



**TRANSCRIPT  
OF PROCEEDINGS**

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**PRODUCTIVITY COMMISSION**

**INQUIRY INTO NATIONAL COMPETITION POLICY REFORMS**

**MR G. BANKS, Chairman**  
**MR P. WEICKHARDT, Commissioner**

**TRANSCRIPT OF PROCEEDINGS**

**AT CANBERRA ON MONDAY, 13 DECEMBER 2004, AT 9.04 AM**

**Continued from 7/12/04 in Melbourne**

**MR BANKS:** Good morning, ladies and gentlemen. Welcome to the Canberra leg of the public hearings for the Productivity Commission's review of national competition policy reforms. My name is Gary Banks and I'm chairman of the Productivity Commission. The commissioners assisting me on the inquiry are Philip Weickhardt on my left, and also Robert Fitzgerald, who unfortunately can't be here today. He has had to undergo some surgery and he will be back on deck in early January.

The purpose of the hearings is to provide those who have an interest in the inquiry with the opportunity to present submissions, in response to the commission's discussion draft which was released on 27 October. After these hearings we have a hearing scheduled for Perth. We also had hearings scheduled for Toowoomba, but due to lack of interest in appearing in those hearings, we've had to cancel them. After the round of hearings is concluded we'll proceed to finalise our report to government which is due by the end of February 05. The public hearings allow anyone to have a say in person on the issues under consideration and for others to listen to those remarks and respond if they wish.

We keep the hearings as informal as possible but the act does require that people be truthful in their remarks and a transcript is made of the proceedings, which we endeavour to place promptly on the commission's web site. I would remind participants, for the record, that all submissions need to be in by the end of the year to allow us to draw on them adequately in working through our final report. I should also take this opportunity to thank those participants who have assisted us thus far in the inquiry.

I'd now like to welcome our first participants this morning, the National Farmers Federation. Welcome to the hearings. Could I ask you please to give your names and positions.

**MR HOWARTH:** Thank you, Gary. Nicholas Howarth. I am the economics policy manager of National Farmers Federation.

**MR ARKLE:** Peter Arkle, policy manager for rural affairs at the National Farmers Federation.

**MR BANKS:** Good, thank you very much. Thank you for attending today, also for the submission which you've just provided and which you'll speak to. You provided an earlier submission on 7 July which was very helpful and we had earlier informal discussions with you which were of value as well. So perhaps I might just let you proceed to outline the main points you want to make.

**MR HOWARTH:** Thank you, Gary. First of all, I'd like to offer NFF's

commendations on the draft review of national competition policy reforms as a timely, insightful and relevant contribution to the debate on the future of competition policy and micro-economic reform more generally. NFF recognises the substantial benefits that national competition policy has provided to the Australian economy, including the farm sector, and considers the micro-economic reforms undertaken by governments as fundamental to Australia's current prosperity.

The commission's draft report reflects the concerns raised by the National Farmers Federation in its original June submission, that the public benefits test be amended to ensure the interests of rural and regional Australia are fully and appropriately addressed and that appropriate compensation or structural adjustment assistance is paid to those individual businesses and communities bearing the costs of reforms for the greater public good. Read alongside the commission's draft report into the economic implications of an ageing Australia, the NCP review provides a powerful case of the need for a new micro-economic reform agenda to drive productivity growth into the future.

NFF considers that a new reform agenda, building on the lessons learned from NCP is vital for future prosperity and economic security of all Australians and to contribute as well to continued low interest rates and employment growth. The benefits of national competition policy in the current economic environment are also fairly relevant when compared to the drought situation in the early 90s as opposed to today, and it, I would say, is a generally accepted point that farmers are in better shape to be able to handle the various variances in farm incomes because of the improved economic climate.

Nonetheless I think that NFF saw value in preparing a submission based on the review which is the draft review that's been published. We felt that it is a significant contribution to the debate and provides, I guess, a bit of a road map for where future reforms may take us, and in that context NFF provided comment. We also have comment on further sharpening perhaps of some of the language around the public interests test and around implementation issues which we think may be of value to the Productivity Commission's deliberations on the final report. The key points from our submission that I'm talking to today, is that NFF agrees with the need for a broader micro-economic reform agenda, covering new areas including the health sector, but of particular interest to farmers is the natural resource management section in the draft report.

Competition policy will play a key role in any future reform agenda and by no means is the business of competition policy finished. However, NFF feels that national competition policy should be rebranded to reflect a new broader agenda which brings in these other areas and emphasises the positive nature that reforms can bring. The NFF in its submission is suggesting something along the lines of a

national productivity and sustainability strategy to succeed national competition policy, as distinct terms. This may also help in addressing some of the negative perceptions and resistance that have built up to NCP, particularly in rural and regional Australia, as a result of poor implementation programs, particularly surrounding public benefits testing and the payment of any structural adjustment assistance.

The future reform agenda needs to address the lack of capacity and the inefficient, inconsistent regulation of our nation's infrastructure. Perhaps one of the things that has struck me in my first few months here at the NFF is some of the absurdities that arise in the regulation of our roads, rail and ports, where we have different regulations resulting in - for example, trucks being asked to unload cattle at state borders, weights allowed in one state not being allowed in the other. You've got investments which are being made, such as the upgrading of bridges made by one jurisdiction but the upgrading of the roads are the responsibility of another jurisdiction, and the efficiency of those investments is significantly undermined by these inconsistent approaches which then essentially mean you can't take advantage of the increased mass limits, which is what the investments were targeted to do. In particular the NFF would like to see inefficient and inconsistent transport investments and regulations addressed under our new nationally coordinated reform agenda as a priority. This is vital given the distances travelled, particularly in Australia. If we're going to remain competitive, internationally competitive, this is a key consideration.

Moving on to perhaps the number 1 priority for the National Farmers Federation, which is greater resource security for farmers in land and water, it is vital for the future productivity and sustainability of Australian agriculture that the states and territories recommit to the national water initiative and that COAG agree to implement the recommendations of the Productivity Commission's recent report into the impact of native vegetation and biodiversity regulations. In relation to land and native vegetation issues, NFF has called on COAG to develop an intergovernmental agreement to deliver resource security and certainty for farmers.

In relation to greenhouse policies, farmers are delivering 31 million tonnes per annum of emissions reductions in 2004, towards meeting Australia's internationally negotiated Kyoto target. However, they receive no recognition of this despite the obvious costs incurred. Inconsistent regulations across state and jurisdictional boundaries continue to impose considerable costs on Australian farmers. Many of NFF's members operate farm businesses that span across state borders and therefore face varying and often inconsistent compliance requirements within these separate jurisdictions.

With this in mind when implementing reforms to address issues, it will be

important that any analysis of those reforms bear in mind regional contingencies associated with those specific regional aspects and that not always will the one size fits all approach be appropriate. NFF also considers that there is an urgent need for more consistent cross-border regulations with regard to agricultural and veterinary chemicals, occupational health and safety and food and safety standards, which are currently imposing unreasonable compliance costs on farmers and would definitely benefit from a nationally coordinated approach to their reform.

NFF supports the full completion of the legislative review program as previously agreed by COAG. These reviews focus on areas which have not been previously given attention by governments - for example, antidumping regulations. If jurisdictions do not complete these agreed reviews, they should be subject to penalties. NFF considers that in the past it's been too easy for jurisdictions to defer or shirk some of their agreed responsibilities under the legislative review program and that the NCC has had too limited a capacity to enforce compliance.

The NFF considers that future areas of further competition reform should also include the professions, newsagents and chemists. NFF notes that industrial relations reform, tax, and education and training reform are areas that the Productivity Commission note would not benefit as much as other areas of a nationally coordinated reform approach. While noting that, NFF consider that there may be some benefit to constructively progress further tax reform through a nationally coordinated approach, particularly with regard to the abolishment of several inefficient and costly state stamp duties and transaction taxes.

This brings me to implementation issues with NCP, which is perhaps where the NFF has had its key concerns in the past. It's absolutely critical, and I probably can't emphasise this too much on behalf of the farm sector, that for the future credibility of the next national reform agenda, implementation of reforms must be more rigorously governed. This must include as a minimum the requirements set out on page 295 of the commission's draft report. I won't go into those here, but I note that those comments on page 295 do not mention that adequate provision or contingency is made for any structural adjustment assistance in putting together the implementation agenda, if you like, of reforms. Now, that's an absolutely critical element where implementation policies have perhaps stumbled in the past. We would like to see some mention of the need for provision of any structural adjustment assistance required put into those basic guiding principles on page 295.

NFF welcome that the commission has emphasised and is arguing that adjustment costs and in particular the cumulative impacts of reforms and broader pressures be afforded greater policy attention in the future. This is particularly important for regional communities where the reforms may exacerbate social drift which is already occurring in these communities and that they're appropriately taken

into account.

On implementation, the NFF note that there's been a general negative perception - the tone of the draft review here reflects a general negative perception of NCP in the bush. Particularly NCP has been perceived to ignore issues of social capital and community cohesion in favour of unfettered competition. NFF consider that these problems have arisen through poor implementation of NCP, bad communication of reforms in the bush, lack of awareness and rigour of the public interest testing, and inadequate assistance given to those groups worse off for the greater public good. Some of these issues are picked up by the commission in their draft report.

NFF note that in particular the commission sees value in encapsulating the essence of the 2000 COAG directive on governments to give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities including expected costs in adjusting to change. NFF also notes that on 29 August 2001 the federal government committed to a number of changes to national competition policy. I guess it's an issue of note that that 29 August 2001 policy isn't referred to in the draft review of national competition policy although its basic messages are picked up in principle throughout the document; but there may be some merit in referring to that specific policy statement as it explicitly deals with the issues that have arisen through poor implementation and the effects of NCP on regional communities. That was in light of a Productivity Commission inquiry into the effect of NCP on regional communities, so they may be some pertinent points that you may wish to pick up in the final report.

Because of these problems with implementation and the obvious failure of COAG directives to place a stronger emphasis on public benefits testing and creating a stronger - creating more rigorous implementation programs which address some of the issues in regional Australia. The NFF urges governments to apply explicit targeted payments to assist in the implementation of reforms in a future reform agenda. This will greatly assist in restoring community confidence.

NFF also recognise that commonwealth-state relations are central to many of these areas of reform. This underscores the need for COAG to work to find improved ways of delivering services and implementing regulatory reform. NFF also supports the principle of the federal government providing direct incentive payments to local governments to reduce inefficient regulations.

I guess I've covered the main points perhaps from our submission on the draft review. In conclusion I'd like to say that despite perhaps all of these problems and issues that the NFF has raised and I've spoken about in my overview, I'd still like to reiterate that NFF strongly supports a future reform agenda that delivers and macro

and micro-economic settings required to boost the productivity and sustainability of farms and other businesses around Australia. We don't think that economic prosperity needs to be at the cost of social cohesion or environmental sustainability and an appropriately implemented reform agenda can achieve all three of those goals. On that, I'm happy to take any further questions and draw on the body of our submission to pick up any issues that you may have.

**MR BANKS:** Thank you very much for that. I think you've made a number of points there that we'll certainly take into account in preparing the final report. Do I take it from the comments you've made about natural resource management that you endorse the priorities that the commission itself has proposed? For example, we've identified water, which is already clearly on the agenda; native vegetation regulation; biodiversity regulation, and also greenhouse gas abatement policies. So I suppose my question is, firstly, do you endorse those as priorities and do you have any other areas that you would add to the list, or do you think our view that having another process of review beyond those, to identify further priorities, would be worthwhile?

**MR HOWARTH:** Right. I guess the three areas that NFF has also identified - water, land and native vegetation and climate change, as having significant impacts on resource security for farmers, and so I think in that respect the NFF and the Productivity Commission seem to be in quite close alignment. In their recommendation in the report, I note that the commission puts a fair emphasis on climate change policies.

NFF, I guess, views these things through the prism of natural resource management or native vegetation management, whereas climate change policies, while intrinsic to natural resource management and native vegetation management, also cut across into energy reform and other sectors of the economy as well, so we didn't comment directly on the recommendation, but that's perhaps just something to note - we did have a discussion around that. There may be some scope to finetune the recommendation, but by and large it's pretty consistent.

I think one of the key issues in this area of natural resource management is where any group - but in this case farmers - are providing a public good, be it environmental service or some other amenity value, perhaps that might be driven by governments on behalf of the broader community; that where farmers are providing those public benefits that are over and above what is normally required to maintain a productive farm, that there should be appropriate recognition of that and assistance provided. From my reading of the Productivity Commission's work in this report and also in their report on native vegetation regulations, the NFF and the Productivity Commission are in furious agreement on that point. Perhaps you might want to confirm that.

**MR BANKS:** I guess, whether one has learnt from the other or we've both learnt simultaneously, we do seem to converge in those areas. One thing I thought I'd just draw you out a little bit more on is the question of, I suppose, the water reforms. You've mentioned the National Water Initiative. Again, I guess we've both called for that initiative to proceed. What is the NFF's views on progress in water reform? What do you see as the most important remaining priorities in the water reform area?

**MR HOWARTH:** The NWI was seen as a very significant win for farmers. It has the potential to deliver all the sorts of things that we continually lobby for on behalf of farmers - resource security. The NFF consider that probably the first imperative is to get the National Water Initiative back on track, and we're hopeful that there will be some movement on that soon, perhaps in the context of this review, which probably outlines more of a roadmap of reform rather than detailed reform initiatives.

I think it would be probably more appropriate for the NFF to have a dialogue either with the Productivity Commission or the National Competition Council or whatever comes next in the process, in terms of putting together the actual detailed reform policies in terms of specific projects, specific regulations, specific initiatives, which will then naturally fill in this. But in terms of the broad direction, I think it seems to be largely - we seem to be consistent in where we see these things heading.

**MR BANKS:** One of the features of the National Competition Policy that you referred to then and also in your earlier submission, I think, was the institutional arrangements which provided carrots and sticks and an independent oversight and payments or withdrawal of payments according to progress. Against that backdrop, I would be interested in any comments you might make even about the National Water Initiative and the way water reform is progressing in terms of, in a sense, unhitching itself from that wider institutional arrangement, and any views you have about whether that is a plus or a minus in terms of discipline on implementation of water reform.

**MR HOWARTH:** Well, to the extent that carrots and sticks can put a discipline on jurisdictions to implement reforms, they're obviously highly supported, but in terms of a more detailed perspective on how they have gone in the past and where we perhaps would see that going, I'd be happy to take that on notice and get back to you with some further detailed comments. It's a very important issue for us and it's not something that I came necessarily prepared to go into in detail today.

**MR BANKS:** Okay.

**MR ARKLE:** We've certainly been very supportive of the establishment of the National Water Commission because we're happy to see the legislation get passed through the senate only last week. So, I mean, we have identified it as the number



one priority for the National Farmers Federation too, so to give the issue that level of prominence with a separate commission, I think is something we've been very supportive of, also very hopeful that through setting up that independent structure some of the politics in terms of establishing water investment priorities can be taken out of the process. That stands to be seen over coming years, I guess, through the appointment of independent commissioners and the like. I think that's something we have been supportive of - taking it into isolation and dealing with it as a defined priority.

**MR BANKS:** Perhaps just one further step on that. If you're getting back to us more generally on institutional arrangements, any views you had - and you've referred to them here, but I haven't seen the detail of it - on the role of payments, if any, going forward. We've commented on the role of payments in the past. You've talked about rebranding national competition policy and giving it a broader title, but it wasn't clear to me, below the brand, whether you saw the kind of institutional arrangements or principles that had informed the NCP continuing, or whether you saw a need for some different arrangements. I guess the things we'd be interested in relate both to the kind of institutions or organisations that are involved, the process and also the question of payments - whether you have any strong views in those areas.

**MR HOWARTH:** Sure. I think the NFF certainly see it more as a refocusing - the rebranding as a reflection of a refocusing of the NCP approach, to build on a lot of the competition policy reforms and the frameworks that have gone in the past, but learning from the lessons from where things didn't work as well as perhaps it was intended, that there can be significant change regarding the payments. We see specifically that there is a lot of merit in providing direct payments, tied payments to businesses and communities, rather than going to the state governments, which then may redirect those to the priorities that they may have at the time, which may or may not involve easing the burden of competition policy.

One of the problems as well which the commission touches on in their draft report is that there's no mechanism to effectively and directly engage local governments, and that by providing direct tied payments to local governments to implement reforms and have a robust implementation agenda where the payments can be tied to milestones in the implementation process, to ensure that you have a rigorous public benefits test to ensure that contingency is made for structural adjustment assistance where appropriate.

I guess the rebranding of national competition policy to a national productivity and sustainability strategy was also reflecting the move towards the natural resource management sector and the health sector, where you have sustainability and the integrity of the government finances at stake going into the future on the health side,

and also you have the sustainability and integrity of our agricultural systems at stake going into the future on the natural resource management side. So they are, I think, a very profound shift in direction and focus that may occur within a nationally coordinated reform framework, and that shift in focus NFF believe is sufficient to have a complete new way of looking at the reform agenda, away from just purely competition based reforms.

So, I guess, it's on two levels. Yes, we are suggesting that there are changes to the institutional arrangements, particularly regarding payments in a new approach. We are also suggesting that there is a broader reform agenda which includes natural resource management and health policy where competition policy perhaps is still relevant but there are broader issues as well involved, such as the achievement of environmental objectives and to have a robust framework for delivering those. It's a very important issue which will benefit greatly from a nationally coordinated approach.

**MR WEICKHARDT:** Can I just write on the back of that request Gary made, if you're going to put in some additional submission on payments, your comment on payments on page 4 of this latest submission refers specifically to jurisdictions that have not completed various parts of the LRP and you refer to antidumping which of course implicitly implies that you're talking about penalties to the federal government. I don't want you to answer this now because I've got other things I want to pursue, but you might in going forward, if you're making another submission, talk about how you would see some form of penalty system being logically and, I suppose, rationally framed around that and who would be adjudicator in those circumstances. There are all sorts of issues I'm sure you're familiar with in terms of how you should think about any arrangement in that regard, and whether indeed it's logical to think about it.

**MR HOWARTH:** That's a very good question and if we can solve that, I think we can really make progress on future reform. As I said, it's something we can perhaps have a discussion about further on.

**MR WEICKHARDT:** Can I then say, you specifically referenced antidumping in terms of a part of the LRP that had not been concluded. You didn't refer to another issue we raised, and that is the single-desk reviews, particularly the wheat single desk. I don't know whether you've seen the report that was commissioned by the NCC on the barley and canola trading in single desks and the case study that ACIL Tasman have done there, but if you haven't - - -

**MR HOWARTH:** Is this the one that's recently, literally, just come to our attention

**MR WEICKHARDT:** That's it. I guess I'd be interested if you've had a chance to

even look at that briefly. It seems to be very consistent with material you put forward in your original submission about barley, and I think you instance lamb and other areas. However, your original submission was silent on your position on the wheat single desk, so I'd be interested, in light of that study and other studies, what the NFF's position is on the wheat single desk.

**MR HOWARTH:** What we've done in our response to the commission's draft report is provide the NFF's position on the future direction of where we consider the priority areas for reform, and not wanting to duplicate what we've said in our original submission, we're not walking away from what we said in our original submission in June. Our second submission, I guess, is a response to what the Productivity Commission has put forward in their draft review, and I think the NFF has put forward its views in that. That's probably where we will sit on that issue.

**MR WEICKHARDT:** Well, our report specifically did recommend that the wheat review be brought forward.

**MR ARKLE:** As a rule NFF generally doesn't buy in on issues of commodity marketing specifically. The case studies we offered in the first submission were in fact case studies put forward by our members, taken forward as just that, sort of input from individual members as opposed to NFF positions, so I certainly hope the commission has had the opportunity to explore in Western Australia with PGA some of the views on barley and lamb. I also note that the Grains Council of Australia will be appearing tomorrow and they've no doubt got some firm views on the document that's been released, so we might just leave it at that, if that's okay.

**MR BANKS:** It would be fair to say, just bringing that a bit further, that your members wouldn't have a single view on the single desk.

**MR ARKLE:** That's exactly right, Gary.

**MR BANKS:** But if we look at the experience of what's happened, would it also be true to say that the sky hasn't fallen in where moves towards deregulation have occurred, including in barley in WA, but the experience there would actually be useful in terms of thinking about where you might go in other areas?

**MR ARKLE:** Yes, I think that's a fair point, and certainly PGA will elaborate on that in terms of their own experiences; but, yes, the sky certainly hasn't fallen.

**MR BANKS:** Okay. Thank you.

**MR WEICKHARDT:** Just another issue if I could clarify - you talked about greenhouse policies, farmers delivering 31 million tonnes per annum emissions

reduction. Is that a net figure that takes into account the greenhouse emissions from all the diesel that's used in ploughing, the emissions from cows farting, from fertilisers that are applied and various other emissions that occur - not to mention land clearing?

**MR HOWARTH:** This, as I understand it, is a net figure that came out last week in the government's own Towards the Kyoto Target document, as the net contribution made by farmers towards the achievement of the Kyoto target. It's a very significant figure and I think it's probably - if you've got a further interest in how that's put together, it's probably best that I direct you to that document rather than paraphrase it.

**MR WEICKHARDT:** Thank you.

**MR BANKS:** You picked up - and I was pleased you did - the question of transport and the need for further reform. I think you particularly emphasise road transport, some of the issues with the inconsistencies between road and bridges and interjurisdictional rules and so on. Do you have any comment on rail? There have been some concerns still expressed about the adequacy and cost of rail services, particularly I think in relation to the movement of grain in New South Wales and Victoria. Do you have any comment on that?

**MR HOWARTH:** We certainly do, I guess relating to the poor maintenance of certain rail lines. The example that I know is in New South Wales where there's a number of grain lines which due to poor maintenance are essentially inoperable for a lot of the time, resulting in grain unable to get to market or grain having to be trucked along country roads not built for transport of heavy loads, which is both inefficient and dangerous in terms of posing externalities as well on communities with these trucks thundering along the roads which weren't designed for such trucks. Those are the sorts of things that we are pushing for to be fixed up. They're the most obvious symptoms of a system which isn't delivering adequate infrastructure provision and is obviously affecting the farmers' competitiveness on the international stage.

The NFF is also involved in work to improve the intermodal efficiency of these transport networks: where it's most efficient to transport by road, then rail, to make sure that the linkages are right, and that you have the right transport medium for getting the product to market in the most efficient way. So rail is certainly an issue and efficiency and capacity at the ports is also an issue. We're looking to the Productivity Commission in their draft report to provide a strategic document, not just a fix - I guess, bandaid solutions - for grain lines in New South Wales and roads needing to be upgraded in other country areas.

I guess what we're looking for from the Productivity Commission in this is a much more fundamental strategic document which will put in place a framework which will stop these things from happening and enable the capacity and regulation of our nation's infrastructure into the future, perhaps 10 years or 14 years into the future, to be more efficiently regulated so that we're better positioned into the future in terms of our productivity and our competitiveness.

One of the things that has struck me is that over the last almost 50 years, where the farm sector's terms of trade have diminished by about 50 per cent, we've also had a threefold increase in the volume of farm produce being pushed through our transport systems, through our roads, rails and ports. Now, that's a trend which is set to continue. The federal government estimates that the freight task is forecast to double in the next 20 years and that urban road freight will increase by 70 per cent between 2000 and 2020. The Bureau of Transport Economics estimate that the costs of congestion to the economy in 2015 will amount to almost \$30 billion per annum.

Now, this is an obvious brake to productivity growth and we look to the Productivity Commission in their report to provide - with our input, I guess; we can help, right some alarm bells here - the frameworks to address some of these challenges to ensure that we minimise these congestion costs and that we make sure that our ports and our road and our rail have the capacity to deal with an ever more productive farm sector, which also means you'll have bigger volumes pushing through our infrastructure, putting more pressure on our infrastructure .

It's obviously no good being really productive if all your farm produce is sitting at your farm unable to get to market in an efficient way, so there are a couple of elements to productivity, and the nation needs to have the infrastructure to efficiently move our produce which we certainly hope will continue to grow and expand.

**MR WEICKHARDT:** Just on that score, one comment and a question. The comment would be that most of the submissions we've seen would suggest there is a likely underrecovery of costs from heavily loaded trucks, if you take into account wear and tear on roads. You've complained about high fuel excise costs but I think there's at least an arguable position that at the heavy end you've got road wear and tear that's not been appropriately charged for and if you take into account the congestion charges you just alluded to, and you take account of the underrecovery of rail costs in the grain area and the need for further track investment, the likelihood is that all those costs may go up. They may be more competitively neutral between modes and they may be more efficient, but the costs to your members may actually go up, I would have thought. That's my comment.

The second point, which is a question, is: you're silent on the issue of coastal shipping, which does provide inputs at least in the industry I'm familiar with, and

fertilisers to your members and yet is by international standards extremely expensive. Again, I'd be interested if you have a view on that.

**MR HOWARTH:** I think perhaps the first point - and you mentioned fuel excise and when I think of how best we can meet our transport infrastructure needs in this respect, the NFF certainly holds the position that fuel excise is already too high and that from an economic perspective when you're trying to address these issues, it's best to target the problem as close as you can to the issue. Now, taxing fuel is not a good way to fund road infrastructure. I don't know if that's what you were - - -

**MR WEICKHARDT:** No; regardless of the tool the net transport costs may rise.

**MR HOWARTH:** But I just needed to make that point because fuel costs are already too high and NFF is strongly pushing for the reduction of excise. It's a very inefficient way to fund the nation's infrastructure. On the point that you make regarding transport costs rising, there's a very strong argument as well that says that if you improve our infrastructure and increase the efficiency of our infrastructure, transport costs will fall because you won't have trucks taking circuitous routes which are twice as long as perhaps necessary to get their product to market because the roads and rail systems aren't there.

So unit costs might go up for a specific type of transport but you might see a saving happen through decreased fuel. You have to look at it in the sense of the overall picture of the efficiency of getting a product from the farmgate to the - while unit price might rise for a specific load, if that generates savings through eliminating inefficient and costly transport in other areas, I don't see that it's necessarily a bad thing. On a couple of the other issues, such as coastal shipping, I note your point on that.

We haven't tried to sort of chase every rabbit down its hole, in our submission, here today, as have the Productivity Commission done in their report; it's more of a general broad based road map of reform. That's what the NFF is doing as well. It's a principles based submission by its nature. We are certainly going to be looking forward to working with our members and working with government organisations, to chase a few of the reform priorities down to a very detailed implementation program, which includes specific proposals. That's probably something for a later date.

**MR WEICKHARDT:** Just one issue on water reform that perhaps you'd like to comment on. There have been some suggestions, in looking at overall water usage in the nation, that the interface between urban requirements for water and rural requirements for water need to be looked at. Obviously geography and logistics need to be taken into account here, but do you see the potential that some water that at the

moment is used for irrigation might actually be more efficiently redeployed into urban areas rather than the nation building more infrastructure; reservoirs, et cetera?

**MR HOWARTH:** I don't think that that's something I can particularly comment on at this moment, in the context of this submission. As I said before, this is mainly a principles based document. We fully support the national water initiative, which has put in place the basic frameworks to address all of these issues and we will be working with governments to achieve the best outcomes we can for - - -

**MR WEICKHARDT:** So you accept the principle that water should be priced and go to the highest value, which might be redeployed from one use to another?

**MR HOWARTH:** What we support is a robust and transparent method of valuing water and allocating property rights. If you do that, I'd imagine that if there's a well-functioning market there would be nothing to stop people from entering that market and buying water at whatever price they want to and let the market sort it out. You are putting, I guess, a second round; you are making an inference on where water might flow once you had a market in place.

It was interesting to note that where there are markets in place, in some areas in New South Wales, we have seen an increase in some of the very water-intensive industries, such as cotton, which might suggest that if these areas are booming in a market environment that they have a great future and are good users of their water for the value they are producing. I think we need to be careful when we start inferring where things - - -

**MR WEICKHARDT:** I wasn't suggesting that I have a view either way. I was just asking you, do you see water as water and it should flow to wherever the usage is of the highest value?

**MR HOWARTH:** The principle is that if you define the right and provide secure rights to water and allow a market to operate, then that's probably the key issue for us.

**MR BANKS:** Thank you very much for that. That has been a useful excursion through, as you say, some of the key points. If you are able to come back to us on the couple of things that we raised, we would appreciate that, particularly if we could get any further input in by the end of the year; I know it's not a lot of time. Again, we are not looking for volumes of material; just a brief response would be useful. Thank you very much.

**MR BANKS:** Our next participant this morning is the Real Estate Institute of Australia. Welcome to the hearings. I'll just get you to give your name.

**MR STEVENS:** Bryan Stevens, CEO of the Real Estate Institute of Australia.

**MR BANKS:** Thank you very much. Thanks for appearing. We got a substantial submission from you back in June, which was helpful. We look forward to hearing your comments on our draft report.

**MR STEVENS:** Gary, thank you, and Philip. Firstly, let me thank the Productivity Commission for allowing me to talk this morning. By way of background, we represent all of the state and territory institutes across Australia. We also have strategic alliances with NREFA, which is the National Real Estate Franchises Associations, which is all the franchises in Australia. Also Property Look, which are the major commercial companies in Australia. Therefore, we represent the spectrum of real estate agencies and about 75 per cent of that. So we represent independent franchises: commercial, residential, et cetera.

The REIA welcomes, let me say, in the broad, the draft report and certainly it supports the direction of the Productivity Commission. In the context of the National Competition Policy Reforms, the REIA proposes further reform of the Queensland government to deregulate commissions on real estate agents, to be consistent with all the other states around Australia, and territories. This will provide more flexible service delivery, increase fee competition between agents, higher levels of accountability and encourage free market economy in the public interest.

The REIA supports the discussion draft report and that a national review be established to look at consumer protection policy and administration but will welcome the draft report to include specific examples in the real estate sector. In particular, the REIA supports the call for a review of mechanisms for coordination policy development and application across jurisdictions. In an increasingly globalised business environment and with increasing use of technologies, such as the Internet, it's inefficient and contrary to the principles of the national competition policy for different consumer protection regimes to be operating in each of the eight jurisdictions across Australia.

Further, the consumer protection responsibilities of the states and territories needs to be better coordinated with federal consumer protection responsibilities to avoid regulation duplication and, in some cases, regulatory oversight. In its submission to the Productivity Commission study, the REIA noted its concern that there are significant differences in the legislation and regulations governing the real estate industry amongst the Australian states and territories. For example: vendor bidding is treated in different ways in several states.



Our submission to the Productivity Commission 2003 review, of mutual recognition arrangements, noted that the practice of offering real estate services is regulated by registration and licensing in all states and territories. Whilst there is commonality between the jurisdictions in the way that the industry is regulated, there are also significant differences in the regulatory models that apply. The current differences between jurisdictions, in respect to entry levels of licensing and registration to operate in the real estate industry, are creating problems and inefficiency within the industry. Labour mobility between the states is being restricted. The need to retrain new entrants who originated from another state is inefficient, time consuming and costly.

This year the REIA provided input for the standing committee of officials of Consumer Affairs, SCOCA in its review of harmonisation of real estate regulation. This was a view which was initiated by the REIA about 12 months ago. REIA noted that a consistent nationwide approach to education and licensing is the first step in a broader harmonisation of estate agent regulation. This is a goal which the REIA believes must be attained in a marketplace that is increasingly without borders, both through commercial practice and legislation such as the Mutual Recognition Act of 1992.

Regarding deregulation of fees in Queensland, there are four broad points I think, Gary, that it would be useful to make. Firstly, in 1992 the Prices and Surveillance Authority conducted an inquiry into agents' fees, relating to residential property. The authority recommended deregulation. All states did this except Queensland. You would have to ask the question: "Why hasn't it been done in Queensland? Why is Queensland so unique?"

Secondly, legislation should not restrict competition unless it can be demonstrated that it's in the public interest. We are not aware of such a public-interest test which would test positive in the case of Queensland. Evidence in other states supports deregulation; it has been successful. Finally, the fourth point I'd make here is there would be benefit to agents who will not be bound by fee scales which have not been adjusted, in the case of Queensland, since 1986.

Whilst we recognise that competition policy and consumer protection are essentially different, by definition, they are obviously inextricably linked. Noting this link, there seems to be a disconnect between macro competition policy reform and coordinated implementation across the states and territories by regulatory bodies, particularly in the real estate sector. So overall, gentlemen, we'd say that the REIA welcomes the draft report and we'll provide a further submission which covers the points I've just made there, and we look forward to the final report. We think the commission has done a good job.

**MR BANKS:** Thank you very much for that. Just a point of clarification. I wasn't sure whether you had alluded to this, but there was a further review I think ordered by the Queensland government at the time when they rejected the deregulation, and I think that review started in March of this year. Do you know what the status of that review is?

**MR STEVENS:** It's "ongoing". That's our understanding, Gary. Certainly the Real Estate Institute of Queensland has been discussing this with the Queensland government for some time and has been seeking this review, which has started, but there's been no conclusive outcome to that, to my knowledge.

**MR BANKS:** Okay. Now, we all know that Queensland has got a wonderful climate, but you're saying there's no other respect in which it's unique in relation to this matter?

**MR STEVENS:** Well, not that we can discern. We simply ask the question - if there is a public interest test applied to this, what is it and how did it turn out positive that would cause the government not to proceed with the other seven states and territories.

**MR WEICKHARDT:** I assume your members in Queensland aren't unhappy that the fees in this regulated environment are too high?

**MR STEVENS:** They would argue, and we've put evidence in the submission that we showed you there, that in fact it's the increase in prices they're actually missing out.

**MR WEICKHARDT:** Sorry, who's missing out?

**MR STEVENS:** The agents.

**MR BANKS:** So fees are being suppressed in Queensland essentially by the regulators.

**MR STEVENS:** We think a couple of things are happening, Philip. Firstly, the fees would be competitive in the sense that a consumer would go to an agent and he would negotiate that fee. However, in a survey conducted in Victoria, I think it was, which is, in our submission, 80 per cent of respondents who are consumers said that the fee did not drive their choice of agent; it was actually the service that was provided. So what you get is a better service, and the agent potentially will get a better fee in the sense of what he's providing is being paid for, and because the scales haven't been changed since 1986, it's causing them difficulties.

**MR WEICKHARDT:** No, I understand the scales look peculiar - - -

**MR STEVENS:** Yes, they are.

**MR WEICKHARDT:** - - - but net net to the consumer, on average I assume that the Queensland members have lower fees than the members in the deregulated states.

**MR STEVENS:** It's difficult to say that, Philip, and the reason it's difficult to say is, because it's deregulated, in all the other states and territories the fees vary widely; they do, they vary widely, because they're deregulated. There have been examples where agents here in the ACT for example would sell a house on less than 1 per cent commission. How they'd survive on that you'd have to question, but that's what's happened. So when you sort of say, well, Queensland sits here; where do the others sit? They sit in a range of sort of 5 to 1 per cent and less. So it's a difficult question to answer.

**MR WEICKHARDT:** Yes. Okay.

**MR BANKS:** Is there any data on trends in fees in the post-deregulatory environment? I know data - we've talked about this before - data is a bit of a problem in that area anyway.

**MR STEVENS:** It is.

**MR BANKS:** Is there information that will give you some indication of what the trends have been across different jurisdictions?

**MR STEVENS:** In terms of the fees going up, do you mean?

**MR BANKS:** Yes. Just on average what's been happening.

**MR STEVENS:** Well again, because it's deregulated, it's very difficult because there's such a disparity, Gary.

**MR BANKS:** You'd almost need a special survey. There's no source of data that you're aware of on average fees?

**MR STEVENS:** There is data on the profitability of agencies, a large part of which is driven by fees, but the extent to which you could use that usefully, say, from 1992 after the Surveillance Authority made their recommendation, would be spurious, I think. We'll have a look for it and see what we can come up with, Gary.

**MR BANKS:** The PSA report that you talked about, when was that produced? That's quite a while ago now, isn't it?

**MR STEVENS:** Yes.

**MR BANKS:** Was it 10 years ago, or more?

**MR STEVENS:** 1992 is - - -

**MR BANKS:** 1992?

**MR STEVENS:** Yes.

**MR BANKS:** I guess the only other thing to ask: in Queensland - trying to think of reasons why they might be taking a different approach - are there more significant barriers to entry in Queensland if you wanted to start up an agency, compared to other jurisdictions?

**MR STEVENS:** No, and I could say that quite frankly, very simply because that's the basis of another review that we're going through with SCOCA, which I mentioned. We're trying to get a consistency of education licensing across Australia and an argument that is used is this barrier to entry argument that says, well, if you put the bar too high it's getting people out. I guess the two ends of the spectrum on this argument would be anyone with a mobile phone and a pulse can sell real estate, and at the other end of the argument you need a PhD. Now, some are in the middle of this - you know, there's a bit of commonsense to be struck.

The REIA approach is very simply that we think that the education standards at the moment, up to sort of diploma level, are appropriate. All we're asking for is to be consistent. There is an argument that says it might be too high. Evidence shows that it's clearly not because of the thousands of people across Australia, including Queensland, who are taking real estate courses each year - literally thousands - and also the plethora of registered training authorities, organisations like franchises, real estate institutes, TAFEs, private enterprise, who are in the teaching business, who are providing these courses.

Now, you could argue that a barrier to entry is when, by definition, people are excluded from taking courses. Demonstrably that's not happening. Quite the opposite. So to our knowledge there's no such barrier to entry in Queensland.

**MR BANKS:** By implication what you're saying is that the main requirement is training rather than other licensing requirements? I mean, presumably there are things about good character and probity and whatnot.

**MR STEVENS:** There are, and that's about the extent of it. There's, yes, probity, occasionally a police record check, time in the business, a couple of years - these are not high hurdles that would cause someone not to be registered or licensed.

**MR BANKS:** What you're saying is that they don't seem to be any higher in Queensland than they are in other jurisdictions?

**MR STEVENS:** No, Gary, I don't think they are.

**MR WEICKHARDT:** Can I ask how transparent the review was in Queensland? Were the reasons for not deregulating in Queensland fully published and articulated by the review panel, or not?

**MR STEVENS:** I couldn't answer that question. I put my hand on my heart and say I really can't answer that question. Transparency is something that you don't know about unless you know about it.

**MR WEICKHARDT:** Okay.

**MR STEVENS:** To our knowledge it's been transparent. Our institute in Queensland has been trying to engage the government there with respect to getting this review going, but there are no outcome that we're aware of at this stage.

**MR BANKS:** I got the impression - and this might be wrong - from your submission that in fact the review body had recommended deregulation and the government had rejected it. Is that the way it went?

**MR STEVENS:** That's the way we see it. Certainly commercial agents' fees were deregulated and the Motor Traders Act was part of this, and that was deregulated, but for reasons we really can't discern or see good commonsense to, that rump was left.

**MR WEICKHARDT:** I guess my question would then be: did the government articulate exactly why they rejected the review panel - - -

**MR STEVENS:** And to be frank, gentlemen, we'd like to see something in your report that actually could meaningfully be used to go to the Queensland government and say, "Well, look, there's been a review and in keeping with the policy" - and we understand it's policy - "we suggest that you have a closer look at this and review it".

**MR BANKS:** Obviously we can draw attention to some of these things.

**MR STEVENS:** Yes.

**MR BANKS:** The NCC, however, produces regular reports. I don't know whether you've been following that, and indeed there's another document due out shortly which may well have this on the list.

**MR STEVENS:** Okay.

**MR BANKS:** That's perhaps another tangible mechanism. I don't think I had any other - - -

**MR WEICKHARDT:** Can I just change gears - it's a question without notice to a degree, but later on today we've got the Shopping Centre Council of Australia appearing before us and one of the issues they raise is that - they say that, for reasons that are hard to fathom at the moment the shopping centre members - you know, the Westfields of this world - are being regulated in what they see as an inadvertent manner by regulations under the real estate legislation, designed to protect individual mums and dads but which catch them in this process. Do you or your members have a position on that or are you aware of that issue?

**MR STEVENS:** I'm not sure it's the same issue, Philip. I would simply say in principle, because I don't know the detail of what their objections are - - -

**MR WEICKHARDT:** I think they're just saying they're big boys, they're capable of dealing with each other and with big commercial tenants without having to have individual members trained in how to sell houses and stuff like that, which at the moment they claim - unintentionally they believe - they are caught up in.

**MR STEVENS:** Let me give you an analogy. Property seminar spruikers, the Henry Kayes of the world: our view publicly on this for the last couple of years has been - and we have been instrumental in getting SCOCA and the ministerial council to do a review of this - that if you sell property, you've got to be licensed to do so; to give financial investment advice, you should be licensed to do so. At any stage where you come in a business-to-business contact or with the consumer, if it applies to real estate agents with respect to property, why wouldn't it apply to anybody else? Just because they're big, why should they be exempt? If you took the deregulatory view of the world that they're clearly trying to take - it seems to me, on the evidence you've just given me - that's fine. Apply it to everybody else.

But this is where you get that tension, I think, healthy tension, between productivity, competition policy, outcomes, efficiencies and consumer protection and why you shouldn't be running a very efficient, productive business. You might not be doing the consumer any good and indeed could be doing him harm. There's always got to be a balance of those two things. Certainly in terms of real estate

regulation around Australia, we think that state governments have got very highly structured regulatory regimes in place for agents. No doubt about it. It's one of the highest regulated bodies in Australia, so we would say, "Just because you're big" - and how big is big? What's the definition of big? - "doesn't mean you should escape regulation in the sense of business to business and business to consumer."

**MR BANKS:** All right. Thank you very much for that. We appreciate that.

**MR STEVENS:** Thank you.

**MR BANKS:** We'll break now for morning tea and we have the ACCC appearing next. Thank you.

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**MR BANKS:** We'll resume. Our next participants this morning are the Australian Competition and Consumer Commission, ACCC. Welcome to the hearings. Could I get you to give your names, please, and positions.

**MR SAMUEL:** Graeme Samuel, chairman of the Australian Competition and Consumer Commission.

**MS SYLVAN:** Louise Sylvan, deputy chair, Australian Competition and Consumer Commission.

**MR WILLETT:** Ed Willett, commissioner ACCC.

**MR BANKS:** Thank you very much for taking the trouble to appear this morning and also for preparing the submission in response to our discussion draft. In fact I think two have appeared - you sent two to us since the draft came out; and of course the earlier submission that you sent to help inform the discussion draft itself. There's plenty to talk about. I'll give you the opportunity to give an overview of the key points you want to make.

**MR SAMUEL:** Thanks, chairman. I'll be brief because I think it's probably more relevant that we get to discussion between us as to the issues that we can elaborate on. We are broadly supportive of the PC's draft proposals. There are a couple of points of difference, but we'll elaborate on those as we go through. There is, in our view as in the view of the PC, no question that the national competition policy has been a success and it has improved the nation's competitiveness. We have seen this ourselves and it has been evident in industries where we are the relevant regulator. There are two or three of those that we want to address just in a few moments. The Trade Practices Act has been effective in providing competitive incentives.

We believe that particularly we'd like to give focus - and we've done so in our second submission, or in fact the two subsequent submissions that have been made to you - on the issue of the protection and promotion of competition in the energy and telecommunications industries and believe that should be a high priority for government and government policies into the future. We're also supportive of the proposal for a national review of consumer protection policy and consumer protection framework under the Trade Practices Act and have addressed that again in our supplementary submission, which I apologise for you receiving so late in the day. I think you received it on Friday, so we'll go through that as we talk this morning.

Let me deal with a number of areas that we would like to particularly highlight. Competition in the electricity sector: there are some significant challenges that are arising in this area and it's been no more evident than perhaps even over the past 12 or 18 months. In the past five years the ACCC has received 60 informal merger



applications which are related in a broad sense to reintegration in the electricity sector and we have expressed in our submission our concerns relating to reintegration, both horizontal aggregation and vertical integration in the electricity sector. There is we submit to you a strong case to ensure separation of contestable and noncontestable industry segments in the electricity industry and the generator market power is a complex and significant problem.

We have addressed and have had cause to address over recent times the adequacy or otherwise of section 50 of the Trade Practices Act to deal with issues of integration and reaggregation in the electricity sector, and we are not sure at this point of time that section 50 on its own will be adequate to deal with some of the issues that are before us. Of more recent times we have dealt with three specific proposed mergers. They are well known: AGL Loy Yang; SPI-TXU; and then IPN Edison Emission Energy.

AGL Loy Yang, it is well known, was determined at a single judge of the Federal Court and we have expressed our own concerns about that particular judgment and some of the issues of market definition that have been raised in that judgment; but for a number of legal reasons, which I won't elaborate upon here, we chose not to appeal that judgment to a Full Federal Court, choosing instead I think to wait for an appropriate case where those sorts or issues might be raised at some time in the future before a Federal Court and perhaps the Full Federal Court.

The issues of SPI and TXU and of Edison Emission Energy were settled through the informal merger clearance process by means of undertakings but the substantive contents of those undertakings are subject to confidentiality constraints which in its own way has some difficulties because it leaves the market relatively uninformed as to what was achieved with those undertakings and the extent to which integration was, shall we say, inhibited; or if you like, the extent to which separation was achieved by virtue of the undertakings.

I think all that points to a position at the moment of significant uncertainty as to the ability of section 50 of the Trade Practices Act on its own to deal with the concerns that we have in relation to reintegration. At this point of time I think the most that can be said is that it is not yet certain whether section 50 in the future could deal with reintegration issues; certainly in the immediate future, until we can get some final determinations from a Full Federal Court or indeed a High Court as to the market definitions that might apply in the electricity sector.

For that reason we have proposed in our submission to you that some consideration needs to be given to whether there should be some sector-specific regulations, particularly as they might be brought into application by means of the Ministerial Council on Energy and the advent of the AER and the AEMC under the

new national regulatory framework that will apply potentially from early in the new year in relation to the electricity industry.

Let me move now to telecommunications. We can elaborate on this as part of the discussion perhaps subsequently - move to telecommunications. The costs and benefits of structural separation of Telstra are not known and you've acknowledged this in your draft report. There are a number of options that could apply in terms of the structural separation of Telstra. One would be to leave Telstra intact. Another would be to have a vertical separation, particularly of the wholesale and retail business operations of Telstra.

Others involve horizontal separations which have been the subject of our Emerging Market Structures report of June 2003. In that we contemplated the separation of Telstra from its ownership of 50 per cent of Foxtel and of its ownership of the HFC, the hybrid fibre coaxial network. Then there could be a combination of horizontal and vertical separation. The ACCC has long supported an inquiry into these issues. It would be inappropriate to express a view at this point in time as to the outcome of such an inquiry, but we do support the proposal that there should be a cost end-benefit analysis of these various options, in terms of the ultimate outcome, which is to enhance competition in the telecommunications industry.

We have, in our emerging market, a structures report advocating the divesting of the HFC network and Foxtel, as reforms at the horizontal level. If that isn't possible and if other forms of strict separation - that is, vertical separation that we've described - are deemed too costly, as the result of a cost end-benefit analysis, then operational separation at a minimum would enhance ring fencing of accounts; internal transfer pricing, separate staff and locations for business units is a matter that we would be proposing at a minimum.

There have been recent media reports, just in the past week or so, that Telstra proposes to establish its wholesale business as a stand-alone division. While we consider that is a step in the right direction, it is short of the measures that the ACCC has suggested in this and other submissions that are necessary to improve the competitiveness of the telecommunications sector.

If that alone were the sole step that we have taken, then it would probably qualify for the description of being "mere cosmetics". If, on the other hand, more were done along the lines of the issues that I've just described, in terms of clear separation of business units, clear separation of accounting, reporting and making absolutely transparent any transfer pricing and the like, then it may be that internal operational separation will go some way towards dealing with the sorts of issues that we believe may be drawn out in a cost-benefit analysis of vertical separation.

In terms of consumer protection, we have supported your proposal that there should be a national review of the consumer protection policy. We do not believe that Part V and Part VC of the Trade Practices Act needs a complete overhaul from the beginning; we believe that the basic structure of those provisions is right, although there are issues that we have advocated need to be addressed, including the issue of penalties for noncompliance with Part V and the issues of facilitating the obtaining of restitution for consumers who suffer damage as a result of breaches of Part V.

We also think it's appropriate there be some further examination of the issues of the interaction between consumer protection policy and competition policy; that is, understanding that the fundamental foundation stone of competition is that consumers can make effective choices and that if the ability to make those choices is constrained then that, at first blush, has the potential then for constraining the normal interaction or the normal action of competitive forces. We have advocated, in our second submission to you, that those matters ought to be addressed now as a matter of careful examination, to again examine the costs and benefits associated with ensuring that consumers have a choice that might enhance the competitive process.

We've talked of issues of shield of the crown. The issue of shield of the crown was most recently considered in respect of government business and governments conducting business operations in the Northern Territory PA case - that's in the High Court. We still have an outstanding issue in this area and that relates to private firms contracting with governments and whether they gain derivative immunity in terms of shield of the crown by virtue of dealing with government.

That matter is currently before the courts in the Baxter case. If that were to go through the various processes, with ultimate hearing and determination by the High Court, we wouldn't expect that a decision on that matter could be achieved prior to about 2007. We think that a simple legislative amendment to put that question out of doubt would remove an area that would be, on our submission, inappropriate in terms of providing derivative crown immunity to private parties that deal with the crown.

We have expressed our view, in relation to section 51(1) exemptions. We believe the authorisation process should be the preferred means by which any new restrictions on competition are permitted - that is, a process that's rigorous, it's transparent, it requires all relevant parties to be putting their views to an independent body, the ACCC - and then, of course, for that process to be ultimately accountable through an appeal to the Australian Competition Tribunal. We think that that process is more transparent and more accountable than legislative exemptions that are contained in section 51(1) and/or legislative exemptions that may be given through state legislative powers, again under section 51. We still advocate that the authorisation process would be the preferred means by which new restrictions on competition are permitted.

In the area of antidumping, we have proposed that there be a closer interaction between the antidumping laws, or the customs laws and the Trade Practices Act. Very often, in the area of mergers, it is put to us that import competition is a significant constraint on any anticompetitive forces that might apply in the Australian marketplace and that that ought to be taken into account in determining whether a merger should be approved, so often in this area the prospect of imports will be hampered or hindered by antidumping applications.

It is our view that other parties, including the ACCC, ought to be able to present submissions and material to the customs authorities in their consideration and determination of antidumping applications - that is, it is currently prohibited under the legislation that external parties can present such submissions. We believe that that ought to be opened up so at least we can present our views and other parties could present their views in relation to antidumping issues.

I think I will conclude at that. The protection of the competitive structure of industries is a key challenge for national competition policy. There is a strong case for policy measures that go beyond the provisions of the Trade Practices Act to ensure there is vertical separation in the electricity industry and in response to problems posed by generator market power. Consideration of the structural configuration of Telstra is a complex issue. It requires a thorough assessment before a policy response is implemented and changes to the Trade Practices Act can improve competitive incentives across the economy in relation particularly to the areas of consumer protection.

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**MR BANKS:** Just in case the transcript wasn't able to record with all that noise outside, Graeme, if you could repeat the last - - -

**MR SAMUEL:** It was just a very summary conclusion in four points. Protecting the competitive structure of industry is a key challenge for NCP, for national competition policy. There is a strong case for policy measures that go beyond the provisions of the Trade Practices Act to ensure there is vertical separation in the electricity industry, and a response to the problems posed by generator market power. Consideration of the structural configuration of Telstra is a complex issue that requires thorough assessment before a policy response is implemented, and changes to the Trade Practices Act can improve competitive incentives across the economy.

**MR BANKS:** Thank you very much. There are a range of things there, which I think we can talk about. Just beginning, there's a sort of theme that has come

through in the earlier submission and also in your response there which is in relation to the structural configuration of firms. Indeed, I must just get you to respond to the question of whether the ACCC sees vertical integration, or indeed horizontal for that matter, as being problematic in principle or whether you would concede there were situations in which the costs of separation exceeded the benefits - just in broad terms.

**MR WILLETT:** I certainly concede the latter point: that there are times when the efficiencies of integration will outweigh any benefits associated from increased transparency associated with separation. That's why you need reviews to consider these things and you don't just do them as a matter of course. In telecommunications it's particularly complex, of course, because you have changing technology and you have very different ways to cut up the pie, if you like, in looking at options for structural reform. One of the points we try to make - I certainly try to make consistently in speeches - is that structural reform is not an absolute. It's not a binary outcome, it's a question of degree. With Telstra, we've already had structural reforms of sorts in the accounting separation arrangements.

The recent announcement by Telstra to strengthen the separation of its wholesale division is a structural reform, albeit one that's voluntarily undertaken, and the record-keeping rules that we can impose on Telstra on reporting arrangements are structural in nature, in that they do what structural reform is designed to do, in that it's designed to make the different business operations more transparent and dealings between those business operations more transparent.

There are no absolutes in any of this, in our view. There are a range of considerations that should be taken into account in determining what appropriate structures are for particular industries, but we do think that the premise that the Hilmer report brought out strongly, which is a presumption in favour of structural reform and a presumption in favour of promoting competition, with that presumption to be overturned by a demonstrated case for scale efficiencies or other efficiencies associated with vertical integration, is a sound principle and a sound way to approach these things. It puts the onus on those who actually are in the best position to know what those efficiencies are to actually make the case, and we think that sort of principle is at least as relevant today as it was when the Hilmer report was brought out.

**MR DI MASI:** If I might add.

**MR BANKS:** Could you give your name first.

**MR DI MASI:** Joe Di Masi. I think it goes without saying that we're talking here about industries where there are actual natural monopoly elements. It's generally the infrastructure sector. That's the sector that we're thinking of. Adding to Ed's points,

the only additional point that I would make is that the degree of natural monopoly in the networks that we're dealing with is also relevant to the strength of the case. In a situation where it's clear-cut that you have a classical natural monopoly, the case there would be stronger to one where - I think as Ed had suggested - there are changing technologies and so on. The strength of that natural monopoly might be weaker and the economies of scope might be stronger so that you have a spectrum there, I guess, over the range where you can go from a very strong case to potentially a weaker case.

**MR BANKS:** If we think then of the main mechanisms whereby you'd have scrutiny of reintegration proposals or reaggregation proposals, section 50 obviously plays an important role. I might just get you to elaborate on why you have this concern about section 50. I take it, from the presentation, that market definition and how that's been interpreted by the Federal Court, particularly in the AGL case, is the main element of concern. I was going to ask you about why you didn't appeal that particular case, but I won't. Could you just elaborate on why this has caused a problem for section 50, as the main mechanism for assessment.

**MR WILLETT:** I might start at the outset by making it clear that what we're saying in this area of electricity really has very little to do with the outcomes in the AGL case, although - as I'll go on to say - some of the components of that decision are problematic in terms of the way we see things going forward. I'll say more about that as I go along. I'll answer that question by dealing with what we see with problems, or potential problems, in electricity in three categories. They're actually in, I think, an order of priority and, by pointing out that they're in order of priority, you'll see from that that the outcomes of the AGL decision are actually very low-order issues, in our view.

The first problem area, or potential problem area, is this question that we've just addressed: the risk of breakdown of the separation of the natural monopoly areas of electricity networks - in particular, transmission - from the contestable areas of electricity - in particular, electricity generation. Governments have already formed a view that that sort of separation is desirable. That's reflected in the electricity reform agreements. Our concern about the application of section 50 in this area is that - a pretty fundamental issue - section 50 wasn't designed to deal with these sorts of issues.

Section 50 wasn't designed to promote competition by separating out natural monopoly components from contestable areas of the economy. While there are competition issues here, section 50 is a very poor tool for dealing with those particular issues. Section 50 certainly can't deal with problematic small interests between contestable and noncontestable areas of energy supply in the way that, for example, the Airports Act limits the interest that an airline can take in a major airport

to 5 per cent. If you see that sort of outcome in separating contestable from noncontestable activities as desirable, you can't rely on section 50 to get you that sort of separation. That needs to be done by separate policy, in the way that it's been done in the Airports Act; in the way that Hilmer envisaged in a separate area of consideration of structural reform; in the way that's reflected in the electricity reform agreements agreed by COAG.

The second area of potential concern is to make the point that section 50 is also not designed to promote competition in markets that aren't already competitive. Section 50 is designed to protect competition in contestable markets that are already effectively competitive. We think this is a problem with electricity in some areas, where we don't think competition in electricity generation is as yet effectively competitive. We've done some extensive work on this. Darryl Biggar has written a paper on the exercise of market power in New South Wales and Victoria, and we've forwarded that to you.

We think there's a very strong case that the current structure of electricity generation in New South Wales is not effectively competitive, but you can't rely on section 50 to change that situation. It may be that new entry will deal with it over time, but section 50 is a poor tool in preventing those existing three generators from being the ones who expand capacity rather than new entrants. One of the more frustrating things about section 50, given that it works by looking at the world with and without the acquisition - that sort of test - one of the very frustrating things you find about mergers regulation is when you're confronted by the argument that there can't be said to be a substantial lessening in competition associated with this proposed acquisition because there's no effective competition in the first place. We do, from time to time, get faced with that argument.

The third issue that I'd like to talk about goes to the question of whether the courts are really in a good position to deal with the complexities of generation markets in the national electricity market. I'd agree with the comment that the lessening of competition test, or the substantial lessening of competition test, is the right test in principle to deal with acquisitions in a generation market that is already effectively competitive. I have no problem with that, but there is a risk, in our view, that because generation markets work in such different ways to most other markets - and that's well recognised in the literature and it's well recognised by the Parer report - courts won't apply the special lessening of competition test that's required for electricity generation in the right way. We think that the AGL decision is not a good indicator of the need of the courts to recognise the special characteristics of electricity generation.

Parer recommended that the ACCC issue a new set of guidelines that have special provisions for dealing with mergers in electricity generation. One of the

reasons, I think, for that recommendation, was that the Parer review thought that the current safe harbour thresholds that are in the current mergers guideline, the thresholds which say, "Well, they're just per se; there shouldn't be a problem if the acquisition doesn't breach those thresholds," those safe harbour thresholds are not suitable for applying to electricity generation. What Parer said was we should have new guidelines with different safe harbour thresholds for electricity generation, and that's all part of trying to apply the lessening of competition test in the right way to electricity generation mergers.

If anything, the AGL decision has moved in the other direction. It has come up with market definitions and analysis of the exercise of market power by generation which we think are entirely inappropriate. To simply demonstrate the point, if there is truly a single national market throughout the national electricity market in a legal sense, in the way that that concept is applied by the courts, then there would be no problem having one generator in Queensland, one generator in New South Wales, one generator in Victoria and one generator in South Australia.

The way the courts look at these sorts of issues, if you look at it simply as a national market, then section 50 couldn't prevent that sort of outcome, and yet I think most people who understand the national electricity market would accept that that sort of market structure would be extremely problematic. That's what is causing us concern about the way section 50 might be applied in the future to mergers in electricity generation.

The final worrying aspect of the AGL decision, which is something I hope we will pick up on later, is this notion that is built into the French decision that, well, if we get market structure wrong, we just regulate more. In fact, French J referred to the countervailing market power of government regulators. We think that's an unfortunate concept. It's far better, we think, to get market structures right that promote and protect competition, rather than allowing structures to break down to the detriment of competition and then regulate in a whole market. I will leave it there.

**MR BANKS:** I guess the point I was just going to raise is - I suppose the conception of the national market hinged to a large extent on the linkages between the markets and the transmission mechanisms to do that, the interconnects - (a) how effective are they in creating a single market and, secondly, whether recent initiatives to reform regulation to allow greater investment and to allow those mechanisms to work better would move us in the right direction in terms of reducing the capacity of single generators to exert market power?

**MR WILLET:** Yes. I'll start with saying that I agree with the comments that have been made to you that electricity reform in Australia has been quite a substantial success and conferred enormous benefits. I don't think there's a general



view internationally - Joe might know more than me - but the view I perceive is that the operation of the national electricity market is probably the best operating electricity market in the world. That doesn't mean there aren't some improvements we can make.

There is a level of contestability across regions at the moment, facilitated by interconnectors. That contestability can be problematic from time to time, depending on network constraints. As you can see from Darryl Biggar's work on the market behaviour of generators, I don't think the NEM was ever designed to have a situation where very substantial market power in one region could be totally and explicitly overcome by contestability from another region. In order to get that sort of outcome, you would need very large interconnectors between those regions to alleviate network constraints, because otherwise a monopolised generation sector in one region is always going to know the maximum electricity capacity that can be imported from other regions, because there are finite constraints in these interconnectors.

I don't think the NEM was ever designed to work like a fully integrated market in the way that industrial organisation theory and the law would understand that concept. What it is designed to do is to have contestability between generators within a region and some level of extra contestability from other regions, facilitated by interconnection. To further facilitate that contestability from other regions, there are some things we can do to make it easier to enter into derivative supply agreements across regions.

That's problematic at the moment and that was well recognised by Parer and generally, I think. Even if we put those things in place, while ever there are significant constraints on the import of electricity into a region across regional boundaries, then you're still going to need a significant level of competition within that region for that market to work properly.

**MR DI MASI:** I would just add two points to that. The first is what your question really gets to is, should the interconnectors be so large that, in effect, we don't have effective constraints across the different regions? I guess the answer to that is, well, there's a cost benefit here. You have to repay that investment for such large interconnectors and is it the cheapest way of providing electricity to the market? I guess the answer will be in some cases it will be, up to a point, but not always.

The second is you need to have a look at the patterns of demand and supply across the NEM and their coincident peaks. You could build a very large interconnector between two regions and with coincident peaks - for example, South Australia and Victoria - the net effect of that will be negligible at peak demand and so, if you like, you could have wasted a lot of resources when the much better

solution would have been some additional generation in one of the other areas.

In short, what you need is a system which is neutral between generation and transmission, so that the right commercial decision is made as to what might be the appropriate answer. The idea of an overengineered solution that gets you these big interconnectors being the solution, I think has a number of problems associated with it.

**MR WEICKHARDT:** I accept the point that it's never going to be total transmission, you know, sort of with unlimited capacity.

**MR DI MASI:** Yes.

**MR WEICKHARDT:** But I think interconnect capacity has been installed much more slowly than was ever envisaged. A question relating to this, however, in terms of trying to limit market power in the generator area is, given the case studies you have quoted, whether or not more could be done by two mechanisms. One is the withdrawal of capacity. That seems problematic and seems to have caused some of these price spikes. I understand in Britain they have taken a much tougher line in terms of generators withdrawing capacity. It's sort of almost farcical. If it wasn't so serious, it would be amusing that people in your case studies quote reasons for withdrawal of capacity as profit maximisation. I would have thought surely NEMMCO could do a better job in terms of sort of getting people to prove mechanical failure to withdraw capacity.

I guess the second question I would like your comment on is whether or not the proposal by New South Wales to lease the trading activities from their generators might actually go some way to getting a more competitive market in the generator sector in New South Wales.

**MR WILLET:** I'll have a go at the first part of the question and then I'm sure Joe will want to expand because he's more familiar with the area. There are provisions in the code that do place some constraints on generator bidding and rebidding activities. The enforcement role associated with those code provisions lies with NECA but is one of the first things that's going to be transferred across to the Australian Energy Regulator. That is going to be the AER role, and we are already doing some work on converting the monitoring systems that NECA has for use by the AER and, to at least some extent, developing those systems.

So there is some activity already where NECA sends off "please explain" in relation to suspicious generator activity. I question how effective that enforcement activity is. It's something we will be looking at closely as part of the AER's responsibilities when that organisation is up and running. I might say that on this

question of structural reform versus regulation, again it's a case that, where you have more incentives and opportunities to exercise market power, inevitably there is going to be more regulation. If we do see, in the future, suspicious generator behaviour then inevitably it's going to be the subject of a regulatory response.

Governments actually, when they made some changes to the National Electricity Code to enhance monitoring activities of generator behaviour, wanted to go further than the changes that were in the end approved. I think the ACCC - and Joe will want to comment on this - took the view that, well, it's better to have competition and contestability in these markets than to regulate them heavily. So in a way we were putting faith in the emergence of competition as a better outcome than having heavy-handed regulatory intervention. That's not to say that if we don't manage to get effective competition in generation that governments won't want to impose those more heavier-handed interventions in the future.

I might also add at that point, you've had some representations to suggest that retail price regulation should be removed or at least lightened. We'd have some sympathy for those views but I think it's fair to say that governments will be reluctant to act in that area until they have confidence in the operation of other parts of electricity supply, in particular wholesale markets for electricity. Do you want to add something on that?

**MR DI MASI:** The only thing I would add is that we have an energy-only market in Australia and that's fairly unusual around the world. With an energy-only market there are no capacity payments for generators to ensure there is adequate capacity to meet peak needs. It's done through the bidding process and a generator has to survive, basically, on being dispatched and, of course, on the contracts that it signs up; so it doesn't just rely on the pool price. In conjunction with an energy-only market we have a fairly free-bidding and rebidding set of arrangements.

The view that has been taken is that you need to allow generators to respond to the circumstances as they adjust their bids. However, as Ed has said, you could end up with a problem where you do have market power because it's very difficult to separate the issue of market power versus bidding and rebidding due to scarcity and changes in market circumstances. If the energy-only market is to work well, I think the question of market power has to be addressed, otherwise I suspect that over time the very architecture of the market is going to come under pressure.

**MR WILLET:** The second part of your question: yes, I think there is a potential there for these proposed arrangements in New South Wales to increase contestability, particularly in terms of generation. There's an opportunity there but there's no guarantee. It's quite possible that these arrangements could be put in place in a way that retained, in effect, three electricity suppliers within New South Wales, three

electricity generation entities within New South Wales.

We've had some discussions on these arrangements with New South Wales. We have encouraged more competitive arrangements. But there's nothing we can do to get those arrangements in place. It's simply a transfer of generation interests from one entity to another and section 50 has no application in that area, which is one of the areas where we are saying, "This needs to be looked at."

**MR DI MASI:** You would have caught up with the fact that the New South Wales government has recently released a paper where it has made some changes to those proposals; that was just last week. Indeed they are significantly revising the proposal to sell the (indistinct) arrangements. That's now quite a significantly different proposal. They have put out a discussion paper on it.

**MR WEICKHARDT:** If I could just ask you one other question on that vertical separation issue. You quote the electricity example and the telco example. You haven't specifically cited the rail area. I'm not sure whether that's because you are not as concerned in that area. Certainly we had a submission by Pacific National who cited a number of what they saw as being pretty dysfunctional and inefficient arrangements which were preventing investment because of the separation between track and the above-rail area. We would be interested in your views as to whether or not that's an area you are also concerned about or whether you feel there could be some efficiency gains there by vertical integration.

**MR WILLETT:** Personally, I think there would be. I think there is a case for structural separation between track and rail. We haven't done a lot of work in this area and it might be an area where further research and review could be applied productively. I guess one of the reasons we haven't run with that issue is that perhaps it's a case of the egg being so scrambled now that it's almost impossible to unscramble it. That goes to our concerns about electricity, that once you have integration between natural monopoly components and contestable components in private hands then it's very difficult to unscramble that egg.

I think that's in large part the reason that electricity reform in the United States has been so problematic, because they've had this legacy of incumbent suppliers being vertically integrated. I will leave with you a table to which I don't think we've referred in our materials, by Josco, which deals with this. It's a recent paper of last year. It surveys structural reform and regulatory arrangements in electricity markets around the world and seeks to explain why the reform process hasn't worked so well in the US.

One point I will make about rail reform though is again on one of the benefits of structural separation being less regulatory intervention. I think if you look at the

areas where there has been structural separation in New South Wales, and in relation to operations by the ARTC, you not only have more effective provision of third party access and more effective regulation, it's also less intrusive regulation than you see in Queensland, Victoria and Western Australia, where you have, to differing extents, some level of vertical integration.

Western Australia is an interesting example because they actually have a separate company structure for the track, and that was imposed at the time of privatisation, at the time the regulatory arrangements were put in place. I think you will find, if you look at those, the way regulation works there and the effectiveness of the regulation, once again that level of structural reform, while not as beneficial as what has happened in relation to the ARTC in New South Wales, has nonetheless had some benefits.

When I talk about effective regulation, I might clarify something that has been the subject of some misunderstanding in representations to you. I'm not trying to make my job easier; I don't expect to have an easy life in this job and I'm sure Graeme and Louise don't have those expectations either. What I am talking about is trying to make regulation more effective and, by doing that, not only improving market outcomes but also reducing the costs of regulation because you need less intrusive regulation to make it effective in the context of structural separation as opposed to where you have vertical integration.

If you look at the two extremes in Australia, Telstra on the one hand and major airports on the other, you see very good structural reform in airports, very light-handed regulation and, in the other stream, you have the most ubiquitous and integrated telecom service provider in the world being the subject of very heavily-handed, very intrusive regulation but that regulation being much less effective. I don't know that my job is any easier or more difficult in relation to Telstra, but it's certainly much more intrusive.

**MR DI MASI:** Just to touch a little bit more on the question of rail, as Ed has said, we probably haven't done as much work in rail as we have in electricity, for example, or telecommunications. I think it is fair to say that there is a bit of a debate emerging around the world about - implicitly, you were asking about the economies of the rail sector and, in fact, we're looking at that at the moment and we'll be doing some further work. So I think it is a little bit of an open question there still but I guess, at least in Australia, we can say we've got every model going so if we look around the different states we'll be able to see what the laboratory throws up because we've got separated, integrated and in between. But I do expect that we will certainly be in a position to make those judgments a little bit further down this year as we're doing more work in rail.

**MR BANKS:** Good. I might just draw your attention to an observation or a little bit of work that NECG did that was presented to us in Sydney and it bore on this question about the ease of difficulty of regulation, depending on structural separation or not. Henry Ergas and his team did some work there where the bottom line of their work was the time taken for regulatory outcomes seemed to be not any different when you looked at comparable situations. Indeed, it took longer for structurally separated businesses, if you included the gas transmission cases in that. But he then goes on to say that there has been similar evidence in the USA. I just raise it. I don't expect you to necessarily come back now. You'd have to look at that study. Indeed, I'm not sure whether it's publicly available.

**MR WILLETT:** I don't think so.

**MR BANKS:** We'll seek to get it.

**MR WILLETT:** I'd be interested in seeing it because it's difficult to comment without seeing it; but I'm very suspicious of it. It certainly doesn't accord with our practice. I might say that the time taken to engage in a particular regulatory process is not necessarily a good indicator of either the effectiveness of the regulatory process or the intrusiveness of the regulatory process. I might also add that Henry, I think, referred to the eight years it has taken to look at the PSTN. There's no regulatory process in an industry that's not vertically integrated that has taken more than eight years. In fact, they all take very substantially less. Our experience is that, while we have less regulatory levels in those industries that have been subject to pretty rigorous structural reform - in gas and electricity and indeed, we now look at the ARTC regulatory arrangements in rail - those arrangements are, at the one time, both less intrusive and more effective.

Comparing that to our role in telecoms, we find we've got a lot of levers. We've got a lot of things that we can do but the regulation is actually much less effective and we always seem to be in constant discussions and negotiations with Telstra on how those regulatory processes should work and should be applied. So our experience, and I think this experience is consistent through all the members of the utility regulators forum that we participate in, is consistent through Australia that where you have structural reform, then the regulation is very likely to be both more light-handed and more effective.

**MR WEICKHARDT:** The other thing that we might ask about in relation to the submission that Henry put to us was his point that the very fact of having an inquiry into the benefits of structural separation would itself be (a) difficult in terms of technologically - where do you draw the line which he put to us was moving all the time in terms of as technology evolves and changes - and the second point that it could be quite a lengthy and expensive process in which all sorts of other people sort

of jump on the bandwagon. I guess the question is, if there is, at least in the minds of different people, an argument on both sides of the coin, there may well be an outcome at the end of that whole process which says, well, no, it's not worth it or it's technologically too difficult to do.

I suppose if that were the case, the question is, is it better to put more energy, given the way Telstra is today, into finding a fall-back position of - you've talked about certain provisions that would go some way. Is it better off as a nation that we'd spend more time doing that, recognising the egg is - at the moment - scrambled, rather than having a huge inquiry which might take a long time and end up with a decision that is still too difficult anyway?

**MR WILLETT:** Yes. That may well be. I must say that Henry and his comments set up the most marvellous catch-22, I thought, where he said, "Well, you shouldn't have a review until the case for reform is actually established," but of course, it's very difficult to establish the cases for reform until you do some research and have a review. I often notice when I go around talking about these issues that the first comment I tend to get from the people who argue against reviews of this nature is that there is no evidence that any change is necessary and I think that's a bit less than satisfactory, that sort of approach.

**MR BANKS:** I think perhaps in fairness he was really saying that you needed to have a prima facie case before you went to the expense and trouble and disruption of a review. The challenge I put to him was to demonstrate that there was not such a prima facie case.

**MR WILLETT:** Yes.

**MR BANKS:** I guess the burden of your submission is to argue the opposite.

**MR WILLETT:** I think certainly we've put up a lot of evidence that would help establish a prima facie case. I read a little more into Henry's comments than that, I must say. In terms of whether you're better off just doing something that is an improvement or having a full review that canvasses all the opportunities - and I assume you're talking in terms of telecoms in that question - the difficulty I have is that there are things that are being done now and there are some more things that are likely to be done in terms of regulation and possibly further structural changes. It may be that an ad hoc process will get those pretty right but I think we'd all have a lot more confidence in the process if it was a little bit fuller and canvassed all the opportunities, albeit if it only could be done in a relatively short time within the time frames that we have, due to other requirements.

So I'd still advocate the fuller review and give people an opportunity to have

their say - put a short fuse on it, if you want - and it may be that that process would do a better job of turning up the right compromises if compromises are indeed the right way to go or turn up answers that don't raise risks in terms of costs of separation but nonetheless prove the outcomes. We've made some suggestions along those lines and if it comes to it, then we, I guess, advocate those compromises because we think there's a case for them. But I think if you're asking, "Would it be better to have a review?" we'd say it would be better to have a review.

**MR SAMUEL:** But we go on and say that if the real politic was such that a review was going to produce - that whatever the outcome of the review, there was a policy decision that vertical separation and/or horizontal separation on the lines that we've outlined is not going to take place, then you might want the review to be, as Ed puts it, short-fused but also the focus of the review to be on what is achievable in policy terms. If that were proper operational separation, then that would be - the focus would be - combined with the issues that you've raised for it, which is the issues of technological developments potentially providing some competitive forces in telecommunications that might overtake the issues of full vertical or horizontal structural separation.

**MR BANKS:** In terms of operational separation, I might just get you to comment again on your view as to why the recent initiative within Telstra doesn't meet what you need. I think currently we would have accounting separation and we've also got a kind of functional separation within Telstra, but you don't see that as - - -

**MR SAMUEL:** No, and the main problem is that it's virtual accounting separation rather than the real, I might call it, accounting separation that you see in other jurisdictions, and that's because we rely on attempts to impute wholesale prices from Telstra's retail price and its costs to derive a wholesale price. That's how the current arrangements work, rather than Telstra saying, "These are our costs associated with this wholesale service, this is the price we provide to Telstra retail and this is the price we also provide to other service providers."

So it's that sort of grounding with reality in terms of the separation and the transparency in pricing and costing behaviour that would be the key improvement that we see as necessary. There are also some sort of governance arrangements that you might put in place that might help with that sort of transparency and separation as well. So it's very important to recognise that we only have a sort of virtual accounting separation at the moment; we don't have a proper accounting separation.

**MR WILLETT:** The initiatives announced the other day, on their face, go no more than the appointment of a head of wholesale which will report directly to a CEO, and then in broad terms the retail division reporting to exactly the same CEO and then ultimately to the same board of directors. Now, if it did no more than that -and there



were some suggestions made, I think, by Dr Switkowski in his press conference relating to this that it might go further, but at this stage we have no more detail than simply those appointments; and on the face of it, those appointments, if that's all it were, would be no more than cosmetic changes.

But if it went further into a full, actual accounting separation along the lines that it has outlined - separate divisions located separately, potentially; proper Chinese walls established between the two divisions, and clear evidence that there was not a transfer pricing in terms of costs and/or profits running between the two divisions such that you couldn't establish transparently that the wholesale division was dealing with its own retail division on similar commercial terms and conditions as it was dealing with other wholesale customers of Telstra - then not sure that the changes announced the other day actually achieve anything at all.

**MR DI MASI:** But you characterise that as we have accounting separation. Ed's described it as virtual accounting separation. We have record-keeping rules that require accounts, but they're for regulatory purposes only. We don't have, as Ed said - and I just want to reiterate that point - genuine accounting separation, and I think that with the transfer price that Graeme mentioned, that is the minimum that you would need to make operational separation effective.

**MR SAMUEL:** That's fundamental to the operation or our ability to invoke the powers that we have under Part XIB in terms of dealing with potential anticompetitive conduct on the part of Telstra.

**MR WEICKHARDT:** One would have sort of assumed if you were going to judge the performance of these two individuals running the separate businesses, they'd have to have some form of transfer pricing. But it remains to be seen - - -

**MR SAMUEL:** No, that's right, but it's not there at the moment.

**MR WEICKHARDT:** Right.

**MR WILLETT:** I might make two further comments on that, one in relation to Telstra and one applying these issues to electricity. The first in relation to Telstra: in terms of structural separation, it is - as I think has been put to you - always difficult in telecommunications to draw the right line. In the past, people probably would have drawn that line in terms of vertical structural separation at the PSTN service. These days I think you'd probably draw it at the copper wire itself, the unconditioned local loop service.

That's actually an easier line to draw than with the PSTN service, and it's difficult to imagine that that line would ever be cast closer to the premises. So on the

one hand I think that issue has actually been made easier with technology changes; but on the other hand the costs associated with that innovation have become less with technology, provided that we can deal effectively with any barriers to entry to people getting into exchange and installing the switch gear that they need to to provide services in competition with Telstra. That's the main focus of our efforts at the moment in telecoms.

In relation to electricity, I think the point has been made to you that a review would mean some uncertainty in investment and the markets. I think there's a bit of uncertainty there at the moment when you've got a decision by the court saying some things and that being the current law, and the regulator saying, "Well, we're just waiting for the right case to try and overturn some of these things." So I think that creates some uncertainty itself and that uncertainty might be effectively dealt with through a policy process that imposed provisions like the Airports Act, which are very clear about the sort of structural separation you should have between contestable and natural monopoly activities.

**MR WEICKHARDT:** You've talked about a policy response, without being sort of clear as to whether or not that was some modification to section 50. You've also talked about state regulation, and I understand there is some regulation in Victoria that does have some influence in electricity about the degree in which reintegration can proceed. Do you have a view as to whether or not this is sufficiently state-specific, given your point that there will never be a hundred per cent sort of conduits between each of the state markets. Is this sufficiently state-specific that it would be better to have a state based approach, or a national approach through section 50?

**MR WILLETT:** One of the points I need to make very clearly is we're not talking about changes to the Trade Practices Act or to section 50, and in fact we believe very strongly that the universal applications of the Trade Practices Act and section 50 is an important principle that should be adhered to. That doesn't necessarily mean that you wouldn't have complementary rules to clarify the application of section 50, along the lines of the Victorian legislation that is in place at the moment that says, "If these thresholds are traversed" - and the thresholds have changed recently, but if they're traversed or going to be traversed - "then the ACCC needs to express a view on that."

We don't see that as overturning section 50; we see it as complementing section 50 and doing it in a way that's consistent with the notion of protecting and enhancing competition. It's just dealing, I think, with an area that section 50 is not designed to deal with, which is promoting competition rather than protecting competition. Again, the example of the Airports Act: we don't see the Airports Act as undermining the application of the Trade Practices Act to airports. It just provides a supplementary provision that regulates small interests in airports by airlines.

**MR WEICKHARDT:** Just clarifying another point you raised, the issue of the guidelines: are there industry-specific guidelines? You mentioned Parer and talked about that being developed. When push comes to shove, and if somebody actually takes that to appeal, I assume the guidelines have no sort of real force at that stage.

**MR DI MASI:** They have no legal effect and, in fact, as a public institution, we're obliged - and we do - to ensure that the guidelines are consistent with the law, which makes it a bit problematic trying to adhere to the recommendation of Parer in the light of the AGL decision. It's just that the two don't come together.

**MR WEICKHARDT:** Could you perhaps just give us a quick update on the time line for the Australian Energy Regulator and market regulators, because these seem to have been in gestation for some period of time.

**MR DI MASI:** There's one significant missing piece and that is state legislation which needs to progress through the South Australian parliament, and then that will be picked up by the other states. The effect of that state legislation will be to hand over some powers to the AER, the Australian Energy Regulator. I should add first-off that the Commonwealth legislation to establish the Australian Energy Regulator has already passed the Commonwealth parliament, so that's already set. The state legislation that's required to go through the South Australian parliament is taking a little longer than expected, I think it's probably fair to say. It's been released for comment, some draft legislation. It's now expected that the AER and the AEMC - the Australian Energy Market Commission - will be established in the first half of 2005, so that's pretty much the timetable at the moment.

**MR SAMUEL:** Induced delivery would be appropriate if you knew how to induce it.

**MR BANKS:** Just for my sake, clarifying the institution arrangements here, there are separate, I suppose, commissioners involved but how does this operate in relation to the ACCC? Is it you're staffed by - - -

**MR DI MASI:** There are a couple of elements. There are two institutions, the Australian Energy Regulator and the Australian Energy Market Commission. I'll talk about the AER. The AER will be established so that it has independent decision-making powers. It has got three members and it has been agreed that one of the three members will be a commissioner of the ACCC. The other two members are being appointed. It will be by agreement between the Commonwealth and the states, by and large.

**MR BANKS:** And who chairs?

**MR DI MASI:** The chair is to be appointed and will be jointly agreed by the Commonwealth and the states.

**MR BANKS:** And it could be someone from the ACCC or - - -

**MR DI MASI:** No.

**MR SAMUEL:** No, the initial chair won't be the appointee from the ACCC.

**MR DI MASI:** That's right. It will be one of the three that is to be appointed - one of the other two that is to be appointed. In terms of decision-making, the functions of the AER will take over the current regulatory functions of the ACCC in energy - that's electricity transmission as well as gas transmission - in 2005; also, the monitoring and enforcement functions of NECA. It will take those over. Following an agreed framework, it will take over electricity and gas distribution and retail, other than retail pricing. So that's by the end of 2006. That's the plan. So by the end of 2006, if all this is put into place, you'll have a body which will be able to do a fair bit of the work that is being done around Australia at the moment.

In terms of its structure, as I said, it has got the three members. The resourcing will be a secretariat that will, if you like, provide the support to the AER but will also undertake any ACCC functions in energy as well. So you'll have one body of expertise and all employees will be employees of the ACCC. So it's a body which is a constituent part - that's the word that's being used - of the ACCC.

**MR WEICKHARDT:** And appeals? Will they go to the ACT?

**MR DI MASI:** The arrangements in no way change the appeal arrangements that currently exist as to the ACCC and the Australian Competition Tribunal. As functions are rolled in, it's expected that any appeals will go the Australian Competition Tribunal, yes.

**MR BANKS:** Good. If we've finished with those two areas, I was just going to ask you about your proposal here in relation to mergers, antidumping and competition. Is the proposal here effectively saying that in situations where imports have been invoked as the main discipline on the market, that antidumping duties shouldn't be applied? Is there something as strong as that, or are you simply arguing that the perspective about the role of imports in relation to competition needs to be somehow brought to bear? It's just that currently - - -

**MR SAMUEL:** Yes. It's the latter.

**MR BANKS:** - - - there's no room for that to happen.

**MR SAMUEL:** No, it's the latter and there's no room, as you say, for those views to be put to the customs authorities in dealing with antidumping applications. The legislation doesn't permit that. I think what we're indicating is that the ACCC may well have some views and some input into antidumping applications that would be relevant, particularly in the context of those areas where informal clearances of mergers have been permitted to take place and the mergers have been permitted to proceed, based on import competition, and then it is seen that antidumping applications have been used to, in fact, constrain imports.

**MR WEICKHARDT:** But I assume that there wouldn't be many cases where people sought informal permission, citing imports as, if you like, a controlling mechanism or a competitive mechanism where they cited dumped imports as the only mechanism.

**MR SAMUEL:** No, but I can say to you that in considerations or in merger applications we've been required to deal with, even of more recent times, where imports have been indicated and proposed as a major constraint on anticompetitive conduct between concentrated domestic industries, one of the issues that we've actually raised has been the issue of a tendency in the past for Australian participants, Australian competitors, to be making complaints about dumping and sometimes it is suggested that those complaints are made to, in effect, endeavour to constrain imports or constrain the competitive impact of imports on those domestic industries. I think it's appropriate that those issues - particularly if the prospect of imports is a major factor that is taken into account by the ACCC in clearing a merger - those factors be brought to the attention of customs authorities in dealing with antidumping applications.

**MR BANKS:** I guess the practical problem in a sense is that, well, you could legislate, as you're saying here, for those views to be taken into account. Well, it's not clear what you mean by that - whether you mean that the criteria that the authorities would apply in deciding whether to invoke antidumping duties or not would have to be changed. Currently, there are quite narrow criteria relating to injury to the affected industry. What you're saying is there's a broader competition issue, potentially bringing the consumer and the wider community into play.

**MR SAMUEL:** Yes, but also perhaps taking account of the analysis or studies that we may have undertaken in permitting industry structures to develop - that is, more concentrated industry structures to develop as a result of mergers, to take account of those factors in determining whether or not antidumping applications ought to be considered favourably or otherwise ought to be dealt with. Only in the sense that it may well be that antidumping applications that are being made to customs authorities

are such that taking into account the matters that the ACCC would raise, it may be considered that, in fact, what we're seeing evidence of is not true dumping but it may be perhaps an attempt by domestic participants, domestic competitors, to restrain the impact of imports.

**MR BANKS:** Yes, in effect, that they previously cite it as being a discipline on competition.

**MR SAMUEL:** As being a competitive constraint - on anticompetitive results from a more concentrated domestic industry.

**MR BANKS:** All right. Well, it's getting near lunchtime. I think we've had a good conversation about those things. I guess, as you know, we've made proposals for reviews in relation to market power, both in relation to energy and telecommunications. We've had submissions from some quarters arguing that even a review would be a negative outcome for Australia and I guess it's probably incumbent on you to keep an eye on those submissions. We'll bring some to your attention as we would in the other direction, just to help us see our way through to the final report, but we appreciate your efforts in being here today and the submission.

**MR DI MASI:** Thank you. Perhaps being a little flippant, Gary, if you took that to its logical conclusion about not doing any reviews on the basis of uncertainty, you might have to shut down the PC.

**MR BANKS:** Well, I think establishing a prima facie case is - - -

**MR WEICKHARDT:** Just one last quick one: you talked about the issue of the degree of which the Trade Practices Act covers government businesses, and we had a submission by the consulting engineers, who were concerned about Part V applying in terms of them actually contracting with government and the unconscionable conduct - - -

**MR SAMUEL:** Part IVA, unconscionable conduct, yes.

**MR WEICKHARDT:** Okay. But they said there are times when government is the only customer for some of their services and that they're extremely heavy-handed in terms of the way that they strike contracts and they have no mechanism for relief in those circumstances. You might have a look at their submission.

**MR SAMUEL:** We'll have a look. Yes.

**MR WEICKHARDT:** Thank you.

**MR BANKS:** Thanks very much. We'll just break for a moment before our final participants in this morning's session.

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**MR BANKS:** Our next participants are Care Inc Financial Counselling Service. Welcome to the hearings. Can I ask you to give your names and the positions that you hold with that organisation.

**MR TENNANT:** Thank you. My name is David Tennant and I'm the director of Care.

**MR BROWN:** My name is Robin Brown and I'm actually the president of the ACT Council of Social Service of which Care is a member organisation.

**MR BANKS:** Thank you very much for taking the trouble to appear today and also for the submission which we have received. I'll give you the opportunity to raise the key points and we can have some discussion about it.

**MR TENNANT:** Thank you. Thanks for the opportunity to appear. The comments that we've made are brief and touch on only one area that the commission is looking at, although in our view that area is the one that's of most significance to the work that our agency does. We are particularly happy that there is to be a consideration given to consumer protection processes and frameworks, and in our view the limitations and the advantages that competition delivers, particularly for vulnerable and disadvantaged consumers, are poorly considered.

In terms of this introduction I'll just talk generally about our experience and perspective as a service delivery agency and then Robin will perhaps expand on some of the larger issues, and in particular raising the consideration of consumer protection policy issues to a level that's comparable with countries overseas who are giving it that pre-eminence and, in the views that we've expressed in our submission, perhaps giving better balance to the way that considerations of that type deliver good public policy generally.

In relation to the work that Care does, we are an ACT based organisation; however, we have links to the broader consumer movement. I'm the immediate past chair of the Consumers Federation of Australia, which is the main peak body for consumer groups in Australia. Although it holds that position of pre-eminence, it is an organisation that has no funding of any description. I think in the last financial year it reported income of \$5. That was the estimation by the accountant rounding up to the nearest \$5, rather than being a fair representation of what the association's income actually was. I think it was more like about 20 cents. It was previously operating a national secretariat with federal government support and funding. That funding and support was withdrawn in 1996 and since then the federation has not operated in any practical or formal sense, although the importance of the role has led organisations like ours to continue the banner of the CFA in existence in name only, and in trying to present policy submissions because it is such an important role to



play.

We as an agency in the ACT focus on vulnerable and disadvantaged consumers. Predominantly they are low-income consumers who tend to present with problems with credit and debt. It is, as we've expressed in our submission though, often our experience that those problems with credit and debt come from a variety of other causes and one could extrapolate from that, that those causes are often because of the consumers' interaction with markets that are either dysfunctional for their means or needs, or to the extent that there is a market, that market exists exclusively for the purpose of taking advantage of their vulnerability or disadvantage. Often our frustration is in trying to present to them options that are simply about them having insufficient income or no practical choices available at all.

In the earlier introduction that the ACCC provided, I know that the chair spent some time talking about the telecommunications market and issues in relation to Telstra's separation or otherwise. In our view that is an excellent market to get some sort of understanding about consumer detriment. There is a great deal of talk about competition but, in a practical sense, it is delivered in very small segments of the telecommunications market, rather than being something that you could say is a genuinely and generally competitive market.

For the consumers that an agency like Care interacts with, their difficulties are at the most basic levels where, for many of our client group, they are forced into high-cost, inappropriate products simply because they can't get access to the products that suit their needs. In fact, many consumers, particularly young consumers, carry mobile telephone contracts simply because they've been excluded from the home line rental market, because of usually a debt that they can't pay from a previous arrangement, or one where they've had a dispute but they simply can't get the telco to acknowledge or do anything reasonable with.

Our agency in the last financial year had around 2200 new requests for assistance. Of those I would say that several hundred had telecommunications problems as the driver and, in such a small agency, where we carry a case load of around about 120 to 140 files at any given time, six of those involve current complaints to the Telecommunications Industry Ombudsman that are about fundamental failures to even recognise, let alone comply with, the industry self-regulatory code, such as they exist. We think that code process is utterly dysfunctional and, one of the reasons that we have put forward in our submissions to the communications authority on this point, is that if you want a self-regulatory mechanism of that type to work, then there must be a credible threat of sanction for noncompliance - and there simply is none at the moment.

To take forward some of the other comments that were made in the previous

presentation, although we are happy that the review of consumer protection is to be undertaken, and that we would assume Part V, being the main deliverer at the Commonwealth level of consumer protection in a legislative sense. I'm not sure that I would agree with the chair of the ACCC when he says that there aren't fundamental issues within Part V that, in our view, need addressing. In fact, there are some very significant issues that have been raised to a national level of significance in just the last 12 months.

Perhaps the most significant of those is a suggestion by the SCOCA working groups that unfair contract terms regulation be included in nationally uniform legislation, and the most logical place to insert that type of legislative instrument would be in the Trade Practices Act. That's not what I would call an insignificant change and, again, it's part of what isn't happening in Australia in consumer protection regulation, that has happened overseas, in particular in the UK and the European community more broadly.

If I could finish by saying the process that we have at the moment for dealing with questions of consumer detriment and of delivering good community outcomes is generally through the process of the ACCC overseas, in authorisations. I don't agree necessarily that that process is delivering good outcomes and perhaps because it's neither the best process to deliver those outcomes, nor is it necessarily equipped with the tools that would enable it to ask the questions about public benefit that would actually produce good outcomes.

If I could give you a recent example of where we have seen that process not deliver an outcome that was desperately needed, it was in relation to the Australian Bankers Association application to authorise a basic bank account product. That application was eventually withdrawn by the applicants. I believe there were 10 banks plus the Australian Bankers Association that were involved. The ACCC did release a draft determination and the determination found that there were four key issues of concern that weren't dealt with in the application: ensuring access to a basic bank account is available through branch networks, not only through agency networks, and ensuring that there are an adequate number of minimum transactions - an adequate number of transactions for people to make use of accounts in a practical way without those transactions being fee based; excluding balance inquiries from the number of transactions considered in any transaction limit; and ensuring that dishonour fees more accurately represent real costs and don't operate as penalties.

In reaching its view the ACCC suggested in the draft determination that there was an active and competitive market for basic bank accounts. I would suggest - and our agency suggested in some of its comments to the ACCC - that that wasn't competition in the normally accepted market terminology. It was more an exercise in marketing advantage than true competition because those who were applicants in

that process don't compete for the business of those that they were seeking to produce the product for.

So the logical way of actually delivering that outcome is to consider it in a framework different from just the tools that we have available to us in the competition framework. That's why we put together the rather rudimentary document that accompanied our submission, suggesting that if you consider issues like good consumer protection regulation and social policy within the framework of competition, then you miss the point of the reason for the existence of those policy drivers and they must have entry points of their own that deal with questions of vulnerability and disadvantage.

**MR BANKS:** Thank you.

**MR BROWN:** Just reflecting on what David has mentioned about the authorisation process initially, I support what he says and I want to just make clear that in general terms, of course, the authorisation process is a model for the rest of the world. I do a bit of work in developing countries and in those places I say - and I write - that Australia's processes are, generally speaking, a benchmark, and we wouldn't want to go in the direction of some sort of parliamentary process for exempting industries that is the case in a number of other countries.

So in broad terms the authorisation process is sound and is a lot better than a lot of other countries have. But I strongly agree that it needs refining, having been engaged in a couple of those processes a long time ago. They nevertheless retain some sort of adversarial element to them and, where the weak voice of consumers in general is important to be heard, the process doesn't work as well as it might. Now, that's probably going to relate to some of the other points I'm going to make. I previously was the chair and then the director of the organisation that David mentioned - the Consumers Federation of Australia - and I echo what he said: that without that organisation we are, as a nation, more limited in terms of ensuring that consumer policy questions are adequately discussed at the national level or, indeed, at state levels.

The Australian Consumers' Association obviously fills the gap. I'm a member of the Council of the Australian Consumers' Association but its resources are limited. It's a whole lot more crucial to have effective resources behind the consumer policy input or behind the consumer position on policy development, given that we like many other nations have leant more and more in the direction of utilising markets to achieve public policy objectives. What it seems to me this represents is really putting a greater burden on consumers to make markets work. It's almost a public policy cost shift to consumers.

My concern is that we don't know what the limits are. We just don't know enough about how consumers are coping with the changing markets of this world. I think many of them are doing information searches and making decisions based on information searches but how many of those decisions are entirely rational and adequately informed is, I think, a very open question. So just how effective they are at making markets work is, I think, open to a great deal of question. I think a lot make the decision that, well, it's just actually easier to earn a few more bucks than to try and make a market work to get the value for their dollar; a few more hours of overtime. That certainly seems to be the case with the number of households that are now forced into two or three or four part-time incomes in order to cope. The result of that must be a lack of efficiency in the economy overall.

I myself have very little confidence that the mobile phone I've got is the best that I could have and the same would go for a lot of the other things that I purchase. So the question I have is, really, do we have a big enough percentage of consumers that are actively doing the necessary information search in each market to make those markets work? It's particularly difficult for lower socioeconomic status household consumers; not because they don't have the motivation or the will or, in many cases, the capacity to do the job, but they often just don't have the time. They don't have access to the information. I think the advent of Internet based systems for marketing is a strong illustration of this.

I think Internet marketing systems are working very well in certain markets. I think they have been pretty important in the results that we've seen in airline markets. Very readily consumers of airline services can cost-compare across airlines if they've got access to the Internet. But a significant proportion of lower socioeconomic consumers don't have access to those sorts of information tools. So I think we just need to be thinking about doing a whole lot more to get the most out of the consumer force in the process. There are lots of little things that have been talked about for years and years like unit pricing of groceries. So a whole lot more thought needs to be put into that area and it's an area that seems to have lagged in public policy terms in Australia over the last decade or so.

I think there is an awful lot of scepticism in the community that the reforms are doing the job that we expect them to do when we see a widening gap between rich and poor on the one hand but first-year economics tells us on the other that no-one gets rich if markets are truly competitive; if they're truly competing away profits down to a normal return on capital. So I think there is a lot of scepticism and work to be done to turn those sorts of things around.

If we don't know enough about what consumers are doing, how they're coping, what should we do? The UK for a good many years now has had a body called the National Consumer Council which is well resourced by the UK government and has

a high measure of independence from the government and is able to undertake some really first-class research on real consumer experience and feed that into the policy process. We've had a consumer policy advisory body of one sort or another for a good many years in this country - I used to serve on the body in an earlier form a few years ago - but it's never had the resources to really make a big impact on public policy development. I was doing some work in Fiji a few weeks ago and I was astounded to learn that Fiji has a consumer council rather similar to the UK's. If little Fiji can have a consumer council - it's had it since the 70s - then it puzzles me that we don't have that sort of capacity to undertake this independent effective restaurant.

What we'd like you to think about is how to fill that gap, and to look at the National Consumer Council in the UK. We have a National Competition Council in Australia; we don't have a balancing capacity to ensure that these reforms are actually doing the job that they should be doing for consumers at the end. A national consumer council in Australia should, like the National Competition Council, be a cooperative Commonwealth/state/territory body. The last thing: because it's informed my thinking, I wanted to table a paper by Louise Sylvan, who was just here - Activating Competition - for the benefit of the inquiry.

**MR BANKS:** Thank you very much. Do I take it nevertheless from the tenor of your remarks that you do see competition as being something that can be helpful to consumers?

**MR BROWN:** Absolutely. That's what the work that I do in developing countries is about: moving them towards competition policy and development of competition policy, capacity for competition regulation. As I said, I point to my own country as having a model which is particularly suited to smaller economies, economies in transition, developing economies, and I point to the Hilmer review as an example par excellence of the kinds of policy reforms that countries need to undertake. But I say at the same time that their consumer policy and consumer protection regulation has to go in step with competition policy reform, otherwise the benefits aren't going to flow through to the neediest in the economies. I'm not saying let's throw out Hilmer and go back a couple of decades by any means, but I think we've got a lot of work left to do to ensure that the benefits are really flowing right through to the whole community.

**MR BANKS:** Just following on from that, though, to take out that implication, would you say that you need a stronger consumer protection regime with competition without it?

**MR BROWN:** If you're relying on a market to deliver something, rather than a regulated GBE then, yes, maybe.

**MR BANKS:** Okay. I suppose it depends what we think of as the counterfactual, but certainly in the areas that we've been talking about today with the ACCC, they're markets that never have worked efficiently and will always be regulated, so we're talking the degree of regulation in those cases.

**MR BROWN:** Yes, absolutely.

**MR BANKS:** The point you make about your mobile phone, I wonder the same myself, and private health insurance is another area where I've had cause to wonder from time to time. What do you think of the argument that's been made, including at a roundtable we had - and I think your comments actually show that you accept it in principle - that you do have the so-called marginal consumer who's doing all the work - - -

**MR BROWN:** Yes.

**MR BANKS:** - - - and that competition in itself and the ability for an entrant to come in and differentiate its organisation on the basis of being more consumer-friendly in providing goods and services are potential protections anyway, rather than every consumer having to know everything about every product?

**MR BROWN:** Yes, that's right. But I guess my question is: do we, in all markets, have that threshold level of consumers that are doing the necessary searches? I also wonder - I still wonder; I've wondered for a long time - why so much money spent in advertising is spent not on providing information that can be used in an information search but rather on image and so on. That money wouldn't be spent if it didn't work, surely, and so surely there are plenty of consumer decisions that are made that are not rational decisions based on an adequate information search.

**MR BANKS:** We just need to look at a number of these markets a whole lot more critically. In fact there's a paper that you had, David, this Powering Poverty, which looks particularly at the electricity market for a group of low-income households in South Australia, and I think produces some very interesting questions. It was a very small sample, just 12 households, but:

Almost all the participant households did not understand how to read and interpret their meters or their accounts.

So how can that market be working adequately for them if they can't adequately use the information that is essential for doing the information search?

**MR TENNANT:** But even if they could, the question is, should they be expected to? Where you're talking about the sort of reform that delivers a national electricity

market, in the ACT I guess, even though we've got full retail contestability, we don't really know what that means in any practical sense because we've got effectively one deliverer, and those who have been able to take advantage, to the extent that there's advantage to be had in our market, are those who might be able to bundle with other products like their home Internet arrangements or so on. But there are grave concerns that the move toward - the euphemism that's been used is "harmonisation", but the great danger that people who work with the client group that our agency interacts with see is that the protections that exist for low-income households to prevent them from being disconnected will be bundled into that harmonisation process and what we'll end up with is a dumbing down of those consumer protections rather than a lifting up of other jurisdictions to the best models that exist in the country.

Ironically, in every single state in Australia the consumer advocates seem to be putting forward the view that theirs is the best model. Perhaps part of that is because the issues that would confront a low-income family in the Tuggeranong Valley in the middle of winter are very different perhaps than the issues that might confront a similarly low-income family in the suburbs of Sydney or Melbourne or Darwin, and that the characteristics of the relief that they need are necessarily local. So moving toward a system where you simply say, "We can roll this out nationally and expect to deliver aggregated good outcomes" - part of that process might be that you are accepting that some of those at the bottom end of the scale actually get worse outcomes but that that's part of delivering the better aggregated outcomes.

I don't accept that as being a good premise for reform and I think when you're framing your reform package there has to be an entry point for considering those unintended consequences, and Robin's comments about the National Consumer Council is that, in the same way that you might have propositions put forward by the competition policy development processes in Australia, you have an effective, appropriate national consumer response that takes into account those other issues. Some of the problems are entirely predictable at the outset if you bother asking the questions. The difficulty is that there's nowhere to ask those questions in any organised national way in Australia.

**MR WEICKHARDT:** Can I just clarify why government have to fund such a body? Why don't organisations like the ACA and other consumer organisations form a more effective consumer lobby group in Australia?

**MR TENNANT:** Let me speak from the perspective of my own agency. We receive funding from the ACT government, the Commonwealth government that funds a four day a week position, New South Wales government funding a three day a week position and we bundle those things together to produce an office of some 12 people. As I said earlier, in the last financial year we dealt with over 2200 new

requests for assistance. In terms of how we spend that money, over 90 per cent of our resourcing goes into staffing costs which in turn is delivered at the coalface in consumer services.

We do have a community development and education program and this morphs into some organised policy comment insofar as we're able to do that; but our responsibility is at the front end in delivering services. Were we to redirect those funds to being part of a more organised national consumer movement through paying membership fees or the like, then that would directly impact on the services we can deliver at the coalface. And where would the funds be sourced from to do that but from government in any event. We see our primary role as being a service provider doing what government asks us to do and delivering services.

I think the process of defunding of consumer voices in Australia was a quite deliberate one and the sector that we interact most regularly with, which is financial counselling, also have a national peak body. Financial counselling has seen no new input of resources throughout the period since the defunding in 1996 and yet some of the rationale for that defunding was so money would be put back into direct service delivery.

If I could use it as a comparison, we've recently seen a budget announcement in the lead-up to the election and post the election that \$21 million would be put into financial literacy in Australia, 5 million to establish a financial literacy foundation and the remainder for undertaking research and set-up and connecting that foundation to the Australian community. That's for the first two years, as I understand it, of the operation of the CEDA. By way of comparison, the Commonwealth financial counselling program accounts for \$2.5 million per year to deal with some of the most vulnerable and disadvantaged members of our community who are the people for whom supposedly financial literacy information will be the most critically important.

The market that I'm most familiar with is financial services. Increasingly the consumers that we're seeing are older and earn more and in the first six months of 2004, after two very modest interest rate rises, we saw an increase in demand for our service of 20 per cent. The messages about what might happen or what will happen should there be movement in monetary policy - and all the indications are that there will be; it will be a case of when rather than whether. Our experience tells us at the front end that there are lots of medium-income families who simply don't have the resources to make adjustment and they are generally in products that are simply ill-suited for their needs. There's not a lack of competition in those markets, it's just competition for products that seek to take advantage of a particular type of vulnerability.



**MR BROWN:** I suspect, though, your question might be also about why consumers in general don't dish out a few bucks to make markets work better for them. Mancur Olsen is the free-rider guy, isn't he? Well, it's that. It's that it's not necessarily entirely rational for an individual consumer to pay a hundred bucks a year to support a consumer advocacy organisation unless they can see that most other consumers are doing the same. But it makes a heck of a lot of sense for a small business person - an egg producer or whatever - to belong to the Egg Producers Association to get egg regulation operating in their interests rather than in the consumers' interests. That's the essential problem and there's no country where it's any different, to my knowledge.

The Australian Consumers Association is a \$10 million a year outfit but the profit that it makes is only enough to pay for four consumer policy analysts. Again, that's a similar sort of experience in other parts of the world. So they're successful operations in terms of selling information to consumers who are wanting to buy information to help their information searches but in terms of being a mechanism to have a real, significant impact on public policy in general, it's not enough. I could actually perhaps also answer the question by saying, well, why does government pay for a national competition council? Why doesn't somebody else pay for that? Why do we need governments to pay for that? Isn't it the same? It's a public interest activity and we need some more resources put into the other side of the market analysis.

**MR BANKS:** Thank you very much for that. You've also I think brought to our attention a paper which we'll append to your submission perhaps?

**MR BROWN:** Yes.

**MR BANKS:** You've got another paper there to do as well?

**MR BROWN:** You might note to forgive our doodlings on this one. I wasn't really expecting to table it.

**MR BANKS:** We can seek a clean copy. Thank you very much. We'll just break for lunch now, resuming at 2.15.

(Luncheon adjournment)

**MR BANKS:** Our first participant this afternoon is the Australian Taxi Industry Association. Welcome to the hearings. Could I ask you to give your names and positions, please.

**MR DAVIES:** Blair Davies, secretary of the ATIA.

**MR BOWE:** John Bowe, president of the ATIA.

**MR SACH:** And Neil Sach, vice-president of the ATIA.

**MR BANKS:** Thank you very much. Thank you for taking the trouble to appear at the hearings today. We don't have a formal submission yet, I understand, from you, but are happy to hear what you have to say and we will perhaps respond to that with some questions.

**MR DAVIES:** Thanks, Gary. I suppose the first point to make was that the ATIA welcomed the Productivity Commission's review of the national competition policy, and we were delighted to see that there was a focus on passenger transport as being a big-ticket item. We believe that the report, though, should make that point clearer and should make that point stronger, and in that regard we note that there is a problem facing Australia in terms of finding solutions for passenger transport. The report correctly identifies that the cost of congestion could well be in the order of \$30 billion and, with an ageing population confronting us, we need to find solutions that solve passenger transport for all members of our society.

We're also very conscious of the fact that there is an environmental problem associated with passenger transport, and finding solutions to that which are both efficient and effective makes this really the big-ticket item from the ATIA's perspective. Accordingly, when we reviewed the report, we saw that probably something that could be improved was the focus of the report on taxis being separate from public transport and, when we met with the delegation from the Productivity Commission in Brisbane, we made the point that the taxis are actually part of the public transport system, and that really there's a role in terms of public policy to see an integrated public transport system.

I suppose the Productivity Commission is seeing public transport as buses and trains and the mass transit providers at the moment, particularly in this report, and we'd encourage the commission to look at public transport more generically than that; not just as components but as what it should be, which is the ability to move people around in public modes of transport. Really it is the option that people use when they're not using the private motor vehicle. Taxis are not private motor vehicles; they're open for public hire.

We'd also see that there's room for the report to be improved by seeing taxis as an environmentally positive initiative, and in that sense taxis are significant movers of people. We use LPG fuels pretty much throughout the whole country. There are areas where LPG is not easily accessible or cost effective, but in the capital cities in the order of 90 to 95 per cent of the taxi fleet is using LPG. That's a cleaner fuel option than the private motor vehicle uses at the moment. What the commission may not be aware of is that, say in Queensland, taxis carry 2.3 people on average, and therefore by promoting taxis, we do see less cars or vehicles on the road. Therefore the commission probably should look at the statement where it says that public transport providers - and presumably it was thinking about buses and trains - can relieve congestion; well, taxis can also do the same.

We also would see that taxis have the ability to relieve congestion because they work as a complement to the rest of the public transport system, and obviously people are not going to be able to give away their private motor vehicle if they can't use an effective public transport system to solve all of their transport needs. We see that taxis can be used in off-peak times and the shoulders to peaks, and that will allow households to downsize the number of cars that they have. That will then help reduce congestion. In that sense, we probably encourage the commission to take a more expansive view of public transport and what it can be in the future, as opposed to being bound by what it's been in the past.

We have seen in various areas the trialling of flexible transport solutions, notably in Mackay a product called Taxi Transit, which operates in the off-peak times and delivers a bus-like service from people's homes to common destinations in the city of Mackay, for a bus fare. It does it far more economically than a large-scale bus operation. We'd also probably encourage the commission to look further into the role of taxis in building an accessible society. The wheelchair-accessible taxi has almost single-handedly provided mobility for people in wheelchairs in our society, and when we've got planners out there who are requiring accessible buildings to be built and for renovations to retrofit buildings so that they're accessible, that is of no benefit to society if people can't get to those facilities, and there's a large proportion of the community who have a disability who rely on taxis to get to those venues.

The wheelchair-accessible taxi is the obvious way that people in wheelchairs get to those venues. Folk with a sight impairment, maybe hearing impairment, maybe a disability where they use a walker or a collapsible wheelchair use standard cabs, and so taxis play an understated or an underestimated role in building a more accessible society, and with an ageing population this is going to be something that needs to be grown and fostered. The report does mention the role of taxis providing accessibility, but we believe that the report should strengthen that.

We were a little surprised to find on page 190 that the commission's report

talks about the public benefit tests of all states, with the exception of Queensland and South Australia, and of course it was therefore quoting public benefit tests that were recommending deregulation or something akin to it. Of course, the Queensland public benefit test argues strongly for the retention of a regulated environment. We think, for balance reasons, that should be noted in the report.

**MR BANKS:** You mean the Queensland review or the government's response to the Queensland review?

**MR DAVIES:** The Queensland government's public benefit test, which I think was produced in September of 2000. It's simply a point that we believe - and I think the commission would agree with this - that there was a range of standards by state governments doing public benefit tests and by and large, as Prof Nicholls identified in the report that the commission noted from the ATIA, they've tended to focus on economic issues and ignore social and environmental issues. I think that as a case in point, the Queensland report did take into consideration social and environmental issues and consequently, was out of step with, say, some of the other states.

**MR WEICKHARDT:** If I could just ask on that matter: has the National Competition Council accepted that assessment or is that one on the list of reservations, fines and withholdings?

**MR DAVIES:** The National Competition Council's response in regard to Queensland is that they accept the fact that Queensland found that there were benefits associated with maintaining a regulated environment. However, the NCC have picked up on a technicality, which was that the Queensland review did not address the issue that regulation was the only way of delivering the benefits. Because it failed to address that particular issue, the NCC has dismissed the Queensland review. On such an important issue with so many implications for people's lives and livelihoods, it was disappointing to us that the NCC took such a technical view of Queensland's report.

Another issue which we were surprised at was the commission's report notes that there are problems when jurisdictions have implemented regulation; in particular, that there can be a lowering of productivity levels. This is certainly the case that occurred in the Northern Territory. Demands stayed the same, the supply of taxis increased and therefore, the productivity per taxi dropped significantly. It's surprising to us that the Productivity Commission isn't concerned about productivity levels, because what we've found is that the taxi industry, by virtue of it being an on-demand service, wrestles with trying to lift productivity levels and that's the best way to keep prices down. Of course, the introduction of open supply of taxi licences reduces those productivity levels.

So we believe that the taxi market is a case in point where introducing an open supply of licences is going to work contrary to what people expect and we believe this has been borne out by the empirical evidence which shows - as the OECD report suggests - that there are negative outcomes when jurisdictions deregulate and there has been - particularly over in America - cases where deregulation has been followed by the reintroduction of regulations. I think if you looked at the Northern Territory, you'd find that they opened up the supply of licences and then found that that has created enormous problems for industry participants, hasn't solved customers' problems and created a benefit to customers, and consequently they have reintroduced moratoriums periodically, restricting the supply of licences.

We note in the report - and we welcome it - that the commission has identified a problem for regulators in looking at deregulation, and that is how you compensate licence-holders, taxi licence-holders, for the economic loss that might be associated with deregulation. The report talks about that being the main barrier to deregulation. Our view would be that it is a problem but it is not the main barrier. The main barrier for deregulation is that it doesn't deliver the benefits to customers and consumers and the community that it has promised. Certainly, it's an obstacle to good policy as to how you adequately compensate licence-holders. But the main problem is that deregulation hasn't worked when it has been applied to the taxi industry and it has produced significant externalities which, on balance, have outweighed any benefits.

On page 192 of the report, there's a recommendation for genuine reform in the taxi sector. The next dot point talks about reforms and improvements for the public transport sector. Consistent with our view that taxis are part of public transport, we don't believe that it's good policy to be looking at introducing general reforms to the taxi sector in isolation for what is otherwise planned for the public transport sector. In fact, those two recommendations ought to be folded into one. We believe that reform and improvement is needed in the public transport sector because the real competition is with the private motor vehicle and the public transport sector needs to become more effective or efficient in providing services that compete far better with the private motor vehicle.

We believe that's a system problem that requires to be addressed from a system perspective. So you can't just go and tinker with the taxi industry and introduce reforms without looking at what the implications would be for other initiatives. There's no point in going off and putting additional fees on parking in CBDs, maybe putting fees on cars entering the CBDs, no point in putting more buses out there if you're not providing a solution for people's travelling needs. One of the dilemmas out of putting so much money into mass transit solutions is that they don't provide a door-to-door solution for customers that's equivalent to using a private motor vehicle.

If 20 per cent of the Australian population has a disability of some form or another, which is according to the ABS, we need to be able to provide door-to-door solutions. Currently, policy makers are assuming that people can get off at a bus stop or they can get off at a train station and walk home. Yet, the infrastructure doesn't exist there in terms of the footpaths. The climate in Australia doesn't exist such that it allows people to walk home when it's wet, when it's inclement, in terms of humidity. We came to this meeting and it hailed in Canberra. We note that after dark, many of our senior citizens feel vulnerable and don't want to be out there walking the streets and we note that society is becoming much more protective of our young. Consequently, we need door-to-door, safe transportation and we believe that taxis are an obvious player and complement to mass transit, providing that last link from nodal points to home.

The commission has recommended that COAG endorse an independent national review of passenger transport and the ATIA welcomes this. We believe this is a good idea. Passenger transport is really the big ticket item and that's what we said when we started our presentation. We'd like to be involved in that and we believe that in any such review, it will be important that there's reasonable access and involvement by key stakeholders. Certainly the ATIA would be willing to participate.

We also believe that such a review ought to draw on the conclusions of the commission on page 124, that when dealing with matters with significant social and environmental impacts, it's important that those reviews are not constrained by some form of ideology which reverses the onus of proof and by that, we shouldn't be just looking for change for change's sake; we shouldn't be looking to introduce competition for competition's sake. What we should be looking at is policy change which is about delivering benefits to customers, benefits to the community. In that sense, the ATIA would welcome such a review.

So, in summary, the taxi industry is not broken. It's a good performer and we know this from our benchmarking against international comparisons. The taxi industry therefore is well placed to be a supporter and a complement to initiatives to solve the big problem, which is passenger transport in Australia. This strength should be capitalised on by policy-makers. In that sense the main game ought to be lifting the market share of public transport vis-a-vis private motor vehicle transport.

As a last point, the Australian taxi industry has delivered significant environmental and social dividends already. We see problems facing us, like traffic congestion, air pollution, social fragmentation, an ageing population - to name a few. The taxi industry has been part of the solution for many of those things. We would like to be allowed and encouraged to become more of the solution. As a case in point, on 31 December 2007, there is an expectation that folk who want to call for a

wheelchair accessible taxi will have that wheelchair accessible taxi respond as quickly as a standard cab would respond.

We, as an industry, are working towards delivering that outcome. It's a difficult one to deal with because, as you'd know, the taxi industry is owned by the private sector and runs without subsidy from government. We need to be able to deliver those sorts of results, and that requires a coordinated and system approach to the regulation of taxis. So as I said before, we support reform and improvement of the whole passenger transport sector, not some isolation of the taxi industry and some reform agenda for the taxi industry that doesn't consider the wider implications. Thank you.

**MR BANKS:** Thank you. I think we're in heated agreement with each other on that.

**MR DAVIES:** Correct.

**MR BANKS:** Because you'll notice the subtle change in the language, that by the time it got to the draft proposal we were speaking about "passenger transport sector".

**MR DAVIES:** Indeed.

**MR BANKS:** It united how we had interpreted public transport, as the traditional public transport, with the taxi sector and that is why we handled them both in the same section. We can perhaps explain that a bit better as we go through, but certainly that's where we got to, and that's why we dealt with the two sides of the passenger transport system in the same place.

**MR DAVIES:** Good.

**MR BANKS:** That's one point. I guess the other point, just to get you to perhaps share with us how you see the industry responding to the increased demand over time. I mean, in a sense what you're saying is that there needs to be more reliance on taxis proportionately, or at least in absolute terms as society gets a bit older and so on, which translates into more cabs on the road. How do you see that happening?

**MR DAVIES:** Okay, perhaps I can answer that. The number of cabs is a function of a range of things: it depends on how good and effective the bus service is, the rail service is, how many people own cars and therefore you start looking at the age of the population, because obviously people with large families or young families - they don't have the same number of cars per person as other types of households; also the urban form. We see that cities are expanding and the densities dropping in cities, which makes it harder and harder for mass transit providers to deliver services

efficiently.

Determining the number of taxis required to service an area is a complicated process. We've also seen, as an industry, competition from courtesy buses, community transport services, paratransit services and limousines are out there providing a service as well. Really, getting the right number of cabs out there or taxis for a particular area needs to take on board all of these issues. At the end of the day the taxi is a business which needs to be able to deliver reasonable incomes for drivers, for operators and the taxi licence owner.

So the answer to your question is: could we be doing far more work than we currently are? Yes, look, there's plenty of work out there that we've identified, which is being done inefficiently either by buses, by community transport and certainly under the name of courtesy transport. There is certainly an ability for the cab industry to grow into that work and that's where we need a proactive and systems approach from planners, to look at what response they want and how they want to deliver transport. But, at the moment, what we're finding is certainly cities are growing, there is some encouragement for high-density dwellings, but by and large it's low density and that is putting a great deal of pressure on the mass transit providers, to be able to deliver efficient services. We'd see the maxi-taxi, the dial-a-ride type of concept coming into play in the future, far more than it has done in the past.

**MR BANKS:** Thank you for that. Just in more sort of pragmatic terms, how would you see the expansion of licences occurring? Would governments be distributing them for nothing? Would they be auctioning them? Would they be giving them to existing drivers, owners? How would it go?

**MR DAVIES:** Our preference would be that the government reviews the market, looks at what is required. For your interest, the Queensland government has developed a model which provides consistent outcomes and recommendations on a per district, taxi district basis - and presumably the other states are down the track of developing similar sorts of models - and the government continues the process of issuing those licences.

The key to this is not only having enough taxis out there but it's about having enough taxi drivers behind the wheel, and it's all about providing a 24/7 service. What the international studies show, is that the more taxis that you put out there, those additional taxis will service the thick routes, so you'll find that there will be plenty of taxis at airports competing for that work, but they won't get out there and service the far-flung fringe suburbs. Those far-flung fringe suburbs are the ones where you can't get a bus service, because there's just not enough customers. So the restriction on the supply of taxis in an area works well when you've got an efficient



dispatch service.

**MR BANKS:** Okay. Does Queensland currently auction plates?

**MR DAVIES:** Yes. In terms of taxi licences, the current arrangements with restricted supply allows the market to determine what the licence value should be. The release of licences in a strategic and sensible way by government to a fully informed market has maintained licence values, but licence values have gone up and they've gone up. The market has determined them, and we think that's a sensible way to go, to continue.

**MR SACH:** In Victoria there is probably a different approach from the government's point of view, where the government is essentially leasing licences into the marketplace and in Melbourne, in particular, there are those peak service taxis you might have heard about. They operate late afternoon and all through the night, and they're leased out by the government on an annual basis. That has flowed through into the country areas. In some regards, I guess, the release of government-leased licences modifies the private market.

One of the issues that has come up out of that, particularly from people in the country, is that they see it as an inhibitor to growing their business in a value sense, because they can't transfer those licences and they can't sell them. They can't do much with them except operate them. The general comments we're getting back from the country people are that they see that as a disincentive to grow their business. That's the only comment I'd make. That's one of the downsides of it.

Can I come back to the point you made about where the industry is trying to develop its new markets. I heard somebody talking last Monday about the silo effect of isolating different businesses into looking at it in the narrow sense. We believe that it's got to be looked at, as Blair was saying, as a broad transport task. That's why in Victoria my organisation is working to try and get themselves into that wider planning aspect, to become part of the public transport strategic thinking. It's difficult at times because the people who you're trying to influence have that silo effect of saying, "We run trams," or, "We run trains," or, "We run buses," rather than looking at a whole strategic sense of the transport task.

We're trying to break down those barriers and say, "Let's look at what the demands and the needs of the community are and work together and create those strategic alliances which we need to create to become partners in the job." I'm sorry I diverted back, but I think it's worth saying that, as an industry and to look at growth, we've got to - as we should be doing - look at new opportunities and new alliances.

**MR WEICKHARDT:** The comment that I think was made in the submission by the Canberra cabs people - and you alluded to it too - is that there have been examples where additional licences have been released and the problem becomes that there are enough taxis but not enough drivers. I guess I'm sort of struggling in my own mind to understand why that's the case because, at least in Victoria where I come from, it seems that taxi plates are still selling at high values. I guess that that value is underpinned by some expectation that the plate holder has of the amount of money that they're going to earn from the plate.

It sort of implies that maybe the problem is that the money that's being gained by driving the taxi is still going primarily to the person who owns the plate and not to the driver, because if the driver was getting a bigger crack at the amount of money that was coming from it you'd expect the plate value to fall and there to be a flock of people wanting to drive cabs, which doesn't seem to be what's happening.

**MR DAVIES:** We're currently experiencing some shortages of drivers for some shifts across the country, but it's not uniform. That's the first comment to make. The second comment to make is that we are finding it difficult to attract quality drivers into the industry, but so are virtually a whole range of industries across Australia. We call it a shortage of taxi drivers, but there's a whole range of industries that can't find salespeople, they can't find people to work behind the bar, they can't find staff. We are in an economic cycle where employment options for people are at a maximum and unemployment is at a minimum, and folk are looking at their options.

Quite simply, the price of taxi licences moves independently of the amount of money that can be made out of a taxi on a weekly basis. I'll give you an example. We find that, say, in a taxi district where they service a mining community you can have a downturn in the mine and people are paid large redundancy moneys. They want to then get out there and buy a job. They buy themselves a taxi licence and, as a consequence, the demand for taxi licences is strong and the price of the taxi licence goes up, notwithstanding the fact that the local economy is actually devastated by a closure or a downturn in the mine. We then find that that mine might start up again and what we see is that the folk who then joined in the industry want to exit as quickly as they possibly can to go back to their chosen profession and, as a consequence, they're selling licences and licence values are going down just at the same time when the income for a cab is going up.

This is something that casual observers of the taxi industry fail to understand. Taxi fare structures are not determined by licence prices. It's a fundamental flaw, particularly of organisations like the NCC, to assume that if licence values went down to zero there would be some commensurate reduction in the fare structure. Fare structures are determined independently of the price of a licence. In fact, the price of a licence is not a factor in the determination of the fare structure. It flows

out of the fare structure. It's a dependent variable, not a causal variable, of price structure.

**MR BANKS:** Are you talking now in a regulated environment or a nonregulated environment?

**MR DAVIES:** Yes, a regulated environment. The issue for us is that the shortage of drivers is a function of simple economics. People who would otherwise be driving have got a range of other job options available for them, and at the moment many of those folk are choosing those other options. What we're also finding is that, because it's 24/7 service, many of the taxi drivers across Australia are casual drivers. They drive one shift, two shifts, three shifts. Typically, they do that for their own reasons, but many times it's because they need some supplementary income to their other profession.

In the current environment they're able to pick up overtime in their existing profession, and so they don't need to drive a cab as much. The second thing is that currently the demand for taxi services is generally buoyant across Australia, particularly going into the Christmas period. What we're finding is that people who would otherwise drive, say, three or four shifts are actually making enough money on two or three shifts. Consequently, we're seeing these micro issues coming into play and creating a macro issue for us, which is how do we attract drivers into the industry.

**MR BANKS:** Why does the miner buy a job rather than just getting a job in a cab? Why does he buy the whole cab?

**MR BOWE:** I think to please himself when he operates.

**MR BANKS:** Okay.

**MR DAVIES:** I think one of the things that's occurred in Australia is that the taxi industry is seen as a relatively stable industry, and there's a general belief out there that taxi licences will create an income, but there's an expectation of capital growth associated with the licence. We could quote to you examples where the licence value has gone down, but I believe that for many investors they assume that over the longer term licences do grow and are a reasonable investment, or the return on licences is reasonable, compared to the risk associated with them. Over the longer term, that certainly seems to be the evidence.

**MR BANKS:** What proportion of licences would be owned by, say, professional investors as opposed to owner-drivers or people who might have a couple of cars but essentially are in the taxi industry as opposed to investing in it?

**MR BOWE:** Could I quote Sydney?. We probably have about 40 per cent of our owner-operator drivers. We would probably have another 40 per cent who have retired and lease their plates. We would probably have upwards of 20 per cent who have become investors over the period, but those investors have a fair bit of play, too, on the price of the plate, because when they liken it to an annual return, if that return drops as it has in Sydney, then consequently plates come on the market and you see the classic case at the moment, in 12 months, from 290,000 down to 230,000. Leasing fee is dropping by \$100 a week. You know, it really does reflect the economy, as we said, and the marketplace out there and the stability of the marketplace in terms of drivers, availability of drivers. It all goes into the mix.

**MR DAVIES:** It's worthwhile making the point that most jurisdictions have a linkage between ownership of a licence and a requirement to participate in the business, either as an operator or as a driver. In the 1990s, most jurisdictions actually dropped that, allowing the investor to come in and own the licence. Prior to that event, people who owned a licence were typically driving it or operating it. What that then meant was that there was usually a limitation on how many licences you could be associated with. Consequently, it limited the scale of operation.

What we have seen since the 1990s is the emergence of fleet managers who might be running 50 cars to 100 cars in the larger capital cities. That has allowed the investment in the industry for things like safety programs and quality assurance programs into their operations, which has been a good thing. Of course, it has also then meant that there has been an estrangement between the person that owns the licence and the actual operation of the licence. I suppose our position would be that there needs to be a balance between those issues. At the moment, as John was saying, there are a significant number of people who own licences who are still very active in the industry and that would be true of all jurisdictions, but there's also a significant number who are simply investors.

**MR WEICKHARDT:** Let's say just hypothetically there was no capital appreciation or no value in a licence plate at all. With the current fare structures, would you have people still owning a cab and getting another person to drive it? Is there enough to go around with the current fare structures if there's no capital appreciation from the plate?

**MR BOWE:** I think, Philip, you come back to what we said earlier. We have seen our drivers go down from a six-shift a week taxi driver to three and four. It is a misnomer. Certainly Monday and Tuesday nights are quiet. They're quiet for everybody. The other nights give them sufficient income that they can reduce their working week. That seems to be general over the industry and it's causing us no end of problems, because we still have to provide that service Sunday, Monday and

Tuesday nights.

**MR SACH:** What tends to be happening in Melbourne is that we have got a very large shortage of drivers. In the early part of the week, we're lucky to be able to cover 60 per cent of our shifts. To put it another way, you can only get about 60 per cent of the cars out. Even on Friday and Saturday night, and even now leading up to Christmas, we're lucky to hit 90 per cent. You're talking about labour supply for drivers. My association runs a training school for drivers and 60 per cent of the people coming through our driver school are Indian students. Under the visa, they can only drive 20 hours a week during school time, but unlimited at other times. Now, that's a very unstable base to be able to plan and run a business.

If you're talking about income for drivers and operators - and generally in Victoria we work on sharing the purse at the end; about half each - these fellows, particularly the inexperienced ones, are probably only earning over a 12-hour shift about \$8 an hour. That's not great money. If you look at another stat, if you take a cab that is working on the road in a shift, they only have passengers on board for about 30 per cent of the time. They're going to jobs, they're sitting under a tree or waiting for a job to come through in the area that they're in.

In terms of revenue to the driver - and we've seen it with some of these students that have come through. We did a survey of students - our driver students - over the last two years and we sent it out to about 500 students. We found that 30 per cent of them have now left the industry and there's another 30 per cent who want to. That makes it really difficult to put in quality control issues and develop up experience and competence. That makes it difficult. We're not going to give up, though.

**MR DAVIES:** It's probably worthwhile to make the additional point that in most jurisdictions there will be a difference in the value of the licence, depending on where you go. That difference could be very large and yet they will typically work under the same fare or tariff structure. We have got some licences in some country towns where they have been sold by the state government for a dollar, so that's their value. We have also got some licences which, because they're obviously attractive to certain folks, have moved up into the hundreds of thousands of dollars. They work under the same tariff structure quite often. The marketplace which is determining the price for the taxi licence is working independently of the price paid by the customer for a taxi fare.

I think the key thing there is all about what service gets delivered to the customer. Where you have got a very efficient dispatching of cabs, so that the nearest cab is the one that is dispatched to the customer - and that takes an enormous amount of fleet discipline - then pick-up times can be incredibly quick. What we

find is in those jurisdictions where they keep these statistics, it is quite commonplace for customers to be picked up say within 10 minutes of calling on 90 per cent of occasions - 90 per cent plus - where the nearest cab is being dispatched to pick up the customer.

Where you have got no fleet discipline and no coordination of dispatching services, what you tend to find is that the taxi industry then becomes hail and ride: your ability to pick up a phone and in an emergency situation be able to call a cab to help you, say, take your young child off to the doctor's, which is a common experience in Australia, that facility starts to dwindle away. This is where it's important to see the social impact of what the cab industry does. In virtually every jurisdiction of Australia the cab industry will be called on - in those semi-emergency-type circumstances - to, say, take products that are required for medical procedures between one hospital and another, because it's recognised that the taxi service is reliable; it's dependable.

We as an industry are called upon to provide safe transit for children. You're expecting that the taxi driver is a credible person who is known to have passed some qualifications in terms of their competence to operate a cab, but also not just their medical fitness but their character fitness; to be alone with somebody who otherwise might be vulnerable. What we have seen in deregulated environments is that the incidence of sexual assaults, of fraudulent behaviour, of price gouging, all these things take their toll. We typically get very good support out of the tourism industry, because even at a business level it's recognised that an efficient and honest cab service is a very significant asset for a tourism industry promoting its services. But answering Philip's question: yes, taxi licence values vary.

**MR BANKS:** What that tells me is the market does work, in a sense, because as you said, the value of a licence is related to the fare structure but it's also related to the amount of business that licence can generate in the market in which it's allocated. We've got an economist coming to talk to us later so we can explore it a bit more.

**MR DAVIES:** But it's important to say that if the cab service is coordinated by good dispatch services, then the ability to service an area with less cabs, and therefore for the income per cab and the productivity level per cab to increase, is significant. That's where we spoke about before that the simple opening up a supply of taxi licences typically reduces productivity levels, reduces levels of income per cab, but oddly enough can actually diminish level of service to customers.

**MR BANKS:** As you say, the question is, what's the appropriate volume as a market evolves?

**MR DAVIES:** This concept of looking at passenger transport from a system

perspective, if we've got an urban form which is highly decentralised and low densities, then the taxi industry possibly has a larger part to play in the solution than it does in other countries.

**MR BANKS:** All right. As I indicated, I think we're going to be talking taxis again a bit later on, so we'll save some questions for those participants as well. Thank you very much. We appreciate you coming all the way to Canberra and wish the weather had been a bit nicer for you when you arrived.

**MR WEICKHARDT:** Hope you took a taxi here.

**MR DAVIES:** We did.

**MR WEICKHARDT:** And hope you didn't have to wait too long.

**MR DAVIES:** No, we didn't.

**MR BANKS:** We'll just break for a minute now before our next participants.

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**MR BANKS:** Our next participant today is from the Shopping Centre Council of Australia. Welcome to the hearings. Could I ask you to give your name, please, and your position.

**MR COCKBURN:** Yes, Milton Cockburn, executive director of the Shopping Centre Council of Australia.

**MR BANKS:** Thank you for coming along today. I'll make sure I've got this right: you've provided a submission back in June, I think, that we used in preparing our draft report, but I don't believe you've made another written submission yet.

**MR COCKBURN:** No.

**MR BANKS:** Okay. I'll leave it to you to outline the key points you want to make.

**MR COCKBURN:** Thanks. I heard you say to the previous witnesses, Gary, that you were in heated agreement with them and I think that describes our view of the Productivity Commission's draft report, which we strongly recommend; and in particular, we strongly recommend the chapter 11 recommendations that the competition policy reforms should continue. We believe, along with the Productivity Commission, that these reforms have already delivered significant economic and social benefits to the nation, but we also believe that there is more work that needs to be done. Without a body such as the National Competition Council continuing to prod governments to continue these reforms, the impetus will be lost and the potential for backsliding by governments is real.

Our experience of the national competition policy reform so far has been mixed. In one of the most significant areas for us, trading hours reform, there's no doubt that it's been the existence of national competition policy and the threat of penalties or the threat of reduction in national competition policy payments which has been the major driver in terms of the introduction of Sunday trading and/or the deregulation of trading hours around Australia, to such an extent that in less than a decade we've gone from a situation where very few states have had Sunday trading - that is Sunday trading, of course, for the larger shops - to a situation now where really only Western Australia and regional Queensland don't permit that; and in Western Australia you're probably aware the government has announced and in fact has put through parliament a referendum bill which will be held along with the state election probably in February.

It's in that area that I specifically want to comment today, and particularly to endorse the comment on page 289 of the draft report that:

A modified legislation review program focusing on periodic



reassessment of significant remaining anticompetitive regulation should continue beyond the life of the current NCP. So too should some independent review mechanism to monitor and report on progress in implementing the various reforms and the outcomes achieved, and gatekeeping arrangements for vetting new or amended regulations restricting competition.

We haven't put in a second submission, commissioners, simply because we set out in our first submission in some detail what we regard as being the unfinished business as it affects our industry. In particular, we're concerned that even in the trading hours area - which, as I acknowledged, significant reform has taken place - we do have the bizarre situation where, even in some of those states such as Queensland and New South Wales where the NCC has effectively ticked off those states in terms of having completed their reforms, for example, in the last month in both New South Wales and Queensland we've had legislation put through parliament which has effectively removed Boxing Day as a trading day for most of the general retailers - that is, the large retailers.

But exemptions have been made for so-called tourist areas. So in Queensland, for example, if you happen to be in Brisbane on Boxing Day, the shops will be shut in that city. If you're lucky enough to be down the Gold Coast, the shops will be open. If you're in Cairns, the shops will be open; if you're in the Townsville CBD, they'll be open; if you're not in the Townsville CBD, they'll be closed. If you're in Toowoomba, they'll be closed. So we have the bizarre situation, as I said, where you've got different trading regimes that will operate on Boxing Day all over Queensland. New South Wales is slightly better, but there again, if you're in Sydney you'll find the shops will be closed, but if you're out at Walgett, if in fact there were large shops, you'll find they'll be open, because Walgett is a designated tourist area. Sydney, apparently, is not.

So we still have these bizarre situations where state governments - even those state governments where the National Competition Council have said they've finished their business in relation to regulation of trading hours - are still subject to the temptation of reregulation. The other areas of unfinished business - and I won't go through them, because as I said they're detailed significantly in our submission - is retail tenancy legislation. We are not convinced that a number of the states have really done national competition policy reviews of retail tenancy legislation. Every state and every territory has retail tenancy legislation and one of the frustrations in our industry is that the legislations are not uniform and are not even harmonious, and they are also subject to significant review on a regular basis; and in fact most of my work is rolling from one retail tenancy review to another.

New South Wales conducted a separate national competition policy review of

retail tenancy legislation. It found only two things wrong with it - coincidentally, one was a thing which happened to be of benefit to landlords; one was a thing which happened to be of benefit to tenants; and changes were made there - but in a matter of months has begun a review of the Retail Leases Act again. This is a statutory review which it's required to do every five years or so, so it just seems to us to be bizarre to have gone through a national competition policy review and then to be going through a Retail Leases Act review in which, of course, the principles of the national competition policy seem to be pushed behind. I mean, the review is proceeding as though, "Oh, yes, we've done national competition policy review. That's all over. Now we get down to review the legislation." That seems to me to be a reason why this ongoing need for legislative oversight is necessary.

By the way, we've mentioned in our submission some of what we regard as being the obvious areas where retail tenancy legislation is in conflict with competition policy. The other major area, and this is one I think that has really slipped off the radar screen of the national competition processes, is the regulation of real estate agents in all states and territories. This is legislation that really developed back in the 1940s, and it's essentially residential real estate regulation, and it's designed to protect the consumer from the activities of the real estate agent and the property agent.

We think it's still valid, obviously, that small residential owners and, for that matter, small commercial owners are protected by the legislation. But of course the legislation predates the rise of the listed property trust, so we've got the situation now where major members of ours are actually caught by this legislation which was really designed to protect residential owners, and so we had the bizarre situation prior to, for example, the amalgamation of the Westfield entities. In fact I think it still applies even though they're now amalgamated. But we had the bizarre situation where Westfield Trust was protected by the legislation against the activities of Westfield Holdings.

Now, that might not sound much of a concern but the protection meant that all sorts of bizarre situations had to occur inside Westfield Holdings in order to conform with the act. Cheques had to be issued sequentially. There had to be separate cheque signing systems within each state. Senior executives in Westfield had to go off and get real estate licences. So at one stage Stephen Lowy, I think, had to go off and get a real estate licence. He spent two weeks of his time learning how to be a real estate agent, handling residential real estate in the suburbs. So this is the bizarre situation we've got.

We've tried, and we are still trying, to get the various state governments to recognise the folly of this sort of regulation. One of the follies, by the way, if ever we have the situation where Westfield Holdings, for example, claimed against

Westfield Trust for malfeasance it would decimate the statutory fund that exists for protection. So in reality there is no benefit that comes from this regulation and there is just frustrating regulatory detail. That's certainly one area where we will be pressing the NCC, or the body that replaces the NCC, to elevate up its priority list because without it we despair of state governments addressing the situation.

The final one, which again I think comes under the heading of the need for continuing legislative review process - and it's also a matter to do with the competitive neutrality principle - is that we are concerned about the Airports Act and the way in which the Airports Act applies to the privatised airports. We have no concern obviously about the aviation-related development that occurs on the airport sites. It's proper, given the federal government's constitutional responsibility for aviation, that there should be a process laid down for the approval of aviation-related development. But we see no reason why non-aviation-related development on these now privatised airport sites should not be subject to the same land-use planning and development control processes that apply for other private land.

So we've got the bizarre situation where you can have, for example, a shopping centre being developed on privatised airport land yet that shopping centre does not have to conform to state, regional or local planning schemes, and the airport does not have to lodge a development application with the local council, whereas just across the road, if a shopping centre was being developed outside the land, then obviously that shopping centre would be subject to the various state, regional and local planning schemes. It would be required to lodge a development application with the local council and it would be considered in terms of the processes for every other private development.

There is a review of the Airports Act - in fact, a review that's been going on for a couple of years now. We understand the recommendations of that are with the minister, so it may well be that this anomaly is being addressed in the review of the Airports Act. But again it just seems to us to be one area where the national competition principles should be extended to cover that particular area. That's all I really wanted to do: just to highlight, as I said, the things we spelt out in some detail in our original submission.

There is one other thing I should say before I finish. The Productivity Commission, I think on page 130, addresses the transparency of the review processes. We think that's a very important thing. One of the frustrations we have is that it's sometimes very difficult to find out in the areas I've mentioned just what a state government has done in relation to its national competition policy obligations. If the process is to continue - which we certainly hope it does - I think the commission's recommendation that there should be an explicit requirement for governments to make public the results of those reviews - and where it deviates from

those reviews, to make that public as well - is a very important recommendation which we'd strongly endorse. I'm happy to take any questions, if there are any.

**MR BANKS:** Thank you very much. I found in this submission a theme that I suppose has emerged in relation to statutory marketing, to my surprise. But it's the fact that I guess in a federation you have some jurisdictions conducting experiments in regulation from which you can learn in other jurisdictions. The one that struck me here, I suppose, was in relation to impacts on small business of shopping hour deregulations. I might just get you, for the record, to comment on what those impacts have been, because as you know that's been one of the key political blockers anyway to deregulation occurring.

**MR COCKBURN:** Yes. I think all sorts of concerns would have been expressed. In fact, we're all here old enough to remember when Saturday afternoon trading was introduced. You'll remember that the same concerns were put forward by small business and even by the Shop Assistants Union - that to extend trading from midday to all day Saturday would in fact decimate small business. It didn't occur. The same arguments were put forward in relation to Sunday trading. Both anecdotally and also to some extent in terms of research, we don't believe there's any evidence that in fact small business has been significantly affected by Sunday trading.

In fact the Australian Retailers Association, which is the major retail association around Australia, has been a strong supporter of Sunday trading. In fact in all of the states in which we've been involved in this as an industry issue we have been in partnership with the Australian Retailers Association on it. Secondly, people forget that the majority of tenants inside shopping centres of course are small businesses. On average around about 55 per cent of the tenants of Australian shopping centres are independent operators and there are probably another 6 or 7 per cent which are small business franchisees. So these are small businesses that are currently not able to trade on Sundays because the anchor tenant is not able to trade on Sundays.

The advent of Sunday trading in fact has meant that a lot of these small businesses themselves have been able to trade and have enthusiastically begun trading on Sundays. We found that very quickly, once Sunday trading is introduced - and we've been able to observe it now just recently in Brisbane where it came in in August 2002; in Adelaide I think it was October last year - we've certainly not observed any concerns about small business. In fact, it dies as a political and a media issue almost immediately once it is introduced. We did actually for the review which took place in WA last year commission Access Economics to have a look at this whole issue of the economic impact of liberalised trading hours. Although I think it's fair to say they were handicapped by the absence of data, we did lodge the Access Economics report with our submission. In fact, it was referred to in the draft

report.

But there are other small business organisations that have strongly supported the introduction of Sunday trading. For example, Metcash which is one of the major suppliers to Independent Grocers, have long argued that in fact they don't believe in restricted trading hours because they believe that the small supermarkets should be able to compete with the major supermarkets on a whole range of areas rather than in terms of restricted hours. Sorry. That was a somewhat long-winded way of addressing you.

**MR BANKS:** No. Thank you.

**MR WEICKHARDT:** Can I just clarify one issue on this regulation of real estate agents point. Given the example you quoted of the legislation bizarrely getting between Westfield Trust and Westfield Holdings, now that they're for example all in one entity and now that real estate management or the property management is becoming more commonplace and is being integrated with the trust structure that used to be there, are these regulations impacting on that?

**MR COCKBURN:** Yes, they are still, though the specific example of Westfield - I must confess since the merger took place, I haven't inquired of them as to whether that's resolved their problems. I think the answer is it's doubtful, because for example with AMP in AMP Capital, the management of their shopping centres is done by AMP Retail which is a separate company but of course a related entity to the overall AMP Capital investors and they still have to conform to the regulations, even though they are a related entity. So I think the answer is, yes, they will still be caught by the legislation.

**MR WEICKHARDT:** This legislation only affects the interface between the property manager and the owner of it?

**MR COCKBURN:** That's right, yes.

**MR WEICKHARDT:** It has got nothing to do with the tenant in this case?

**MR COCKBURN:** No. That's the bizarre thing. The tenant doesn't benefit from this legislation at all and the tenant of course is protected in terms of their relationship with the owner by retail tenancy legislation and of course - - -

**MR WEICKHARDT:** Unless they are a listed company, are you saying?

**MR COCKBURN:** Yes. Well, in some cases even listed companies are covered. It varies from state to state. As I said, one of the frustrations we have with the

legislation is that it is not harmonious, but in some states such as Victoria and Queensland, even though you are a listed company, you are still covered by retail tenancy legislation - sorry, in New South Wales and Queensland, and in Victoria you're not.

Our strong view is that if you are a listed company you really don't need the protection of retail tenancy legislation and you are often in a situation where you are far more powerful than in fact the individual landlord with whom you are dealing. So it seems to us bizarre to be in a situation that you are requiring retailers - to give you an example: the Colorado Group would have probably around 400 stores around Australia and the majority of those would be in shopping centres.

Possibly even if you are dealing with a Centro or an AMP, the bargaining power you have got when they're wanting you to come into one of their centres is quite enormous, and so the notion that Colorado has less bargaining power than, say, Westfield or AMP in that situation is really quite bizarre; let alone getting down to the level where you are talking about an individual shopping centre owner. As I said, the justification for retaining these property companies under the estate agents legislation has long since - in fact it never existed in the first place. They were just caught up in the legislation and I think there are strong reasons why they should be released.

**MR WEICKHARDT:** And you say in Victoria the review found that the costs did exceed the benefits.

**MR COCKBURN:** That's right.

**MR WEICKHARDT:** So what happened in Victoria?

**MR COCKBURN:** It didn't go anywhere.

**MR WEICKHARDT:** What, the government decided - - -

**MR COCKBURN:** The government basically didn't move any further on that particular area and, as far as we're aware - this comes back to the transparency issue - none of the governments in the other states have moved into this area.

**MR WEICKHARDT:** Have they held reviews in the other states?

**MR COCKBURN:** We think not.

**MR WEICKHARDT:** Thank you.

**MR COCKBURN:** Thanks very much.

**MR BANKS:** Thank you very much for coming. We will just break for a couple of moments before our next participant.

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**MR BANKS:** Our next participants this afternoon are from Canberra Cabs. Welcome to the hearings. Please give your names and the capacities in which you are here today.

**PROF NICHOLLS:** My name is Des Nicholls from the Faculty of Economics and Commerce at the Australian National University. I act as an adviser and consultant to Canberra Cabs.

**MR O'BRIEN:** My name is Denis O'Brien. I am a director of Canberra Cabs and of the Canberra Taxi Proprietors Association.

**MR BANKS:** Thank you, and thanks a lot for coming in today. We have a submission from you, which is very useful. We probably have a couple of questions but we will give you the opportunity first to raise the key points you want to make.

**PROF NICHOLLS:** I guess with respect to the taxi industry in the ACT and Australia the national competition policy and the council took it on itself - we had to do reviews. Every state and territory did reviews and specific to the reviews was looking at deregulation and taking into account the public benefit issues and when they put out recommendations, particularly in the ACT and other places, deregulation was recommended - deregulation of entry - but it was rather interesting: none of the reviews, to my knowledge, actually went any way to suggesting how they could increase demand for taxi services. They were all for deregulating the supply, but not increasing the demand.

There was also a carrot offered by the government. Once you did this and got a tick on the annual assessment, then you got a bunch of money, and that was the sort of carrot-and-stick approach. The Northern Territory was the first one to go in that direction. They actually deregulated - I think it was in 1999 - and within 15 to 18 months the number of taxis went from 138 to 186, an increase of 35 per cent, and there was no increase in demand, so obviously productivity and profitability are going to be hit, and that's exactly what happened.

The quality of drivers dropped and a whole bunch of safety issues - it was always coming up in the Northern Territory parliament; discussions, questions - and the paper I have left with you documents a fair bit of that. In the end there were major safety issues, problems. The press was onto them - drivers working for 12 hours for \$85, I think were the figures quoted. There was just no return from it. There was no increase in demand with the increase in the supply.

The Northern Territory government actually paid full compensation. It cost them \$25 million - or a bit over \$228,000 per licence - and, to recoup that, they charged in Darwin \$16,000 lease fee each year then. So every taxi has to pay



\$16,000 lease fee to recoup the 25 million. They expected it to take seven to nine years, but it looks like it is out to about 12 years now, so the taxis have all got to pay this lease fee each year. They have ended up in real trouble up there, so much so that they set up a Commercial Passenger Vehicle Board and reregulated. They in fact reregulated; they deregulated again, and then they have reregulated and they have stuck with the regulation now to try and get some sanity back into the industry.

Other states have come out and just said, "We won't deregulate." I think that was the case in Queensland. Others have looked at other places. Macquarie Bank went into particular state governments and offered to buy the plates, pay full compensation, and they would look after charging lease fees and get a return on their investment. They've tried that on in the ACT and they tried it in Western Australia. I don't know how many reviews in the ACT - we've had two state reviews. Stephen King did one first-up with Freehill Hollingdale.

Stephen is a straight deregulator from way back and that's what he said, "Deregulate entry." The government had problems. They had another review. They got the ICRC to do that. Paul Baxter did that. Paul also said, "Deregulate." He didn't want to "to compensate", but he used things like "safety net" and tried to come up with schemes for the government to slowly release plates over a period of time, auction them off, and the money they got after costs and paying WAT lift fees, they would then distribute anything left to the current plate holders as some form of compensation. They would never get the value of the plates as the value of the plates drop.

The government then moved on. They had more hearings. They introduced a bill into the ACT government and it went to the Urban Services Standing Committee. We went through a series of hearings with that at the end of last year. The outcome of that was that they suggested full compensation and the government rejected that; went back to their original bill; it came up in the assembly last August and then got rolled. They can't do anything for 12 months now with respect to legislation.

**MR BANKS:** Yes.

**PROF NICHOLLS:** That's a brief history of where it's at. Canberra Cabs have been a bit progressive. What has happened as a result of these reviews going through, the government introduced another 20 WAT licences - that's wheelchair accessible taxi licences - and they only pay \$1000 a year, these guys. They had 26 on the road and when they're not doing WAT work they're allowed to do normal standard taxi work. Well, we ran some surveys - they're referred to in the submission - and we found that the WATs were averaging two disabled fares a day, or, sorry, less than two per WAT driver, and all the rest of their time was effectively doing standard work. So we had an extra 20 come in there, just about the same time as they

opened the market up to Queanbeyan cabs, and another 16 came in there.

**MR BANKS:** Is it on an annual lease, a renewable lease, basis?

**PROF NICHOLLS:** Yes, it is. It's an annual renewable lease, guaranteed six years. I think they've extended it out to eight years now, is it?

**MR O'BRIEN:** No. They've extended the functional life of the vehicle to eight years.

**PROF NICHOLLS:** Sorry. That's right.

**MR O'BRIEN:** The six-year non-transferable leased licence, if you like, in effect is a perpetual because it will be renewed unless the leaseholder decides not to renew. The non-transferability is a bit of a myth as well. They have been transferred, and there's an expectation that they could be transferred to family members of people who presently own those things, and so in effect they become transferable but without a consideration.

**MR BANKS:** If what you say is right in terms of what people pay for a plate relative to the lease value, then there would be a strong incentive to make them transferable in some way, even if you couldn't do it on the open market.

**PROF NICHOLLS:** That's absolutely right, yes. But as a result of this happening from 1996 to 2003, during that period the demand for taxis has dropped off. It's dropped in fact 14.3 per cent. It went from 2.9 million down to 2.8 million metered fares over that period of time, and with the added cabs coming in - the WATs and the Queanbeyan - the average number of trips per cab has dropped by 21 per cent. So there's been quite a drop-off in the demand for taxis. What our local industry is doing now is trying to become proactive and we're looking at demand-responsive transport systems, talking with the government about those. In fact the CEO, Mark Bramston, is unable to be with us because he's over in New Zealand this week. He's looking at what's going on over there, specifically with respect to airports, but we're going to be looking at - the idea there is, Action Buses being subsidised 58 million a year, and we say: at night why not have the taxis do the quiet runs around the suburbs, dropping people off at home? With the subsidy, we believe we can save a lot of money there and we think that's got a real potential. There is the issue with the unions; that will come in.

Another one that has come to light is with the aged. We have started some discussions with Northside Community Service. As of this week there have been some informal discussions. They will formalise up early in the new year to do a pilot study with the government, with Northside, to take the aged - keeping them at home,

living at home, and when they want to go down and get a prescription made up or go to the doctor, have a taxi service pick them up as part of this demand response. That seems to have worked quite well in some overseas countries and I believe there's potential here for it. So they're being proactive, also trying to look to get more markets coming in.

**MR BANKS:** What's happened with the value of the licences here in Canberra?

**PROF NICHOLLS:** I think I'd turn to Denis for that. If you have a look at the history of the licences, they went through the roof. They got up to I think 320,000 when the Commonwealth said everyone should take their early retirement. They got their golden handshake, were looking for something else, and a lot of people bought licences and it pushed them up to 320-odd thousand. They came back to about 220, 240.

**MR O'BRIEN:** Yes. I think there's been a little bit of a move upwards, even in the present fairly uncertain climate. I think you could confidently say that they're probably changing hands around the 250 mark at the moment.

**PROF NICHOLLS:** People buying them don't seem to understand sovereign risk. They just ignore that.

**MR O'BRIEN:** Well, that's not unusual either, because the people buying them quite often are taxi drivers who have been through as drivers, been taxi managers, have leased plates and operated taxis on their own, as I've done and other people in this room have done, and have actually bought a job to ensure stability of employment, and provided that the price of the plate is affordable and can be financed then it's seen as a long-term proposition.

**MR BANKS:** But presumably they're also people who know the business pretty well, too, having had such an apprenticeship.

**MR O'BRIEN:** They often think they do. Unfortunately it's not that predictable.

**MR WEICKHARDT:** So what sort of return would somebody make these days in Canberra? Trips dropped by 21 per cent, you're saying. If you invest 250 K as a non-driver, just with the cab being driven by somebody else, as an investor what sort of return will you make on the 250?

**PROF NICHOLLS:** Well, if we step back a couple of years, the lease fee - investors buying plates are expecting 26,000 a year and over the last couple of years that's dropped down to a bit less than 20,000. So it's eased back. I think, say, 19,000 would be safe. It may even be a bit lower now.

It was interesting, the discussion you had earlier on it. We always had this driver issue of getting drivers. The Northern Territory went through that problem. We see that emerging with the system. Victoria got the tick from the NCC and they're releasing plates, leasing them in over a period of time, and already the drivers there - they just can't get the drivers. The drivers won't drive for nothing. If you want a classic example of that, overseas there's the Irish experience. Ireland: they had discussions, going to the taxi industry. Overnight the Prime Minister deregulated the whole industry and 85,000 pound plates were worth nothing overnight. You could pick up a plate then for 5000 pounds.

It's been absolutely fascinating. The number of plates in 15 months went from a bit over 2700 - it's in the public benefit - 2700 up to 9500 taxis. It was rather interesting, what happened. The market for WATs collapsed. The WATs drivers all handed in their WATs plates and took standard plates. They lost 6700 WATs, effectively, within a matter of months. Prior to deregulation, 85 per cent of the taxis had two or more drivers, and once the deregulation came in, 99 per cent of the taxis are now driven just by the owners, one driver. They just take it as a part-time job. They go out when they want to. They won't go out late at night. They won't go into Dublin in peak periods, and they're worse off now with respect to the demand because of the congestion in Dublin than they were before deregulation. So a whole industry can change as a result of just deregulating - the whole industry. We saw it in the Northern Territory. We've seen it everywhere overseas.

**MR O'BRIEN:** I could add to that, too. The rate of return varies quite considerably, depending on how the vehicle is operated and whether it's operated as a single unit or as part of a larger fleet. I guess the bigger the turnover the smaller the margin that you'd expect out of it, and so there are some fleets that operate almost around the clock when drivers are available, and their turnovers can be comparatively high. Their margins get smaller. That's not a recipe for success either.

There is an almost constant change of leases. I couldn't speculate what the volume of it is, but there's a fairly constant movement of leases from one operator to another: new operators coming in, other operators going out. There's some fairly reliable anecdotal evidence that some operators going out are going out owing money to the people that they have leased plates from. New people coming in are always smarter than people going out, and probably there's some confidence at the time that you come in with a new vehicle and a fairly high commitment - the possibility of a good complement of drivers - but that situation can deteriorate very rapidly as the car gets older, as drivers find other things to do.

So what starts out as a fairly attractive business proposition has the potential to

turn into something else in a very short time. So in relation to what sort of return you would expect, I couldn't tell you. At the moment I've just lost a driver. I now have two drivers and they cover, between them, four shifts a week, out of 14, so at the moment I can confidently say I probably negatively gear my labour to make the business work.

**PROF NICHOLLS:** One thing that might give you a bit of a ballpark figure: our fare review last year with the ICRC with Paul Baxter - there's a complete restructure of the fares and there's a component there on an interest repayment on loans, and of the total running cost of the vehicles. He put it down as 7.2 per cent.

**MR WEICKHARDT:** On the value of the plate, you're saying?

**PROF NICHOLLS:** No, this was on the running cost of the vehicles over the year; the total cost of running the vehicle over the year. He said about 7.2 was the - I just had a look before we sat down.

**MR WEICKHARDT:** Sorry, 7.2 per cent of what?

**PROF NICHOLLS:** Of the total cost of running the taxi as a business for the year, so that if the total costs of running the taxi for the year were \$190,000, \$195,000, then the 7.2 per cent of that was put down as interest repayments.

**MR WEICKHARDT:** Okay.

**MR BANKS:** In the Northern Territory, where they have reregulated again, have they gone full circle, or have they got a regulated but - - -

**PROF NICHOLLS:** No, they have gone full circle, Gary. What they've done is they've developed the Commercial Passenger Vehicle Board to look after the industry and reporting directly to the minister. They make recommendations to him with respect to the number of licences, with respect to the setting of fares and all the safety issues. But, you see, up there they've got themselves a bit of a problem because anyone coming into this - and there's been a big fallout because they couldn't make it pay - but each one in Darwin has still got to pay their lease fee of \$16,000. So that's a fixed cost - - -

**MR BANKS:** That's what I was going to ask.

**PROF NICHOLLS:** Yes, they've got a fixed - - -

**MR BANKS:** So there are more caps now.

**PROF NICHOLLS:** Yes.

**MR BANKS:** So it's been reregulated with a larger number of cabs with the original drivers, or owners getting compensated but now having to pay a lease for it.

**PROF NICHOLLS:** Yes.

**MR BANKS:** In common with the new entrants that are coming in.

**PROF NICHOLLS:** Yes.

**MR BANKS:** In what sense is it reregulated; that they've now closed the - - -

**PROF NICHOLLS:** What they've said is that they're not going to allow any more new licences; they're not issuing any more new licences, so they've stopped that. As people - they went from 138 up - in April 02, the most recent figures I've got - they've gone to 183. In fact, they started to drop out. People just couldn't make it work, and I'm sure the 183 are probably down to 150, 160 - maybe even less. But they've just dropped out; they've just given up and handed their licence back in because there was no real cost of doing that.

They've set the safety conditions. That was a real problem up there, with safety, with passengers getting molested - and it went down to the quality of drivers. They had trouble with drivers and they just went down and down and down in the pecking order and then, in the end, the drivers were saying, "Why am I doing this? I'm better off on the dole." That's when the government really moved.

**MR BANKS:** Yes, but now there's not an open market in plates.

**PROF NICHOLLS:** No.

**MR BANKS:** All plates are leased.

**PROF NICHOLLS:** All the plates are leased and the government is actually not releasing any more licences. The last time I looked, the last time I checked up on the Department of Transport they weren't releasing any more plates. As people handed them in they just put them in the bottom drawer and left them there, to try and get more stability back in, and try and get a living wage out of it.

**MR BANKS:** Right.

**MR WEICKHARDT:** I think you were suggesting that this whole issue be looked at on a sort of region-by-region and city-by-city basis.

**PROF NICHOLLS:** State by state, or territory by territory, I guess is what I was meaning.

**MR WEICKHARDT:** Okay.

**PROF NICHOLLS:** Yes, even region by region; certainly metropolitan Sydney would be different to country.

**MR WEICKHARDT:** Country Bourke or something like that?

**PROF NICHOLLS:** Yes, that's right.

**MR WEICKHARDT:** But has any other country actually tried that? Are there any models of that process in practice?

**PROF NICHOLLS:** No, what I think you'll see in the submission - what they've said in the case of the UK, the Office of Fair Trading put up the proposal to deregulate everything and the British parliament - I've given some references in there - they said, "We see this as a local area issue. Let the local areas" - this is your local councils rather than your state governments over there - "your local councils, your local authorities, let them decide. We would strongly encourage deregulation but if you don't want to go that way just give us reasons why." So they've pushed it down to the local authorities who know what the conditions are like there to make those decisions.

That has obviously happened elsewhere. In the US there is a lot of history there. They deregulated 21 major cities and went back and effectively reregulated the lot of them. There is a very good paper by a lawyer called Dempsey that Denis and I - it's become our bible. He summed it up beautifully. He said it was the clash of economic theory and empirical reality. You have the economic theorists saying this is what is going to happen, but empirically when you got to the real world it didn't happen. This came down to them using their competition model of supply and demand in equilibrium. It can't happen in the hail market, and in some of the areas that's 60 per cent of the market. Places like Sydney have massive problems with congestion up there now.

Indeed the ICRC in their report - their fare review - we thought they hit on a very good point that we'd actually missed, or I'd actually missed, and I think it applies elsewhere, particularly in Sydney. The demand for cabs in Canberra has dropped significantly and they listed 10 reasons, one of them being that from 1996 to 2003 in Canberra the population has increased 4.4 per cent and the per capita ownership of motor vehicles has increased 19 per cent. Cars are cheaper now.

People are just buying them and driving them. When we see the congestion on Sydney roads, I'll bet you - with their rail and bus problems up there - that's what is happening up there, too. But motor vehicles are very cheap now, relatively cheap and it makes for an interesting statistic just here in the ACT - the car ownership going up.

**MR BANKS:** I haven't seen this Dempsey piece but I'll have a look at it. I would have felt more confident if you hadn't said he was a lawyer.

**PROF NICHOLLS:** It's basically transport economics he was doing, you know. I know exactly what you're saying, but for a lawyer I was still a bit impressed.

**MR BANKS:** He impressed you, so that's something.

**PROF NICHOLLS:** They went through and grabbed these 21 cities and just analysed what had happened in the 21 major cities and why they went back. He gave some pretty good evidence as to what was going on there.

**MR BANKS:** Could I just ask you to comment, in terms of your model of local determination of what fits in local jurisdictions, why you wouldn't see the national competition policy as having met that model, or that requirement?

**PROF NICHOLLS:** Sure. Different markets are just so much different, and the ACT is probably a unique one. Anything you do anywhere in Australia, I'd say it won't work in the ACT. Here the demand for traffic drops off - the demand for taxis drops off 25 per cent in January. The backside just falls out. They're all down on the south coast. When Queanbeyan was allowed to come into the ACT, we put forward the proposal that the ACT taxis be allowed to operate out of Batemans Bay but because it's a high part of New South Wales, they wouldn't even consider that.

Each year we run surveys and we give all this information to government and to the ICRC for fare determination, on the average length of a fare in Canberra, each fare, and the important one in Canberra is what we call the dead running time - that is, how much of a taxi's time, or how much of their mileage they don't get paid for. They are dropping off down at Conder and they have to come back in - it's dead running time. That's 48 per cent. You know, year after year it's 48 or 49 per cent of the - - -

**MR O'BRIEN:** Yes, it's pretty constant. We've done the meter surveys.

**PROF NICHOLLS:** What, three or four - - -

**MR O'BRIEN:** Metering surveys. Yes, there would probably be - we'd go back to



2000, 2001 - I think 2000 might have been the first one. It could even have been 99. It's a fairly constant relationship.

**PROF NICHOLLS:** And it's so spread out. This does cause a bit of a problem in that the drivers don't want to go down to Banks or take someone down there, because they know they're going to have a dead running time coming back to Tuggeranong or somewhere. But you might have seen recently they tried off in New South Wales, in Sydney. When they phoned in they weren't told what the destination was with the cabs, and it hit the fan up there with the taxis. But that's been in place here in Canberra for some time. When they book in, they've got to take the fare.

**MR BANKS:** Just to get back to that question of the local circumstances and so on, are you saying that the two reviews that were done in Canberra didn't really adequately take into account the local circumstances of this region?

**PROF NICHOLLS:** No, I don't believe they did. They were very light on public benefit issues, if you go back and have a look at their recommendations. All they wanted to do, though, both Paul - I've known Paul Baxter for many years as you probably have, too, from Price Waterhouse days - and Stephen King, first and foremost, deregulate was the idea; deregulate entry. They had this fixation that you were talking about before: if you reduce the cost of the plates to zero, a taxi fare will drop by \$2.17. Unfortunately, it doesn't work like that. It's your economic theory versus your empirical reality, because the guys are buying a lifestyle, they're buying a job, they're buying security.

**MR BANKS:** We had some discussion earlier about environmental and social dimensions and so on. Were these looked at at all?

**PROF NICHOLLS:** No. I felt they were very much lacking in that aspect. Denis can correct me.

**MR O'BRIEN:** No, I think they had a template that they followed. This is not a new exercise. This examination of the taxi industry has been going on for probably 40 years that I know of now. I've become reasonably well informed. The Paul Dempsey exercise is very informative and relies on quite a long list of research and reviews that have been conducted, particularly in the US, and there is a fairly conspicuous template that you can find in any review or any current documentation from just about anywhere in the world that uses the same phrases, the same words, puts them in the same context and unfortunately arrives at the same conclusions almost universally.

The examination of the application of those outcomes to particular locations has not produced the beneficial outcomes that these sorts of templates envisage, so

once again - as Des referred to earlier - there's a difficulty in, I think, addressing issues on merit as opposed to applying a template to a location. I think that's where the difficulty has arisen.

In relation to Canberra, I don't know if we're unique in the country or in the world because I don't know enough about everywhere else in the world to be able to say that. What I can say to you is that the taxi industry here is very seasonal and it's seasonal in terms of what Des was talking about - where you have that summer break and the place empties out. But it's also seasonal in terms of government business conducted in the town. Parliament, I believe, is sitting for 18 weeks next year, so 18 weeks, a combination of three and four-day weeks. This year it was probably less than that because of the interruption with the election. Last year it was somewhere round about 20, I think, from memory. That has a huge impact on the amount of taxi work conducted in the city.

The daytime work is pretty well dictated by airport arrivals and departures and the multiplier effect of that: people from and to hotels, from and to restaurants, that sort of thing; by and large business people. Des indicated to you the growth in private vehicle ownership over recent years. If you have a look around, if you go for a drive around here, you notice this is a car city. It was designed for cars. It's very car friendly. The roads are not congested. Parking is both ample and cheap, so there's really no disincentive to private car use. When you overlay over the top of that cheaper private cars, then you can see that usage increases disproportionate to population increase. They are a couple of the factors, so that's why imported work, if you like, is so important to us. Parliament is a big driver, a big generator, of that.

In addition to that, it's seasonal in relation to how the government sees its priorities as well, outside of the parliamentary process. Des talked about a little while ago where taxi plate prices increased almost exponentially. That happened to coincide with a time when the government decided that the public service had grown past a useful number and decided both to reduce public service numbers and also to impose a contraction on government programs. Both of those things had an enormous impact on taxi usage.

There was a big slide away from 96 onwards, a recovery through 99 as the government here - locally - worked very hard to restructure the local economy, and there was some success seen in that through our numbers which saw a monthly increase through 99. Then, of course, there was the imposition of the GST and that hit us quite hard again, and we're only just starting to come out of that. We're trending upwards but we're still a long way behind the eight ball.

Throughout that period, as Des also mentioned, we had an extra 20 wheelchair accessible taxis come on, which equated to about 18 standard taxis in the amount of

work that they took out of the pool. So even though they were put on for the specific purpose of providing accessible transport for wheelchair people, their major impact was to decrease the pool of work available to the rest of the taxi fleet. In addition to that, because of cross-jurisdictional issues and the preference for a seamless border in all services including taxi services, the ACT market was opened up to the Queanbeyan taxi fleet, which has 16 taxis. They are now licensed to operate without restriction in the ACT.

**MR BANKS:** And vice versa, for what it's worth.

**PROF NICHOLLS:** Yes, for what it's worth.

**MR O'BRIEN:** Yes, but for the 20,000 people in Queanbeyan, it's really not - if there's not enough work there for 16 taxis, there's certainly not enough for another 230-odd, 240. So the reciprocal nature of it really is illusory. It doesn't produce a benefit. It hasn't even produced a benefit for the taxi consumers in Queanbeyan, quite frankly.

**MR BANKS:** Could I perhaps ask while Des is there: as an economist, you've been thinking about this gulf between theory and practice. I'll get you to give your explanation, because at face value if people aren't paying a quarter of a million bucks for licences and therefore having to get a return on a quarter of a million bucks, you'd expect that they could do as well with a lower fare, all else considered.

**PROF NICHOLLS:** If they restricted the number of licences, that would be certainly true. But if you bring the value of the licence down to zero and open it up, everyone wants a cut of the action. Then the supply of taxis, as we saw in the Northern Territory and we've seen in Ireland, goes through the roof. You go through major structural problems. Unless you can have an increase in demand for the taxi service, a corresponding increase in demand, your productivity and profitability has got to drop.

**MR BANKS:** Could you say that in some ways this reflects a kind of adjustment, a rather bad adjustment for everybody in the industry; but nevertheless at some point you'd have to get a shake-out to get a more sustainable basis occurring, and meanwhile you would have done a lot of damage? Is what we're observing there, including in the Northern Territory, part of this sort of shake-out - learning and then shake-out kind of process?

**PROF NICHOLLS:** It's interesting. As I said, it amazes me they place no value on sovereign risk. If you have a look at what is happening in Victoria at the moment and what they're going through - and one of the attachments to our submission is a report, a study done by the Herald Sun in May down there. It's been fascinating.

What they've done down there, they're slowly increasing the number of cabs and they're going to increase them by 40 per cent over 12 years, and they've got the National Competition Council on side. They've also brought in - what do they call them, Greentops?

**MR O'BRIEN:** Yes.

**PROF NICHOLLS:** They can just operate in peak periods. When that happens, that's fine for the peak period, but the normal standard drivers that are making their money in the peak periods say, "What the hell? We're losing our profit through the peak periods to carry us through the quiet times of the night," so they're just off the road and this is what's happening late at night. The taxis are just staying off the road because the drivers overall are not making the money. They can't pick up the increased profits in the peak period because of the increased supply.

It's not worth them staying out all night for a few dollars. It's trying to overcome the problems with the peaks and the troughs. Do we try and satisfy the peaks with increasing the number of cabs at the expense of the drivers? Whenever I talk, the whole industry is dependent on the drivers. If you can't get good, knowledgeable drivers that can speak English, that's what you're judged by. That's these guys' window to the world, the quality of their drivers.

If the profitability drops for them - here in Canberra it's a fifty-fifty split. Whatever they take, they get 50 per cent of. In Sydney, it's somewhat different up there. Talking to different drivers, I think up there they have to pay from 110, depending on their shift, to 120, 130 dollars a shift, plus their gas, which is going to be another 50 or 60 dollars, so they've got a fixed cost of 180, 190 dollars before they start in Sydney. Anything on top of that is profit. With the congestion there, I don't know how you would be a taxi driver in Sydney. They're waiting an hour and a quarter, hour and a half, for a fare into the city at the airport, with the queues. Denis might like to comment, because we've had lots of discussions on the relationship between the value of the plates and the reflection of the price - - -

**MR O'BRIEN:** And fares.

**PROF NICHOLLS:** - - - and fares.

**MR O'BRIEN:** We have presented statistics over the range of our reviews that have been undertaken since the initial Freehill competition policy review commenced in November 99, so we've been constantly five years in this process. We have supplemented all that information through the annual fare reviews conducted by Paul Baxter at the ICRC. We have also presented it in a review of wheelchair taxi services and I'm trying to think of something else - the review that

Paul Baxter also did, yes, on the future of the taxi industry. Also a review that was conducted by the ACT assembly into the government's response to Paul Baxter's review of the future of the taxi industry.

What we have pointed to is that there is no causal relationship between plate values and fares. Plate values have moved independently of fares and in different directions and certainly with different magnitudes; funnily enough, in opposite directions in relation to demand for taxi services as measured by meter-ons over the years. The expectation of a financial return from the purchase of a taxi plate is not consistently reflected in any reporting over time of the value of taxi plates.

If I could illustrate, say, in the early 90s when we had just recovered from the recession we had to have, or we were just moving into it - no, we had just recovered from the pilot strike that hit us in about 89. We were moving into the recession that we had to have. There was a bit of a downturn in the economy. Plate prices increased, because at the same time there was the first round, I think, of government payouts to people that were no longer needed in the public service. So that was the main driver in the rising price of taxi plates. It was reflected again in the mid-90s, following the Howard government. There is no clear causal relationship between taxi plates and fares.

**MR WEICKHARDT:** Going to the Northern Territory situation, going back to Gary's question, the trauma of allowing the market to reach equilibrium might be too great, but wouldn't eventually, in a situation where the plates have sort of got no value, supply and demand actually reach some sort of equilibrium?

**PROF NICHOLLS:** I would say why didn't it happen, Phil?

**MR WEICKHARDT:** I don't know whether they waited long enough and whether the pain was too great in the middle - - -

**PROF NICHOLLS:** What was happening, the plates went down to the price of your registration and you had to pay a \$16,000 lease fee which you're going to recoup through time through fares. They set a maximum fare. That's all they did. The people swarmed in there and they couldn't make it work.

**MR WEICKHARDT:** Right.

**PROF NICHOLLS:** It was the drivers. It came down to the drivers.

**MR WEICKHARDT:** But eventually surely the drivers would say, "This isn't worth it." They would hand their plate back in and - - -

**PROF NICHOLLS:** The drivers did, but the owners are stuck with the plate. They are locked in for the year, I guess, for the 16,000.

**MR WEICKHARDT:** For the 16,000, but eventually at the end of the 16,000 - - -

**PROF NICHOLLS:** Yes, they hand it back in.

**MR WEICKHARDT:** They hand it back in.

**PROF NICHOLLS:** And that is what's been happening since the - - -

**MR WEICKHARDT:** But surely then over time the market would have reached some sort of steady state, wouldn't it?

**PROF NICHOLLS:** Who knows? Certainly they couldn't wait up there, because it was the social impact that was really crucifying the public benefit issues that really took effect up there with respect to literally molestation, rape - the whole problem.

**MR BANKS:** But surely you can regulate who drives a cab to some extent separately from other parts of the regime.

**PROF NICHOLLS:** Sure you can, Gary, but they've got to get a living wage out of it, you know.

**MR BANKS:** True.

**PROF NICHOLLS:** If you can't break even, if you can't do that, they won't drive the cab. That, I believe, is what is happening in Victoria at the moment. You see, even in Victoria, my understanding is the price of the plates hasn't dropped, even though more and more cabs are coming on the market and they just can't get drivers. Up to 15 per cent of the fleet is off the road at any one time because they can't get drivers. These people must be saying, "Well, I can't afford to run the cab, even though it's cost me 300, 350 thousand in Melbourne. I can't afford to run the cab because I can't get a driver that will do it for a fifty-fifty split" - or whatever there is down there - "so I'll just keep it off the road. At least I'm not losing money." They seem just completely unrelated to price of the plate and the fare.

**MR WEICKHARDT:** It takes a while for people to catch up with the fact that past experience doesn't necessarily go on forever, doesn't it? I suppose there has been a past experience that taxi plate values always go up, so - - -

**PROF NICHOLLS:** Yes. The other extreme example you can use is, say, okay, why haven't fares come down in Dublin? They haven't, but you have seen this

complete shift down to effectively part-time taxi plate owners. They will drive when they feel like it. They will go out at night or they go out when they've got a few hours, but 99 per cent of the plates are one-driver plates.

**MR O'BRIEN:** If you have the opportunity to have a look at the Dempsey study, you will see that all these issues have been addressed and that over a period of 20 years the outcome that you're expecting hasn't been achieved. There are other issues that impact on it and they're not all economic issues. There are many, many other issues.

**MR WEICKHARDT:** I can understand the lifestyle issue in terms of - - -

**MR O'BRIEN:** And there are government imperatives about the availability of taxi services, as well. In relation to the question about why wouldn't a person surrender the licence and get out if he decided that it wasn't an economic proposition, it could well be that he's in the first year of a full-year lease on a vehicle. It could well be that there's something in the local area that is seen as a short-term impediment to a successful business and he will ride that out. It could well be that he's got no brains at all and he shouldn't be there, but he's committed to it and he'll stay there because his other opportunities he has just let go. It could well be that he's not employable in any other sense, because he might be too old to be employed. There are many, many issues that are not straight out, "Is this a good business proposition?"

**PROF NICHOLLS:** Gary, your email address is just gary.banks@pc.gov.au?

**MR BANKS:** No, just gbanks, one word.

**PROF NICHOLLS:** What I will do, I will shoot you a copy of the Dempsey paper tomorrow. I will just send it as an attachment to an email to you.

**MR BANKS:** Good.

**PROF NICHOLLS:** With respect to those issues, it was rather interesting your 1999 Senate select committee basically looked at the socioeconomic consequences of the NCP and they identified these three major issues. I just jotted them down. The first one was a predominance of narrow economic interpretation of the policy. The second one was a differing interpretation of the policy in the public interest tests. The third one was lack of an appeal mechanism. They really came out about ignoring the public benefit issues. They were arguing that it wasn't a one-dimensional economic argument. You had to have a look at all the social consequences, as well. That one sort of ended up being flicked down to the bureaucrat in COAG to look after.

**MR BANKS:** All right. Thank you very much. I think we've learnt a lot between the two sessions, which complemented each other very well. Thanks very much for participating.

**PROF NICHOLLS:** Thank you. I will flick that Dempsey paper over, because we had terrible trouble getting a copy of it from the US, because I've got it.

**MR BANKS:** Thank you. I look forward to it.

**PROF NICHOLLS:** It's quite enlightening.

**MR BANKS:** Good. We'll break now, please, for a moment, before our next participant.

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**MR BANKS:** So our final participant today is from the Competitive Carriers Coalition. Welcome to the hearings. Please give your name and position.

**MR FORMAN:** My name is David Forman and I'm the executive director of the CCC.

**MR BANKS:** Thank you. Thank you also for the submission in response to the draft, and the earlier submission back in June, while we were preparing that draft. As we discussed, perhaps you might like to just outline the key points.

**MR FORMAN:** I don't know whether we were in the minority among the people who have presented to you and submitted to you, but the CCC's view is that, certainly in relation to our industry, we would have liked to see the competition principles applied more rigorously than has been the case in the period really since competition was introduced into telecommunications, because we believe that the full benefits of competition in telecommunications are a long way from being realised. In our response to the draft report, there are a couple of issues that we really focus on.

We welcomed the recommendation for comprehensive review of the structural arrangements of Telstra. We have long argued that that's necessary. I know you've heard from a lot of people that discussion around reform fatigue. I think that the core issue in telecommunications at the moment is regulation fatigue and, if there's a single message that we would like to emphasise, it is that the next round of reforms in this industry in Australia - and I think that it's inevitable that there will be a round of reforms - have to go beyond tinkering with the present arrangements, and go to some of the core issues, some of those core structural problems, because reform fatigue is already proving itself a drain on the resources and the ability of the industry to maintain its competitive fire.

We noted that you had a little bit of commentary in the discussion draft around the present accounting separation regime. We just want to ensure that there aren't any false impressions about how effective that present regime is in addressing the core structural issues and structural impediments. The ACCC itself has stated repeatedly that it has strong reservations about the usefulness of the accounting separation regime that exists today. Most tellingly, the responsible commissioner has pointed out that that accounting separation data had almost no role to date in the pursuit by the commissioner for its competition notice against Telstra in ADSL markets.

I think that's particularly telling because clearly that's the biggest compliance or enforcement issue that the commission is facing in telecommunications at the moment. The accounting separation structures were supposed to provide some kind

of a response to the problems around structural impediments to competition when they were introduced in 2002. That they've not been useful in that investigation, I think, speaks volumes. The CCC would go so far as to say that the accounting separation regimes have just been a waste of time and resources for the industry and the regulator, and in fact has contributed to this regulation fatigue that we're all experiencing.

The second major point that we wanted to raise in response to the draft is that it's our belief that the benefit of accelerating reform and getting the competitive structure right in telecommunications are significant enough that they justify those issues being very high on the list of national priorities for future competition agenda. In addition to the productivity gains that you might expect if competition in the present environment was fully effective, telecommunications is distinguished from other utilities by virtue of the fact that we've got a number of major technological shifts taking place around the world at the moment. I can go into a bit more detail of some of those later, if that's helpful.

It's firmly our view that the speed and the breadth of the deployment of a lot of these technologies will be a direct function of the strength of competition and the number and the nature of the customers that are contestable. The CCC actually commissioned a piece of external work that we intended to submit as an accompanying document to this submission, and I have to apologise that I only received the first draft of that on Friday, so we've not been able to submit it yet, but we'll have it to you as soon as possible.

That expands on the issue of the productivity gains that have flowed from integration of the Internet and Internet connectivity into the business community to date, and talks to the productivity gain that might be expected to be realised in this next generation of true broadband access technologies, if and when and how those are implemented, and looks at how some of the gains might differ under different ownership and control models. So I can talk to some of that on the basis of the draft, but again I have to apologise that I've not been able to provide it to you because I only just received it, and I'll have that to you as soon as possible.

**MR BANKS:** Is this the study that you referred to by the Centre for International Economics?

**MR FORMAN:** Yes.

**MR BANKS:** Yes, okay.

**MR FORMAN:** It relies on a number of previous studies also.

**MR BANKS:** What's your view about the dynamics of this market, and the extent to which new technologies in themselves will provide opportunities, including for your members, in rivalling the existing networks? I'm thinking of wireless technologies and others. Is there scope there over time to provide more scope for entry and so on?

**MR FORMAN:** I don't think that competitive technologies in this industry have been shown to necessarily result in competitive markets. I think that's true internationally, without the regulatory environment creating the competitive structures underlying them. For example, we have a lot of enthusiasm in Australia at the moment for wireless access technologies as an alternative local loop. There are a number of question marks around how effective wireless can be as a technology. What's the maximum bandwidth, for example, on wireless? Although I'm no expert in the nature and the limitations on a lot of these technologies, it would appear quite clear that the ceiling on bandwidth for wireless is never going to be able to match what fibre can deliver.

Ultimately I think in areas wherever it's economically supportable - and that in itself is a bit of a moving feast - fibre will be the ultimate access technology, and it will be a natural monopoly. Wireless is likely to have niche roles in areas where the population density is very low. I think that we will find a patchwork of different wireless technologies as well. It's very difficult to talk to wireless as in a generic sense, because there is a number of different technologies. There are mobile, portable, fixed technologies and there are different types of technologies within each of those.

Often I think we see incumbents talk up the threat of new entry from new technologies. I heard that threat very succinctly dismissed by a speaker that we brought here from Canada recently, a guy by the name of Bill St Arno from an organisation called Canary. He asked, "If wireless is so hot, then why are none of the incumbent telcos around the world investing in wireless? Why aren't they replacing their own networks with wireless?" He said, "Obviously, because they know that wireless is not the long-term threat to their core businesses in areas of high-population density where the money is."

**MR WEICKHARDT:** Sometimes the market leaders can be blindsided, of course. Not many of the mainframe computer companies for a while invested in PCs, and a lot of the optical film companies haven't invested in digital, but I take your point. It may be they know more.

**MR FORMAN:** That's true, they can be, and incumbent telcos, believe me, have showed no evidence of being more innovative than incumbents in protected markets or comfortable markets in any other industry. However, they have shown themselves

to be pretty quick and rapacious in responding when they see a genuine threat. If you look at the example of Australia, Telstra - in terms of ownership of spectrum - is in a position to use wireless. What it has chosen to do is to, in some regional areas, deploy data wireless networks using CDMA technology; interestingly not, to my understanding, a converged voice data network but responding to political and community pressure to provide highband data services using CDMA. They would be in a position to use some of the multipoint microwave technologies in the 3.4 gigahertz spectrum, if they wanted to, but have not.

**MR WEICKHARDT:** I assume, going back in terms of competitive new technologies, had Telstra not invested in mobiles, and was not allowed to, as I understand is the case with BT in the UK - I mean, mobiles would have provided some form of competitive discipline on the copper loop.

**MR FORMAN:** Mobile might have done, in the sense that there's clear substitute ability between the voice services. It's argued that in some markets there has been a lot of substitute ability, and I use "markets" in the terms of national markets and also submarkets. People talk about young people in the US as having substituted mobile phones for fixed-line voice, but I've not seen compelling statistics that convince me that that's the case.

There are also a number of other points at which the threat can be constrained. Obviously, the price of a mobile call is significantly higher than the price of a call from a fixed line. That we have in Australia four mobile operators and mobile calls are so high makes me question the level of competition there, particularly given that one of the members of this coalition is a mobile operator who has argued vigorously for reductions in some wholesale call termination provided by the mobile network operators, arguing persuasively - persuasively, given that it's their business - that there's a margin there that's ridiculously high and that they and all of their colleagues in the mobile business should be cutting those costs to the fixed-line operators.

The fact that Telstra is so pervasive in this market means that the exercise of market power can be observed almost anywhere that you look and is used to sort of constrain competitive entry, both in terms of technologies and in terms of particular markets.

**MR BANKS:** You've talked a bit about accounting separation. We heard the expression this morning "virtual accounting separation".

**MR FORMAN:** Virtual accounting separation?

**MR BANKS:** Yes, to imply that it was more apparent than real, I think. What are your views about the recent initiative announced by Telstra relating to administrative

separation of the wholesale division and so on? Do you draw any comfort from that?

**MR FORMAN:** We draw comfort from it in the context of the debate that's been going on for so long and Telstra's position in that debate, which has been to say, "There's no problem and there's no reason for us to do anything." That they've for the first time acknowledged that they had better do something, even if it's only cosmetic, at least means that we can all now have the same conversation. We can all acknowledge that the same problem exists. We'll have to put that to the test with them, I guess.

In terms of what it means in a practical sense, I am not confident at all that it's meaningful. There's often a mistaken impression that people get when Telstra talks about its wholesale and its retail division - that somehow that implies a vertical relationship between the two of them. It's more like two separate sales groups. There's a wholesale group of salespeople who sell to other carriers and the retail group that sells direct to end users. The retail group doesn't buy its inputs from the wholesale group and, in fact, the construction of the products that the retail group sells seems not necessarily to bear any relationship to the construction of the products that the wholesale group sells.

So there are retail products available to Telstra customers, such as business grade DSL services that are available in 200 locations or thereabouts - 200-odd exchanges around the country - and yet the wholesale DSL business grade service is available in something like half that number of locations. When you ask Telstra to explain why they're able to wholesale this product in twice, or more, the number of locations, you're told, "Because that's not our product," bizarrely. The problem, therefore, becomes apparent - that the wholesale group doesn't actually control the infrastructure. It sells a set of products built off infrastructure, that are constructed in ways that apparently are completely separate to those that are constructed off similar infrastructure that's owned by the Telstra organisation more broadly at a retail level.

If I can give you another piece of terminology to throw into the separation lexicon, we've been trying to create a distinction between accounting separation and what we've been calling an internal separation, which goes some way toward providing the sort of structure that's more meaningful in terms of what you would understand to mean the "structural separation". If you had an internal separation such that we, as customers of Telstra wholesale, were aware that we were buying the equivalent product at the equivalent price that went toward the Telstra retail product being created, that would be a very different situation to simply creating administrative separation, and I think we're a very long way from that.

**MR WEICKHARDT:** Given the fact that there are various hurdles to overcome if structural separation were to be contemplated - first of all, the government has got to

sort of accept that the benefits of looking at that exceed the costs and then, I guess, a review panel has got to find that that is the case and the government has got to accept that recommendation - and given the fact that there are arguments obviously on both sides, it's far from certain that that's an outcome that would be arrived at. Are the sorts of steps that you just described - - like a real sort of separation and any others - likely in your view to give a satisfactory outcome that you believe would give a much more competitive marketplace?

**MR FORMAN:** I think you could create a much more competitive marketplace through that kind of arrangement than through what we have today, no question about that.

**MR WEICKHARDT:** So over and above the matter you just described, what would the other steps be that would, in your mind, provide some sort of confidence that a much more competitive marketplace would be generated?

**MR FORMAN:** I'd like to first clarify and deal with what I think was the proposition you had in your question, that we have to be convinced that the cost of even having an inquiry - - -

**MR WEICKHARDT:** Well, the government has to be convinced of that.

**MR FORMAN:** Yes.

**MR WEICKHARDT:** And obviously there are a whole series of issues there. So I'm just saying, hypothetically, if structural separation did not come about, what are the other alternative mechanisms of achieving a competitive marketplace that don't rely on structural separation?

**MR FORMAN:** Anything short of structural separation can only try to replicate, in my view, the behaviours that would flow from the flow of market signals through that creation of separate entities. So what you would need to do is to go as far as you could to creating the points of separation in a transactional basis, so that you could clearly identify what input costs were being communicated to everybody who was competing at a retail level.

You would also need to find disciplines or mechanisms by which you could be sure that there was no accounting cheating going on so that there was margin-shifting that was sitting behind that. I think that would be another set of tools that would have to go to the ACCC, to allow them to investigate those issues. They may be in place, but until we understood clearly what it is that we were trying to do and so that this notion of - I think there is some need for some kind of inquiry, I don't know the scale of it that you would need - but to really understand what it is that we're trying

to achieve.

The internal structural arrangements we wanted is not something we can assume is easy to describe. I think we would need to have a set of external disciplines around Telstra, in the sense that I would be a bit - well, I'd be very nervous about any proposition that suggested that we simply say to Telstra, "You go away and restructure internally such that you look like this," and leave it at that. I think we would need to have an external discipline that meant that if they were found to be gaming or were found not to be creating the set of arrangements they said they were creating, or reversing that set of arrangements, then I think the regulator would need to be provided with some sort of ability to intervene.

I think the CCC has argued in the past that that's a role for a power such as a divestiture power, where the ACCC could go to the Federal Court and say, "Here's evidence of persistent gaming or cheating or anticompetitive conduct." The nuclear deterrent at the moment in the legislation is a competition notice, and we've had a competition notice in place in Australia now for nine months, so it seems to have been more of a popgun than a nuclear deterrent, and it clearly also doesn't go to the incentives that flow from the structure.

Then you would probably want to have another set of mechanisms that might sit to the side, that were able to address some of the other ways in which Telstra's integration manifests itself, such as in its ability to bundle. If you weren't going to require Telstra to separate its business units, then you at least need to be able to find ways to overcome the problems that cost-shifting can create when you put together all of those infrastructure based components into a retail package. One of those might be to require Telstra to provide a retail-minus formula for any bundle that they provide, so any bundle that they provide should be available to a wholesale customer at minus 25 per cent of the retail price, which provides some sort of discipline on Telstra to ensure that they're not underpricing and cross-subsidising across market segments in ways that they wouldn't if they were being run as separate entities.

That's far from comprehensive because we're far from having sat down and really thought through what the arrangements short of structural separation should look like, so I'm hesitant to pretend that we have all the answers. Part of the process that we need to engage in, I think, as a community of interests, is to work out just what those solutions should be.

**MR BANKS:** We've talked a lot about telecommunications today and valued your comments on those particular points that we were wondering about, but didn't have any further questions. Unless you have any further comments to make - - -

**MR FORMAN:** No.

**MR BANKS:** - - - thank you very much for turning up.

**MR FORMAN:** Okay.

**MR BANKS:** We will adjourn the hearings now and will be resuming tomorrow morning at 9 o'clock. Thank you.

AT 5.06 PM THE INQUIRY WAS ADJOURNED UNTIL  
TUESDAY, 14 DECEMBER 2004



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