



Submission to Productivity Commission

Inquiry into introducing competition and informed user choice into Human Services: Part 2

**Prepared by
COTA Australia**

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COTA Australia

COTA Australia is the national consumer peak body for older Australians. Its members are the State and Territory COTAs (Councils on the Ageing) in each of the eight States and Territories of Australia. The State and Territory COTAs have around 30,000 individual members and more than 1,000 seniors' organisation members, which jointly represent over 500,000 older Australians.

COTA Australia's focus is on national policy issues from the perspective of older people as citizens and consumers and we seek to promote, improve and protect the circumstances and wellbeing of older people in Australia. Information about, and the views of, our constituents and members are gathered through a wide variety of consultative and engagement mechanisms and processes.

Introduction

COTA Australia welcomes the opportunity to contribute to this Productivity Commission Inquiry, given the essential role of Human Services in the lives of older Australians.

COTA agrees with Treasurer Morrison's media statement¹ at the outset of the Inquiry that governments and service providers must ensure that all Australians can access timely, affordable and high quality human services, appropriate to needs and delivered in a cost-effective manner. We support this as the fundamental starting point for the Inquiry. However, we also note that the Treasurer and the Productivity Commission went further and adopted a priori the view of the 2015 Harper Competition Policy Review that to achieve this goal there should be much greater 'choice and competition' in the Human Services sector.

COTA's focus is on achieving the best outcomes for older consumers, on a fair, equitable and sustainable basis, and as such we are a leading proponent of the current reforms in Aged Care that place informed consumer choice and control at their core. We have long argued that to achieve this outcome greater variety and contestability in service delivery is necessary in that particular sector to enable improved capacity for the consumer to exercise real choice.

We recognise, however, that greater consumer choice and control may in some instances be achievable without resorting to the creation of new delivery markets. COTA also shares many of the concerns expressed by a range of stakeholders regarding the risks of increased competition in Human Services delivery, particularly when it involves broad marketization. We argue for the absolute need for proactive and preemptive consumer protection and quality control regimes in any Human Services market.

The recent spectacular policy failure and appalling consumer experiences and outcomes

¹ The Hon Scott Morrison MP, Treasurer of the Commonwealth of Australia. Productivity Commission inquiry into introducing competition and informed choice into human services, Media Release 2able9 April 2016, Canberra

associated with increased marketization in the Vocational Education and Training (VET) area provides a compelling backdrop to the Productivity Commission Inquiry. It is essential that the Inquiry take to heart the lessons from this failed program, which clearly did not contain sufficient checks and balances to prevent practices and behaviors exploitative of both consumers and taxpayer funds.

Earlier experience with government funded employment programs operating in competitive markets, targeted specifically to the disadvantaged in the labour force, also raises flags of concern. Many argue that those programs have engaged extensively in ‘creaming’ of the easiest and cheapest-to-service consumers while ‘parking’ higher needs, more expensive-to-service consumers in order to generate higher profits, resulting in poor outcomes for those most in need². This includes many older jobseekers locked out of work by ageism and a changing economy, and requiring intensive, individualized support to break back into employment. Around a third of the long-term unemployed receiving Newstart Allowance are over the age of 50³.

Curchin has argued that

“The contracting out of employment services was supposed to enable jobseekers to receive services tailored to their unique situation, but research shows the profit motive has actually driven standardisation of services.”⁴

Many older Australians relying on range of government funded Human Services are vulnerable to ‘sharp’ commercial practices and poor service, given that they often have complex, multi-faceted needs that may be more expensive (and less profitable to providers) to address. An example of this is in health service delivery where, for example, the greater prevalence of co-morbid chronic illnesses amongst older people may require more individualised and intensive targeting to resolve or improve. This of course depends in part on the structure, adequacy and conditions of government financial incentives to providers.

Recent work in the field of Behavioural Economics also argues more directly that there is a tendency in competitive markets to target vulnerability for profit-making and cites many examples of this occurring⁵. Curchin, quoting the behavioural economists Akerlof and Shiller, argues that modern economics has failed to take seriously the role of market trickery and deception. The best arrangement, she proposes, is when the power of the markets, government and civil society balance each other, and warns that:

²Eleanor Carter and Adam Whitworth, *Creaming and Parking in Quasi-Marketised Welfare-to-Work Schemes: Designed Out Of or Designed In to the UK Work Programme?* Journal of Social Policy: 2015 Apr; 44(2): Pp 277–296

³ Department of Social Services, Statistical Paper No. 12: Income Support Customers: a statistical overview 2013. Commonwealth of Australia 2014, p37

⁴ Dr Katherine Curchin, Research Fellow, ANU, Social Service Futures Market Innovation is a Double-Edged Sword, 23 May 2016 <http://www.powertopersuade.org.au/blog/social-service-futures-market-driven-innovation-is-a-double-edged-sword/23/5/2016>

⁵ Ibid

“... if we create new markets in new fields we should anticipate that we are opening up new opportunities for exploiting vulnerable people.”⁶

COTA is well aware of the risks to some older consumers associated with the establishment of new delivery markets in sectors such as aged care and disability services. Bringing together new market players and a significant proportion of vulnerable consumers, with more power over purchasing decisions in these sectors could create exploitive, substandard or inappropriate service relationships if not well regulated and supported by government. In aged care the relevant entry and quality regulatory regimes are being maintained, or improved, while the move to a more market based, consumer driven service delivery model is implemented in the home care component of aged care. (Such change has not yet really commenced in residential aged care, despite some freeing up of accommodation pricing).

An example of COTA’s concern in this regard is the potential for increased pressure tactics targeting older consumers through door-to-door and telephone sales. Older people can be more vulnerable to these tactics if for no other reason than they are more likely to be at home in business hours. They may also often not have access to the Internet or other immediately available information sources regarding the increasingly complex arrangements for services they need to access and are therefore more susceptible to pressure sales.

In recognition of this, in our 2016 Election Statement⁷ COTA joined a number of other consumer advocates in calling for a ban on selling through telephone cold calling and door knocking – both situations in which comparative information is not available to the consumer at point of sale. The establishment of new markets for Human Services has the potential to expose older consumers to a greater likelihood of encountering unconscionable selling conduct, so government must provide stronger, proactive consumer protections if it intends going further into marketization in these sectors.

Response to the Discussion Paper

In the face of the risks identified above, COTA would have preferred that the Inquiry had reversed its two stages. We believe that the Productivity Commission ought to have led with the development of a principles-based framework for assessing the future of human services. Instead it started with the identification of potential service areas suited to greater competition, contestability and user choice based essentially as far as we can tell on economic supply and demand factors.

In the Commission’s current Discussion Paper, as well as identifying specific service areas for

⁶ Ibid

⁷ COTA Australia, 2016 Election Statement http://www.cota.org.au/lib/pdf/COTA_Australia/public_policy/cota-australia-2016-federal-election-platform.pdf

reform, the Commission provides a limited “Framework for Assessing Reforms”. This framework relies essentially on a small number of ‘attributes’ to ‘determine overall effectiveness in improving the wellbeing of users and the welfare of the community as a whole’. These generic, management-style ‘attributes’ are proposed as the general benchmark against which to evaluate ‘reform options’ within already identified service areas.

COTA argues that a specific set of clear, guiding principles ought to have been applied alongside supply and demand analysis to the decision on which service sectors offered potential for choice/competition/contestability reform, if any.

Therefore, in our brief contribution to this Inquiry, we concentrate on:

- discussion of some key, overarching issues;
- possible principles for guiding changes to Human Services systems, whatever market mechanism is in play; and
- very brief comment on the choice of service sectors for reform.

Issues

Choice and control

COTA has strongly advocated for shifting the philosophical approach, policy frame and delivery mechanisms in Aged Care towards much greater choice and control in the hands of consumers. This direction has slowly begun to emerge through the current Aged Care Reform process but still has a considerable distance to go.

The Aged Care sector was historically dominated by church and charitable organisations taking a welfare-style delivery approach, plus a proportion of small for-profit providers (often family businesses) in the residential sector, all operating within an increasingly constraining regulatory context. There has in more recent times been a growth in larger for profit residential care providers, but still operating within the same regulatory environment. While there has been some shift in these parameters in recent years it has been marginal to date except in the change that will occur on 27 February in Home Care Packages. However this component of the sector is only 80,000 places of close to a million users of aged care services. COTA believes that this industry model is no longer appropriate for an increasingly diverse ageing population coming from a broad socio-economic base to seek aged care services.

Consumers have repeatedly told us, and the evidence demonstrated over a long period of time, that the Aged Care system was not focused around individuals and their needs and delivered uneven service quality and outcomes. The highly regulated and supply-constrained (by government) nature of the sector means that providers for whom consumers have strong

preference (as evidenced for example by extensive waiting lists) are constrained from offering their services to more consumers than their number of residential bed licenses, home care package places, or allocated numbers of service types (in CHSP, formerly HACC) allow. This is government-enforced restraint of trade and denial of consumer choice. This will change for Home Care Packages in February 2017, but will still be in place for the vast majority of the sector in residential and CHSP programs.

The allocation of aged care places and funding to providers rather than consumers, combined with the capping of supply of aged care places in both residential and home care, has;

- prevented preferred and higher quality providers from expanding in response to consumer demand;
- guaranteed very average quality providers a supply of customers because they had been allocated beds or packages at some time;
- allowed parts of the industry to engage in 'cherry-picking' consumers, largely for financial advantage; and
- meant that people with greater needs such as dementia or cognitive decline, or those with non-mainstream personal characteristics, have not had their needs met well, or have even been poorly served. (The growing number of LGBTI people now seeking aged care is an example of a demographic whose needs are not yet broadly acknowledged nor met by the industry.)

COTA has therefore taken the view that greater choice and control for a broader range of Aged Care consumers and a more individualised approach to service delivery means that there must be a better choice of providers and between providers than is currently available in the sector. True choice implies not just the selection of Provider A over Provider B, but the ability for a consumer to choose type of service, individual care giver, delivery hours, delivery site and more, that meets their needs and preferences and fully supports individual wellbeing. True choice also means a variety of providers being able to operate freely in competition to provide genuine alternatives (within a common regulation of safety and quality).

COTA recognises however that choice is not a simple issue. Classical economics says that people make rational choices in their own best interests, but we know that in the real world that does not always happen. In practice, consumers are likely to face a lot of barriers to exercising optimal choice when accessing and using human services. These include: information asymmetry; lack of confidence for new users of an unfamiliar sector; urgency of need for a service; cognitive decline; service scarcity or homogeneity; locational challenges; and service mobility barriers such as exit penalties. The likely consequences of these barriers are greater for groups of consumers who for a range of reasons are particularly vulnerable or experience persistent disadvantage.

Markets are rarely a level playing field and we are advocating strongly for consumer supports in the transition to the new service model in Aged Care, including: revitalised, robust, user-friendly consumer protections; transparent, accessible information about the choices available, their costs, and their implications for individuals using the systems; and a well-designed and resourced, participatory Consumer Support Platform that provides an integrated range of individual and system-wide support services.

System change

COTA's experience with changes in the Aged Care system to date lead us to identify a number of important issues in managing change towards more open delivery markets in human services.

Essentially, these can be summed up as the need to undertake a planned, consultative, well resourced, comprehensive change management process, including:

- Engage consumers and providers from the beginning and at every stage of co-design of the reform;
- Create and test change plans and roadmaps with key stakeholders and provide resources and support for consumer and industry leaders to be full partners with government;
- Clearly and frequently communicate to all stakeholders, but especially consumers, the intended directions, milestones, timeframes and improved outcomes being sought;
- While maintaining momentum, ensure that transitions are orderly and effectively sequenced, including in parallel when a change needing a longer lead time needs to be in planning and preparation while others are implemented;
- Where appropriate trial and pilot changes before widespread implementation, recognising that this is not always possible or indeed desirable;
- Resource organisational and cultural change management on the ground (recognising providers also have responsibility for this);
- Evaluate processes, outcomes and impacts at each phase of change, against the goals and purpose of service delivery and with a willingness to make adjustments as needed.

Government as 'Market Steward'

COTA is aware that there is some stakeholder debate surrounding the choice of the Productivity Commission as the agency tasked with considering the future directions of Human Services. COTA observes that the Commission's market orientation and economic remit appear to many to predetermine a bent towards market solutions to all problems.

A market focus in the context of human services risks losing sight of the need for empowerment

of individual consumers and the values of social wellbeing, community engagement and fairness that are essential to effective human service planning and delivery⁸.

Human services are not simple exchange markets and the role of government should remain central in any delivery model. As Jesuit Social Services put to the Harper Review

“[Human Services] provide essential personal services to their users but they also have a wider role of building individual capabilities, cohesive communities and a more civil society.”⁹

The Productivity Commission has drawn on the Harper Review’s promotion of the concept of ‘market steward’ to describe government’s role in a more competitive human services sector¹⁰. COTA cautions against a narrow interpretation of this concept. The terminology could be interpreted to imply a hands-off removal from the action; a regulatory ‘light touch’ as a default, or after-the-fact reviewing of compliance. As Carey says

“Welfare and social supports have always been offered by a combination of government, community and private providers [using different levels of market approaches]. The question then becomes one of emphasis...”¹¹

COTA argues that partnership between the four sectors integrally involved in human service delivery - government, civil society/community sector, for-profit providers, and consumers - is a stronger model than a government ‘stewardship’ role.

It needs to be borne in mind that in most if not all Human Service areas government is a major player and major stakeholder, in that it provides the majority of funding, often overwhelmingly so, and either explicitly or in practice sets key prices and ‘terms of trade’. This is not inappropriate given the level of its stake and the fact that taxpayers and consumers of services look to government to ensure that it gets value for (taxpayers) money; achieves effective outcomes; and treats all stakeholders fairly.

In the Principles section below we outline some of the key roles for government as we see them in any increased marketization of Human Services, whether referred to as ‘Market Stewardship’ or otherwise.

⁸ Jesuit Social Services, Submission to the Competition Policy Review, November 2014. P2
<http://jss.org.au/submission-to-the-competition-policy-review/>

⁸ Productivity Commission, Human Services: Identifying sectors for reform. Productivity Commission Issues Paper. June 2016, p1

⁸ Carey Op Cit

⁹ Jesuit Social Services, Submission to the Competition Policy Review, November 2014. P2

¹⁰ Carey Op Cit

¹¹ Dr Gemma Carey, NHMRC Fellow and Senior Lecturer UNSW Canberra in

<http://www.powertopersuade.org.au/blog/is-the-productivity-commission-still-fit-for-purpose/18/4/2016>

Principles

In the interests of consumers, including our own constituency of older Australians, COTA recommends that the Productivity Commission and government adopt a set of principles as an essential component of a framework for reviewing the future of directions of Human Services markets. We suggest the following:

1. The purpose and goal of government-funded human services should be to ensure that all Australians have equitable and affordable access to the services they need.
2. The achievement of this purpose should guide decisions around and test the success of contestability and competition in the sector.
3. Human Services delivery should have informed consumer choice and control as a central design feature.
4. Reliable, up-to-date service quality and price information must be available and accessible to consumers.
5. Consumers of Human Services must have adequate, timely, affordable protections and support available to them, including those consumers who are unable or unwilling to exercise choice.
6. Consumer choice and competitive provision in human services are related but not always co-dependent, and sector-by-sector analysis needs to clarify if the latter is required in order to achieve the former.
7. Any changes to human services markets must safeguard equitable access, recognising that competition is unlikely to be viable in the delivery of some high cost, specialised human services where resources are scarce.
8. Competition does not guarantee quality and can in fact reduce it, therefore regulation of quality in human services remains a prime government responsibility.
9. Any systemic shift to current arrangements in Human Services should be undertaken through a better practice change management approach.
10. Efficacy in some Human Services relies on design and delivery taking place very close to the ground (to enable the incorporation of local knowledge and trust relationships), and market arrangements should not undermine this where it is needed.
11. A balanced market allowing for niche or small local providers (for profit or not-for-profit) is essential for meeting the needs of a diverse population, and unfettered competition should not be allowed to result in elimination of these providers because of economies of scale. However, this should not protect niche and smaller providers from having to ensure they are responsive to consumer needs and preferences.
12. Differential pricing levels or funding models should be supported by government to

address differing circumstances in various markets, such as rural and remote areas.

13. Marketization should not result in an increase in population or individual socio-economic inequality and disadvantage or unequal access to human services.
14. Systemic disadvantage must be recognised and addressed in the design and delivery of human services to Aboriginal and Torres Strait Islander communities, Culturally and Linguistically Diverse (CALD) communities, rural and remote communities and other special needs or vulnerable groups.
15. Good Human Services often deliver broader social and community outcomes and contribute to the public good, and these features should be safeguarded in any Human Services delivery model.
16. Competition should not undermine integrated or 'joined up' Human Service delivery and therefore relevant individual data must be portable, secure and protected by regulation.
17. There should be full accountability to the Australian public and parliament for the expenditure of public funds and the outcomes achieved under any model of human services delivery.
18. The role of government as 'market steward' needs to be fully resourced, broadly interpreted and developed to ensure:
 - Equitable access to affordable, quality services
 - Full mitigation of the risk of, and a framework for effective responsiveness to service provider failure, and thin markets
 - Service 'creaming' and 'parking' does not occur
 - Continued attempts to address systemic and deep-seated social and policy problems are not abandoned under greater marketization
 - Integration, wrap around service delivery, collaboration, collective effort and co-operation across service types to meet individual needs is not a casualty of greater market competition
 - Diversity of individual needs are met by diversity in service offerings
 - Non-market values of importance to the community are preserved in human services.

Sectors Proposed (and not)

Alongside family and community services commissioning and human services in remote Indigenous communities, the Discussion Paper identifies four specific service areas for choice/contestability/competition reform: social housing; public hospital services; end-of-life

care; and public dental services. These sectors are of particular importance to older Australians:

- While 76% of people over 65 owned their own home in 2013-14¹², this is consistently trending downwards and it may well be that in years to come there will be a greater number and proportion of people entering older age (generally with very constrained incomes) as renters in the private, public and social housing sectors. A strong social housing sector is and will increasingly be critically important to older people;
- People aged 65 and over (who make up about 15% of the population) accounted for 41% of hospital separations and 49% of patient days (across public and private hospitals) in 2014–15¹³;
- Two-thirds (66%) of deaths were among people aged over 75 years¹⁴, so end-of-life care is a crucial issue for older people;
- More than 50% of people over the age of 65 suffer from gum disease or periodontitis¹⁵. Older people often can't afford private dental care (as it is not covered by Medicare) and rely on the public system which is woefully inadequate to meet demand. Oral health care is a crucial health care gap for older people.

While COTA is not a specialist in the operation of these sectors, and therefore we are not making specific comment on the Commission's requests for information pertaining to them, we have a particular interest in the outcomes of any changes to them. Any policy shifts that result in even poorer service access, experience or outcomes than currently exists in these sectors is likely to have a disproportionate effect on older Australians, either because they are greater users of them and/or their unmet needs are greater than some other groups'. We will look closely at the Inquiry contributions of relevant stakeholders which are qualified to comment in these sectors.

Residential aged care missing

The Commission did not include residential aged care in its recommended sectors, which we understand was because reform is already underway in aged care. However major reform to date in aged care has been largely focused on the home care component, and even that is still significantly constrained by a number of legacy policy settings and lack of investment in requisite system changes. While proposals exist to extend such reform to the residential sector this is not yet either Government or Opposition policy.

¹² AIHW: Older Australians at a Glance <http://www.aihw.gov.au/ageing/older-australia-at-a-glance/>

¹³ AIHW: Admitted Patient Care 2014-15, P53
<http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554729>

¹⁴ AIHW: <http://www.aihw.gov.au/deaths/> (reported at 9 February 2017)

¹⁵ Australian Dental Association, Pre-Budget Submission 2016-17 P1
<https://www.treasury.gov.au/~media/Treasury/Consultations%20and%20Reviews/Consultations/2015/2016%20Pre%20Budget%20submissions/Submissions/PDF/Australian%20Dental%20Association.ashx>

COTA is therefore disappointed that the Commission made the decision to drop aged care from its proposed sectors despite initial interest. As we have said earlier we believe the sequence of the selection process should have been reversed and that aged care has been a victim of that decision, which may actually turn out to be detrimental to the reform process. We hope the Commission might reconsider this decision.

End.