

29 May 2015

Patrick Boneham
General Manager
Small Business, Competition and Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr Boneham

Thank you for the opportunity to provide feedback on the Final Report of the Competition Policy Review.

As outlined in our written submission to the review, UnitingCare Australia represents the network of UnitingCare community service providers operating nationally across more than 1600 sites in metropolitan, regional and remote Australia. Our network is one of the largest providers of community services in Australia with a combined annual turnover in excess of \$2.5 billion, employing 39,000 staff supported by 27,000 volunteers nationally.

UnitingCare Australia participated in the review to prompt continued consideration of the needs of vulnerable and disadvantaged individuals and communities across our nation within the context of developing and promoting consumer choice and competition in human services, in particular social and community services. The UnitingCare network's support for increased competition, choice and control for people accessing human services is predicated on two overarching principles. First, a clear understanding that governments cannot absent themselves from their enduring obligation to ensure that all people are able to access quality human services when and where they are needed. Second, that competition policy must prioritise quality outcomes for those accessing human services ahead of price.

It is our view that the guiding principles set out in recommendation two of the Final Report with regard to human services need to include specific provision for the development of a set of "choice principles" to assist government policy and decision makers, and also to oblige governments to act as a model contractor when purchasing human services. However, prior to addressing these specific issues we believe it would be appropriate to first outline the broader context in which competition policy operates within the community services domain.

UnitingCare agencies have long provided a range of community services such as aged care, child care and employment services in a mixed economy of for-profit, not-for-profit (NFP) and

government providers. While we regard this diversity as important in driving innovation and efficiency in service delivery, we also recognise that the mix of providers is not distributed evenly across services, localities or clients. It is important therefore to acknowledge that competition policy in the context of community service delivery is vulnerable to “cherry picking” whereby only the most profitable services are sought by for-profit providers, leaving low margin activities, high cost localities and clients to other, often NFP, providers to service.

The “cherry picking” approach by some for-profit providers in the community services domain undermines the cross subsidisation business model used by many NFP providers to deliver services in high cost, low return localities as well as supports to high need clients. We are therefore cautious about a “full market” approach to competition policy in the community services domain, especially given that the funding and price for these services is often determined by government.

In a related matter, we also caution against the assumption that competition in community services can only be achieved by increasing the number of providers within the system. It is our view that while a mixed economy of providers is important, access to a diversity of services and the quality of them is more important. Accordingly it may be more beneficial in certain localities for one or two providers to deliver appropriate diversity and quality of services rather than having multiple niche providers.

Service quality in community services is fundamental to ensuring quality outcomes for clients. Quality community services must respond to the complex needs of individuals and as such they are unlike those which can be produced and marketed to fulfil a mass need. Community services do not operate in a natural market where supply and demand principles determine price. Indeed it is almost the exact opposite where demand for services usually outstrips supply and funding for those services (i.e the price paid by the government to deliver them) is often insufficient to fully meet operating costs. In this context we would caution the government in seeking to apply incentive payments mechanisms commonly seen in the for-profit sector, such as payment on results, to the provision of community services. International experience has demonstrated that such mechanisms have actually reduced the number of NFP providers, to the detriment of the sector and the community as a whole, when applied to community services.

Our experience in delivering community services is that people who have had minimal opportunity to exercise choice more often than not require support to gain the skills, capability and confidence to choose the appropriate service for their particular circumstances. We welcome that this issue has been recognised in the Final Report and that the review panel gave consideration to the need for intermediaries or purchase advisors to help users make decisions. However, we believe that the considerations and findings of the review panel around this issue need to be reflected in the recommendations of the Final Report.

As such we suggest that the recommendations include provision for the development of a set of “choice principles” to assist government policy and decision-makers to ensure the expansion of choice across a broader range of human services over time.

These “choice principles” should include:

- Acknowledgement of the diversity of the users of human services and respect for their desire and capability for exercising choice and involvement in decision making.
- Acknowledgement that some people will require additional support to make decisions and to exercise choice.
- The need for appropriate, accessible and clear consumer information.
- Respect for all consumers (including the broader family or community where applicable) as partners in the delivery of human services.
- Understanding that choice can be exercised in a range of environments including those environments where statutory intervention is involved (e.g. mental health services).
- Acknowledgment of the overarching objectives of access and equity in the delivery of human services and that choice may not be feasible in some locations.

Although the Final Report does consider the limitations of the government monopsony in human services it does not, we believe, make any recommendations to address the operational reality of this issue in the context of increasing choice and control for people accessing human services. We believe this is a critical issue in this review and one which must could be addressed through the introduction of an obligation on governments to act as “Model Contractors” when commissioning/contracting human services, particularly from not for profit and small business providers.

Similar in concept to that of the government acting as a “Model Litigant”, the principle of “Model Contractor” imposes an obligation on government agencies, when contracting with service providers – in particular not-for-profits and small businesses, to act in a manner which will:

- Respect the independence of the contracted party;
- Provide scope for genuine negotiation between government and the contracted party;
and
- Allow all parties to seek to negotiate fair and reasonable terms and conditions.

In terms of operationalising this principle we suggest:

- The overarching test of ‘fairness’ would require the government agency to consider whether the provisions within a contract would:
 - cause a significant imbalance in the parties’ rights and obligations arising under the contract;

- be necessary in order to protect the legitimate interests of the party who would be advantaged by the term; and
 - cause detriment (whether financial or otherwise) to a party if it were to be applied or relied on.
- Funding agreements/contracts would be underpinned by an agreed explicit risk management framework that:
 - should be predicated upon the principle that risk should be allocated to the party best able to manage the risk; and
 - allows the price of 'risk' to be transparent and fully compensated for when imposed by government,
- The Government agency would seek to minimise the compliance burden on the contracted party,
- The level of tendering, contractual and reporting requirements would be proportionate and fit for purpose given the level of public money and risk involved,
- There would be a recognition of the need for flexibility in service delivery, and
- There would be an allowance for innovation in service design and delivery.

We believe that applying a "Model Contractor" obligation on governments will strengthen the capacity of providers to negotiate more flexible, innovative and effective approaches to addressing long-term and complex social issues.

The final report rightly identified that competition policy in the context of human services is complex. The collective experience of the UnitingCare network suggests that while increased choice control and diversity in the delivery of human services can lead to better and more innovative services and supports for individuals it can only be delivered sustainably if government and the community sector work together openly and transparently.

Yours sincerely



Lin Hatfield Dodds
National Director