

Submission to the Competition Policy Review - Draft Report

20 September 2014



**AUSTRALIAN LOCAL
GOVERNMENT ASSOCIATION**

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Introduction

The Australian Local Government Association (ALGA) welcomes the opportunity to provide a submission to the Competition Policy Review - Draft Report (September 2014).

ALGA is a federated body of state and territory local government associations, representing some 560 local government authorities across the country. Whilst ALGA has consulted its member associations in developing this submission, it has not consulted with any individual councils. As such, ALGA's submission should be read in conjunction with submissions put forward by its member associations and individual councils.

ALGA has had a long history and engagement with national competition policy. In 1995 the Australian, state and territory governments agreed to a program of competition policy reform. Whilst local government was involved in the negotiations, it was not a signatory to the resulting agreement. The state and Northern Territory governments signed the agreement on behalf of local government and were responsible for local government's implementation of National Competition Policy (NCP). Consequently, the experience of local government in each state and the Northern Territory has varied¹.

While local government recognises the benefits of improving the efficiency of its activities, the NCP process was problematic particularly during the early stages of the reform program. Local government had difficulty accessing accurate information on the NCP reform requirements and the obligations of local government. Many local government bodies, particularly small councils in rural and remote areas, had difficulty accessing the skills needed to review restrictions on competition and implement competitive neutrality reforms.

More significantly, however, many of the councils that bore the adjustment costs associated with reform did not receive any funds from their respective state or territory governments to assist in the implementation process or share in the benefits of the reform process. All reforms require resources for implementation and ALGA's strong views are that local governments must receive appropriate support and guidance when asked to implement changes as recommended during the NCP process.

This submission provides an overarching response to the specific findings and recommendations contained in the Competition Policy Review Draft Report (September 2014) that impact local government. However, ALGA's submission should not be read in isolation from submissions made by either the state and territory local government associations or individual councils.

¹ There are no local governments in the Australian Capital Territory. The government in the Australian Capital Territory operates as both state and local government.

National Competition Policy

ALGA appreciates that competition policy is aimed directly at improving the economic welfare of Australians, and is based on assumptions that an open market will derive multiple benefits for society in the form of lower prices, innovation, and a more efficient use of resources.

ALGA welcomes the review and supports the need for competitive neutrality policies to be reviewed and updated against best practice. It also supports the need for improvements to be made to competition policy complaints-handling processes and monitoring.

However, ALGA has concerns with a number of the draft recommendations, namely those relating to human services and planning and zoning that it believes simplify how competition policy impacts these public services. Local government is in the business of managing the social, economic, cultural and economic needs of local and regional communities. The operation and functioning of local government is based on democratic principles of representation and the need to ensure acceptable access and equitable opportunities for all its citizens. Whilst the consumer is important, councils continually strive to look after the broader and longer term needs of their local and regional communities. What may appear to work in theory does not always reflect what happens in practice.

Impact of Current Arrangements on Local Government and implications for the future

Clause 7 of the Competition Policy Agreement (CPA) requires that local government should be party to the principles set out in the CPA. Under the CPA, states and territories took responsibility for applying these principles to local governments within their jurisdiction. As such, the impact of the current arrangements on local governments has been different in each state and the Northern Territory. This difference reflects the right of jurisdictions to implement competition policy based on jurisdictional priorities and resourcing availability.

ALGA accepts this variability, and supports the principle that any review of NCP should not recommend actions that unduly impact on or restrict the ability of state, territory and local governments to govern in the broader interests of their respective communities. Any NCP framework must be drafted in a manner that respects the authority of the jurisdiction, and therefore provides the necessary opportunity for implementation to reflect jurisdictional circumstances, including regional and local variations. Local councils are diverse in nature and the implementation of competition policies must reflect this diversity in geography and capacity.

Comments on the draft findings and recommendations

The most common competition policy principles applied to local government activities relate to competitive neutrality (CN), structural reform, and the ongoing review of legislative restrictions on competition.

Given this, ALGA's response to specific draft findings and recommendations are as follows:

Draft Recommendation 1 - Competition Principles.

Draft Recommendation 13 - Competitive Neutrality Policy

Draft Recommendation 14 - Competitive Neutrality Concerns

Draft Recommendation 15 - Competitive Neutrality Reporting

Draft Recommendation 44 - Competition Payments

ALGA supports in principle the general thrust of all of the above draft recommendations and, in particular, the importance of retaining the "public interest test".

Local Governments support the overarching intent of competition policies and appreciate that the overall objective of CN is that government businesses (whether they are corporatised or not) should not enjoy any net competitive advantage simply because of their public sector ownership. This principle does not apply to all non-business, non-profit activities of publicly owned entities and it has been up to each state and territory to determine its own definition of non-business, non-profit activities.

The application of the public interest test that assesses whether the benefits of the change exceed the costs is also relevant to the implementation of CN.

Application of competitive neutrality has required a substantial overhaul of how councils operate, including full-cost reflective pricing for competitive services.

Full-cost pricing has ensured that local government does not provide subsidised services in competition with private providers. For example, Victorian local councils received complaints from private providers who accused local councils of cross-subsiding recreation services such as gyms and swimming pools. The Municipal Association of Victoria, by developing a model framework to determine the full-cost reflective pricing of these services, enabled councils to provide services in a competitive environment and fulfil its CPA obligations.

Structural reform involves introducing competition or, at a minimum, removing barriers to new businesses competing in the market. Legislative reform involves all levels of government reviewing and changing legislation that restricts competition. However, the application of the public interest test may allow local government to retain restrictions on competition if those restrictions are in the best interest of the

community. Local government believes that the 'community interests' also must incorporate social, cultural, environmental and equity considerations.

Local government considers the public interest test broad enough to enable consideration of all relevant issues during the assessment of a particular restriction of competition against the public interest. Local governments have benefited from the application of the public interest test by being able to maintain certain services delivered better by local government rather than private businesses. This is especially in the area of community/human services.

ALGA wishes to highlight that councils throughout the country are significantly impacted by regulatory workloads that are largely generated by state and territory governments, and to a lesser degree, by the Commonwealth². Given this situation, any further changes to competition policy should ensure that local governments' capacity to administer these changes are fully considered and that support mechanisms are introduced to assist with any transitional impacts.

In its submission to the Hawker Inquiry into aspects of the National Competition Policy Reform Package, the National Competition Council (NCC) accepted that there were numerous circumstances where local governments had incurred significant reform costs without receiving any funding resources to assist in accomplishing this task. The NCC submission also noted that local governments in some states received competition payments as an incentive for local government to undertake the necessary NCP reforms. The jurisdictions concerned have found local government initiatives to be of value in assisting the reform process. Given this finding, it is not unreasonable for local government to be given financial assistance with ongoing implementation of reform initiatives.

Draft Recommendation 2 - Human Services

Local governments provide a diverse range of services to communities, many of which may be described as human services. Access to these services contributes to quality of life experiences for children, youth, the physically impaired, culturally and linguistically diverse communities, single household families and the aged. As stated in the draft report, these services play a vital role in the lives of Australians.

Given this, competition policy must also have inbuilt mechanisms to ensure that enhancing the health, welfare and overall wellbeing of people and communities is given proper consideration. This implies that the unit cost of a service is not the only matter that councils should consider.

As the Municipal Association of Victoria (MAV) and Western Australian Local Government Associations (WALGA) have argued in their submissions, 'contestability' can be usually embedded in the community services sector readily, "however the consequences can be irrevocable with no net community benefit in the execution".

² Productivity Commission (2012) The Role of Local Government as Regulator

It is important that any competition policy changes envisaged for the delivery of human services fully consider the ramifications of adopting a contestability model. That is, a market that must be continuously tested; leading to constantly changing shape of the service sector and the organisations within that sector. Whilst this may deliver cheaper unit costs or greater service delivery choice, it also comes at the cost of a cycle of changing personnel, organisational structures, partnerships and alliances that can lead to lack of service continuity and the diminution of trust and engagement by those in the community reliant on such services.

Community connectedness and social cohesion are enhanced through the leadership that is offered by local community service providers as well as by the opportunities for communities to participate in activity and initiatives that bring people together to a shared sense of place and purpose.

The risk to these desirable goals, inherent in a quasi-market model, is that service providers will no longer be local agencies with deep roots in the community. And further, the practice of putting a price on each service may mean that unpaid community service is reduced or lost. This will have the biggest negative impact in those communities that are small and remote in nature.

Draft Recommendation 3 - Road Transport

ALGA supports this draft recommendation and has long argued for improved road pricing mechanisms based on road user charges and investment needs.

Local roads are the capillaries of our communities linking homes, schools, farms and businesses. The maintenance of the local road system (now in excess of 670,000km) is one of local government's major tasks and in most councils is the single largest item of expenditure.

As such, ALGA continues to liaise with the Commonwealth and state and territory governments and other stakeholders to develop appropriate arrangements for alternative sources of revenue that councils can draw on for investment in infrastructure. This includes more cost effective road pricing systems, with pricing subject to independent oversight and linked to not only new road construction, but maintenance and the need for ongoing enhancement of safety.

However, it is local government's opinion that the use of alternative sources for finance should not to be considered at the expense of any diversion of or diminution to existing funding provided by the Commonwealth and state and territory governments. The capacity of the Commonwealth to lend money to councils would need to be carefully considered from a constitutional perspective and in close consultation with and support of state and territory governments where there are existing debt facility arrangements.

There is also a need to appreciate that Australia's geography will give rise to a need for some roads to be funded by governments, given the community service role they play for isolated and sparsely populated communities.³

Draft Recommendation 10 - Planning and Zoning

ALGA does not support this draft recommendation and we have substantive issues with both the discussion and description of how planning and zoning operates in practice and the subsequent role of local government in this important policy area.

Local government plays an important role in land use planning and development assessment systems in all jurisdictions in Australia, except for the Northern Territory. Councils develop strategic plans for the future development of their municipalities, coordinate and provide a range of physical and community infrastructure, guide the application of land use and development zones through a planning instrument and administer the local planning instrument on a day to day basis. The planning system seeks to cater for the current and future needs of society, including the business sector.

Planning plays a critical value - adding role in and for society, but is often criticised for being anti competitive and/or generating additional cost for developers, and in turn consumers. The development industry has sought to create a perception that local government involvement in planning is inefficient, lacks transparency and adds considerable cost through unnecessary delays and regulatory burdens. The draft report fails to substantiate any of the claims it makes in respect to the concerns it raises on page 32 or 93. This criticism can also be directed to the Productivity Commission⁴ which also fail to substantiate many of the findings they have made when it comes to the operation of the planning and zoning systems.

It is important to realise that land-use planning in Australia is a state responsibility and as such, there is no single national planning and development system. Instead there exists a composite of state and territory systems and thus the 'experience' of the planning system by national developers or developers operating in more than one state varies from state to state.⁵ Given this arrangement, it is not unreasonable that the planning processes will differ from "one part of the country to another".

Planning is designed to consider the spatial as well as the social, environmental and economic benefits of prospective development proposals. It is also concerned about questions of fairness, intergenerational equity, design and community wellbeing and overall sustainability.

Competition is just one amongst many issues that are already considered by councils when undertaking strategic planning reviews or assessing development applications. It is reasonable that the planning system must consider a range of contemporary issues such as rapid population growth, affordable housing and the impacts of

³ Productivity Commission (2014) Public Infrastructure.

⁴ Productivity Commission (2010) Planning, Zoning and Development Assessment and Productivity Commission (2013) Major Project Development Assessment Processes

⁵ A small developer, e.g. a small building company, land developer or an owner builder operating in one jurisdiction, only experiences the system at the local level and comparisons across state borders are not relevant.

climate change - particularly where the risks from natural hazards are expanding substantially. Competition is one of many considerations that planners and decision-makers consider.

As such, the draft recommendation as proposed will not result in any regulatory or decision-making improvements, given the broad brush nature of the suggested principles. It is possible that the draft recommendation may lead to further policy confusion and delays if implemented. Regardless of jurisdiction, when it comes to planning, the majority of councils are already experiencing 'planning objectives overload'.

The planning system has been established to ensure that the broader needs and desires of communities and society are fully considered and incorporated where possible. Planning is a legitimate political mechanism in democratic free market societies such as Australia, and as WALGA argues, 'should not be seen purely as a market driven consumer tool'.

Draft Recommendation 11 - Regulation Review

ALGA appreciates the intent of this recommendation and believes this is in keeping with existing best practice regulation-making protocols. Given that local government is a creature of the state and territory governments, this recommendation should be directed towards the jurisdictions (that is State and Territory Governments), which in turn have responsibilities to guide and assist councils in reviewing their regulatory obligations under state and territory laws.

As argued by the Local Government Association of Queensland, where additional review and reporting mechanisms are required for councils, duplication should be avoided where possible and processes aligned with existing review and annual reporting requirements, including those contained in respective state local government acts. All regulation should be kept as administratively simple as possible to ensure that compliance costs for all involved are kept to a minimum.

Conclusion

Local government has played important role in the implementation of the National Competition Policy despite not being party to the Competition Policy Agreement.

Under the application of the competitive neutrality principle, local government has experienced:

- full-cost reflective pricing for services and compulsory competitive tendering;
- an inconsistent approach to rate exemptions for different types of entities engaged in competitive activities, and
- reluctance on behalf of state governments to pay local government any of the revenue raised through government owned corporations paying rates.

In many states, local government has made very difficult adjustments to meet its obligations without compensation from its respective state governments.

The public interest test has been of benefit to local government as it has given local government a choice of whether to maintain services. However, communication of the role of the public interest test to councils has in the past, been poor and will need to be improved should there be a next stage of reforms.

Local government looks forward to improved consultation during the development and implementation of further reforms. However, before new areas of competition policy reform are established, new financial agreements should involve consultation with local government and include financial recognition of the work undertaken by local government.

For further information in relation to any of the matters raised in this submission, please contact ALGA's Executive Director, Policy and Research Mr John Pritchard or the Chief Executive, Mr Adrian Beresford -Wylie on 02 61229400.