

15 December 2014

Professor Ian Harper
Chair
Competition Policy Review Panel
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Professor Harper

Thank you for meeting UnitingCare representatives to discuss the Competition Policy Review Draft Report. We appreciate the opportunity to provide the panel with our feedback on some of the critical elements of the report, in particular around the various challenges in developing and promoting consumer choice and competition in human services.

As we outlined in our discussions UnitingCare Australia represents the Uniting Church's 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.

The UnitingCare network supports increased choice and control for people accessing human services. Our agencies aim to be 'the choice for care and service' and place each person at the centre of everything we do. Our support for choice and competition in human services is predicated on 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 need to. While competition policy in human services may offer scope for greater efficiencies in the delivery and cost of some human services, those efficiencies should not come at the expense of innovation and quality of services, or negatively impact the wages and conditions of low paid community sector staff.

Increased Choice, Control and Diversity

For consumer choice to be realised, people who access human services must be understood as consumers who have control over their lives and the ability to choose which services they access and from whom. The empowerment of citizens as consumers of human services, rather than passive recipients of those services, requires a shift away from traditional paternalistic thinking too often prevalent in the government and community sectors.

The benefits of increased choice and diversity across human services are being demonstrated in disability and aged care through the introduction of the NDIS and aged care reforms. Citizens accessing human services will also be increasingly able to exercise choice through the availability of new technology and new products and services. Despite these opportunities, there may be some people who are unable to exercise choice because they have not had the opportunity to develop the skills and capabilities to do so. This may include some people with disabilities, with alcohol and drug addictions, living with mental ill-health, experiencing homelessness, at risk children and families, and other high risk population groups.

There is a strong interface between good human service practice and effective competition policy. Both should support people to make informed and empowered choices that enhance the control they have over their lives. Both should drive towards achieving better quality services that are efficient, effective and delivered at best cost. To realise these benefits the human services system must recognise (and address) the reality that there are some people who may require additional support to exercise informed and empowered choices. Our experience in delivering social services is that people who have had minimal opportunity to exercise choice may require support to gain the skills, capability and confidence to choose the appropriate service for their particular circumstances. We therefore believe competition policy in human services must have as its keystone informed and empowered choice.

We believe that a set of principles should be developed 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.

These principles need to be underpinned by structural, policy, program and contracting reform for consumer choice to flourish in human services.

Creating a conducive environment for greater consumer choice

A focus on outcomes, the bundling of programs and service delivery contracts and the sharing of risk between the government and providers will enhance innovation and quality for those accessing services.

Governments are and will remain significant investors in human services. Although jurisdictions have made some steps towards policy and program reform, more is needed in order to realise the goal of greater choice for citizens who access human services. Many social policies recognise the need for person centred services including the delivery of services at the “right time, the right place and for the right duration”. However efforts designed to meet a particular social goal can sometimes be distributed across government agencies that don't collaborate or communicate effectively with each other or that may have inconsistent policies and approaches.

In addition, governments have become increasingly risk averse in the expenditure of public funds, leading to procurement arrangements and contracts with vendors that end up costing government more over the long term when compared to more innovative or sophisticated solutions. These factors result in the development and delivery of fragmented human service programs, costly and complex tender processes, prescriptive reporting and compliance requirements, and non-negotiable contract terms and conditions. This limits the flexibility of providers to respond quickly to changing consumer need. Only by ensuring the best policies, programs and procedures necessary to address complex social issues are in place, can governments and the human services sector achieve effective outcomes. In turn this will offer the potential for greater flexibility and innovation in the development and implementation of human services.

In practical terms this means aligning outcomes with budgets and funding models that break down structural barriers. It requires more integrated social policy and program development across multiple agencies such as health, education, employment, community services, child safety, disability, police and community safety. We recognise this is a complex task, however it takes many, if not all, of these agencies to work together to ensure best outcomes for very vulnerable clients. Contracting processes should allow for reasonable negotiation between parties, be underpinned by an agreed explicit risk management framework with compliance and reporting, be commensurate with the level of risk, recognition of the need for flexibility in service delivery and scope for innovation in service design and delivery.

Commissioning and Contracting

Government participation in human services whether through direct service delivery or through contracting/commissioning will continue in parallel with consumer choice and consumer directed care. Consumer choice however is not the only vehicle for improving quality, efficiency, effectiveness and innovation in human services.

To achieve these goals, governments also need to acknowledge their unequal competitive position in human services contracting and its potential impact on innovation, competition and the delivery of empowered choice. The existence of government market power in human services negatively impacts on competition and the delivery of empowered choice for consumers.

Addressing the limitations of the government monopsony in human services could be achieved 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, 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.

Applying a “Model Contractor” obligation on governments operating as monopsonists will in our view strengthen the capacity of providers to negotiate more flexible, innovative and effective approaches to addressing long-term and complex social issues. Including a recommendation in the Panel’s final report for governments to adopt the principle of “Model Contractor” in their dealings with service providers, in particular those from the not-for-profit sector and small business, will be an important signal to governments and providers alike, that the inherent monopsony enjoyed by governments in the area of human services has a material impact on the flexibility and innovation of human services which should be addressed.

Conclusion

There is a lot of work to be done before the real potential of greater choice, control and diversity can be effected across the broader range of human services, and before the best levers to achieve this are identified. However the development of choice principles for the delivery of human services is one avenue to drive positive change. To fully realise the potential for competition policy to achieve greater choice for people who use human services there also needs to be commensurate structural, policy, program and contractual reform by funders/investors.

Further we believe that this review should consider some important early steps that could be taken to shape the future success of this agenda including:

- The development of choice principles; and
- The adoption of the principle of “Model Contractor” for governments when dealing with providers.

As the review and this submission highlights, competition policy in the context of human services is complex. While UnitingCare Australia strongly supports increased choice, control and diversity in the delivery of human services, our experience suggests that citizens who access these services will be best served if government and the community sector proceed in partnership, cautiously but with a willingness to work together and to develop effective new approaches.

Yours sincerely

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