NATIONAL COMPETITION POLICY

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National Competition Policy (NCP) legislation and agreements between the Commonwealth and state governments were finalised in June 1995. They arose from the recommendations of the 1993 Hilmer report, and were preceded by an intense lobbying process involving business, unions and community and consumer organisations.

The policy will mean profound changes to the structure of public utilities delivering services like electricity, water, and public transport and to the prices and availability of those services. The policy is also being used by governments as a justification for the introduction of competition in the provision of other public services. This could mean the fragmentation and privatisation of health education and community services. This paper critically examines the Hilmer Report, the legislation and agreements, the potential equity effects of the policy and the extent to which governments have discretion in its implementation which could mitigate those effects.

Supporters of NCP argue that it will assist in curbing the power of monopolies and increasing efficiency. NCP is intended to create a consistent national framework for competition by extending the Trade Practices Act, the law which regulates competition, to bodies currently exempt. These include unincorporated bodies like legal partnerships, and state based public monopolies, like water, electricity and public transport. Advocates cite economic theory on the role of competitive markets in producing lower prices and increased efficiency, and emphasise government inefficiency and failure in public utilities and public services.

Australia's NCP is seen as complementary to trade liberalisation through global and international trading agreements like GATT and APEC, and as a possible model for other countries in the Asia Pacific region (Industry Commission, 1995c :17; Brenchley, 1995:8).

The Hilmer Report

The National Competition Policy arose from the Hilmer Report, commissioned by the Keating Government and published in August 1993. Professor Fred Hilmer has been Dean of the Australian Graduate School of Management at UNSW and had previously written several reports for the Business Council of Australia (BCA), criticising the inflexibility of the award system, and urging a shift to enterprise bargaining. The BCA represents the one hundred largest firms in Australia, including many overseas based and Australian based transnational corporations. The BCA has been a major lobbyist for the adoption of the Hilmer report, on the grounds that it will reduce costs to business (BCA, 1995).

Hilmer argued that the main focus of competition policy should be economic efficiency (Hilmer, 1993:3), and that competition should generally be assumed to apply in the same way across all industries and areas. This can be called the abstract and wholesale approach. .

The policy principles (Hilmer, 1993: xviii-xix) are summarised as:

- no participant in the market should be able to engage in anti-competitive conduct against the public interest;
- as far as possible, universal and uniformly applied rules of market conduct should apply to all market participants regardless of the form of business ownership;
- conduct with anti-competitive potential said to be in the public interest should be assessed by an appropriate transparent assessment process, with provision for review, to demonstrate the nature and incidence of public costs and benefits claimed;

- any changes in the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:
- to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition;
- in recognition of the increasingly national operation of markets, to reduce complexity and administrative duplication."

The report focused mainly on areas like non-incorporated bodies, including legal partnerships, statutory marketing authorities and state based public sector organisations which are currently exempt from the Trade Practices Act (TPA). The aim is to expose these to competition which should result in increased economic efficiency and lower prices.

Hilmer conceded that some areas of public infrastructure like rail, electricity grids, and pipelines are natural monopolies, with economies of scale and scope such that it is inefficient for competitors to duplicate them. Instead, he argues that competitors should have legal access to publicly owned infrastructure. The report claimed to be agnostic about privatisation of public monopolies, claiming that competition is its main concern, but that competition should in any case be introduced before privatisation (Hilmer, 1993: 226). Access by competitors to public infrastructure does in fact mean at least partial privatisation in many cases. The report advocated open and public inquires before introduction of competition or privatisation (Hilmer, 1993: 238).

The report also argued that cross subsidies were inefficient, and that greater competiton would result in prices being based on actual costs of services. It argued that community service obligations funded through cross subsidies should be identified and funded through government budgets (Hilmer, 1993:281-6). It also recommended reviews of all legislation and regulation against the criterion of whether they restrict competition, to encourage administratve simplicity and national consistency and lighten regulatory burdens on business activity (Hilmer, 1993:xxx).

The Legislation and Inter-Governmental Agreements

The Commonwealth Government did not adopt all of the recommendations of the Hilmer Report, specifically retaining both public interest and economic efficiency as objectives in the legislation, although the definition of public interest was unclear. However, most recommendations of Hilmer were adopted by the Commonwealth and State Governments (COAG) meeting in February 1994, and inter governmental agreements were adopted in April 1995. There was intense lobbying by business, unions and other community organisations over that period, and some amendments were made. The legislation was passed in June 1995.

Objectives and Relationship to Other Policies

The initial draft of the agreements did not contain objectives for the legislation, relating them instead to other government policies like social justice and environmental policy. As a result of lobbying by unions and community organisations, a series of other policy objectives are included in the intergovernmental agreement. These are to be taken into account, where relevant, when governments implement the policy. Governments can decide whether they are relevant. The objectives include ecologically sustainable development, social welfare, and community service obligations, occupational health and safety, industrial relations, access and equity, economic and regional development and the interests of consumers (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:12).

The major features of the legislation and agreements relevant to this discussion are as follows (details are set out in the appendix to this article):

- Extension of the Trade Practices Act to apply competition principles to state owned businesses
- Structural reform of public monopolies
- Competitive neutrality: no net advantages from public ownership

- Application to business activities which are not part of other government agencies
- Access to public infrastructure in cases of natural monopoly, where it cannot be duplicated
- Prices surveillance and monitoring
- Legislation review in support of competition principles
- Establishment of National Competition Council and Australian Competition Committee
- Compensation to be paid from Commonwealth to States in return for implementation of the policy

Benefits for Whom?

The NCP legislation was preceded by a blast of publicity about its benefits for the economy, including an Industry Commission report claiming it would result in "an increase in average household income of $1500" (Industry Commission, 1995). Headlines like this failed to mention that this mythical average per household was an estimate after a ten year period, derived from estimating an increase in Gross Domestic Product based on a very limited methodology and economic modelling which overestimates economic benefits and does not include any of the costs. As economist John Quiggin said, "Don't plan your holiday yet" (Quiggin, 1995a and b).

Underlying Theory

These assumed benefits are only part of the story. Conventional economic theory also tells us that competition produces economically efficient outcomes only under certain market conditions. These include substitutable goods, a large number of buyers and sellers, perfect knowledge by all parties, no natural monopolies, and no externalities like environmental costs. If these conditions are not present, competition will

not work in the way predicted by theory: circumstances known as "market failure". Orthodox economic theory does not claim that markets, even if perfectly competitive, will produce equity, social justice or environmental objectives.

Some economists also concede that water, electricity and public transport are not normal commodities because they are not substitutable, are essential for life and have inelastic demand, which means consumers cannot choose not to consume them. They also have both positive and negative health and environmental externalities, or unintended consequences (Ernst, 1994: 39-41). In short, they are "merit goods" which must inevitably involve government intervention and regulation to ensure equitable access.

Critics of NCP are often accused of totally ignoring the role of market forces and the need for efficient and effective services, and of wanting to protect the monopoly interests of state monopolies and legal partnerships, or obscure state regulations which restrict competition and are relics of a bygone era. These are not at issue. Few would object to the establishment of a consistent national policy framework, or to competition for legal partnerships or reviews of truly obsolete legislation. The problem is the abstract and wholesale application of competition principles to all industries, markets and areas of legislation, regardless of the particular circumstances and of other policies which they may override or undermine. This is a characteristic of the extreme approach to economic policy which is sometimes called economic rationalism, but which some prefer to call economic fundamentalism.

Ramifications for International Trade Policy

This abstract and wholesale approach to competition policy is also to be found in aspects of international trade agreements like the Uruguay Round (1986-1993) of GATT (the General Agreement on Tariffs and Trade), NAFTA (the North American Free Trade Agreement), and more recently in APEC (Asia Pacific Economic Cooperation Forum). Canadians have discovered that the 1993 NAFTA agreement with the USA and Mexico means that US companies can challenge a wide range

of Canadian social and environmental policies on the grounds that they restrict free trade. Examples include a challenge to the Canadian domestic medical drug industry, on the grounds that it restricted intellectual property rights of US drug companies, and challenges to Canadian restrictions on tobacco advertising on similar grounds. Canadian laws requiring domestic processing of salmon and timber (rather than export of the unprocessed product) have also been challenged (Cohen, 1994).

Australia faces a decision in 1995 about whether to ratify the WTO (formerly GATT) government procurement agreement, which forbids governments from giving any form of preference to local firms in government purchasing, on the grounds that it restricts competition from international firms (Department of Foreign Affairs and Trade, 1995). If Australia did ratify, decisions on Government purchasing policy made in 1994 as part of industry development policy could come under challenge.

Previous rounds of GATT negotiations have focussed on reducing tariffs on manufactured goods. The Uruguay Round of GATT included trade in services for the first time. The trade in services agreement commits countries to treat foreign suppliers of services no less favourably than national suppliers and to progressive removal of barriers to market access. This was supported by industrialised countries which already have developed service sectors, but developing countries who do not have developed service sectors were more cautious. Countries can choose sectors to be included in the agreement and many governments have not included strategic sectors like electricity, water, public transport health, education, telecommunications, or finance.

Currently government owned services are not included in the agreement, except where they are supplied on a commercial basis or in competition with one or more other suppliers, and are specified in the agreement (General Agreement on Tariffs and Trade (1994d) *General Agreement on Trade in Services*, Geneva). NCP will potentially place all government trading enterprises in Australia on a commercial basis and expose them to competition, as a preparation for further liberalisation under the World Trade Organisation, which has replaced GATT, and full exposure to international competition.

Corporate Interests or Public Interest?

Corporate interests represented by organisations like the BCA have a wider interest in NCP than their explicit interest in lower prices for services like water and electricity. In an era of relatively low growth in many sectors, formerly publicly owned services are an expanding area for capital investment and trade. Many companies, including transnational companies which specialise in these areas, are lobbying governments to privatise or open these services to competition. In addition to recent privatisations of electricity in Victoria, and the management of water services in South Australia, governments are now being approached by companies interested in other areas. The South Australian Government was approached in 1994 by the British based corporation Serco, which operates former publicly owned services around the world ranging form defence bases to cleaning and administrative services. It proposed it could contract for the administration of the South Australian Education Department, except for teaching services, at lower cost than the current operations. This provoked major community opposition, and the Government refused the offer (Serco, 1994, and Adelaide Advertiser, 17/10/95:6).

A more balanced approach would recognise that economic growth and efficient industries and services are not ends in themselves. They have as their goals better living standards and the social development of the whole community. This recognises the role of markets, but place them in the context of Australian history, geography and culture, in the actual conditions of specific industries, and in the context of social justice and gender equity policies. The public sector has played and must continue to play a key role in addressing market failure, ensuring economic development and achieving social justice goals which cannot be achieved by market forces alone.

The Hilmer report had little to say about the problem of private monopolies developing out of NCP, or about community service obligations, equity issues, public accountability or the environment. It did not deal, for example, with issues of possible conflict between commercial and environmental objectives and competition objectives. Competition also implies abolition of pricing cross subsidies in public

monopolies. Currently these enable services to be provided at less than full cost to rural or other disadvantaged consumers, using revenue from more profitable areas. Competition implies that all services should be priced on a full cost basis (Hilmer, 1993:6).

Commonwealth business enterprises like Telecom and Australia Post are already subject to most aspects of the TPA, although they currently have industry specific and regulatory frameworks and legislation which allow them to deliver community service obligations like uniform untimed local call prices and standard letter uniform national pricing, and which also oblige competitors to contribute to the cost of them. These obligations were devised only after extensive public debate and submissions from a wide spectrum of community organisations, and the Telecom arrangements have recently been reviewed through a public process. The Government has indicated that these can remain as industry specific arrangements, although they would be subject to review under Hilmer principles. Both untimed local calls and the national standard letter price would be eliminated under strict application of competition principles, as they involve prices which do not reflect costs.

Equity Implications

Prices and Access to Services

The policy will impact at Commonwealth level, on Australia Post and Telecom, and at state government level, where it will encourage breaking up of public monopolies, and private competitors in electricity, water, public transport and other services. The absence of an obligation to carry out public reviews and the large areas of state discretion leave Governments with considerable power.

Overseas evidence, particularly from the UK, indicates that the breaking up of public monopolies, removal of subsidies to rural and domestic consumers and privatisation of essential services like water and electricity result in a "rebalancing" of prices. This means that while, in some instances, prices for industry and business have fallen, prices for essential services for domestic consumers have risen.

In the UK, competition has occurred only for business users in electricity. Domestic water and electricity consumers still face private monopolies. Water companies were privatised on a regional basis from 1989. Recent studies by consumer organisations have shown that water and sewerage prices for domestic consumers rose on average by 67% in the four years after privatisation. Price rises varied across regional companies, with increases of up to 108% for water and 122% for sewerage. There was a dramatic increase in the number of people with water debts, and in those disconnected from the system because they could not pay bills. They were mostly pensioners and other low income consumers, many of whom were women. The situation was so severe that social security payments were adjusted in 1991 to include a special payment to contribute towards increased water costs, but the amount did not cover the full cost. There was also an increase in diseases associated with lack of access to water and sewerage services.

The dramatic increase in disconnections in both electricity and water has since been reduced through the use of prepayment meters, but these subject users to higher charges, to cover the cost of the meters, and can still lead to self disconnection because of inability to pay. They create an underclass of consumers who must pay at higher rates and in advance (Ernst, 1994:136-147, 174). Ernst concludes that domestic consumers experienced higher prices for gas, electricity and water after privatisation, although there were falls in underlying costs. Business users experienced lower real prices over the same period, while the companies experienced record profits and executive salary rises became a public scandal. The water companies also failed to invest in infrastructure, which was the initial justification for the price rises (Ernst, 1994:110,131).

The UK experience shows that price rebalancing has decreased the living standards of low income groups, especially pensioners and others on government benefits, while record profits were distributed to executives and shareholders.

While the UK example is dramatic, it is consistent with estimates of the recent Industry Commission Report, *The Growth and Revenue Implications of the Hilmer Reforms*. This report predicted that competition policy and consequent removal of cross subsidies in

Australia would mean water prices for city residential consumers would rise by 20%, electricity prices by 16% and passenger rail fares would rise by 19%, while prices for business users of water, electricity and rail freight would fall (pp 221 and 336).

Such price rises would especially affect low income earners, and impact on women, who form the majority of low income earners. Women's economic position compared with men's is still extremely unequal, and reflects their continuing responsibility for unpaid work and child care in the family, and their unequal access to paid work. In August 1994, 52% of women were in the paid workforce compared with 75% of men (ABS, 1994:74).

In the paid workforce, women are clustered in lower paid jobs and form the majority of those earning less than the median wage. This is due in part to the greater number of women part time workers. But even comparing full time workers, in 1993 the average weekly total earnings of full time adult non managerial women employees was 84% of men's earnings. Non managerial full time women's earnings were lower in all occupations, including clerical, sales and service workers, which are the most common female occupations (ABS, 1994:99).

In 1993, 37% of women relied on pensions and benefits as their main source of income, compared with 20% of men. Women were 95% of sole parent pensioners and there were over twice as many women (1 million) as men (481,200) receiving the age pension (ABS 1994:102). Although there are more men than women on jobsearch and disability allowances, overall women form the majority of pensioners and beneficiaries. This contributes to the fact that women and their children form the majority of those living in poverty. Research on income distribution within households has shown that even women dependent on a partner with a higher income are not guaranteed an equitable share of that income, and may have to pay household bills and support themselves and their children from a very limited budget (Edwards, 1984).

Hence women as a group, and particularly low income women, are more vulnerable to price rises and more reliant on pricing policies such as concessions or cross subsidies to access essential services like water,

electricity, gas, telephones and public transport, and on specific legislation like maternity leave rights, anti discrimination and EEO legislation.

Legislative Review

The review of legislation could also have equity implications. Governments have considerable discretion for this review, which will apply to all legislation and regulation. The onus is on those supporting the legislation to show that it does not restrict competition; that if it does, the benefits are greater than the costs, and that there is no alternative means of achieving the goals of the legislation. Another goal is national consistency of regulation. It is not clear that public interest legislation in areas like Anti Discrimination, Equal Employment Opportunity, Occupational Health and Safety and the environment will be exempted. If it were not, this would provide opportunities for governments to roll back gains previously won in all these areas, or to argue for the lowest common denominator in the name of consistency. Again, women would be particularly affected by reviews of such legislation.

Competitive Tendering of Non Commercial Government Services

Some are now arguing that NCP means that competition principles and competitive tendering will be applied to all government services. Competitive tendering is different from traditional contracting by governments.

Contracting involves contractual arrangements with suppliers or contractors for goods and services which cannot be supplied in house. This has always been an aspect of government activity, and can involve public tendering processes. Some areas of community services have been traditionally delivered by both private businesses and non-government not-for-profit organisations, like nursing homes and some disability services. Competitive tendering is the extension of the competitive process into areas of service delivery previously done by government employees. Contracts are awarded based on competition between

potential contractors for the work of delivering services. This can, but does not always, involve an in-house bid by the employees themselves.

Competitive tendering is essentially an attempted cost cutting measure which is initiated in the belief that it compels agencies and employees to reduce costs through bidding on a lowest cost basis. Frequently those who win contracts are large transnational companies with considerable market power, who win the contracts on the basis of claimed economies of scale and scope. They prefer long term contracts, and offer no greater choice to consumers, who now deal with a single private rather than a single public provider. This has been the case in public transport contracts in Victoria and South Australia, in local government contracting in Victoria and in information technology and private hospital contracts in South Australia (Paddon and Thanki, 1995).

The application of competition policy not only to commercial activities but to all public services, through the introduction of competitive tendering processes, has the potential to fragment services and reduce service quality and employment conditions in areas like health, education, employment services and community services.

Assistant Treasurer George Gear recognised this in the context of the NCP legislation, and gave specific undertakings that the policy would not apply in these areas, in his speech on the second reading of the bill he said:

> There has been some concern that implementing a national competition policy will lead to the wholesale dismantling of the public sector. This is a serious misunderstanding of the proposed reforms. For the most part, these reforms are relevant only after governments have taken the threshold policy decision to introduce competition, and then only to 'significant' business activities. Many public sector organisations have both commercial and non-commercial functions, and these reforms are not designed to affect the non-commercial functions undertaken by governments.
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> In sectors such as education, health, welfare, community services and labour market programs where the public sector has, and will continue to have, a dominant role, the relevance of competition

> policies will be limited to those circumstances where enterprises are engaged in business activity. In most cases where this is an issue at all, this is a small part of their overall role, or ancillary to the provision of core services.

This intention now appears to be contradicted by interpretations of National Competition Policy to mean that competitive tendering should be applied to all areas of public services. The Industry Commission report, cited above, predicted increased competitive tendering in many public services, including police, education, hospitals and fire protection (Industry Commission, 1995a: 136). The current Industry Commission Inquiry into Contracting and Competitive Tendering produced a draft report in October 1995 which recommended increased competitive tendering at all levels of government (Industry Commission, 1995b:2).

As unions and community organisations argued in submissions to the Industry Commission, this would be completely contrary to the public interest because the public services provide both advice to government and a range of essential services which address social equity and the rights of citizens. They involve parliamentary and legal accountability, which cannot be provided through market mechanisms of competition or profitability. Competitive tendering or contracting out, which rely on cutting costs and, in the case of private providers, a margin for profit, conflict with the nature of most public services (Paddon and Thanki, 1995). A comprehensive survey on public services in 1994 showed an overwhelming majority awareness of these public policy issues and a strong preference for direct delivery of services by government (EPAC, 1994).

Problems arise for management in applying the theory of competitive tendering in practice. Often markets are not competitive, and contracting firms have significant market power, more specialised knowledge and expertise in contract negotiations. This can result in contractor capture and lock-in to certain types or levels of technology, and loss of staff with knowledge of the business capable of effectively supervising the contract. The in-house option often disappears after the first tendering process, as employees are made redundant and plant and equipment sold off.

Access and Equity in Service Delivery

Case studies show that service quality often suffers in the contracting process, since contractors' priority is to reduce costs; and quality issues, including equitable access to services for women and other EEO designated groups, are difficult to specify and monitor (Fraser, 1995; Ranald, 1995).

Most Australian governments have legislation and policies which recognise the specific needs of designated groups, including women, people of non English speaking background (NESB), Aboriginal and Torres Strait Islander people and people with disabilities. Specific measures, known as access and equity programs are needed to ensure these groups have equitable access to services. Members of these groups can be disadvantaged in their access to particular services if public sector functions are contracted out as shown by the following examples.

- The NSW Greiner/Fahey Government (1988-1995) contracted its staff recruitment to private employment consultants, claiming that EEO guidelines for recruitment would be followed by the contractors. A study of the advertising practices and interviewing procedures showed that the contractors did not follow the office of Public Management Guidelines on EEO procedures, and that there has been no overall monitoring of their performance (Ranald, 1995: 142-5).

- The Commonwealth Ombudsman has highlighted problems for access and equity for Aborigines and Torres Strait Islanders if services are competitively tendered on a lowest cost basis. She commented that, if there is to be a fostering of self-determination, Aboriginal groups should be involved in consultation about services which are available to them. Cost factors would make it unlikely that a competitive tendering process would enable the involvement of Aboriginal and Torres Strait Islander groups in consultation.

- The translation of publications into several different languages for NESB clients is needed to assist their access to the services. Cost factors may prevent a private company which has competed for a contract for a public sector function from providing such

information. In fact studies show that such issues are often ignored in tendering processes (Fraser, 1995).

Employment Conditions, Industrial Relations and Equity Issues

Competitive tendering commonly results in reductions in job numbers and/or employment conditions, which are not real efficiencies, but a transfer from employees. This conflicts with the requirements of public service delivery for a highly trained, skilled and motivated workforce, with high standards of public accountability, ethics, and probity. In the Australian Public Service, there have been significant gains in efficiency, effectiveness and equity without competitive tendering, through award restructuring, job redesign, bench marking, EEO programs, and other forms of continuous improvement (Ranald, 1995:112-113). Productivity growth per year averaged 3% in the three years between 1987 and 1990, which was higher than productivity growth in the private sector over the period (ABS, 1992).

Most people in EEO target groups enter the public sector at lower level positions. The introduction of EEO plans and job redesign in these sectors have expanded the opportunities available in employment and career paths. These include access to training and skill development which increase their opportunity to progress through the levels of the public sector. In the Australian Public Service, such programs have raised the number of women and other members of the EEO target groups in higher classifications. Women form the majority of employees in clerical, human services and community services areas (Dept of Finance, 1994).

Overseas evidence of the impact of competitive tendering show that it is unlikely that such opportunities would be available to women and other EEO group members if services were contracted out on the basis of lowest cost tenders. Competitive tendering results in casualisation of the workforce, loss of jobs, skills and working conditions, and is particularly disastrous for the employment conditions of women and other disadvantaged groups.

Chandler and Feuille, cited in Fraser (1992), conducted a survey of 1500 municipal public works directors in the United States which highlighted that women and other minority groups were directly affected by the contracting out of public sector functions. Their representation in public sector employment was higher than in the private sector, and their wages and conditions were diminished after transfer to the private sector. Whitfield's (1995) study of the gender impact of compulsory competitive tendering in local government was based on detailed surveys of managers, workers and contractors in 39 local UK authorities. It concluded that on average there was a loss of 21 per cent of jobs after competitive tendering in four major functional areas. Further conclusions were:

> Female employment fell by 22 per cent and male employment by 12 per cent. Women accounted for 93 per cent of 'pre-contract' employment in these four services and for 96 per cent of the net job loss between 1988-89 and 1993-94. Since 91 per cent of employment in these services prior to the introduction of competitive tendering was part-time, part-time workers accounted for most of the total decline in employment (95 per cent).

On employment conditions it concluded:

> Hours were reduced on average in building cleaning by 25 per cent and in education catering by 16 per cent with virtually all those affected being part-time workers... Many school cleaners and school meals staff are no longer paid throughout the year or receive a holiday retainer. They are paid for only about 39 weeks of term time which represents a salary reduction of up to 25 per cent.
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> The employment of black people was very low in all but three of the case study authorities and had remained static since competitive tendering. In spite of ethnic record keeping in 60 per cent of authorities, black workers are under-represented compared to their share of the population in both male and female dominated services.

> Both male and female disabled workers were poorly represented in the services studied. There is evidence that the number of disabled workers employed by local authorities decreased during the first round of competitive tendering. (Whitfield, 1995:6-7)

The available Australian case studies support the conclusions of the more comprehensive research literature cited above, that competitive tendering is about short term cost-cutting and results in erosion of jobs and working conditions. They also show that, in the areas of cleaning, catering, aged care and home help, the majority of employees were women and many were of NESB backgrounds. They suffer marked deterioration in their employment conditions, including loss of or reductions in working hours, income, holiday pay, sick leave, and maternity leave (for more detail and case studies see Ranald, 1995).

If Competitive Tendering is extended into clerical and administrative areas, and into human and community services, in which women form the vast majority of employees, women would lose many of the gains they have won in public sector employment. Access and equity provisions in service delivery are also likely to be reduced.

Government Discretion in Policy Implementation

As indicated above, State and Commonwealth Governments have considerable discretion in the implementation of NCP and how they apply the equity, social justice and environmental objectives in the intergovernmental agreements. This discretion is not necessarily being acknowledged, as some governments seize on NCP as a rationale for policy choices. For example, the Victorian Liberal/National government has claimed its privatisation of electricity companies is consistent with NCP. The NSW Labor government is claiming its separation of rail freight from passenger operations, and separation of ownership of tracks from the employing body is consistent with NCP. The Queensland Labor government has rejected those options and intends to keep its rail operations integrated and to continue to use direct employees. Both options are in fact possible under NCP (Statements made at the Conference of the Australasian Railways Association on Outsourcing in

Australia's Railways, 22/1//95). Unions and community organisations have been lobbying for policy options which would begin to address the equity issues outlined in this paper. They include:

1. Clarification that government policy objectives such as equity, social justice and protection of the environment *must*, rather than *may*, be considered in the application of the legislation and agreements;

2. Open and public reviews should be conducted by governments before decisions to introduce competition or privatisation;

3. The implementation of competitive neutrality principles should ensure that:

   - Government agencies which are not mainly business enterprises but have some commercial activities in the context of their broader objectives like publication sales or school canteens will not be fragmented by the application of competitive principles;

   - Competitive Tendering will not be applied to non commercial public services, including clerical and administration, education and health and human and community services, as it would conflict with access and equity policies for both clients and employees;

   - In accordance with the current Commonwealth Industrial Relations principles of no disadvantage in employment conditions, and equity for women and other designated groups, wages and working conditions of employees will not be reduced;

4. Private access to public infrastructure should not be on a basis which enables privatisation of all the profitable areas, leaving taxpayers to fund all loss making community service obligations (CSOs). Competitors should contribute to the cost of infrastructure and the cost of CSOs;

5. The proposed review of all State and Commonwealth legislation and regulation must exempt legislation which is in the public interest, in such areas as environmental protection, health and safety, anti discrimination EEO, and consumer affairs;

6. Pricing regimes must ensure that domestic and rural consumers do not bear the burden of price rises, and that low income consumers, most of whom are women, have equitable access to public services and are not restricted by disconnection or prepayment meters. Rates of return and executive salaries should be carefully monitored to ensure that they are not excessive, and that any improved productivity is passed on to consumers in the form of increased investment in infrastructure or lower prices and not retained by shareholders and executives.

Conclusion

NCP will have profound effects on the structure of public utilities and the prices of services. It could accelerate trends to privatisation of services through the introduction of private competitors in government business activities. It could result in the removal of cross subsidies for domestic and rural consumers and the funding of these and other defined community service obligations from government budgets, rather than from the profits of the enterprises. In spite of reassurances to the contrary, some governments are seeing it as an opportunity to introduce competitive tendering for non-business government and community services.

All of these possibilities would contribute to increased inequality as domestic and rural consumers, and especially low income earners, pay more for essential services, and possibly suffer restricted access. Funding of other government services could be affected if governments choose to fund former subsidies or community service obligations from already restricted budgets. Public interest legislation in areas like EEO, OH& S, and anti discrimination could be watered down. Women and people of non English speaking background would lose jobs and suffer reductions in wages and conditions if government and community services were

contracted to private companies. Although governments may not acknowledge it, they do have policy choices which could mitigate these effects. Governments can choose to have equitable pricing polices, to retain cross subsidies, exempt public interest legislation and retain direct services delivery for community and public services. These issues are still contested terrain.

Appendix: Legislation and Inter-Governmental Agreements Following the Hilmer Report

- **Extension of the Trade Practices Act to apply competition principles to state owned businesses.**
  State owned businesses are no longer exempted from the provisions of the TPA, and the intergovernmental principles outline an agreed framework for the application of the legislation and competition principles, although governments have considerable discretion in implementing these (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:14-16).

- **Structural Reform of Public Monopolies**
  Each government may determine its own agenda within an agreed set of principles, which include that all public monopolies should be structured as commercial operations and subject to competition. Governments should conduct reviews, before introduction of competition or privatisation, but (contrary to Hilmer's recommendations) they do not have to be public. Commercial functions should also be separated from non commercial functions. Any regulatory functions should be separated from commercial functions and established as independent entities. Community service obligations should be defined and appropriate means of funding determined (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:15-16).

- **Competitive Neutrality: no net advantages from public ownership.**
  Competitive neutrality principles should be applied to all public business activities, so they operate on the same basis as private competitors. Again governments can determine their own agendas. This applies to areas like payment of taxes and charges, and conformity with legislative requirements. The agreement does not formally oblige governments to end cross subsidies; however, these cross subsidies run counter to the competitive neutrality principles which include full cost pricing.

Following lobbying, the agreement was amended to clarify that public bodies can conform to government policy in areas like EEO, OH&S, employment conditions, environmental standards or other areas where that policy might mean higher standards than the private sector. However, there is no protection of employment conditions for employees transferred to the private sector (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:14-15).

- **Application to business activities which are part of other government agencies.**
  Competitive principles do not apply to the "non business, non profit activities" of public agencies, but can apply "where appropriate" to any "significant" commercial activity by any other government agency, eg sale of publications, school canteens or hospital pharmacies (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:14).

- **Access to public infrastructure in cases of natural monopoly, where it cannot be duplicated.**
  The agreements establish rules of access to infrastructure of national significance which cannot be feasibly duplicated. Competitors may negotiate access to publicly owned essential infrastructure, and have access to arbitration if parties cannot agree on terms. In theory, this would also apply to privately owned essential infrastructure. Access rules are intended to be national policy, but can vary within agreed guidelines at state level (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:17-18).

- **Prices surveillance and monitoring.**
  The legislation provides for a more nationally consistent system of price monitoring through application of the Commonwealth Prices Surveillance powers to state bodies or through the establishment of state pricing authorities operating on consistent principles (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:12-13).

- **Legislation Review in support of competition principles.**
  Reviews of all Commonwealth and State legislation and regulation are to be conducted against the criterion of whether they restrict competition. Restriction of competition should only be permitted if it can be demonstrated that benefits outweigh costs, and that the objectives cannot be achieved by any other means (Competition Policy Reform Bill, Intergovernmental Agreement, 1995:16-17).

- **Establishment of National Competition Council and Australian Competition Committee.**

These are the bodies which will administer the legislation and agreements. Initially those appointed to these bodies were not required to have consumer or public interest expertise. As a result of lobbying, appointments will now include one person on each body with consumer rights expertise, but following agreement of all governments. These bodies will incorporate the current functions of the Trade Practices Commission and of the Prices Surveillance Authority (PSA) in surveillance and monitoring prices of national companies in both public and private sectors.

- **Compensation to be paid from Commonwealth to states in return for implementation of the policy**
  The states argued that they would suffer revenue losses from GBEs as a result of the policy, and that the Commonwealth would gain revenues. Payments were required to secure the intergovernmental agreements. Payments of $4.3 billion are to be made in 1997-8, $585 million in 1998-9 and $2.6 billion in 2000-2 for specific stages of policy implementation.

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