interest Test have been developed and broadened over time to respond to potential social impacts their effectiveness also remains unclear.

It is hoped that this review will form a platform for building more effective evaluative and consultation processes.

### **Evaluating the impacts of NCP on the economy and community**

A serious impediment to making judgments about the impact of NCP on the community as a whole, and on people affected by poverty or other disadvantage in particular, is the lack of evaluation information about the outcomes of competition.

In its draft response to the Senate Select Committee on the socio-economic consequences of NCP in 1999, ACOSS observed that there was a lack of empirical evidence about the socio-economic impacts of NCP and how these social impacts are being monitored and evaluated. This remains a concern today.

The wider community is expected to trust that benefits will eventually flow outwards and be shared by everyone as improved living standards. Even if this trust can be justified, the distributive outcomes across society are an even greater concern.

The issues concerning the evaluation of the social impacts of the NCP and of a proper evaluation of the public interest reflects the dearth of good practice models of social impact assessment in Australia. Where social impact assessment is being undertaken as part of the NCP process, it is often the responsibility of agencies committed to the primacy of economic goals and competition.

In particular, the lack of a transparent and accountable evaluative process continues to be a serious deficiency in the intellectual prerequisites for measuring the effectiveness of NCP and its public interest provision.

It is the case that the introduction of NCP has coincided with a decade of strong economic growth. However, the benefits of that growth have not been distributed evenly through the community and on many social trends we have witnessed decline or relatively modest improvements given the strength of the economy.

### **Coverage of NCP**

While the issues paper notes that competition based reforms in the area of social services are not strictly captured within the remit of NCP, there has nevertheless been a large flow on effect to this sector. In addition many areas of social service funding and delivery exist within a mixed economy (e.g. child care, health, employment assistance and aged care) and coverage issues remain confusing.

### **Markets, quasi market and social welfare**

For markets and competition to operate effectively, a regulatory framework will often be required to establish the prerequisites for market forces to function. For example, a market requires people to have equal knowledge and bargaining power between purchasers and sellers (the so-called level playing field), the capacity of purchasers to move between buyers who compete on known quality and price, and a range of sellers from whom to choose. The key aspects of consumer power required for a market based approach to operate effectively are choice, voice and exit. At the very least in most areas, there is a need to require disclosure of certain information to enable consumers to make effective choices.

It can be maintained that for many consumers of community services (e.g. a disability service) these elements are not naturally present. In addition, these consumers are not in fact the purchasers of services, the primary financial relationship is in fact between government and service provider, and a main motivator of the 'purchaser' (government) is to drive down costs and transfer risk.

To take an example in the health care arena, where power imbalances between consumers and providers is manifest, consumers have been vocal in asserting the obligation of government to provide a sound regulatory framework that supports desired social objectives such as public safety and quality of care. Reduction in regulation, for instance in advertising of health products, can bring with it good and bad consequences for consumers. It may provide consumers with more awareness of options

but it may also provide them with biased and inaccurate information. For example, a growing number of advertisements and "infomercials" about vulnerable areas of health care - plastic surgery, impotence, weight management, fear of cancer - have inevitably "talked up" the positives and downplayed the negatives associated with their services. They often involve sale of pharmaceuticals as part of "the package" and undisclosed links between them and various diagnostic testing services.

In the area of choice of provider and quality of care, publicly available information is almost non-existent. People rely on word of mouth, which may sometimes be accurate but which is at least as likely not to be.

In the absence of many of these market features, if policies are introduced which assume they do exist, they will almost inevitably compound the power and knowledge differentials and reinforce the existing imbalances.

Further, where government is the sole purchaser you have a monopsony market. These are actually highly regulated markets (e.g. via Governmental contractual arrangements), and this is generally a good thing (e.g. by imposing quality controls, targeting of those most in need etc). Competition policy must therefore tread warily in these 'markets'. Competition still operates, but it is deliberately 'distorted' by the rules of the game set by government.

### **Social benefit and the "public interest test"**

Most parts of the NCP regulatory framework explicitly recognise the importance of governments' role in establishing social objectives and of achieving desirable social as well as economic outcomes. While the Competition Principles Agreement requires the transparent assessment of the costs and benefits of these broader interests of government, such ideals have not always been realised in the implementation of the policy.

Community organisations have often not had an adequate say in legislative review processes where their interests are not entirely obvious.

The Public Benefit test was introduced following widespread lobbying by social and environmental groups concerned with the narrow economic focus of the draft NCP package. The social and economic costs that could be considered under the Competition Principles Agreement included:

- social welfare and equity considerations, including community service obligations
- government legislation relating to matters such as ... access and equity
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers
- the efficient allocation of resources.

A number of other mechanisms are also available to consider such matters under NCP, which generally makes for increased complexity. For example, Section 51 of the Trade Practices Act enables a government to make exemptions by passing its own legislation. There are also public interests provisions that the ACCC can invoke to authorize behaviour inconsistent with Part IV of the TPA. Finally Part IIIA of the TPA enables

third parties access to 'essential services such as electricity or gas, and provides that the NCP council can 'declare' a service is it felt "that access would not be against the public interest."

A process that seeks to benefit the majority of the population can in fact work to the clear disadvantage of specific groups. For example, changes to utility pricing which provide for larger "fixed fees" for the infrastructure component of these services and lower service usage charges may be seen by the majority of regular users to be a good thing. However, for people affected by poverty, the payment of a larger fixed fee reduces their capacity to economise by using the services frugally. It can also make access to these services more difficult.

The potential economic "tyranny of the majority" is also implicit in many broad "cost/benefit" analyses in health care and other areas where the social and economic interests of people affected by disadvantage may not be consistent with that of the majority. While referring to equity is a relevant concern, NCP is unclear how these different issues should be "weighed up" and when special legislative arrangements limiting competition are appropriate. Clearly any system of assessment of "public benefit" which does not apply itself specifically to the needs of people in these circumstances will inevitably add further to their disadvantage.

For community services also there is no guarantee that the public interest tests apply to reforms that apply NCP principles.

Many commentators have highlighted concerns in the application of Public Interest Tests. They point to:

- Difficulty in quantifying public interest
- The appropriate weight given to qualitative and quantitative factors
- Inconsistency in processes between jurisdictions and administrative bodies
- The complexity and number of approaches for assessing public interest, and
- The primacy of economic efficiency in assessments of public interest matters.

### **Social and economic trends**

Since the introduction of national Competition policy in nearly ten years ago, a number of worrying social trends have emerged.

Despite strong economic growth over the period overall socio-economic indicators are signaling more uneven distribution of wealth and opportunity across the community, concentration of disadvantage in certain locations and communities, and larger numbers of people living in relative income poverty.

The nature of contemporary work and the impact of internationalized and deregulated economies bring particular pressures to the policy and program environment. Marginalised communities with low incomes and limited or no work opportunities continue to grow and the gap between the rich and poor is widening.

Many of the poorest Australians live outside our capital cities or in regional centres, where economic reform, the changing face of farming and industry, low levels of

investment in infrastructure, and the historically poor management of our land and water have contributed to a general decline as well as financial and emotional pressure.

Progress for Indigenous Australians remains painfully slow, despite some successes. Unemployment is three times higher than for other Australians, infant death rates are three times as high, and life expectancy nearly 20 years lower.

Of particular concern is a polarisation of opportunities that is emerging – between job rich and job poor areas and households, and between regional and city dwellers. In December 2002, the Australian government estimated that around 850,000 children were living in 435,000 jobless families. Ironically, the economic boom of the 1990s has led to a growth in the number of jobless families.

While part-time and casual jobs have grown, full time secure employment has not. This is leading to a major problem of ‘hidden unemployment’, where in addition to the official statistics large numbers of people are either discouraged and stop looking for work, or have some work but want and need more.

Research by Siminski and Norris (2003) indicates that equivalent gross household inequality increased between 1996 and 2001 in every state and territory and by 1.5 per cent nationally. Peter Saunders (2003) shows the effect was most significant in terms of those in the bottom quintile (gaining \$13 per week since 1995) compared to those at the top end (gaining \$111.00), with the income share of the lowest quintile declining markedly since 1997, and inequality rising sharply by 6 per cent over that period.

The more equal distribution of resources is a precondition for a society where all people have opportunity and access to resources. To what extent NCP has contributed to or ameliorated the level and shape of contemporary poverty in a rich country like Australia, against a backdrop of rapid industry, trade and workforce reform, remains a valid question. Perhaps an even more important question is how NCP will respond to these trends, given its overall aim is to grow a productive society and “to improve the welfare of the Australian community” (Treasury 1998).

### **Overall impact of NCP**

The principles and practices underpinning NCP have increasingly been applied to a range of community services funding and reforms. The three main areas of impact (both positive and negatively) have been:

- reviews of legislation
- changes to the Trade Practices ACT, and
- the application of NCP principles to selection and funding decisions, including to local government.

Legislation application to the community services sector poses particular challenges, as policy and legislative frameworks were developed with particular service goals in mind. For example, there are some programs where by legislation not-for-profit agencies only can attract government funding (e.g. disability services). Following the reviews NCP has been applied to specific areas that can be seen to have a negative impact on the well-

being of the community. Examples include liquor retailing and gambling. In these kinds of cases, the public interest tests has not demonstrated itself to be fully effective.

It remains unclear whether changes to the Trade Practices Act, which extended Part IV to apply to all businesses including government business and unincorporated business, indeed goes to organisations which provide community services, and if they did what impact would there be on this, as this has yet to be tested in the courts. Some of the key issues are:

- whether government funding is a grant
- whether the organisations are engaging in trade or commerce.

This is of particular concern to agencies such as those meeting the social policy goals of government through Job Network services under the now privatized employment assistance program. In 1998 Greg Banks found that 'there is significant risk that a court would decide that organisations providing employment services are subject to the TPA. This has significant implications for many other providers of community services in Australia, who are now almost universally funded through contractual arrangements rather than grants.

Even though they are not party to the Agreement, local governments are specially covered as subject to NCP provisions. Local governments in Australia are significant suppliers of social services, including child care, aged care, support for people with disabilities, community transport, youth and family support services. The discretion that each State and Territory has in relation to local government has resulted the adoption of in diverse approaches across Australia (see Ernst, Glanville and Murfitt 1997 for a summary of these). The impact of these diverse approaches could be wide reaching, have threatened the viability of many local governments, and undermine its capacity to function as the third tier of democracy in Australia.

With the progressive implementation of NCP, governments have tended to represent it as applying to all sectors of the economy. This is partly because NCP is effectively a broad set of principles which governments agreed to implement following certain common processes such as legislative review. Governments have exercised their discretion in terms of policy and program priorities and this has resulted in a patchwork quilt of approaches across the country.

### **Impact on people on low incomes**

Significant challenges are being faced in the program of ongoing reform to balance the economic social and environment outcomes of major reform to the energy, water and telecommunications market.

While, these kind of utilities are generally subject to community service obligations, these are usually expressed in terms of concessional or emergency responses for tightly targeted groups, such as pensioners or concession card holders. This has the effect of excluding important segments of Australian society, such as the growing numbers of working poor. Reports across the country indicate also that one-off emergency vouchers or similar schemes vary in their effectiveness.

Further, as long as price signals remain the prime mechanisms to manage energy and water consumption, low income Australians will continue to be excluded from this dialogue or be adversely financially affected by the strategies adopted.

### **Impact on the community services sector**

NCP has impacted powerfully on community services. It has been implemented at a time when significant changes have occurred in the funding of community services. Governments have increasingly moved to: outsource services previously provided directly by government, introduce contestability and competition into funding decisions and establish more formalized 'purchasing' and 'monitoring' relationships.

Further, NCP (or the principles underpinning it) has been widely used as a rationale and vehicle for achieving change in particular industry sectors, including the community services sector. This is combined with a lingering confusion about what is meant to be covered by NCP or not.

Perversely, application of aspects of NCP may well have contributed to a loss of certain flexibilities and efficiencies in relation to the delivery of some social services. It is widely reported that: increased competition between agencies has led to a lack of cooperation and coordination; service quality has diminished in the race to the 'price' bottom; strict contractual arrangements have diminished innovation and individual responsiveness; there have been increased transaction costs for both governments and agencies; and that large 'corporate' charities are emerging (at the cost of smaller local agencies) with many of the negative attributes that government bureaucracies are criticised for.

The notion that community based and for profit organisations should compete for community services funding to improve efficiency also ignores the social capital that community organisations build (for instance, by involving local communities or communities of consumers in management and voluntary work, through fund raising efforts, and through community education). The entry of for profits erodes social capital, not just by displacing community based organisations, but by changing the character of existing community based organisations so that they replicate features of the private business sector. In some cases this improves efficiency, but it can also undermine service quality (given the relatively high priority the for-profit sector gives to cost competitiveness), the targeting of the most disadvantaged and social capital (for example, by forcing a greater concentration of services in the hands of a few large services that are no longer locally based).

At the same time, it is acknowledged that the experience of recent years have contributed to a rethinking of the reform agenda for the community services sector. Forward movement is supported on a range of fronts:

- improved support for the development of high level management, governance and organisational capacity of non-government community service organisations
- greater transparency and accountability, especially in terms of targeting greatest need
- the need to recognise and build in the true costs of quality service provision
- increased dialogue and cooperation between government civil society and industry on social policy and planning issues, and

- achieving more appropriate (and reduced) compliance costs for service providers.

### **Community Service Obligations**

From time to time, the public interest in competition policy is seen as requiring a policy which will adversely affect a particular group in society. Where the government considers that this is not appropriate, the general thrust of NCP is to make the costs of addressing this inequity transparent through the use of Community Service Obligations (CSOs).

Such CSOs include the "universal service obligations" placed on Telstra, the service obligations on Australia Post and various ones relating to utilities. The attractions of CSOs for governments include:

- Formal CSOs are transparent and outcome-oriented, ideally setting their own performance standard against which they can be measured
- The beneficiary group usually likes them because they provide a guaranteed benefit in their favour (though their scope can remain uncertain unless it is very clear what the expectations are)
- Where a CSO is financed through a cross-subsidy on other service users, it can amount to a hidden tax, but one which isn't included in the fiscal accounts
- Organisations will seek to provide CSOs at the least cost to them, and so these can be more efficient than a direct subsidy.

While CSOs can be beneficial to people affected by poverty and disadvantage, such as pensioner discounts on utilities and service guarantees for rural people, they are not used as widely as might be assumed. A CSO is generally only employed where a service is primarily commercial in nature, but has an important social dimension that may not otherwise be met by the market. It is also only used where it would be the least cost option. Often the imposition of a CSO is opposed by companies as an infringement upon their institutional autonomy. They can be regarded as inflexible and, in a deregulatory environment, too interventionist. There is also the danger that companies may attempt to use CSOs to subsidise their core business.

Arguably, they could be used more broadly to impose consistent obligations upon industries to achieve social goods, particularly where the industries require a government license to operate. However, there remains an apparent reluctance to use these tools to address equity issues.

### **Conclusion**

Unless there are effective mechanisms which ensure equitable distribution of the economic benefits of NCP, the situation of already disadvantaged Australians is likely to worsen, and contribute to growing inequality.

The public interest components of NCP are key elements in its central goal of maximizing social good. However, their effectiveness has been reduced by the limited capacity of community groups to contribute to legislative reviews and the absence of transparent, comprehensive and well resourced evaluative processes.

At the same time, the NCP appears to have delivered some benefits in some areas. For instance, while there have been downsides of competitive policies in areas like health care advertising, the changes have allowed consumers to find out more about the work and charges of health providers. There is evidence of higher fees being paid by low income Australians for essential health and welfare services. While this could indicate a diminution of much needed access in some areas, it could also serve as a means of controlling over use in others.

While the evidence is scant, the public interest probably lies in a position which recognises where a market-based approach works well, where it doesn't, and where a mix may be appropriate. However, as yet this level of sophistication in analysing and applying NCP frameworks is not evident in government policy making and program delivery decisions.

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