

Adam Johnston

NSW
May 6th 2001

The Productivity Commission,
Cost Recovery Inquiry,
Locked Bag 2,
Melbourne VIC 8003

Dear Commissioners,

I am writing this submission to comment on the release of your draft Cost Recovery report. It is also my intention to draw your attention to a few issues that may have been missed and problems with elements of your Terms of Reference. Firstly, your decision to completely exclude what might be termed "welfare services" (1) from the scope of Investigation, is most unfortunate. Welfare, or transfer payments, are significant costs to government. In 1996, they represented 39.6% of budgetary allocations (2). From what I will outline below, it can be readily argued that welfare (a function increasingly outsourced to private firms) is very much within the scope of cost recovery.

Certainly, from considering your draft report, there are many reforms which the Federal Government could make (and should implement), which effect services I receive. The fact that these recommendations or findings come from your draft report does not, admittedly, make the case for my problems being relevant to your terms of reference. However, when considering how much notions of welfare have changed and continued to do so, then it becomes pertinent that a body like the Productivity Commission reconsider whether some excluded material is in fact essential, to achieving a complete overview of cost recovery in action.

In this respect, my first point of reference at a theoretical level, are some comments made by Gary Sturges. It is his argument, as reported by Mark Latham, that modern technology like the Internet will render current methods of government service delivery obsolete. In Sturges's opinion:

"...The boundaries of government will become in time so blurred that we will have trouble knowing whether we are being served by a public servant or a private employee, whether we are dealing with national, state or local government ... This is not about privatisation; it is not about making government smaller, if by smaller government we mean stripping the public sector of its capacity to participate and intervene in society. It is about giving the state greater leverage in society, whatever the people through their elected representatives decided that they want government to do..." (3)

Personally, I am not convinced that the electorate would ever accept a situation, where a realm of government was not clearly defined. However, there are some indications that public policy is moving more and more in this direction. As Sturges indicates, not everything about such developments is bad, and I am not going to "rant and rave" that competition, privatisation or the like is necessarily unhelpful. It is my view though, that there is an unfortunate trade-off when it comes to accountability and transparency. This is point you make on page 43 of your Draft Report. It is a particularly telling that the various agencies of government are having difficulty "(establishing) the objectives, costing and revenue raising of many cost recovery arrangements" (4).

I would suggest that this problem is even more acute in the "non-Commonwealth" area, which your Terms of Reference refuse to consider. Having been a client under the Commonwealth's

Continence Aids Assistance Scheme, (CAAS) for a number of years, problems in service began to emerge when the Government's nationally contracted supplier, P. Q. Lifestyles, was unable to reach a sub-contracting arrangement with Paraquad NSW. The latter firm had been the supplier of CAAS for as long as I have been eligible for the program and, its service met my needs.

However, when one of my CAAS orders went missing for a month, it seemed time to inquire of the Department of Community Services; the authority then responsible for the scheme. Previously, I had also made inquiries of the Queensland Department of Fair Trading. P. Q. conceded that it had not been able to fill my order (5). Equally, my mail had also included a letter from Paraquad, raising certain concerns about the security of personal information under the new arrangements. Paraquad's claim that the Government "(had) no objection P. Q. Lifestyles passing (personal) information on to a commercial business"(6) caught my attention. I became even more concerned, when advice from the Federal Privacy Commission indicated that private firms contracted by the Government were not directly subject to provisions of the Privacy Act (7). Finally, given the Government's refusal to release the CAAS review (8), I initiated FOI proceedings.

On receiving a copy of the review, I made a further appeal to the Aged Care Department, which had taken over responsibility for CAAS. In my view, this is where the Productivity Commission missed an opportunity to fully assess the effects of cost recovery. The review of CAAS summed up the major benefit of the national contracting arrangement with P. Q. Lifestyles this way;

"...Value for Money. Overall, one of the major benefits of a move to a contracted national agency was the establishment of a contract which separated charges from administration and freight from client allocations. This meant that a CAAS client's \$450 subsidy was no longer reduced by administrative mark-ups on products, and freight charges, which differed markedly across States under (previous) arrangements ... Administrative costs to the Commonwealth have been effectively capped for the period of the national contract from 1997..." (9)

Precise use of words is a problem here. I am assuming that "value for money" is synonymous with cost recovery. This is on the basis of your definition of cost recovery as including "(the provision) of incentives to improve the efficiency of government services" (10). In making this claim, the capping of administrative costs and interstate variations in per unit costs are being cited as the efficiency gains. If this does not meet your wide definition, might I recommend further clarification in the final report.

Meanwhile, on the basis that I can reasonably use your definition in this way, some observations need to be made. With reference to the first FOI appeal document (dated 5 August 2000), I noted that:

- For an arrangement that was supposed to represent value for money, it was surprising that pricing policies were not initially specified (11)
- If the new contractor had little lead-time to make necessary arrangements, this situation tended to undermine the very claim of efficiency and value for money (12)
- Further, if the contractor hadn't the resources in the first instance (13), I challenged whether the new arrangements really represented an improvement. State based mark-ups may have been removed, but a handling charge now existed for the return of incorrect goods (14)
- Finally, one has to question the astuteness of a Department that concedes a failure to obtain "appropriate legal and commercial contract advice" (15)

It is for reasons such as these, that I thought your inquiry and several recommendations you make would be relevant. In many respects, the CAAS arrangements seem to exist in a confused "no man's land" between commercial interest, Government policy and community service. The tensions involved in this arrangement would be greatly reduced if the Commission would allow some of its recommendations to be applied here.

Firstly, your draft report alerted me to the existence of the Financial Management and Accountability Act (16). Given the problems outlined above, it would be advisable to bring nonCommonwealth agencies that enter government contracts, under this legislation. After all, GAAS grants are Commonwealth money, but according to a letter I received from the Attorney General (via my Local Member):

"...(As the Attorney understood it) the continence aids assistance scheme is a non-statutory scheme and that the Commonwealth's decision to enter the contract with P_ Q. Lifestyles was not made under an enactment. If that is the case, the Administrative Decisions (Judicial Review) Act would not appear to apply ... In some circumstances such decisions may be challenged by proceedings under section 39 B of the Judiciary Act 1903 or section 75 (v) of the Constitution. However, Mr Johnston would need to seek his own legal advice on the possibility of challenge in all the circumstances of his individual case..." (17)

While appreciating the Attorney's position, many like myself do not have the funds for such action. Also, as a matter of policy, is it not better to avoid legal confrontation when a legislative and administrative solution is possible? It was from this perspective that I continued to pursue the issue of the CAAS contract with the Department of Aged Care. FOI request 75 of 2000 sought the tender documents P. Q. Lifestyles had submitted. This was refused on both the initial request and the appeal (18).

A fair summation of the Department's opinion is that it saw too much commercial damage to P. Q. Lifestyles, was concerned about maintaining confidence with commercial contractors and emphasised that it was not the status of FOI applicant's which effected release but "the nature of the information being requested" (19)

Again, while appreciating this position from a technical standpoint, it could also be read as reinforcing many of the criticisms made by representative bodies during the review. Namely:

"...the Physical Disability Council ... indicated that the aims of P. Q. Lifestyles are commercial to the extent of putting profit ahead of community services to people with disabilities. Likewise Paraquad NSW also indicated that the aims of the national agency and distributor were commercially driven and not based on equity considerations. They suggested a joint venture of State or regionally based suppliers. Paraquad Victoria were more specific and stated that centralised order placement and distribution centre had proved unsuccessful, giving their example of an effective state based service 'Continence Care Australia', a joint company with the Paraplegic and Quadriplegic organization in NSW..." (20)

To my mind, this level of commercialisation of a Government contract (which is described as a project grant (21)) should be a concern that your inquiry at least takes note of. Cost recovery is important, but we must always ensure there is an adequate legislative framework. CAAS is apparently without a specific enactment, while its review exposed some worrying planning and implementation shortcomings. There is a need to clarify the use of language; does "value for money" equal "cost recovery"? Further, the Commission should consider the issue of skills and culture. In this I mean, even if the bureaucracy adopts the language of corporatisation, are we certain that they are fully equipped to deal with independent, private commercial interests? I think not, given my earlier four dot points, summarising the shortcomings of the CAAS contracting process. Equally, your own draft report states:

"... There is a lack of transparency and accountability in current cost recovery arrangements. It is difficult to identify from existing sources the level of cost recovery by Commonwealth regulatory and information agencies, Publicly available data are incomplete and inconsistent, and the Department of Finance and Administration is unable to identify cost recovery receipts separately from other revenue. Moreover, at the individual agency level, it is difficult to establish the objectives, costing and revenue raising of many cost recovery arrangements..." (22)

Given my experience, I could not agree more. It has been a long road to get documents out of the Department. Furthermore, while it is appreciated that the objectives of value for money and greater administrative convenience (23) were achieved, it has to be asked at what cost this was done? Upon reflection, to avoid re-arguing the pro's and con's of state based or nationally administered CAAS arrangements, it may be beneficial to have the Government allocate a certain percentage of a client's pension money to CAAS and let the client choose their preferred supplier. This certainly reduces Government intervention and may produce as many (if not more) cost savings as the introduction of a national CAAS contract. Therefore, cost recovery has been achieved, but at the same time, clients receiving services have greater freedom of choice.

Yours sincerely,

(signature)
Adam Johnston

END NOTES

1. See Productivity Commission, *Cost Recovery: Draft Report*, April 2001, p. 6 (second dot point from the top of the page, referring to "payments by customers to non-Commonwealth organizations...")
2. See Blackall, Simon et al, *The Book of Australia: Almanac 1997 -- 98*, The Watermark Press, 1997, p. 301
3. Latham, Mark, *Civilising Global Capital*, Allen & Unwin, 1998, p 211 (quoting Gary Sturgess, *Virtual Government -- the Public Sector of the Future*, Address to the Public Service Commission's Lunchtime Seminar, Canberra, 25 July 1994)
4. Productivity Commission, op cit., p. 43
5. See letter to Chris Irons (Department of Fair Trading) from Rhonda Fardon (P. 0. Lifestyles), dated 13 March 2000
6. Letter from G. G Williamson (Paragard), dated 24 June 1999
7. See letter from Brant Pridmore, dated 30 March 2000. Also note that while Rhonda Fardon gives assurances about the privacy of personal data, in her letter of 13 March 2000, I would prefer this to be reflected legislatively and the Privacy Commissioner to have formal authority
8. See letter from Gary Kent (for Community Services Minister Larry Anthony), dated 18 April 2000
9. Employment Reforms Section: Department of Family and Community Services, *Review Administrative Arrangements for Continence Aids Assistance Scheme*, March 2000, p. 5
10. Productivity Commission, op cit., p. 1
11. See letter to Warwick Bruen (Assistant Secretary, Community Care Branch, Department of Health and Aged Care) from Adam Johnston, dated 5 August 2000, p. 1
12. See Ibid., p. 3
13. See Ibid., p. 4 (and also Employment Reforms Section: Department of Family and Community Services, op cit., p. 32 [to confirm the quotation])
14. See Ibid. pp. 4 -- 5
15. Ibid., p. 1
16. See Productivity Commission, op cit., p. 41
17. Letter to Dr Brendan Nelson MP from the Hon Daryl Williams AM QC MP (Min 001199822, 00/199333), 13 June 2000, pp. 1 -- 2
18. See letter from Warwick Bruen to Adam Johnston, dated 23 November 2000, my subsequent appeal document dated 17 December 2000 and the response from Dr David Graham, dated 18 January 2001
19. Letter from Dr David Graham, op cit., p. 2
20. Employment Reforms Section: Department of Family and Community Services, op cit., p. 30
21. Ibid., p. 39

22. Productivity Commission, op cit., p. 43

23. See Employment Reforms Section: Department of Family and Community Services, op cit., p. 37

Included with this submission were the following letter attachments:

Paraquad Association of NSW;
Office of the Federal Privacy Commissioner;
Minister for Aboriginal and Torres Strait Islander Policy, Qld;
PQ Lifestyles Ltd, Qld;
Office of The Hon Larry Anthony MP;
Attorney-General, Parliament House Canberra;
Letter to Department of Health and Aged Care;
Reply Aged and Community Care Dept, Canberra;
Appeal of Decision -to Aged and Community Care;
Second Letter of Reply from Aged and Community Care, Canberra.