ELECTRONIC VERSION

EXTENDING THE HILMER REFORMS TO QUEENSLAND: THE COMPETITION POLICY REFORM (QUEENSLAND) BILL 1995

LEGISLATION BULLETIN NO 6/95

ROBERT TROEDSON

QUEENSLAND PARLIAMENTARY LIBRARY
Publications and Resources Section

BRISBANE
November 1995
ISSN 1324-860X
ISBN 0 7242 6613 5

This Legislation Bulletin was prepared to assist Members in their consideration of the Bill in the Queensland Legislative Assembly. It should not be considered as a complete guide to the legislation and does not constitute legal advice.

The Bulletin reflects the legislation as introduced. The *Queensland Legislation Annotations*, prepared by the Office of the Queensland Parliamentary Counsel, or the *Bills Update*, produced by the Table Office of the Queensland Parliament, should be consulted to determine whether the Bill has been enacted and if so, whether the legislation as enacted reflects amendments in Committee. Readers are also directed to the relevant *Alert Digest* of the Scrutiny of Legislation Committee of the Queensland Parliament.

Inquiries should be addressed to: Director, Publications & Resources, Queensland Parliamentary Library, Parliament House, George Street, Brisbane.
Director: Ms Mary Seefried.

CONTENTS

DATE OF INTRODUCTION: 2 November 1995

PORTFOLIO: Treasury

HANSARD REFERENCE SECOND READING: Various: see Clause 2

1. INTRODUCTION

The Competition Policy Reform (Queensland) Bill 1995 is part of national complementary legislation to implement certain elements of the National Competition Policy Agreements. These agreements were finalised in April 1995 between the Commonwealth and the States and Territories. They represent the response of the Council of Australian Governments (COAG) to the report of the Hilmer Inquiry which was presented in August 1993.[1]

The Competition Policy Reform (Queensland) Bill is not in itself a complex piece of legislation. Its specific purpose is to apply certain parts of the Commonwealth *Trade Practices Act 1974* (the "TPA") as the law of Queensland. The parts in question regulate restrictive trade practices and are referred to as the Competition Code.

---

[1] F.G. Hilmer, M.R. Rayner and G.Q. Taperell, *National Competition Policy: Report by the Independent Committee of Inquiry*, AGPS, Canberra, 1993.

The TPA already applies to corporations in Queensland. However it does not apply to non-corporate businesses that do not trade across state borders, or to Government trading enterprises. In subjecting all businesses in Queensland to the restrictive trade practices provisions of the TPA, the main new impact will be felt by government businesses and the professions.

2. BACKGROUND

Competition policy reform, itself a part of the larger scenario of micro-economic reform, has been debated in many forums over the last four years. However the two watershed documents are the Hilmer committee report and the agreements finalised at the April 1995 COAG meeting. The Hilmer report contained a broad range of recommendations; the COAG agreements adopted most of those and delineated the responsibilities and committments of the various levels of government in implementing them over the next five years.

The overall reform is referred to as the National Competition Policy. The current Bill is one element of that policy. The aim of this section is to provides a background to the Bill by briefly summarising the Hilmer report and the COAG agreements.

2.1 THE HILMER REPORT

The current emphasis on Competition Policy Reform was foreshadowed in the Prime Minister's *One Nation* statement of February 1992.[2] That statement emphasized the need to enhance competition in the aviation, electricity and finance industries. By the time the Hilmer inquiry was announced in October 1992, a consensus had been reached for a broad investigation based on the following four principles, which form part of the inquiry's Terms of Reference:

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

---

[2] Hon Paul Keating MP, *One Nation*, AGPS, Canberra, 1992.

- *any changes to the coverage or nature of competition policy should be consistent with, and support, the general thrust of reforms:*
  - *i) to develop an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition; and*
  - *ii) in recognition of the increasingly national operation of markets, to reduce complexity and eliminate administrative duplication.*[3]

2.1.1 Policy Recommendations

The Hilmer committee stressed the need to develop a truly national competition policy because of three main factors:

(a) Australia has effectively become a single integrated market. State boundaries have little economic significance for business activity. Moreover, national regulations and standards are already in place in many key sectors such as corporations law and interstate transport.

(b) Significant sectors of the economy are sheltered from pro-competitive laws such as the *Trade Practices Act*. These include public utilities, professions and some areas of agriculture.

(c) Without a national approach, competition policy would vary regionally and between sectors of the economy, with attendant inconsistencies, inefficiencies and high costs.[4]

The Hilmer report contained recommendations for competition policy in six broad policy areas. They were:

(a) **Application of competitive conduct rules**, such as the restrictive trade practices provisions of Part IV of the TPA, to minimize the anti-competitive conduct of business entities,

(b) **Reforms to government regulations** so that restrictions to competition are eliminated, unless they are demonstrably in the public interest,

(c) **Reform of public monopolies** to introduce or increase competition in the sectors involved,

(d) **Providing third-party access to certain "essential facilities"**, to facilitate competition. Usually such facilities are in monopoly public ownership, but are too large or extensive to be duplicated to enable competition. Examples include railway and electricity transmission networks,

---

[3] *National Competition Policy*, p.361.

[4] *National Competition Policy*, p.xvii.

(e) **Restraining monopoly pricing behaviour**, through a prices surveillance mechanism, and

(f) **Fostering competitive neutrality between government and private businesses**, for example by removing any net competitive advantage of government businesses through corporatisation.[5]

Competitive Conduct Rules

The current Bill is primarily concerned with policy area (a) above - expanding the application of competitive conduct rules. Additional information on all six policy areas is available in the library's Background Information Brief No.30.[6]

The Hilmer report recommended that the existing provisions of Part IV of the *Trade Practices Act*, with minor amendment, be retained as the basic anti-competitive conduct rules in the National Competition Policy. The committee further recommended that application of the rules be broadened by eliminating exemptions currently available through

- State and Territory legislation, which may authorize conduct that would otherwise contravene the TPA,
- "Shield of the Crown Doctrine", which has served to exempt State and Territory government business enterprises, and commercial transactions between government businesses (including those of the Commonwealth), and
- Constitutional provisions, by which non-corporate businesses operating in one state only, escape the operation of the TPA. This category includes many professional business entities.

The current Bill addresses these three sources of exemptions.

2.1.2 Two New National Bodies

Following the Hilmer Committee's recommendations, two institutions have been established to oversee and facilitate National Competition Policy. The previous appeal body has had a change of name.

---

5 *National Competition Policy*, p.7.

6 R. Troedson, *Competition Policy: Hilmer, Governments and Business*, Background Information Brief No.30, Queensland Parliamentary Library, Brisbane, June 1995.

National Competition Council

The NCC is a new, independent, analytical, advisory and coordinating body. It was established on 6 November 1995. The President is Mr Tony Daniels, Managing Director of Tubemakers Australia Pty Ltd, and there are four other Councillors. The Hilmer report proposed six key characteristics of the NCC. In summary, they are:

- its functions would be purely advisory (although the recommendation of the NCC would be required in cases of proposed unilateral action by a Commonwealth Minister),
- it would be independent of government,
- it would take an integrated, economy-wide view of competition policy matters, and could draw on industry-specific expertise when required,
- it would take a pragmatic, business-like approach, focusing on specific practical reforms, and would consider transitional issues arising from its recommendations,
- it would operate through open processes, with input from all affected parties, and
- it would not duplicate the skills or resources of other agencies, and could contract analytical work to specialist agencies such as the Industry Commission.[7]

Australian Competition and Consumer Commission

The Australian Competition and Consumer Commission (ACCC) was formed by combining the Trade Practices Commission and the Prices Surveillance Authority, as of 6 November 1995. The founding chair is Professor Allan Fels, formerly chair of the Trade Practices Commission. The ACCC will be the administrative body for the national competition policy, having a range of statutory functions. Key among those will be oversight of matters concerning the competitive conduct rules, including authorizations, declarations and enforcement.

Two other important functions will be the administration of access to essential facilities and of the national prices oversight mechanism. In both cases, the Hilmer Committee considered the contentious option of industry-specific regulation, but rejected it in favour of an economy-wide regulator. Another important aspect of the role of the ACCC is consumer protection, by virtue of parts V and VA of the TPA. The original Hilmer recommendation was for an Australian Competition Commission. COAG expanded the name in recognition of the consumer protection role.

---

[7] *National Competition Policy*, p.319.

The key functions proposed for the ACCC are as follows:

- **Competitive conduct rules** - to enforce and monitor compliance, administer the authorization process (i.e., authorization of specific exemptions), and monitor and report annually on legislated and regulatory exemptions. The Commission will also administer other specified parts of the TPA.
- **Regulation review** - to undertake reviews of regulatory restrictions on competition.
- **Access regime** - to oversee the administration of the national access regime, provide arbitration facilities to parties subject to an access declaration, and oversee the implementation of any pro-competitive safeguards.
- **Prices oversight** - to administer the prices oversight function of the national policy.
- **Competitive neutrality** - to report on allegations of non-compliance with agreed principles to the relevant government and the NCC.
- **Public education** - to provide public education on the conduct rules and the role of competition in the community. [8]

The Australian Competition Tribunal, successor to the Trade Practices Tribunal, will be the appeal body for decisions made by the ACCC .

2.2 THE 1995 COUNCIL OF AUSTRALIAN GOVERNMENTS AGREEMENT

The Council of Australian Governments meeting on 11 April 1995 endorsed a national competition reform package which was derived from the recommendations of the Hilmer report. At the meeting the Prime Minister, Premiers and Chief Ministers agreed to the legislative amendments in the Commonwealth's Competition Policy Reform Bill 1995 [which has since been passed, receiving Royal Assent on 20 July 1995], and signed three inter-governmental agreements which dealt with other-matters. Each of the agreements is briefly summarised below to provide background information on the overall competition policy review process.

While the recommendations of the Hilmer report of 1993 largely became the competition policy reform package of 1995, the COAG meeting determined certain notable differences.

Most prominently the States and Territories secured more control over the development and implementation of competition policy than Hilmer recommended. In several key respects the agreements specify that the States and Territories are

---

[8] *National Competition Policy*, p.332.

under no specific obligation to reform, and each is entitled to determine its own agenda.

The States also retained the right to authorize, by statute, conduct which would otherwise contravene the TPA, although such exemptions will be subject to disallowance by the Commonwealth if a net public benefit cannot be demonstrated. However despite these apparent concessions to the independence of the States and Territories, the agreements contain attractive financial incentives for them to comply with the reform proposals (see Part 2.2.4 below).

The current Bill embodies the agreement by the Premiers and Chief Ministers to pass the required legislation to apply the competitive conduct rules of the TPA to State and Territory jurisdictions within 12 months of the Competition Policy Reform Bill receiving the Royal Assent[9].

2.2.1 Competition Policy Reform Act 1995 (Cwlth)

The Act contains the amendments to the TPA and other Commonwealth legislation required to implement the competition reform package. New Section 2 of the TPA sets out the object of the Act as follows:

> *The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.*

The amendments provide the legislative provisions for

- the National Competition Council
- the Australian Competition and Consumer Commission
- the amendments to the competition rules (primarily Part IV of the TPA), and
- the establishment of the **Competition Code**, which is based on the "*schedule version of Part IV*".

The Competition Code is an alternative version of Part IV of the TPA which has been included as a schedule to the Act. The main difference between the original and schedule versions of Part IV is that the schedule version has references to persons rather than to corporations. It is the text of the schedule version that will become part of State laws as the Competition Code.

The schedule version of Part IV is included as an attachment to the current Queensland Bill. It has not been included in the NSW Act or the Victorian Bill.

---

9 Council of Australian Governments, *Communiqué*, COAG meeting 11 April 1995, Canberra.

2.2.2 Conduct Code Agreement

This agreement provides for the States and Territories to legislate to apply the text of the Competition Code in their jurisdictions within 12 months of assent of the *Competition Policy Reform Act 1995* (Cwlth). The agreement also outlines the procedure for approval of appointments to the ACCC, and provides that the Commonwealth will be responsible for funding the ACCC.

The agreement sets out a procedure for consultation on any proposed modifications to the competition laws. Where a government enacts legislation which provides an exemption from the competition laws, notice of the exemption must be sent to the Australian Competition and Consumer Commission within 30 days. The Commonwealth Minister may table regulations to disallow the exemption, but if four months have elapsed the regulations must be accompanied by a report by the NCC on the impact of the exemption. Within three years, notice of all existing legislation which provides exemptions must be given by the States and Territories.

2.2.3 Competition Principles Agreement

This agreement sets out several principles for the application of competition policy. In particular, the agreement emphasises that decisions on competition policy should take into account both economic and non-economic criteria. Criteria listed in the agreement are as follows:

(a) legislation and policies on ecologically sustainable development,

(b) social welfare and equity considerations including community service obligations,

(c) industrial relations policies including occupational health and safety,

(d) economic and regional development including employment and investment growth,

(e) consumer interests,

(f) business competitiveness, and

(g) efficient allocation of resources.

Other matters covered in the agreement are listed briefly below They do not impinge directly on the current Bill.

- **Prices oversight of government business enterprises (GBEs).** States and Territories will be primarily responsible for prices oversight of GBEs that they own, and will consider establishing "*independent sources of price oversight advice*". However a State or Territory may subject its GBEs to a prices oversight mechanism of the ACCC or of another jurisdiction, by agreement with the Commonwealth or the other jurisdiction.

- **Competitive Neutrality.** Any net competitive advantage that GBEs enjoy simply as a result of public sector ownership will be removed. Governments will corporatise all key GBEs[10], exposing them to all taxes, fees, and regulatory requirements imposed on private sector businesses. Other GBEs may also be corporatised, but only if the benefits are expected to outweigh the costs. Each Government will publish a policy statement on competitive neutrality by June 1996, and will publish an annual report on the implementation of competitive neutrality principles.
- **Structural reform of public monopolies**. Each Government will review its public monopolies to determine the best way to privatize them. Among other things, the reviews will consider how to separate regulatory functions from commercial functions, and how to fund and deliver any community service obligations that are related to the monopolies and that are considered warranted.
- **Review of Legislation.** Each Government will review and reform anti-competitive legislation by the year 2000, and will prepare a review timetable by June 1996. In some cases, the NCC may conduct a national review. Each Government and the NCC will report annually on progress. Any new legislation that restricts competition should comply with the guiding principle

  ...that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

  i) the benefits of the restriction to the community as a whole outweigh the costs; and

  ii) the objectives of the legislation can only be achieved by restricting competition.
- **Access to public infrastructure.** The Commonwealth will legislate to establish a regime for third party access to infrastructure facilities of national significance. State and Territory services should have their own access regime unless the national regime is more appropriate (for example, if a facility extends beyond one State or Territory). The agreement provides detailed principles for the operation of an access regime.
- **Application of the principles to local government**. Each State and Territory will, in consultation with local government, apply the principles of the agreement to local government within their jurisdiction. Each State and Territory will publish a statement by June 1996 which specifies the application of the principles to particular local government activities and functions.

---

[10] Defined as those classified as "Public Trading Enterprises" and "Public Financial Enterprises" under the Government Financial Statistics Classification.

- **The National Competition Council.** The Commonwealth will fund the NCC, and will consult the States and Territories on appointments to it. Governments will jointly prepare the work program of the NCC, and will review its operation after five years.

2.2.4 Agreement to Implement the National Competition Policy and Related Reforms

This agreement, between the Commonwealth and the States and Territories, sets out the financial assistance to be provided by the Commonwealth in relation to the competition policy reforms. The Commonwealth agreed to maintain the indexed per capita Financial Assistance Grants, and to pay a series of Competition Payments to recompense the States for expected revenue losses from competition reforms.

The Competition Payments will be in three tranches (i.e. increments, commencing progressively). Total payments in current prices will be $200 million annually from 1997/98, increasing to $400 and $600 million annually from 1999/2000 and 2001/02 respectively. They will be divided between the States on a per capita basis.

Payments to each state will be conditional on progress in implementing competition reforms. Briefly, payment of the first tranche from July 1997 to a particular State or Territory will depend on:

- enactment of legislation to apply the Competition Code as a law of the state or Territory,
- complying with the Competition Policy Intergovernmental Agreements,
- where applicable, implementation of COAG agreements on a national electricity market (by July 1995) and free and fair trade in gas (by July 1996), and
- observance of agreed road transport reforms.

Payment of the second and third tranches will similarly depend on the reaching of agreed targets. The National Competition Council will decide whether the specified conditions have been met by each jurisdiction before each tranche is due to commence.

2.2.5 Legislation in other jurisdictions

At the time of writing, Queensland, Victoria, NSW and the ACT have introduced Bills, and the NSW Bill has been passed. The NSW Act and the Victorian and ACT Bills contain essentially the same provisions as the Queensland Bill.

Titles of the legislation in the other jurisdictions are as follows:

Competition Policy Reform (New South Wales) Act 1995 No. 8, assented to 9 June 1995.

Competition Policy Reform (Victoria) Bill 1995 No. 380, introduced 6 September 1995.

Competition Policy Reform Bill 1995 [ACT], introduced 24 August 1995.

3. KEY ELEMENTS OF THE BILL

3.1 THE MACHINERY TO APPLY THE TRADE PRACTICE LAWS IN QUEENSLAND

The main purpose of the Bill is to apply the restrictive trade practice provisions of the TPA to all persons and businesses in Queensland. This is achieved by defining the relevant provisions as the Competition Code of Queensland and declaring that Code to be Queensland law, while leaving its administration in the hands of Commonwealth agencies, principally the Australian Competition and Consumer Commission.

Individual clauses which give effect to this purpose are described below. These notes should be read in conjunction with those in the Explanatory Memorandum to the Bill.

- **Clause 4** defines the text of the Competition Code as certain parts of the *Trade Practices Act 1974* (Cwlth), primarily the schedule version of Part IV, and related regulations under that Act.
- **Clause 5** formally applies the Competition Code as a law of Queensland, to be cited (**Clause 10**) as the Competition Code of Queensland.
- **Clause 2** sets the date of commencement at 21 July 1996, although commencement may be postponed by regulation.
- **Clauses 11** and **12** state the intention that as much as possible the Competition Codes of the States and Territories will operate as a single national Competition Code.
- **Clause 6** provides that amendments to the text of the Competition Code made by Commonwealth legislation will take effect in Queensland after two months. However a regulation under the Queensland Act may reduce that lag period or may provide that such an amendment will not become part of the Queensland Code.

Administration by the Commonwealth of the Competition Code of Queensland is provided for in the following ways:

- **Clause 7** provides that the Commonwealth *Acts Interpretation Act 1901* applies to the Competition Code of Queensland, and the *Acts Interpretation Act 1954* (Qld) does not.
- **Clauses 18** to **20** provide that the Competition Code will be administered by authorities and officers of the Commonwealth. In particular, the ACCC will apply the regulatory and prosecution powers given to it in the TPA.
- **Clauses 21** to **23** provide that the Federal Court of Australia, and not Queensland courts, will have jurisdiction over the matters arising under the Competition Code.
- **Clauses 24** to **28** provide that offences against the Competition Code will be treated as offences against a law of the Commonwealth, and Commonwealth laws will apply for that purpose.
- **Clauses 29** to **33** provide that certain Commonwealth administrative laws apply to any matter arising in relation to the Competition Code. The laws in question are the following five Commonwealth Acts and their regulations:
  - *Administrative Appeals Tribunal Act 1975*
  - *Administrative Decisions (Judicial Review) Act 1977*
  - *Freedom of Information Act 1982*
  - *Ombudsman Act 1976*
  - *Privacy Act 1988*
- **Clause 37** provides that all fees, taxes and penalties levied under the Competition Code are to be paid to the Commonwealth, except amounts that are for damages payable to individuals or business entities.

3.2 KEY PROVISIONS OF THE COMPETITION CODE (CLAUSE 46)

Essentially the Competition Code either prohibits various types of anti-competitive conduct, or imposes restrictions on their use. The main text of the Code is the "*Schedule version of Part IV*", which is included as an attachment to the Queensland Bill. The main types of conduct covered by the Code are summarised below. The section numbers refer to the corresponding sections of the main part of the TPA.

Exclusionary Provisions: Section 45

A contract, arrangement or understanding that contains any provision that is "*exclusionary*" (i.e. that restricts or limits the supply or acquisition of goods or services between parties in competition), or that has the effect of "substantially

lessening competition", is prohibited. ["*Exclusionary provisions*" are defined in Section 4D of the TPA].

Price Fixing: Section 45A

Any provision that has the effect of fixing prices between parties in competition is forbidden. Some exceptions apply, for example in relation to joint ventures and joint advertising arrangements.

Covenants: Sections 45B and 45C

Covenants that have the effect of substantially lessening competition or of fixing prices, are prohibited or unenforceable.

Boycotts: Sections 45 and 45D

Boycotts in which parties exert pressure on a target party to try to force a change of conduct by that party are prohibited under the exclusionary provisions of Section 45. They are referred to as primary boycotts.

Boycotts which are directed at one party with the aim of changing the conduct of another party are referred to as secondary boycotts. Secondary boycotts which relate to the supply or acquisition of goods and services, and which have the effect of substantially lessening competition, are prohibited under Section 45D.

An earlier version of Section 45D, now repealed, was directed at preventing secondary boycotts by trade unions in the course of industrial campaigns, and, as such, was highly contentious.

Misuse of Market Power: Section 46

A person or corporation who has substantial degree of market power shall not take advantage of that market power for anti-competitive purposes. Anti-competitive purposes are those that may eliminate or substantially damage a competitor, prevent the entry of a competitor into a market, or deter or prevent a competitor from engaging in competitive conduct.

Exclusive Dealing: Section 47

Exclusive dealing refers to the imposing of certain conditions on the supply or acquisition of goods and services to or from another party. The types of conditions prohibited are that the second party restrict its trade in some way with a third party

who is a competitor of the first party, or that the second party agree to acquire goods or services from a third party.

Conduct of the latter type is referred to as third line forcing. Under amendments to the TPA contained in the *Competition Policy Reform Act 1995* (Cwlth), parties proposing to engage in third line forcing may notify the Commission of the proposed conduct. The conduct will be lawful unless the Commission issues a notice stating that the detriment of the conduct outweighs any likely public benefit.

Resale Price Maintenance: Section 48

Section 48 prohibits resale price maintenance. The possible meanings of this term are outlined in Sections 96-100 of the TPA. Principally, it refers to a supplier attempting to control the price at which a distributor sells goods or services from the supplier, for example by refusing to provide those goods or services unless the distributor agrees to apply the required pricing.

Acquisitions: Section 50

Acquisition of shares or assets is prohibited when that acquisition would result in a substantial lessening of competition. This section is particularly applicable to mergers and proposed mergers.

Exceptions: Section 51

This section authorizes exceptions under State or Territory legislation. Other exceptions include certain provisions in agreements relating to remuneration, conditions of employment, restrictions on work, application of standards, partnership arrangements, sale contracts, and matters under the *Circuit Layouts Act 1989* (Cwlth) or the *Trade Marks Act 1955* (Cwlth).

3.3 APPLICATION OF THE COMPETITION CODE TO INDIVIDUALS AND BUSINESSES IN QUEENSLAND.

Provisions which cover how the Competition Code will apply to persons and businesses are summarised below.

- **Clause 8** provides that the Competition Code of Queensland applies to persons ordinarily resident in, carrying on business within, or otherwise connected with, Queensland, or to incorporated bodies registered under Queensland law. The Code applies to conduct or matters occurring in or outside of Queensland, but the consent of the Commonwealth Minister is required for proceedings involving conduct outside Australia.

- **Clause 34** provides that any one act or omission that contravenes the Competition Code may only be punished once. Because of the parallel nature of the TPA and the various state codes, the same conduct could be liable to punishment in more than one jurisdiction.
- **Clauses 13** and **14** provide that the Competition Code binds each State and Territory, but only when carrying on a business. That is, any government business activity will be subject to the restrictive trade provisions of the Competition Code.
- **Clause 15** lists activities that are defined as not carrying on a business, including:
  - collecting taxes, levies or license fees
  - granting, revoking or varying licenses
  - transactions within government bodies or between non-commercial bodies
  - acquisition of primary products under legislation
- **Clause 16** provides that a State (but not an authority of a State) cannot be liable to a pecuniary penalty or to be prosecuted for an offence in relation to the Competition Code. The exclusion of authorities effectively limits this protection to Departments only.
- **Clause 39** contains the provision, negotiated by the States at the COAG meeting, enabling the State to make regulations that authorize matters that might otherwise contravene the Competition Code. However such regulations are valid for two years only, may not be renewed, and are subject to disallowance by the Commonwealth Minister if they are not demonstrably in the public interest. Under the Conduct Code Agreement, the State must notify the ACCC of any such regulation within 30 days of the regulation's enactment.
- **Clauses 40** to **43** provide for transitional matters. **Clause 40** sets the cut-off date as 19 August 1994, the date on which COAG, meeting in Darwin, agreed in principle to extend the provisions of the TPA to State business enterprises and unincorporated businesses.
- **Clause 41** provides that contracts made before the cut-off date are exempt from the new provisions, but variations made on or after the cut-off date are not.
- **Clause 42** provides that exemptions granted under Section 51 of the TPA before that section was amended by the *Competition Policy Reform Act 1995* (Cwlth) will continue to apply for three years from 20 July 1995.
- **Clause 43** provides for an exemption from pecuniary penalties for conduct occurring within the first year of the application of the Competition Code (which is expected to be from 21 July 1996).

4. IMPLEMENTATION PROCEDURES FOR QUEENSLAND GOVERNMENT BUSINESS ENTERPRISES

The Queensland Government has established an Interdepartmental Steering Committee to oversee the implementation of national competition policy in government-related agencies. The Committee will consist of Directors-General or their nominees from central agencies and the most affected line departments. A National Competition Policy (NCP) Implementation Unit has been established within Treasury. The Steering Committee and the NCP Unit will oversight the implementation process by establishing policy guidelines, setting timetables, acting as a co-ordinating centre and providing specific assistance to departments[11].

The NCP has produced a *Restrictive Trade Practices Processes and Procedures Manual* for the Queensland public sector. The Manual will assist Departments to identify activities that fall within the ambit of "*carrying on a business*", and which are therefore subject to the TPA, and to evaluate those activities for any potential breaches of the TPA. The TPA does not define the term "*carrying on a business*", but the courts are expected to interpret it broadly. Therefore, only activites specifically exempted in the Competition Code, such as collection of taxes, can be considered certain to not fall within the definition.[12]

Each Department is required to conduct an audit by the end of March 1996, to identify relevant business activities, and also to identify any aspects of legislation that may authorise anti-competitive conduct. The Queensland Government has until 21 July 1998 to ensure that any legislative authorisations are in accord with national competition policy and can pass the public benefit test. Departments are also required to prepare a trade practices compliance program.

5. COMMENTARY ON THE EFFECTS OF HILMER AND RELATED REFORMS

Most commentary on competition policy reform includes or focuses on aspects not addressed in the current Bill, such as regulatory reform, corporatisation of public monopolies and other business enterprises, and access to essential facilities. The principal impact of the Bill will be on the professions and on government business enterprises (GBEs).

---

[11] Glyn Davis, 'Introduction to the Competition Policy Reforms', Proceedings, *National Competition Policy Seminar*, Brisbane, 8 June 1995, pp.3-4.

[12] Steve Edwell, Paper presented to Trade Practices Seminar, Brisbane, 18 October 1995.

A brief introduction to commentary on those issues is given below. References to broader competition issues are given in the Further Reading List. Copies of four recent articles that summarise some of the more important issues are provided in the Appendix.

5.1 OVERVIEW

The Council of Australian Governments meeting in August 1994 requested the Industry Commission (IC) to assess the effects of "*Hilmer and related reforms*" on economic growth and revenue[13]. The expression "*Hilmer and related reforms*" refers to the recommendations in the Hilmer report, and other specific reforms related to electricity, gas, water, road transport, mutual recognition, partially registered occupations and ports.

The IC used a computer modelling approach which involved a range of assumptions and economic estimates, which are detailed in the report. The following points provide a brief summary of the IC's conclusions:

- The projected benefit of the reforms assessed was a gain in gross domestic product (GDP) of 5.5%, or $23 billion per year. This should boost both real wages and job numbers, but they will counterbalance each other. One example given was a combination of a 3% increase in real wages and 30 000 extra jobs. If either increases more than those respective amounts, the other will increase less.
- The benefits should be widespread across industries. In most industries the projected gains are substantial.
- Commonwealth revenue should increase by $5.9 billion annually, or 6.0%, and that of the States, Territories and local government should increase by $3.0 billion annually, or 4.5%.
- Commonwealth reforms will contribute $1.2 billion to Commonwealth revenue and $0.4 billion to state and local revenue, and 1.0% to GDP. State, Territory and local government reforms will contribute $2.6 billion to own revenue, $4.7 billion to Commonwealth revenue, and 4.5% to GDP.[14]

The above figures do not include any transitional costs associated with the implementation of the reforms.

---

[13] Industry Commission, *The Growth and Revenue Implications of Hilmer and Related Reforms*, AGPS, Canberra, March 1995, Appendix D1.

[14] Industry Commission, pp.83-84.

The projected GDP gain from reforms in the unincorporated business sector (primarily the professions) was 0.3%, approximately $1.2 billion annually. Five professions were considered in detail: dentistry, law, medicine, optometry and pharmacy. In each case, productivity gains were projected as a result of removing current restrictions. The greatest gains, representing an average decrease in costs of 12%, were predicted for legal services.[15]

Some commentators have argued that the IC's predictions are unduly optimistic. Dr John Quiggin of James Cook University estimated that the net gain in GDP will be only 0.5%, not 5.5%[16]. Quiggin claims that the difference is due to the failure of the IC to adequately account for loss of employment associated with the Hilmer reforms, and to exaggerated predictions of gains in productivity and the stimulation of capital investment.

The results of an assessment by Dr John Madden of the Centre for Regional Economic Analysis at the University of Tasmania[17] were more comparable with those of the Industry Commission, although his analysis did not include all the reforms modelled by the IC. Overall, he estimated real increases of 3.4% in GDP and 4.0% in household consumption (higher than the IC). As with the IC, he predicted that the benefits of the reforms would be widespread, over all industry sectors and all States. Madden's simulations may be open to the same criticism to that made of the IC study by Quiggin, in that they involve the assumption that unemployment will not change as a result of the reforms.

Madden's predictions for the individual States and Territories are summarised in Table 5.1. Of the States, the greatest predicted impact of reforms is in Victoria, because the greatest amount of productivity improvement in both labour and capital is expected to occur there. The next highest impact is predicted for Western Australia, because of projected benefits for the mining industry, and the fact that WA has a high proportion of Australian mining output relative to its proportion of GDP.

In Queensland, predicted growth in both GSP and household consumption is below the national average. This is at least partly due to the fact that in many of the industries studied (water, electricity, rail, and ports), Queensland appeared to start from a base of substantial prior improvements in productivity.

---

15 Industry Commission, pp.20, 58.

16 John Quiggin, *The Growth Consequences of Hilmer and Related Reforms*, ANU, Canberra, 1995.

17 John Madden, *The Impact of Implementing the Hilmer Report on the National and State Economies*, Report prepared for Australian Chamber of Commerce and Industry and other bodies (see Bibliography for full list), Centre for Regional Economic Analysis, University of Tasmania, 21 March 1995.

Table 5.1 Effects of Hilmer Reforms on Gross State Product and Household Consumption by State and Territory.

STATE/TERRITORY	GSP[a]	RHC[b]
New South Wales	2.54	3.37
Victoria	4.28	4.92
Queensland	2.73	3.44
South Australia	2.51	3.63
Western Australia	4.27	5.16
Tasmania	2.56	4.04
Northern Territory	6.79	7.16
ACT	1.97	4.53
AUSTRALIA	3.37	4.03

a. Gross State Product, for Australia Gross Domestic Product

b. Real Household Consumption

Source: Madden, p.17.

5.2 PROFESSIONS

The TPA does not contain a blanket exemption from its anti-competitive provisions for members of the professions, but most are not currently covered by the Act for various other reasons. These include being in non-corporate entities (eg, partnerships) and not trading across state borders or internationally, or being exempted by State or Territory legislation, or having specific exemptions authorised by the TPC.

Under the new arrangements, statutory restrictions on practice, for example through licensing requirements, will not be affected. Neither will any self-regulation of ethical or other standards. However any rules of professional associations that have the effect of substantially lessening competition will be prohibited under the TPA. Individual professional organisations wishing to retain any such rules would have to seek specific authorisation from the ACCC and will have to demonstrate that the anti-competitive rule resulted in a net public benefit. Existing authorisations (eg, the

Trade Practices Commission granted certain exemptions for pharmacists, architects, metallurgists, lawyers and doctors) will still be valid.

In relation to the medical profession, a summary of a speech made by Professor Allan Fels, then Trade Practices Commission Chairman, now Chairman of the ACCC, to the Committee of Presidents of Medical Colleges on 8 June 1995, contained the following:

> *Professor Fels reassured the audience that there was no need to be uneasy about the effects of the extension of the [Trade Practices] Act to the medical profession. The Act was not designed to harm business or prevent fair and fierce competition - in fact, it protected both consumers and business from unlawful anti-competitive conduct and unfair market practices.*
>
> *...In closing, Professor Fels outlined a complaint concerning the conduct of a group of specialist doctors in Victoria who, by the threat of joint concerted action, were able to obtain a 100 per cent increase in remuneration which subsequently flowed through to all similar specialists in the State.*
>
> *"Such action is, in my belief, a clear breach of the Trade Practices Act. The Commission, if faced with such concerted conduct, will, to uphold its charter, have to examine whether court action is appropriate."*
>
> *However he did not want to leave the impression that court action was the preferred option of the Commission.*
>
> *... Professor Fels said he hoped that cooperation between the Commission and the medical colleges and their members would ensure a smooth transition to a more competitive environment.*[18]

5.3 GOVERNMENT BUSINESS ENTERPRISES

Commonwealth business units are already subject to the TPA. The previous exemption for transactions between agencies has now been removed.

The impact on State and Territory Government enterprises will be greater as they will come under the ambit of the TPA for the first time. The Hilmer Committee noted that rail, electricity, gas and water utilities account for nearly 5% of national GDP. Efficiency measures could increase this by two percentage points, or $8 billion per annum (an Industry Commission estimate), in part through the removal of regulatory arrangements that shield these businesses from competition.[19]

---

[18] 'National competition policy and the medical profession', *Trade Practices Commission Bulletin*, no.82, August 1995, pp.11-13.

[19] *National Competition Policy*, p.129.

A government may still protect community service obligations or other objectives by, for example, creating or maintaining a statutory monopoly with legislated exemptions from competition rules, such as for pricing arrangements. However such a move would have to be justified by a public interest test and in all other respects such businesses would be required to observe the national standards of competitive conduct.

In a recent paper on the impact of competition policy on GBEs, Peter Forsyth, Professor of Economics at the University of New England, said that many industries served by GBEs tend to be natural monopolies and are likely to remain so, including water, electricity distribution and transmission, gas reticulation, rail track and some port infrastructure[20]. He added that

> *...some parts of these industries can become moderately competitive. Electricity generation and supply may be able to support several firms competing, gas supply and production can be competitive, some port services may be competitive, rail operations could be competitive and there is much scope for competition in urban transport. We are yet to see just how effective competition is likely to be: there may be problems with different companies operating trains on a track system, and competition between electricity generators may not be very intense.*
>
> *Further, it needs to be recognised that the scope for competition depends critically on decisions of governments. They can choose to disaggregate industries like electricity generation or leave them as monopolies. The conditions of, and prices for, access to essential facilities which remain in monopoly hands will be critical determinants of how competition develops for other parts of industries. It is one thing to permit competition- this is no guarantee that it actually comes about.*
>
> *Governments are now facing these decisions. In short, they are having to decide whether or not to break up industries, with the possible loss of scale economies, in order to promote competition. This competition may or may not be very effective. If they do not break up these industries, they will be faced with monopoly, and the problems of regulating monopoly in ways that protect customers but do not promote cost inefficiency. Economists can advise on what trade-offs are present, but they have little evidence on the likely size of the relative costs and benefits of the different ways of proceeding.*

Forsyth went on to point out that government revenues from GBEs may well be reduced, as those GBEs are exposed to competition.

---

[20] Peter Forsyth, 'Competition policy and GBEs - Impacts on performance and profitability', presented to seminar on *National Competition Policy - Charting Australia's Future*, Sydney, June 1995.

By opening up their GBEs to competition, governments are putting their revenues at risk. If competition is to work, and put pressure on firms to price and produce efficiently, it will do so by putting pressure on price levels, revenues and profits. Where competition is effective, it will depress the profitability of the firms the governments own. Clearly, opening up markets in several areas, those which remain dominated by monopoly, will make little difference to revenue. As noted, competition is feasible in a range of industry sectors, and in these, it put pressure on profitability. The states are right to be concerned about the revenue implications of the Hilmer reforms.

It might be thought that since few state government enterprises currently earn high rates of return, competition should make little difference. In the long term, they should be able to earn normal rates of return, often higher than their rates of return at present, even when there is strong competition. The fact that the GBEs do not appear to be earning monopoly returns does not alter the fact that they can lose significantly from the introduction of competition.

This is the case for several reasons, Firstly, some GBEs are charging high prices in parts of their systems- for example, carrying mineral traffic on rail. Competition will depress the prices for these parts of the systems, but will not make it any easier to raise prices in other parts. Secondly, while GBEs are not earning high rates of return, they may be earning well above the return possible in a competitive environment. In the electricity industry, there is considerable excess capacity- if there is competition in generation, prices would be much lower, and they would not be sufficient to ensure cost recovery of the excessive investments, as is the case now. Thirdly, some GBEs may be just covering costs, but these costs may be well above the cost levels possible under best practice. If new competitors enter, they are likely to have lower costs than the existing GBEs, which will take time to get their costs down. In the meantime, they will incur losses. Finally, even if competition does not mean that profitability, taking one year with another, falls, it is inevitable that it will make it more volatile, and much more sensitive to economic conditions.

The Commonwealth payments (referred to in Part 2.2.4) are designed in part to compensate the states for losses in revenue due to Competition Policy reforms.

BIBLIOGRAPHY

Articles

- Forsyth, Peter, 'Competition policy and GBEs - Impacts on performance and profitability', presented to seminar on *National Competition Policy - Charting Australia's Future*, Sydney, June 1995.
- 'National competition policy and the medical profession', *Trade Practices Bulletin*, no.82, August 1995, pp.11-13.

Monographs

- Council of Australian Governments, *Communique*, COAG meeting 11 April 1995, Canberra.
- Hilmer, F.G., Rayner, M.R., and Taperell, G.Q., *National Competition Policy: Report by the Independent Committee of Inquiry*, AGPS, Canberra, 1993.
- Industry Commission, *The Growth and Revenue Implications of Hilmer and Related Reforms*, AGPS, Canberra, March 1995.
- Keating, Hon Paul MP, *One Nation*, AGPS, Canberra, 1992.
- Madden, John, *The Impact of Implementing the Hilmer Report on the National and State Economies*, Report prepared for the Australian Chamber of Commerce and Industry, Australian Chamber of Manufacturers, Australian Mining Industry Council, Business Council of Australia, Chamber of Manufacturers of NSW, Metal Trades Industry Association, National Farmers' Federation, Steel Institute of Australia, Victorian Employers' Chamber of Commerce and Industry, and the Victorian Farmers' Federation; Centre for Regional Economic Analysis, University of Tasmania, March 1995.
- Quiggin, John, *The Growth Consequences of Hilmer and Related Reforms*, ANU, Canberra, 1995.

FURTHER READING

Articles

- Allan, Percy, 'Community service obligations and the consumer interest', *Passing on the Benefits: Consumers and the reform of Australia's utilities*, TPC, March 1994, pp.122-125.
- Baxt, Robert, 'A new competition law regime for Australia', [primarily deals with access to essential facilities] *Australian Business Law Review*, vol.23 no.4, August 1995, pp.303-307.
- Borthwick, David, 'The true consumer interest in utilities reform', *Passing on the Benefits: Consumers and the reform of Australia's utilities*, TPC, March 1994, pp.21-29.
- Business Council of Australia, 'Giving effect to the National Competition Policy,' *Business Council Bulletin*, no.122, August 1995, pp.6-9.
- Carver, Liza, 'The Hilmer report and competition policy: a consumer perspective', *Trade Practices Commission Bulletin*, no.80, February 1995, pp.8-10.
- Colebatch, Tim, 'Deal is done for era of competition', *Age*, 12 April 1995, p.1.
- 'Double response to Hilmer report', *Australian Financial Review*, 7 November 1995, p.43.
- Farmer, James, 'The application of competition principles to the organisation of the legal profession', *University of New South Wales Law Journal*, vol.17 no.1, September 1994, pp.285-297.
- Field, Nina, 'Competition bodies start their work', *Australian Financial Review*, 7 November 1995, p.8.
- Freebairn, John, 'Competition policy: some neglected issues in the Hilmer Report', *The Australian Economic Review*, no.111, 3rd quarter 1995, pp.27-42.
- Gazard, David, 'Brave new world of business begins today', *Courier Mail*, 6 November 1995, p.3.
- 'Government reforms lie in NCC domain', *Australian Financial Review*, 7 November 1995, p.43.
- Guille, Howard, 'Market madness: the Hilmer Report', *WISER*, vol.1 no.2, pp.37-40.
- Haynes, Warren, 'Competition in energy', *Business Council Bulletin*, no.117, March 1995, pp.38-42.
- Henderson, Ian, 'Unhinging Hilmer', *Australian*, 4 October 1995, p.41.
- Kennedy, Fiona, 'Sugar first to taste reform process', *Australian*, 14 October 1995, p.7.

- Kolsen, H.M., 'Industry policy and trade practices legislation in Australia', *Economic Analysis and Policy*, vol.24 no.2, September 1994, pp.116-129.
- Mitchell, Allen, 'Keeping the States honest', *Australian Financial Review*, 16 August 1995, p.17.
- Morley, Peter, 'State to cross border for rail trade', *Courier Mail*, 15 June 1995, p.1.
- Nahan, Mike, 'Reform not bound to competition policy', *Australian Financial Review*, 28 April 1995, p.24.
- Park, Tom, 'Why the Hilmer Report is important to business', *Business Council Bulletin*, no.115, December 1994, pp.44-48.
- Pascoe, Janine, 'Professional regulation after the Hilmer report', *Australian Accountant*, March 1994, pp.35-40.
- Pengilley, Warren, 'Hilmer and "Essential Facilities"', *University of New South Wales Law Journal*, vol.17 no.1, September 1994, pp.1-53.
- Ranald, Pat, 'National competition policy: privatiosation by stealth?', *Just Policy*, no.3, June 1995, pp.11-16.
- Roberts, Malcolm, 'National competition policy: realising the gains', *Policy*, vol.11 no.2, Winter 1995, pp.17-20.
- Rodgers, Shane, 'The age of Hilmer', *Courier Mail*, 21 August 1995, p.7.
- Solomon, David, 'A teetering monopoly', *Courier Mail*, 17 August 1995, p.17.
- Struthers, Karen, 'Competition policy - How is it likely to impact on the community services sector?', *QCOSS Bulletin*, October 1995, pp.4-6.
- Thomas, Ian, '[NSW] Premier sets competitive reforms in train', *Australian Financial Review*, 25 August 1995, p.2.
- Turner, Brook and Burton, Tom, 'Borderless nation', *Australian Financial Review*, 12 April 1995, pp.1,4.

Monographs

- Business Council of Australia, *Competition Policy Supplement*, [Papers presented at a Joint Business and Industry Forum, 21 March 1995] BCA, 1995.
- Crown Law (Queensland), *The National Competition Policy: Seminar - Implications for the Queensland Government*, Brisbane, 8 June 1995.
- Kain, John, *National Competition Policy: Overview and Assessment*, Department of the Parliamentary Library (Australia), Research Paper no.1 1994.
- Newby, Jan, *National Competition Policy: Report by the Independent Committee of Inquiry (The Hilmer Report)*, Briefing Note 001/94, NSW Parliamentary Library, Sydney, 1994.
- Newby, Jan, *Update on the Hilmer Report*, Briefing Paper 016/95, NSW Parliamentary Library, Sydney, May 1995.

- Trade Practices Commission, *Passing on the Benefits: Consumers and the reform of Australia's utilities*, TPC, March 1994.
- Trade Practices Commission, *Study of the Professions: Legal, Final Report*, TPC, March 1994.
- Troedson, Robert, *Competition Policy: Hilmer, Governments and Business*, Background Information Brief No.30, Queensland Parliamentary Library, Brisbane, June 1995.

APPENDIX

This Appendix contains copies of the following articles:

- Field, Nina, 'Competition bodies start their work', *Australian Financial Review*, 7 November 1995, p.8.
- Mitchell, Allen, 'Keeping the States honest', *Australian Financial Review*, 16 August 1995, p.17.
- Rodgers, Shane, 'The age of Hilmer', *Courier Mail*, 21 August 1995, p.7.
- Solomon, David, 'A teetering monopoly', *Courier Mail*, 17 August 1995, p.17.

Title **Competition bodies start their work.**

Author **Field, Nina**

Source **Australian Financial Review**

Date Issue 07/11/95

Pages **8**

THE all-new "powerful tool" of competition was sharpened for use

yesterday, as the Assistant Treasurer, Mr Gear, launched the Australian Competition and Consumer Commission and the National Competition Council.

Mr Gear, standing in for Prime Minister Keating, said he had "high hopes" for the new organisations and was sure they would play a big part in continuing the economic reform process in Australia.

The ACCC merges the roles of the former Trade Practices Commission and

Prices Surveillance Authority. It is headed by Professor Allan Fels, who led the TPC.

Mr Gear said there was still economic reform to be done and it was important that all levels of government, business and the new bodies did their part to make the competition policy work.

"So far we have only established the legal and institutional framework within which these reforms can occur," Mr Gear said at the launch in Canberra.

"But making national competition policy work and realising the undoubted benefits that these reforms can bring to the national economy now depends on many small decisions by the Commonwealth, State and Territory governments, the business community and our new competition institutions."..

Mr Gear was confident the legislative framework would ensure all Australians shared in the benefits of national competition policy.

"Competition is a powerful tool if used in the right way - I believe that we have included the checks and balances, public interest tests and so on, which will ensure that we realise its benefits in a socially responsible way," he said.

Mr Gear compared the task ahead to a relay race with no finish line, emphasising the need to ensure that all stages of production are operating competitively and efficiently.

"The race is to get products and services to markets which are competitive on price and quality, " he said.

"This is what the national competition policy is about.

It's about ensuring that all stages of the race are run efficiently and using competition to achieve this."..

Mr Gear did not miss the opportunity to highlight Labor's part in establishing the policy, saying national competition policy was something only a Labor Government could have done, just as the Trade Practices Act had been in the 1970s.

"The national competition policy is a genuine Labor initiative.It is the product of a grand vision of the future of Australia and a lot of very hard work," he said.

"Australian history shows only a Federal Labor Government can deliver such institutions and policies.

A party based on the States, as the Liberal Party is, can never provide the leadership necessary to implement national reforms of this significance"..

Although he would not endorse the estimates of the Industry Commission of a 5.5 per cent increase in annual GDP - or $23 billion a year - he said the gains, even if overstated were something Australia must have.

"This policy is a victory for economic and social progress - we need to set the conditions which maximise our sustainable rate of economic and employment growth," he said.

Title **The age of Hilmer.**

Author **RODGERS, SHANE**

Source **Courier Mail**

Date Issue 21/08/95

Pages **7**

AUSTRALIA is about to embark on a bold new world of competition and deregulation.

Institutions and practices, which have for decades been an accepted part of the way governments, professions and industries do business, are under full-scale and unprecedented review.

In April this year state and Federal governments committed themselves to the "Age of Hilmer", embracing a concept which could result in the

redrafting of dozens of state and federal statutes.

An Industry Commission report on the likely impact of the Hilmer reforms, published in March this year, estimated the spending power of every Australian could increase by $1500 a year as a result of the competition reform.

It would add $23 billion or 5.5 percent to national Gross Domestic Product, lift real wages by 3 percent and create an extra 30,000 jobs.

But some consumer groups have expressed concern at possible price rises as public utilities become more commerce-driven and some industries believe the process is a threat to their survival.

The competition revolution began in earnest two years ago with the release of the report of the Independent Committee of Inquiry into national competition, headed by Professor Fred Hilmer.

The inquiry was the result of a 1991 "new federation" meeting between the states and the Federal Government which agreed to a national approach on competition policy.

Underlining all the Hilmer recommendations was a belief that universal and uniformly applied rules of market conduct should apply to all market participants regardless of ownership.

The Federal Government last month passed legislation giving effect to many of the changes recommended by Hilmer.

State governments are now in the process of identifying potentially anti-competitive practices in their own statutes - a process which they must report on by the middle of next year.

According to an "indicative list" of Queensland legislation, tabled in a parliamentary committee by Senator

Ron Boswell, 106 state acts are under the microscope.

They include everything from the 1967 Acquisition of Land Act to the Dental Act, Gas Act and Traffic Act.

So far most of the specifics of the Hilmer reforms are still being negotiated and many anti-competitive practices might be preserved if the industries involved can prove they lead to a public benefit.

"It is not about competition for competition's sake," Federal Assistant

Treasurer George Gear said when he introduced the Competition Policy Reform Bill to Federal Parliament.

"The agreement does not compel specific reforms by governments.In particular the agreement, and indeed the package of reforms in total, does not compel, or even encourage, governments to privatise government business enterprises nor abandon or reduce community service obligations."..

The following are some of the areas being scrutinised as part of the process.

ELECTRICITY.

THE GAINS: Most state governments, including Queensland, have moved to corporatise electricity services.

The Queensland Government has pledged, however, to maintain the cross-subsidy arrangements which prevent people in rural areas having to pay the full cost of service provision.

According to Assistant Treasurer Gear, reforms so far have already reduced the real price of power by 5 percent nationally.

Queensland has agreed to become part of a national power grid through the so-called Eastlink project.

The aim is to move towards a fully competitive electricity market by July, 1999.

The states are still negotiating whether power traded on the national grid will be priced on a set price or based on the distance it has to travel.

The Industry Commission said a free trade in bulk electricity for private generating companies, public utilities and consumers would reduce power charges to business by a quarter but make little difference to domestic charges.

THE TRADE-OFFS: In Queensland, connecting to Eastlink has sparked a strong protest from environmental and resident groups.

Some commercial electricity users fear they might be disadvantaged if they are a long way from a power source.

GAS.

THE GAINS: The Council of Australian Governments agreed at its meeting in February, 1994, to establish a national gas market.

The agreement included the removal of regulatory barriers to intrastate and interstate trade in gas, non-discriminatory third-party access to gas networks and greater commercialisation of publicly owned gas utilities.

The way was also cleared to use gas as an alternative source of electricity generation.

The reforms are expected to cut the real price of gas by 4 percent by the year 2005 - but mainly for large users.

THE TRADE-OFFS: It is possible in areas where large industrial consumers are cross-subsidising residential consumers, the price for small users could rise.

WATER.

THE GAINS: The proposal is to eliminate cross-subsidies and achieve a return on water infra structure investment.

Moves in this direction have already resulted in a dispute between the Brisbane City Council and some of the surrounding councils who buy water from Brisbane.

The Industry Commission believes commercialising water services would reduce costs by more than 18 percent for commercial users.

THE TRADE-OFFS: Residential users are expected to pay an extra 7 percent for their water.

MEDICAL.

THE GAINS: The Industry Commission found the cost of medical specialists could be reduced by 1.25 percent if there was a relaxing of tight controls on entry.

Some medical specialist areas are controlled by boards and colleges of practitioners.

The Baume report in 1994 found "excessively" tight control of supply of trained surgeons was reflected in the high earnings in particular categories.

THE TRADE-OFFS: The Australian Medical Association argues that provision of medical services should be based on value and quality and not just price.

Higher costs are sometimes needed to provide an adequate level of care and attract people of sufficient calibre.

The AMA says specialist numbers are controlled based on training positions available and these are set on international standards and ultimately in the hands of Federal Government university funding.

It argues the Federal Government's Medicare system, through its fee-setting system, works against competition between doctors.

DENTISTS.

THE GAINS: The Industry Commission found, based on overseas experience, many of the tasks now performed by dentists could be done adequately and more cheaply by dental auxiliary staff.

Use of such staff is currently restricted by state laws.

The commission identified potential labour savings of 4 percent.

The commission also raised the issue of advertising restrictions, which made it hard for people to shop around for dentists, and restrictions on the ownership of practices.

THE TRADE-OFFS: Dentists fear some of the suggested proposals could have an impact on the quality of care.

There are also concerns that allowing non-dentists to own dental businesses could complicate the legal protection for patients when procedures go wrong.

OPTOMETRISTS.

THE GAINS: Some state rules prevent optical dispensers from operating consulting services in the same premises.

The Industry Commission said, if this restriction was removed,

operating costs for the industry would fall 10 percent and capital costs by 20 percent.

These could be passed on to consumers.

THE TRADE-OFFS: This already happens to some degree in Queensland.

There is some professional resistance because of fears clinical decisions could potentially be linked to a desire to sell spectacles.

LAWYERS.

THE GAINS: The Trade Practices Commission found costs could be cut by up to 50 percent in Queensland if lawyers lost their monopoly on conveyancing and barristers were allowed direct contact with clients.

There could also be a 13 percent savings on barrister fees if they were allowed to advertise.

The Queensland Government is reviewing the arrangements.

It has set lawyers a deadline of two years to make their conveyancing services more competitive.

THE TRADE-OFFS: The legal profession argues that people need the protection offered by a qualified lawyer in the conveyancing process.

There are also fears the loss of conveyancing would destroy the viability of legal practices and might deprive smaller towns of legal services.

AGRICULTURE.

THE GAINS: The Hilmer process will involve a review of statutory marketing authorities and a phasing-out of anti-competitive practices such as quotas unless a public benefit can be proven.

In Queensland this would have an impact on organisations such as the Committee of Direction of Fruit

Marketing, the Tobacco Leaf Marketing Board, the Queensland Dairy Industry Authority and the Queensland Sugar Corporation.

The Industry Commission estimates anti-competitive practices add 44 percent to the price of fresh milk, 13 percent to rice, 12 percent to cheese and 15 percent to sugar.

THE TRADE-OFFS: It has been argued, most vocally by Queensland Senator Ron Boswell, that the dismantling of some of these marketing authorities would create an unequal market power position between individual growers and multi-national buyers.

Canegrowers claim its selling system has been responsible for Queensland's dominant position in the world market.

There are also concerns the reforms could have an impact on primary producers already hit by drought and low commodity prices.

PHARMACY.

THE GAINS: The Industry Commission believes reforms to improve

competition could reduce the price of pharmaceuticals by 15 percent.

Existing regulations restrict the number of pharmacies that can be owned and prevents non-pharmacists from owning them.

Numbers are also controlled by only certain numbers of chemists being given authority to provide Pharmaceutical Benefits Scheme drugs.

THE TRADE-OFFS: The Pharmacy Guild is concerned reforms could dilute the professional advice side of pharmacy delivery.

It believes there might be attempts to offer items, now available only in chemists, in supermarkets.

This raised the potential for people not to be adequately warned about side-effects.

(The Federal Government has said such safeguards would remain in place).

BUILDING.

THE GAINS: The Industry Commission estimated up to 2 percent of building costs could be saved by removing unnecessary state building regulations and standards.

It believed a further 3 percent could be saved by streamlining approval processes.

TAXIS.

THE GAINS: The Industry Commission estimated the existing system of taxi licensing adds $2 to the price of every taxi trip.

This system is likely to come up for review although no state has so far indicated an intention to abolish it.

THE TRADE-OFFS: The Australian Taxi Industry Association argues that deregulation would reduce service and

vehicle quality and not create any new market.

There would also be a need to compensate people who have paid hundreds of thousands of dollars for a licence at a total estimated cost of between $2 billion and $3 billion.RAIL.

THE GAINS: The cost of rail freight transport is expected to fall significantly when the statutory monopoly is removed for some commodities, particularly coal.

The states have been given five years to introduce competitive pricing principles to coal freight, a timetable based largely on Queensland's plans to do that anyway.

In June the Federal Government announced the formation of Track

Australia, which will separate the operation of the interstate rail tracks from the trains.

This means anyone wanting to operate on the system can bid openly and competitively with the national rail systems.

THE TRADE-OFFS: Less government revenue from rail freight.

Competition reforms could also put more pressure on railways which require heavy subsidisation.

Costs on subsidised services could increase if rail services moved more towards full cost recovery.

TELECOMMUNICATIONS.

THE GAINS: The current Telstra-Optus duopoly will be replaced with open competition from 1997.

Prices are expected to be 20 percent lower in real terms after six years.

There is also expected to be a 45 percent improvement in labour productivity.

The Business Council of Australia says phone charges have already dropped 4 percent in real terms as a result of the breaking of the Telecom monopoly.

In the mobile phone area the fall was 8 percent.

THE TRADE-OFFS: Competition has led to some rationalising of employment in telecommunications, although new opportunities have also been opened up with new players entering the market.

Early Telstra advertising campaigns suggested competition would make the system more confusing for consumers.

NEWSAGENTS.

THE GAINS: Newsagents operate on a monopoly zone system for newspaper delivery which the Industry Commission says adds 30 percent to the retail margin on the publications (based on a direct delivery service introduced by the Canberra Times in the ACT).

The Trade Practices Commission is currently reviewing whether there has been a change in "material

circumstances" that warrants removing the existing trade practices exemption for this arrangement.

THE TRADE-OFFS: Newsagents are concerned the loss of this arrangement

could have an impact on the value of the goodwill of their businesses.

There are also concerns other, larger, retail players could move into the area and reduce rather than increase competition.

Similar concerns have been raised in relation to a number of small business areas.

POSTAL.

THE GAINS: The Industry Commission estimates postal costs could fall by 9 percent in real terms by 1997 through the breaking of the Australia Post monopoly and corporatisation.

Already the 45 cent price of a standard letter has been frozen until 1997.

THE TRADE-OFFS: Australia Post staff levels have fallen by 2500 since 1990-91 as the corporation seeks to increase labour productivity by 2.5 percent a year.

AIRLINES.

THE GAINS: The Federal Government is requiring the Federal Airports Corporation and Civil Aviation Authority to produce a commercial return on their non-regulatory services.

This was expected to reduce total costs by 15 percent.

The domestic airline industry has already been deregulated from the previous two-airline agreement.

The Business Council of Australia says airfares between Sydney and Melbourne fell 22 percent after deregulation.

THE TRADE-OFFS: Full cost recovery can mean higher charges for some services.

There has been a significant rationalising of staff.

CAA staff numbers fell from 7008 to 4729 between 1991 and 1994.

Title **A teetering monopoly.**

Author **SOLOMON, DAVID**

Source **Courier Mail**

Date Issue 17/08/95

Pages **17**

AN end to the monopoly of solicitors on conveyancing in Queensland

seems inevitable despite Tuesday's decision by the Administrative Appeals Tribunal freezing conveyancer Paul Sande and his colleagues out of the state.

A year ago the Government promised that next June it would decide whether conveyancing would remain an exclusive preserve of the legal profession.

Sande sought to short-circuit the Government's timetable by using new Commonwealth and state mutual recognition legislation.

He wanted Queensland to give him the same right to practise as a conveyancer as he had in South Australia.

However he failed to persuade the Supreme Court or the AAT that there was currently in Queensland an occupation described as "conveyancer".

In the past Queensland has recognised and licensed conveyancers, but for the past five years there have been no practitioners in the occupation.

This meant there was no equivalence between the position in South Australia and Queensland which Sande could use.

The exclusive privilege of lawyers over conveyancing which was confirmed in the Sande case was criticised in the Hilmer Report on Competition Policy and was questioned in the Trade Practices Commission report on the legal profession.

The Sackville Report on Access to Justice approved the idea that the restrictive practices of lawyers should be subject to the Trade Practices Act.

But the Trade Practices Act and Hilmer don't necessarily require the abolition of all monopolies.

It is possible that some legally-protected monopolies, not least conveyancing by lawyers, may be defended on public interest grounds.

Undoubtedly, however, the onus of demonstrating the desirability of retaining the monopoly has been changed by the reform movement in the legal profession.

If conveyancing is to remain the sole preserve of solicitors, they will have

to prove their case - they can no longer rely on the argument of status quo.

One problem they face is that conveyancers have a good reputation in those states where the law allows them to operate.

Significantly, they have a reputation for being cheaper than lawyers, though in recent years competition within the legal profession in Queensland has cut the costs of using a solicitor for a simple conveyance.

Lawyers also cannot rely on mystique - today everyone knows that there are do-it-yourself conveyancing kits allowing many people to avoid having to rely on a lawyer or a conveyancer.

And everyone has a story about how, within a lawyer's office, it is the secretary or a clerk who is responsible for most of the conveyancing.

Lawyers rely on the argument that things can go wrong, that there can be complications which need a lawyer to resolve.

Undoubtedly that is true.

But as the Administrative Appeals Tribunal was told in the Sande case, that is the time when conveyancers are required to hand over to a lawyer.

That is the kind of issue which would have to be dealt with in legislation permitting non-lawyer conveyancers to operate.

It would need to detail just what work they can do and what advice they can offer.

Complaints about the latest standard residential contract in fact suggest that many house sales, using the contract, might need to be referred to a lawyer.

A new legal system would also have to provide for proper training and registration of non-lawyer conveyancers, and for an insurance system which guaranteed that their clients would not lose if something went wrong - along the lines of lawyers' fidelity and indemnity insurances.

It would also need to detail which body would regulate the admission of conveyancers and supervise them.

It seems the Law Society intends to put in a bid for that task.

In its public comments on the issue the Law Society has been anxious to stress that its concern is to protect the interests of consumers.

If that is indeed its prime concern, it should encourage the Government

to agree to abolish the solicitors' monopoly as quickly as possible, and devote its attention to working with people such as Sande to develop the new breed of non-lawyer conveyancers.

However many solicitors, some of whom earn up to half their income from conveyancing, would expect the

Law Society to be fighting to preserve their patch.

This would be the case particularly outside major population centres, where the provision of competitive legal services (that is, at least two firms of solicitors) in country towns might be considered to be a highly desirable social objective.

There could be a case, based on the need to preserve ready access to legal advice, for restricting conveyancers to the cities and larger provincial towns.

So far, however, there has been no public exploration of the problem, as a result of the Government's decision to postpone a decision.

However the Government should encourage a public debate about the issues so that next June it will be in a position to act decisively.

Title **Keeping the States honest.**

Author **Mitchell, Allen**

Source **Australian Financial Review**

Date Issue 16/08/95

Pages **17**

WHICH would you say is the more urgent task facing Australia: reform of the ports and the power authorities and all the other items on the Hilmer agenda, or reform of federal-State financial relations?.

Unless you happen to be a Premier, I'd imagine you'd say it's the ports and the power stations.

And I guess you'd be right, in the sense that inefficient transport and power utilities are probably doing more direct harm to the economy's competitiveness.

However, a report just released by the Bureau of Industry Economics questions whether we will get real reform of government monopolies without fixing federal-State financial relations.

The report, Issues in Infrastructure Pricing, focuses on what could turn out to be an important weakness in the whole Hilmer reform process.

The basic points are the same ones outlined in this newspaper's review of the State economies over the past couple of days.

While the States' tax bases are both limited and under pressure as a result of interstate and international competition for investment, they will be reluctant to give up the monopoly profits of their GBEs.

That doesn't mean there will be no reform.

On the contrary, the States will keep cutting into inefficiency in their trading authorities - but with the idea of extracting higher dividends rather than cutting prices.

That is pretty much what has happened to date.

The main beneficiaries of reform in the State power and water authorities have been the State Governments.

According to the BIE, the aggregate level of real dividends of 60 government business enterprises more than tripled in the seven years to 1993-94.

Of course, State over-charging for business inputs such as electricity and rail freight can be very damaging to the economy - particularly when it hits companies trying to compete in international markets, where the costs of these hidden taxes cannot be easily passed on to the customer.

One of the principal objectives of the Hilmer reform agenda is to stop this kind of over-charging to make Australian industry more competitive.

Under Hilmer, competition is meant to both force the pace of reform in government business enterprises and ensure that the benefits are passed on to the customers.

The States have signed up to the Hilmer reforms and they are getting additional "competition grants" from the Federal Government to compensate for any loss of income associated with the reforms - starting with $200 million in 1997 and rising to $600 million a year by the end of the decade.

So, in theory, there shouldn't be a problem.

But the BIE is not convinced the benefits of the Hilmer reforms will fully materialise while the States have such a clear incentive to keep the monopoly profits rolling in.

Ask yourself this: if the States chisel on the reform process, will the Federal Government cut the grants?.

Hardly.

And, while the BIE is too polite to go into the details, the fact is that it is relatively easy for a State to chisel on reform.

Take the case of the electricity industry.

Suppose the NSW Government wanted to keep making monopoly profits out of the electricity industry, competition between generators and distributors notwithstanding.

It could do it through its effective control of the electricity wires.

It could over-charge the competing suppliers for the use of the monopoly distribution system.

There's enough flexibility in the national grid management arrangements for that.

In NSW there is the complicating factor of the Government Pricing

Tribunal, but the Government could change the law to formally reduce its independence or, more likely, appoint a less independently-minded chairman.

With a co-operative pricing tribunal it could further cheat on reform by demanding excessive rates of return from its generating and retail corporations.

Interstate competition would be a bit of a constraint.

But remember the competition itself will be constrained by the limited capacity of the interstate connection.

Note that chiselling would be facilitated by the State Government continuing to own the electricity companies.

It's another example of a point recently made by researchers at the World Bank: ownership does matter. Corporatisation may make government enterprises more efficient than they were.

But unless the separation of management and ownership is strictly enforced, government ownership still leaves firms open to political manipulation.

There are other efficiency issues with ownership.

In practice, the managers of large publicly-owned enterprises are never as free as their private sector cousins to pursue commercial objectives.

They are never unconstrained by public sector policies on industrial relations, never free of the need to consider the short-term political consequences of their decisions.

They know they will keep their "independence" for only as long as the voters agree.

If public opinion demands government intervention, no government will resist.

Also, in practice, government-owned companies can't go bankrupt.

If done properly, privatisation opens firms to the discipline of the capital markets, where information flows faster, judgments are less polite and managements work under the threat of takeover.

The BIE's point is that while States have inadequate tax bases and rely on the dividends of their enterprises, they may be less inclined to seek the additional efficiency gains of privatisation.