National Competition Council

National Competition Policy:

rationale, scope and progress, and some implications for the ACT and the role of government

A presentation by Deborah Cope
NCC Deputy Executive Director
to the ACT Department of Urban Services'
Summer Seminar Series

20 March 1998

INTRODUCTION

The National Competition Policy package, agreed to by all nine Australian Governments in April 1995, contains a range of reforms designed to reap the benefits which competition in the marketplace can bring. The package includes some one-off changes to the Trade Practices Act, as well as several "work in progress" ongoing reforms stretching well into the next decade (see box).

As a national program, all the States and Territories were involved in negotiating the reform package. Similarly, it is the States and Territories which now need to implement the bulk of the reforms and which need to manage the politics of change to achieve the benefits on offer.

When adopting the package, governments also established the National Competition Council to assist with this process. The Council administers some aspects of the reforms, assesses governments' progress in implementing the reforms, advises on areas where more work is needed, and provides public information on the NCP process generally.

The NCP package is far-reaching, with the potential to effect virtually every Australian in some way or other. It has implications for big infrastructure sectors like gas, electricity and water supply, as well as agricultural industries such as wheat and sugar, and professions like lawyers and medical specialists. It could affect the location of petrol stations, the availability of taxis, and the nature and viability of the local corner store. It may also affect the way universities and hospitals are run or financed, the price of rail freight services, who can own a pharmacy, how food safety is regulated, and where and when liquor may be purchased and consumed.

Two elements of the NCP package will have particular implications for the relationship between governments and the private sector. They are the legislation review program and the competitive neutrality reforms. The legislation review element will effect the way governments regulate the private sector. The competitive neutrality reforms will effect the way government businesses supply goods and services in competition, or potential competition, with the private sector.

These two elements also have important implications for the nature of employment, commerce, and indeed life in Canberra. Many of the reforms will affect the ACT in the same way as they affect other jurisdictions. But Canberra is also different. It has a higher level of public sector activity and employment than other jurisdictions. It has only one level of government below the Commonwealth level. And it is a compact and mainly urban jurisdiction. This means that there will be some different impacts here than elsewhere, and also a different focus to the local NCP reform programs.

In this paper, I will:

- describe the legislation review program — its rationale, scope and progress to date;
- cover similar aspects of the competitive neutrality reforms, albeit more briefly;
- describe some implications of the NCP reforms, both for people in Canberra and Australia more broadly; and
- discuss what NCP means for the relationship between the public and private sectors.

The National Competition Policy reforms

The NCP reform package involves:

- *closing gaps in laws dealing with anti-competitive business practices:* Part IV of the *Trade Practices Act* was amended and it was agreed to apply it to all business activities. Previously, certain types of businesses were exempt – some State government businesses for example.
- *vetting anti-competitive laws:* the package provides for the review and, if appropriate, reform anti-competitive legislation and regulation. Examples of anti-competitive laws include those which sanction government monopolies, and those which establish occupational licensing schemes. Each Australian government has developed its own schedule and timetable for the reviews. Anti-competitive laws are to be retained only if they confer a net benefit to the community and if their objectives cannot be achieved in a less restrictive way.
- *restructuring government monopolies:* the package involves processes where competition is introduced into markets traditionally supplied by government monopolies, or where government monopolies are privatised. The package indicates that, before this is done, the "natural monopoly" elements of the government business should generally be separated from those parts which are amenable to competition. It also provides that any regulatory functions the government business may possess should be given to a separate government agency.
- *putting public and private businesses on an equal footing:* under the package's "competitive neutrality" provisions, where government businesses compete with private businesses, governments must remove unfair advantages enjoyed by their government businesses, such as tax exemptions or exemptions from regulation.
- *monitoring prices of government businesses:* the package provides that, where government businesses retain a significant degree of market power, independent prices oversight should be considered to constrain their prices.
- *facilitating access to "nationally significant" infrastructure services*: the package provides for a national access regime so that businesses which want to use the services provided by other businesses infrastructure can do so, on reasonable terms and conditions. For example, under the regime, a business may be able to get access to a rail network and operate trains on that network, in competition with the existing train operator.

The package requires that reforms be implemented not only at Commonwealth and State/Territory level, but also at local government level.

The package also incorporates pre-existing Council of Australian Government (COAG) agreements on reforms in the areas of electricity, gas, water and road transport.

THE NCP LEGISLATION REVIEW PROGRAM

Background

Notwithstanding the deregulation of some "big ticket" sectors such as banking during the 1980s and 90s, figures compiled by the Commonwealth Office of Regulation Review suggest that the stock of business regulation has been increasing. The main growth has been in "social" regulation — such as consumer protection laws, product safety standards and environmental regulation. This growth has been attributed to many factors including "the increasing influence of political interest groups, greater awareness amongst policy makers of some of the adverse effects of economic growth (narrowly defined) and the increasing prevalence of 'post-material values' within the community generally" (ORR 1993). Whatever the cause, it is fair to say that regulation is and always will be a significant feature of the business environment.

From an economic viewpoint, there are cogent reasons for some regulation of business. Unfettered markets can fail to deliver socially optimal outcomes. For example, businesses which do not pay the full costs of pollution will emit excessive amounts of waste into the environment or undertake insufficient recycling. Regulation is one means by which governments endeavour to safeguard the interests of individuals and the community against these types of problems. Properly designed, it can help to rectify a range of legitimate problems which markets left to their own devices either cannot solve or are responsible for creating.

However, like many other developed countries, Australia faces a range of problems with its regulatory systems:

- overly stringent and prescriptive regulations reduce competition and can impose substantial costs on business, consumers and society;
- regulations which focus on existing problems and are not adaptable to new situations lose relevance once the problem they were designed to address is resolved or superseded;
- regulatory differences within and between levels of government add unnecessarily to the costs of Australian business, which is operating increasingly on at least a national level; and
- as global markets develop for many products, the domestic regulatory environment is becoming increasingly important for the competitiveness of Australian firms.

Governments have been seeking to address some of the problems of inappropriate regulation since about the mid-1980s. Some centralised, industry-specific regulatory bodies were created, such as the National Food Authority. Several jurisdictions also established regulation review bodies and processes to vet new and existing regulation. The ACT's Business Regulation Review Unit coordinates these activities in the ACT.

But in some instances, there were gaps in these early programs, the mechanisms available for enforcing them were limited, and compliance with regulation review principles was overridden by other considerations. Further, the approach taken by some of the specialist regulatory bodies was questionable. More generally, the review programs generally did not directly address problems of the anti-competitive effects of regulation.

The Hilmer Review (1993) found that legislative restrictions on competition were widespread but in many cases of questionable merit, and recommended that a legislation review program be established to specifically address these matters. This was accepted by governments in the April 1995 agreements which established the NCP program.

The mechanics of the NCP legislation review program

The NCP agreements called on governments to compile a schedule of all their legislation that restricts competition, and to undertake the reviews and implement reforms where appropriate by the year 2000. Under the agreements, legislative restrictions on competition are to be retained *only if*:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

The agreements also require new legislation to meet these same principles.

Each jurisdiction is required to conduct its own review program and report to the Council each year on what progress it has made.

The Council has a role in monitoring whether Governments carry out their commitments. We assess the overall review program to ensure that genuine reviews and, where appropriate, reforms occur.

Where they do not, we need to consider whether to advise the Commonwealth Treasurer to withhold some or all of the competition payments which the Commonwealth has agreed to make to the States and Territories provided they satisfactorily meet their NCP obligations. These payments are worth some $16 billion, with the ACT's share being about $250 million.[1] The competition payments provide a significant additional incentive for jurisdictions to undertake robust review and reform processes.

The early experience

So far, all jurisdictions have:

- developed and published their review schedules;
- established mechanisms to vet new or amended legislation to ensure that it does not unduly restrict competition;
- commenced their review programs; and
- implemented the first reforms.

---

1 The version of this paper distributed in Canberra contained an incorrect estimate for the ACT's share of the NCP payments. This revised estimate includes both the competition transfers and tied financial assistance grants, both payable on the successful implementation of the NCP reforms by the ACT.

Most of the early work focussed on compiling the schedules — identifying all legislation, seeing which elements restricted competition, and determining the timing and arrangements for the reviews. This was quite a big job.

Indeed, some 2000 pieces of legislation have been identified for review by the year 2000.

In the ACT, around 180 pieces of legislation have been identified for review under the NCP processes. (This is in addition to various other pre-existing review programs operating in the ACT, such as the review of all pre-1980s legislation). Some examples of ACT Acts to be, or which have been, reviewed are:

- the *Fair Trading (Fuel Prices) Act 1993*;
- the *Consumer Affairs Act 1973*;
- the *Vocational Education and Training Act* 1995;
- the *Architects Act 1959*;
- the *Buildings (Design and Siting) Act 1964*;
- the *Air Pollution Act 1984*; and
- the *Legal Practitioners Act 1970*.

A few of these Acts are being, or may be, reviewed together with similar Acts from other jurisdictions, as part of a national review. For example, a review of all State and Territory food acts is currently being undertaken by the Australia and New Zealand Food Authority with the aim of developing one national food act.

Because of the early focus on compiling the schedules, up to March last year when jurisdictions provided their first NCP progress reports to the Council, only about 100 reviews had been completed and, in many instances, governments were still considering the recommendations. We therefore have been unable to build up a clear picture of the effects of the review process and its likely long-term influence. I know of many developments since then and I expect that jurisdictions next progress reports to the Council, which are due shortly, will reveal a significant boost in the pace of implementation of reviews and reforms. Further, the ACT has set itself a more ambitious timetable than other jurisdictions for completing most of its reviews— by the end of this calender year. This means that significant review activity lies in the period immediately ahead.

Some early achievements

From the early experience, there have been several positive outcomes. For example:

- in the ACT, restrictive trading hours legislation has been repealed after a preliminary examination suggested that the costs to the community exceeded the benefits. Victorian trading hour restrictions have also been lifted;
- an examination of business licenses in NSW revealed significant overlap and unnecessary regulation. Some 34 licences are expected to be abolished outright and a further 44 licence categories collapsed into just three;

- in simply compiling their review schedules, jurisdictions found numerous pieces of legislation that are completely redundant. These are being abolished. (In the ACT, some 160 regulations and pieces of legislation have been examined with a view to their continuing relevance); and
- at the same time, some reviews recommended retaining anti-competitive provisions for genuine public interest reasons — the review of the South Australian *Water Resources Act*, for instance.

Some excellent reviews have also been conducted. An example is the recent review of the *Victorian and South Australian Barley Marketing Act 1993*. This review was done by an independent review panel, undertook significant consultation and produced a robustly argued report with analysis and recommendations framed against the terms of reference. In many ways, it represents a benchmark for the conduct of reviews, at least for those relating to statutory marketing arrangements.

Some early shortcomings

While there were some good reviews and good reforms, there were also some early problems.

First, the Council identified several omissions from the review schedules, and had to request the relevant jurisdictions to amend their schedules accordingly.

Second, the Council received complaints of instances where an industry representative or representatives have been appointed to a review panel, potentially undermining the objectivity of reviews. These concerns, which arose in relation to certain agricultural reviews, indicate that there is a risk of review panels being captured by vested interests. This is particularly the case where such interests are beneficiaries of the protections against competition subject to review. The recent reviews of barley industry regulation in Queensland and dairy industry regulation in NSW are examples where these types of concerns arise.

There is obviously a need for industry representatives and members to participate in reviews of legislation affecting their industry. One way industry representatives can have input is by making submissions and providing information to review panels. But the Council considers that there should not be industry representation on review panels themselves.

Likewise, problems can arise where government officials responsible for the development and administration of regulations also review those regulations. Again, such officials will be well placed to contribute information and ideas to reviews, but problems of "regulatory capture" and a lack of independence may arise if officials review their own regulations and institutional role and powers, particularly for important reviews.

Third, the Council received complaints about a lack of genuine opportunities for interested parties to contribute to some reviews. Reviews need to be publicised, terms of reference published, there should be scope for genuine public input, and for major reviews, ideally an opportunity to comment on reform options or draft findings before a

review's recommendations are finalised. Of course, for some minor reviews, the costs of undertaking full public consultation will not be justifiable. Nevertheless, for most reviews the Council would expect to see genuine opportunities for public input.

Fourth, the Council had concerns about the robustness of the analysis and conclusions of a 1996 review of Queensland sugar industry regulation. The review used some questionable arguments to support retention of the domestic marketing monopoly. We have taken this up with the Queensland Government, and it has undertaken to revisit the matter should evidence emerge, as we think it may well, that the approach taken is not achieving the benefits for consumers which we would expect to see with domestic deregulation.

More generally, review processes and recommendations need to be robust. As mentioned earlier, as far as practicable review panels should be independent, reviews should be publicised and community consultation should be undertaken. The basis for recommendations needs to be made clear, framed against the terms of reference and backed up with solid arguments. Value judgments should also be made explicit. If modelling is to be used, there needs to be an explicit discussion of its main assumptions, strengths and limitations, and the extent to which the modelling, rather than qualitative assessments and theory, drove a particular recommendation. Finally, the review panel should present its analysis and recommendations in a clear report, to be made available to the public.

Where future reviews fail to meet these standards, the Council will need to consider whether the review process is bona fide and, thus, whether the jurisdiction in question should receive its full competition payment.

A fifth problem was the failure of some governments to implement review findings, without providing a bona fide public interest justification.

In the case of the 1995 NSW rice review, for example, NSW decided not to deregulate the domestic market, notwithstanding a review finding that deregulation would confer a significant net community benefit. The Council sees rice reform as an important issue, and is awaiting a response from the NSW Government before deciding what recommendation to make in relation to payment of that jurisdiction's competition payments.

Another example occurred in Tasmania where reforms to traffic licensing legislation, which the Government sought to introduce in response to a review, was initially blocked by that State's upper house. Although the reforms have now been passed, this incident highlights the obvious problems which a government that does not control the parliament in its own right could face in implementing reforms. There are several jurisdictions in Australia where this poses a potential problem — the ACT of course being one.

Nevertheless, for the purposes of assessing compliance with the NCP agreements, the Council takes the agreements as binding not only the jurisdiction's government but also its parliament, particularly as governments change over time. We therefore expect the government to ensure that the parliament passes all appropriate reforms.

Obviously, where reform efforts are blocked by non-government parties, it is open to the government to point out to the electorate that those parties' actions have cost the jurisdiction some proportion of its competition payments, as well as the forgone benefits of the proposed reforms. In this context, it is worth remembering that $16 billion Australia-wide, and $265 million in the ACT's case, can buy a lot of hospital beds, school books and police.

That said, we would expect in the first instance that opposition parties would generally want to support reforms flowing from an NCP legislation review, as they are designed to deliver results in the broad public interest.

The Council has raised the early problems which have arisen with the relevant jurisdictions, and will be taking their responses into account when undertaking its next assessment of jurisdictions' performance in implementing the NCP reforms and, hence, whether they should receive their full share of the competition payments. We will also be looking closely at reviews being undertaken at present and in the future to ensure that bona fide review and reform processes are followed.

THE NCP COMPETITIVE NEUTRALITY REFORMS

Background

Improving the performance of government businesses became a major issue for all Australian governments during the 1980s. Many studies and reviews provided widespread evidence of poor performance, including poor capital and labour productivity, overstaffing and excessive use of material inputs, inappropriate management practices, poor quality goods and services, inappropriate pricing practices and poor financial performance. These studies did not prove that government businesses will always be less efficient than their private sector counter-parts, nor indeed that all government businesses are less efficient. But the evidence did raise wide-ranging concerns about the general efficiency of government businesses as they were then constituted.

In the face of this evidence, and the realisation that government businesses play a significant role in Australia's economy, all governments have been examining the nature of their involvement in the businesses they own.

One way governments have sought to improve the performance of their businesses, and their role in the economy, is to reform their organisational structure and practices, through mechanisms such as commercialisation, corporatisation and cost-reflective pricing. Among other things, these reforms seek to put government businesses on a "competitively neutral" footing compared to their private sector counterparts.

As part of the NCP agreements in April 1995, governments committed to apply "competitive neutrality" principles more comprehensively. The principles pick up some aspects of the earlier reforms, and add others. Competitive neutrality involves the application to public enterprises of the same taxes, incentives and regulations as face private businesses. This is to remove any advantages, *or disadvantages*, experienced by government businesses relative to their private sector competitors. This allows the two

sectors to compete for resources on an equal footing and encourages efficient operation of public enterprises. The underlying aim is to ensure that the community's resources are used as efficiently as possible.

The mechanics of the NCP competitive neutrality program

The April 1995 NCP agreements called on governments to do three things:

- introduce competitive neutrality principles to their significant business activities;
- provide a mechanism to deal with complaints about unfair net advantages enjoyed by particular government businesses; and
- develop a competitive neutrality policy statement by mid 1996 and then report annually to the Council on progress in implementing it and responding to complaints.

The Council has a role in assessing whether jurisdictions have made satisfactory progress in meeting these commitments. This assessment is again relevant for the Council's recommendations in relation to whether jurisdictions should receive their full share of the competition payments.

Progress to date

To date, jurisdictions have:

- developed and published their competitive neutrality policies and, in most cases, published a list of the business activities to which the policies will apply;
- established some form of complaints unit; and
- commenced the reforms.

A large number of government businesses have been corporatised or commercialised throughout Australia, and pricing reforms are being progressively introduced to many others.

A recent report on the performance of government trading enterprises (SCNPMGTE 1997) found that competitive neutrality and related reforms — many of which predated the NCP agreements — are showing some positive results. The outcomes have varied between the enterprises studied. However, over the four years to 1995-96, overall there have been:

- improvements in labour productivity,
- a doubling of total payments by trading enterprises to governments,
- average price reductions of around 15 percent, and
- some limited improvement in service quality.

While some factors such as technological change may also help explain these improvements, this evidence does suggest that the reforms are paying some good dividends.

The ACT has corporatised or commercialised several significant government businesses. For example, Totalcare Industries, ACTEW and ACTTAB have been corporatised, while Canberra Milk, Forests, Yarralumla Nursery and ACTION have been commercialised. In its last report to the Council, the ACT said it expects to corporatise all government businesses of significant size which are capable of being self-funding. It also indicated that it is reviewing, and where appropriate reforming, 41 of its general government activities.

One reason for the solid progress here is that the ACT does not have a separate level of local government. Other jurisdictions are finding it difficult to extend the reforms to their local government businesses. A key reason is that, while there are mechanisms for ensuring that corporatising State and Territory business does not financially penalise the jurisdiction by making it subject to additional Commonwealth taxes, there is no equivalent mechanism for local government businesses. This is a particular problem in Queensland which has a large local government sector. However, as all ACT Government businesses are formally part of the Territory government, this problem does not arise here.

One concern that has arisen with the ACT's performance relates to its complaints unit. The ACT initially proposed developing a fully independent complaints unit. While the Council welcomed this proposal, the interim unit established by the ACT is located within the Office of Financial Management in the Chief Minister's Department and is thus not as clearly independent as the original proposal suggested. That said, the unit does have the scope to consider a broad range of complaints, has issued guidelines which are available for the guidance of complainants, and has transparent operating principles and procedures — all elements the Council sees as desirable for complaints units. I understand that the ACT aims to establish its fully independent unit by June this year.

Another difficulty being experienced by the ACT is determining how to implement fully cost-reflective prices for the services of non-corporatised government business units. This involves a number of difficult economic and accounting issues, and is a problem in all jurisdictions. I understand that the ACT is developing guidelines on this matter, and I look forward with interest to their release.

SOME IMPLICATIONS FOR THE ACT AND THE BROADER ECONOMY

How will legislation review and competitive neutrality, and indeed the other NCP reforms, affect Canberra?

The NCP reforms apply Australia-wide — not just in the ACT. Consequently, we can expect to see many similar things arising here as elsewhere.

That said, Canberra is also different. The ACT has a higher level of public sector activity and employment than other jurisdictions. It has only one level of government below the Commonwealth level. And it is a compact and mainly urban jurisdiction. This means that there will be some different impacts here than elsewhere, and also a different focus to the local NCP reform programs.

It is not possible to predict precisely what effect the NCP reforms will have in practice. For example, in the legislation review area, not all anti-competitive legislation will be repealed. Whether a particular restriction is retained or repealed will depend on an assessment of the benefits and costs associated with it. Reform will then require action by government. And where a restriction is repealed, exactly how the market will respond cannot be determined in advance. Prices might fall, for example, but they could also rise if, say, consumer demands for higher quality (but also higher priced) goods and services are currently being unmet due to a lack of suppliers and competitive pressures in the market place.

That said, it is possible to make some general statements about what may happen with more competition, and to illustrate these with some examples of cases where restrictions have already been removed.

Changes in prices

As competition increases, we can generally expect to see real prices decline (compared to what they would otherwise be).

One reason is that, where existing businesses face limited competition in their market, they are often able to raise their prices above the levels necessary to cover their costs (including their need to earn a normal profit). With more competition, new businesses will enter the market and seek to win sales by offering lower prices — albeit prices at which they can still make a reasonable profit.

A second reason is that, even if current businesses are not earning monopoly profits, lifting restrictions on competition may allow new businesses to enter which have new, more innovative, lower cost ways of supplying the particular product. Again, such businesses would have an incentive to undercut the price of existing businesses in a bid to gain market share.

The NCP reforms should also contribute to lower prices insofar as corporatisation and other reforms improve the efficiency of public business enterprises.

In our 1996-97 Annual Report, we pointed to some recent evidence of falls in prices under competition and related reforms. For example:

- real average airfares were around 22 percent lower in September 1996 than their pre-deregulation level;
- in a survey of Victorian electricity customers in the contestable part of the market, 78 percent indicated that their negotiated rates were cheaper than previous rates with the average decrease being around 10 percent;
- freight rates for rail freight transport between Melbourne and Perth fell by around 40 percent following the introduction of competition on that route in 1995-96; and
- as I mentioned earlier, prices of government trading enterprises fell on average by around 15 percent in real terms over the five years to 1995-96.

As well as these examples, there have also been reports of marked falls in telephone charges since the recent introduction of full competition in that market. And in a recent undertaking made by AGL associated with reforms in the gas sector, gas access charges in NSW are to fall to 60 percent below their 1995 level by the year 2000.

Obviously, where prices fall, consumers (both householders and other businesses) will be better off and have more money to spend on other goods and services, and/or to save and invest. Either way, some of this money should find its way back into the local economy, thereby boosting demand. In this context, it should be remembered that full implementation of the NCP reforms has been projected to increase consumers' incomes by more than $1500 per household per year (PC 1995).

That said, while prices should generally decline, in some cases the NCP reforms could increase prices. This is because aspects of the reforms involve removing subsidies. For example, part of the NCP water reforms involve making the prices of water reflect the full costs of providing the water. At present, many water users do not pay the full costs of storing, treating and transporting water. They therefore have incentives to use more water than is either environmentally or economically sound. Consequently, under the reforms, the prices they pay may be increased. Further, as I mentioned earlier, average prices may rise in markets where lifting restrictions on competition results in a shift in supply to higher specified products.

This highlights that the aim of the NCP is not lower prices per se, but rather more efficient use of resources. Prices which are too low can be just as detrimental in terms of providing incentives for people to use resources efficiently as prices that are too high.

Changes in product value and availability

Product value has many dimensions: quality, safety, reliability, durability, utility, service associated with the product and so on.

In general, the value of products to the consumer should increase under conditions of enhanced competition.

One reason is that businesses which face competitive pressures have greater incentives to search out exactly what features consumers do value. This is because the more consumers value a product, the more they will normally be willing to pay for it. And the more they are willing to pay, the higher the profits which businesses can earn — at least until other businesses respond with their own enhanced product (or lower prices).

Another reason is that, in the absence of competition, businesses can earn monopolistic profits by cutting the value of their products rather than (or as well as) by increasing their prices. With competition, this approach would result in a loss of market share.

As well as better value products, competition is also likely to generate a wider range of products. Businesses will have a greater incentive to innovate and develop new products, target them more closely to specific consumer niches, and market them more widely. For example, since the lifting of prohibitions on pay television in Australia, Australians have been able to choose from a much wider range of programs, with many specialised channels catering for specific consumer tastes in news, sport, movies, science and music.

More generally, in competitive markets the structure of firms and industries evolves over time in response to changing conditions, including shifts in consumer demand. For example, in the grocery retail market, the advent of better transport options and changing lifestyle patterns has resulted in a structural shift towards larger retail outlets which provide wider product choice, longer opening hours and generally lower prices. Likewise, many petrol stations now remain open 24 hours and stock a range of convenience items.

These changes in the marketplace can generally only occur after legislative restrictions on competition, where they exist, are removed or not enforced. That said, in ACT retailing, the trend towards larger town centre shopping complexes and away from smaller local shops has occurred, notwithstanding legislative provisions aimed at providing local shops with a competitive advantage in opening hours. Obviously, there has been a significant debate in the ACT on this matter in recent years, culminating in last year's decision by the Government to repeal of regulations contained in its *Trading Hours Act 1996*. These protected small retailers in suburban centres and group centres by preventing large supermarkets in town centres from trading extended hours. But the objectives of the regulations were questionable, their effectiveness unclear and, as subsequent surveys showed, they were not well received by consumers.

While product value and availability should generally rise under the NCP reforms, it is also possible that some aspects of product value will fall. This is likely where consumers have been receiving products containing features which consumers did not value at the full cost of provision. Where there is limited competition, it is possible for a producer to continue to supply such products and continue to make a profit. However, with full competition, new businesses have an incentive to supply the product without the feature, and charge a lower price, and attract customers that way.

This highlights that the aim of the NCP is not to increase product quality or availability per se, but rather to provide better "value for money" for consumers and society as a whole. Products which are over-specified in terms of their quality, reliability etc can be just as wasteful of resources as products which are under-specified.

Effects on people in private businesses

Where restrictions on competition are removed, new businesses or business people may be able to enter markets by competing with incumbent producers. One example which preceded the NCP reforms occurred in the legal market in NSW. Restrictions on competition were reduced thereby allowing people without full legal qualifications to undertake some activities such as conveyancing. More recently, deregulation of the telecommunications market has facilitated an increase in the number of service providers seeking to gain a slice of the market. Likewise, were restrictions on the number of taxi licenses to be reduced, we could expect an increase in the number of taxi operators and perhaps more brand differentiation within the market. And were the regulation which restricts the ownership of pharmacy businesses to qualified pharmacists to be removed, we might see some entrepreneurs set up pharmacies and offer a different mix or style services than pharmacies provide at present, while still employing qualified pharmacists to undertake the dispensary services.

Of course, new entrants would face the normal commercial risks involved in starting any new business. To make inroads into the market, such business people will generally need to be able to offer a more attractive product — whether it be lower priced, higher in quality, or better suited to customer needs — than the products offered by incumbents.

For incumbents, greater competition, or even just the threat of it, would pose challenges. They may need to lift their game or risk losing market share. This may involve developing or rethinking business plans, looking for opportunities to expand their product range, improving service quality or finding ways of reducing costs.

That said, in many cases, incumbent businesses will be well placed to fend off new competition. Often they will understand their market well and know their customers' needs. They may have had time to build up a loyal clientele and, as mature businesses, they are likely to have more settled and stable financial positions than new businesses.

However, exposing incumbent businesses or business people to greater competition will in may cases affect their bottom line. For example, to the extent that the high salaries enjoyed by some professionals derive from *unwarranted* restrictions on competition, then removal of those restrictions, should it occur, may result in a reduction in those salaries to be more in line with those of other workers of similar educational standards and skill levels. This is equivalent to the point that the removal of the Maritime Union's monopoly in the supply of waterfront labour, should it occur, would be likely to result in a reduction in the salaries of its members. Likewise, the deregulation of shopping hours provides an opportunity for those businesses willing to stay open at times customers find more convenient to gain market share, but at the expense of businesses which are not. This will effect the latter's bottom line and, in the extreme, may contribute to them deciding to close.

For business people then, competition involves both risks and opportunities. Importantly, while the NCP is designed to enhance the performance of the Australian economy overall, it is not designed to improve the profitability or viability of specific businesses themselves. Rather, it is intended to foster conditions in which the businesses best placed to satisfy consumers' wants and to most benefit the community prevail.

Implications for government businesses

Under the NCP, government businesses will come under greater pressure from private businesses, because:

- under the competitive neutrality reforms, governments are to remove any unfair advantages their businesses enjoy relative to private businesses; and
- more areas of government activity are likely to be opened up to competition from private businesses.

To capitalise on these opportunities, private businesses may first need to improve their understanding of government purchasing policies, needs and tendering processes. They may also need to review their business plans and consider expanding by increasing investment and/or taking on more staff — possibly including staff previous employed by government businesses. Indeed, since winning a local government tender to provide

homecare services, a Victorian business called Silver Circle has expanded employing an additional 77 staff, many of whom were previously employed in the public sector (IC 1996).

The flip-side of this is that government businesses face some risks from the reforms. First, being exposed to greater competition brings with it the risk of losing market share to private businesses. Second, some of their employees may choose to move to private businesses, unless they offer sufficiently attractive work conditions and remuneration.

On the other hand, many government businesses should be well placed to confront increased competition, because:

- some, such as Australia Post, may have established a favourable reputation and loyalty amongst some consumers, by virtue of their status as public bodies delivering community service obligations (CSOs);
- some may have strong positions in their markets, as in the case of Telstra; and
- their experience in providing a particular service can be an advantage when tendering for government work.

Further, some government businesses may gain from the reforms. Where a government business which is corporatised improves its efficiency and customer focus, it may be able to increase its market share at the expense of private businesses. For example, last year Totalcare Industries won a contract to supply a range of support services to certain NSW private hospitals, in competition with private businesses.

This highlights that the NCP does not seek to pre-judge whether government or private businesses are more efficient. For example, the reforms do not mean that private businesses will automatically be awarded contracts ahead of government ones. Rather, they seek to allow competition to happen such that businesses succeed on their merits.

Some implications for the ACT

As I mentioned earlier, the NCP reforms apply Australia-wide — not just in Canberra. Consequently, we can expect to see many similar things arising here as elsewhere.

However, as I have alluded to already, the ACT's unique features mean that there will also be some different impacts.

First, the Commonwealth Government's strong presence and ongoing role in Canberra means that reforms made at the Commonwealth level may impact the ACT more than other jurisdictions. We saw this, in an adverse way, with the cuts to Commonwealth public sector employment following the last Federal election. These had a larger proportional impact on jobs in Canberra than on jobs in other centres. While these cuts reflected the budgetary imperatives of the new Government and were unrelated to the NCP reforms, they do demonstrate the potential for differential effects — whether positive or negative — flowing from general reforms to Commonwealth government activities.

While this might give the impression that the NCP reforms to government activities will have a significantly larger effect here than elsewhere, it is important to remember that the competitive neutrality and related reforms apply to the operations of government *businesses*. They will not have significant effects on the administrative and policy functions of government departments — the areas in which a large proportion of Commonwealth employees in Canberra are involved. Hence, the extent to which there will be larger impacts in Canberra from this aspect of the NCP should not be overstated.

Second, because Canberra is a compact and mainly urban jurisdiction, the focus of the ACT reform program will tend to be more on urban, economic, social and occupational/industrial issues. Reforms to agricultural industry regulation, resource development and non-urban environment issues will have less impact here.

This reform program presents a significant opportunity for Canberra. Economic change has become a fact of life, not an option, and will continue with or without competition reform. We can tackle it, or let it tackle us. This is particularly so for the ACT which is a small territory close to some other major regional centres (as well as the larger State capitals) and which, as I have mentioned, has borne the brunt of recent cutbacks in Commonwealth Government employment. The private sector now accounts for around 65 percent of employment in the ACT. However, just as business is becoming more mobile internationally, it is increasingly mobile domestically as well. For the ACT to attract and hold the private (and public) businesses it needs, it requires a dynamic and innovative economic environment which as far as practicable minimises the costs of doing business. While the ACT has already taken steps in this direction, the NCP reform program offers the ACT an important opportunity to boost progress. Further, because Canberra's government is closer to its region than State governments are in relation to their regions, Canberra has the potential to more easily achieve appropriate change. That is, Canberra governs its own destiny to a greater extent than its regional competitors, which are more dependent on the state-wide policies of their somewhat distant State governments. That said, it is unlikely that those State governments will sit on their hand either. This reinforces the need for the ACT to vigorously progress the reform agenda.

NCP AND THE RELATIONSHIP BETWEEN THE STATE AND THE PRIVATE SECTOR

As alluded to at the beginning of this paper, government interacts with the private sector in two main ways of interest today: by regulating it; and by competing with it.

I have already discussed the implications of the competitive neutrality reforms for the way government businesses and private businesses compete.

But what about the regulatory role?

The legislation review program by its very nature is designed to alter the way government regulates the private sector. For a large subset of regulation — namely, that which restricts competition, it requires that government withdraws from regulation, or alters the way it regulates, *unless* it can be shown that such restrictions will confer a net public benefit.

Importantly, the NCP agreements shift the onus of proof away from those who believe current regulation is excessive and thus want it changed, and onto those who think it is appropriate and want it retained (or increased). That is, once a legislative restriction is identified, it goes — *unless* a bona fide case for its retention can be made.

That said, it needs to be emphasised that the NCP legislation review program is not about deregulation for deregulation's sake, nor that it allows no room for (so-called) non-economic considerations, and nor that it sees no role for government.

In fact, social, cultural, environmental and even existential effects are of no more or less inherent importance than financial or materialistic effects under the community benefit-cost approach which underlies the NCP legislation review principles. And as I said at the outset, there are cogent economic reasons for government regulation of business — specifically, to correct "market failures" and to address equity issues.

Rather, the NCP legislation review program is about:

- ensuring that, where government does regulate, that regulation is necessary, effective and well designed;
- ensuring that regulation is not used to prop up the incomes and conditions of vested interest groups, at the expense of the rest of us; and
- replacing the "maximum visible regulation" of the past with "minimum effective regulation", which can pass the test of "net public benefit".

So we are talking about reorienting and refining, rather than rejecting, the regulatory role of government.

At a broader level again, the ultimate goal of competition reform is a more productive, efficient, innovative and dynamic economy — one more able to cope with external shocks rather than immediately plummeting into recession; one better able to sustain or enhance the material living standards of its people, or to achieve its social, cultural and environmental goals, without simply adding to national debt; and one in which resources are used, or conserved, in the most socially valuable way.

Importantly, the goal is not an economy in which competition is an end in itself and in which there is no role for government and no concern for equity. It definitely is not one in which the only concern is "money, markets and materialism" as some commentators would like to mislead us.

Rather, it is an economy in which the business sector knows its role is to compete and produce, rather than seeking out the easy life and lobbying for government favours, and gets on with the job. And those involved in government know that their role is to set up the ground rules for competition, and to deal with areas of market failure and inequity, and to do so in the most efficient way possible.

So we are not talking about moving from a mixed economy to a free market economy. What we are talking about is refining the mix.

REFERENCES

Hilmer (Independent Committee of Inquiry) 1993, National Competition Policy, AGPS, Canberra, August.

Office of Regulation Review (ORR) 1993, *Regulation and its review*, AGPS, Canberra, November.

Industry Commission (IC) 1996, *Competitive tendering and contracting out by public sector agencies*, AGPS, Melbourne, October.

Productivity Commission (PC) 1995, *The growth and revenue implications of Hilmer and related reforms*, AGPS, Canberra, March.

Steering Committee on National Performance Monitoring of Government Trading Enterprises (SCNPMGTE) 1997, *Government trading enterprises: performance indicators 1991-92 to 1995-96*, AGPS, Melbourne, May