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Competitive Tension

The value of contestable
public services in a
post-pandemic world

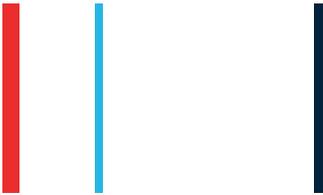
A Menzies Research Centre Policy Brief in
Collaboration with the Serco Institute

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CONTENTS

Introduction	4
Executive Summary	8
What is Contestability?	11
Why is Contestability important?	17
What are the benefits of contestability?	19
Is the idea of Contestability new?	24
Crossing Political Boundaries	25
Undoing Monopolies	25
Contestability Policy - Thought Leadership and Regulatory Reform	27
What are the ingredients for successful contestability?	33
What are the barriers to contestability?	37
Centre left administrations and labour representatives have brought contracting into political focus	39
What can go wrong?	41
Wider Contestability Models	43
Public Sector Mutuals	47
ESG and Social Value	47
Infrastructure Contestability	48
Person Centred Service Contestability	49
Where are we now?	51
Commonwealth and other States	55
The Opportunity	57
Bibliography	62



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Introduction

The COVID-19 pandemic has placed exceptional demands on government service providers stretching their capacity to the limit. The provision of protective equipment and vaccines, contact tracing systems, border security, policing, the isolation of nursing homes and the management of quarantine facilities are just some of the novel tasks government agencies have been required to undertake.

Urgency and uncertainty have called for agencies to adapt quickly and take calculated risks, skills not always in abundance in the public sector. Elevated public scrutiny has further intensified the pressure on service providers, removing the cloak of anonymity under which they customarily operate.

The pandemic has served as a stress test for government service delivery. The variation in the performance across state governments in the management of COVID-19 is a measure of their capacity to deliver services efficiently and to respond to changing circumstances. The evidence that governments that have invested most in public service delivery reform, such as the NSW State Government, have performed relatively well in exceptionally challenging circumstances should prompt all governments to do better.

In this report we re-examine one of the most effective means of improving public service delivery: contestability. We consider how the introduction of competitive tension might be further employed to ensure that every government serve its citizens more effectively, whether in normal times or in times of crisis.

The report assesses the impact of competitive tension on the delivery of government services around the world, acknowledging that the principle of contestability must always remain open to improvement. We assess the outcome of projects to establish empirical evidence on which they may be judged. Our recommendations and conclusions will offer guidance to the broader adoption and improvement of contestability reform across jurisdictions and service sectors.

We begin by re-examining the theory of contestability and the reasons why it was seen as a better path to reform than outsourcing and market testing alone. We offer an overview of the range of government activities in which the strategy has been introduced, the relative success and public and political reaction.

In particular, we draw on Gary Sturgess' report 'Diversity and Contestability in the Public Service Economy' which was commissioned by the NSW Business Chamber in 2012 with the intention of provoking policy discussion about the role of the private sector in delivering public services. The report outlined how public sector productivity could be raised by an estimated 20-25 per cent in newly contested service areas. In view of what the Chamber described

as the tougher economic conditions being faced by governments around the globe, it encouraged governments to build on existing examples of competitive tension to expand the opportunities to deliver even greater benefits to taxpayers, customers and citizens.

While circumstances have changed in the last nine years, notably over the last 18 months, the economic challenges as we emerge from the COVID-19 recession are exceptional only for their size. Our report concludes that if anything, Sturgess' 2012 findings have even greater relevance at a time when governments have taken on greater tasks that they may find hard to relinquish.

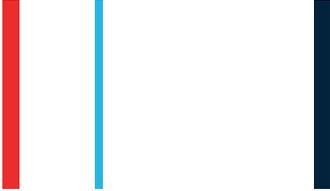
In our July 2020 report, 'COVID-19: Getting Australia Safely Back to Work', authored by Henry Ergas, we recommended the swift winding back of emergency government measures and the establishment of Post-implementation Reviews (PIR) of emergency measures taken in response to the virus. The lens of contestability is an important tool in assessing the efficiency and effectiveness of those measures. It should also determine which additional functions governments should retain and which responsibilities they should abdicate once the pandemic has been controlled.

Sturgess has been a leader in the field of contestability since the late 1980s and his 2012 report is a rich trove of case studies, data, and assessment of the methodology and tools available to governments around the world. It is not the intention of this paper to update the data in this depth, but those interested in public sector service delivery will be rewarded by revisiting that work. Those newer to the field will find it a valuable resource: its analysis stands on its own and its detail is readily available.

Covid-challenged public sector policy makers would also do well to reacquaint themselves with the warnings of philosopher and economist Friedrich Hayek who foresaw the disastrous trend of post war polities towards centralised planned industrial and government monopolies.

This report aspires to provide the foundation for more sophisticated debate in responding to the eternal challenge of public sector productivity. Regrettably, the arguments are too often reduced to an either/or choice between reducing services, or increasing spending and debt. Building on the work of Sturgess, we believe there are sound alternatives that will produce better services, greater public and private productivity, lower costs, and ways for decision makers to balance social, economic and political expectations.

Importantly, the application of contestability can demonstrate that an efficient and innovative public sector can prevail and 'win' a contest against external competitors. Experience has shown that far from eliminating public sector jobs, the application of contestability can make those jobs more creative, rewarding and frequently better



remunerated. It can illuminate better ways to design services, allocate risk, and diversify the market for public sector services and suppliers.

This MRC analysis confirms that careful use of contestability by the public sector could realistically be expected to improve public sector productivity by 10-20 per cent in newly contested service areas whilst also improving customer experience, choice, and growth in sustainable and quality employment opportunities. Contestability can also help build a diverse public sector economy, which has been crucial during the pandemic in helping government and business pivot quickly.

The MRC believes it is timely and responsible to re-engage conversation and evidence about public sector service contestability and its contribution to contemporary public sector service delivery and outcome opportunities. Despite significant learnings and gains for service users, taxpayers, and public sector staff, in the last decade, public and political attention on these issues has waned. This is despite the successful ongoing use of contestability and public private partnerships by some governments in some sectors, particularly in infrastructure delivery.

In re-booting this conversation, the MRC goes further with specific recommendations to governments to lay a pathway to success, by:

- Identifying the approaches within jurisdictions which enabled the principle of contestability to be successfully applied;
- Providing data through case studies which will be hard to ignore by public sector decision-makers; and
- Offering guidance on the broader adoption and improvement of contestability reform application across jurisdictions and service sectors.

We assess the effectiveness of common benchmarks, incentives and penalties to provide a broad framework of best practice. The recommendations emphasise the benefits of a collaborative model, highlighting the importance of political leadership and public service capability.

We identify best practice design and management of the overall system, including procurement processes, size and length of contracts, and transfer of physical and human assets. We identify system-wide benchmarks other than cost that can be applied across the full range of government services and serve as a reference to compare service delivery in different jurisdictions.

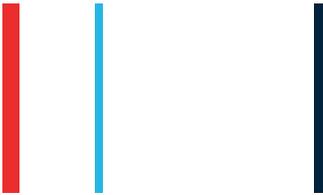
A key recommendation is that contestability should be the default setting for all public service provision. The onus should be to show why services should not be subject to the credible threat of competition, rather than why they should. COVID-19 has demonstrated the benefits of introducing a contestable mindset to all

government service provision in challenging circumstances. Our hope is that it will prove to be a lasting legacy of the pandemic.

The Menzies Research Centre is grateful to the Serco Institute for its input and advice in the compilation of this report. We also acknowledge the work of Gary Sturgess whose thinking has been pivotal to the provision of government services in NSW and further afield. Dr Peta Seaton, a former member of the NSW Legislative Assembly and more recently an MRC board member, gave birth to the idea that led to this research paper and lent her considerable expertise and experience to the project. We are indebted to her and Matt Crocker for compiling the bulk of the report.

Our hope is that it will inspire governments of every political persuasion, present and emerging, to better serve the citizens by whose votes they were elected.

Nick Cater
Executive Director, Menzies Research Centre
July 2021



Executive Summary

In 2020-2021 the Menzies Research Centre reviewed the application of contestability in recent decades, and the potential social, environmental and economic gains to be made if governments were to re-engage strongly with contestability as a default policy tool.

New research identifies the frontiers for the application of contestability in public sector services.

It also confirms that strengthening the principle of contestability across all public services has the potential to increase public sector productivity by 10 to 20 per cent in newly contested service areas and play a significant role in post COVID economic and service recovery.

Furthermore, there is untapped capacity to grow sustainable quality jobs, offer richer career paths, and increase customer satisfaction, in a more diverse public sector market.

The MRC identifies:

- the approaches within jurisdictions which enabled the principle of contestability to be successfully applied;
- providing data through case studies which will be hard to ignore by public sector decision-makers; and
- offering guidance on the broader adoption and improvement of contestability reform application across jurisdictions and service sectors.

The MRC makes twelve recommendations to provide a framework for the wider adoption of a contestable approach to public service delivery.

Some of these restate and update recommendations from other experts. However, we offer three new recommendations which we believe will assist to bring stakeholders including business, unions, citizens and government together to frame a constructive, mutually beneficial framework. The MRC particularly commends Recommendations 1, 2 and 3 for this purpose.

In summary the recommendations (expressed fully on Pages 59-61) are:

Recommendation 1

Contestable processes should be the default strategy for public service delivery.

Recommendation 2

Give employees a voice in contestable processes.

Recommendation 3

Make it easy and non-prejudicial for non-government providers to identify new opportunities for successful contestability.

Recommendation 4

Create a 'commissioning culture' through more systematic education in the public sector.

Recommendation 5

Empower citizens to make their own choices on both which services they want, and which providers they choose to use.

Recommendation 6

Build capacity in the supply side by providing a clear and predictable pipeline of opportunities, and encourage a diverse range of suppliers.

Recommendation 7

Better measure and report on public sector productivity.

Recommendation 8

Adopt a systematic approach to formally commission services with clear outcome measures and establish benchmarking.

Recommendation 9

Collate data in a centralised database on commissioned services to understand 'who does what where'.

Recommendation 10

Improve the procurement process to remove impediments to bidders to speak up about problems.

Recommendation 11

Provide more opportunities for innovation in project and service delivery models at the conceptual stage.

Recommendation 12

Commission services based on outcomes and objectives.

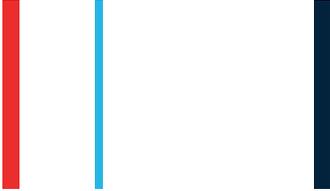
The report also observes that

Contestability is important because

- Government spending on public services impacts productivity, customer experience and choice
- Contestability of service delivery improves productivity
- Productivity is linked to wages and living standards

Contestability is not new:

- In UK, USA, and Australia/New Zealand, both sides of politics initiated regulatory reforms to undo public sector monopolies, and provoke competition in public service design and delivery since the 1970's;
- Reforms to diversify supply have transformed consumer choice and innovation in education, health, transport, aviation, telecommunications and other services;

- 
- Contestability, including the credible threat of competition, has resulted in some public sector service providers successfully competing and winning contracts, whilst improving consumer outcomes and driving down costs;
 - Charities, non-government organisations, philanthropists and public sector mutuals all offer constructive contestable pressure on choices for public service delivery methods;
 - As with any service delivery, government should create an effective assessment and accountability framework;
 - Contestable commissioning can be an effective model to deliver Environmental, Social and Governance goals, however care must be taken that introducing these goals does not undermine the overall value of a contestable approach.

What is Contestability?

The Commonwealth Department of Finance defines contestability as:

The prospect of competition in public sector functions to improve both the efficiency and effectiveness of contributing to achieving government's outcomes^[1].

Contestability enables comparing performance before and after competition, including the threat of competition^[2]. Sturgess distinguishes competition from contestability, noting 'the threat of competition is enough to force most monopolists to respond to their customer's needs', but emphasises the threat must be credible^[3].

Others say:

'Contestability is a strategy to promote cost efficiency and effectiveness in the provision of goods and services'^[4].

In our daily lives, and in our businesses, we routinely compare the cost and benefit of private choices.

Say we plan to upgrade our backyard. We get three quotes, assess bidders' claims about design, materials, completion, future maintenance, and guarantees. We note the costs we will avoid if we pave rather than grass, and the new opportunities it will offer our lifestyle. One tradesperson might suggest an interesting idea we've never contemplated – and we like it. The cheapest quote now seems not the best quote.

In other words, we create a contest for value, costs, ideas, timeframe, price and outcomes. And each bidder works hard on what they propose, to win the job. We compare them against each other, and against our own 'do nothing' option.

When a public sector need arises, governments with standing workforces may decide they have the skills required to execute and deliver. However, a plan driven by an assumption to deploy existing people may not be the best way to deliver the outcome required. Sometimes the outcome is never fully defined – and a process, based on inputs (for example, 'more police') is the extent of service design. Sometimes governments apply inappropriate skills and culture with poor or suboptimal results. In the meantime, skills, ideas, technologies and solutions available outside government are not invited to the table.

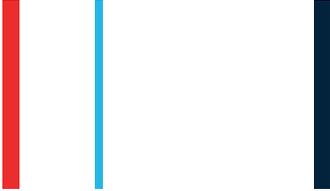
Whilst contestability in public infrastructure procurement has matured rapidly over past decades, the procurement of services (whether in technology, administration or human services) has been uneven.

1 <https://www.finance.gov.au/publications/policy/contestability-public-sector> retrieved 12/02/2021

2 Sturgess 2012:12

3 Sturgess et al 2007: 5

4 Laine 1997



Contestability is the principle and tool governments can use to solicit and test the best possible solutions to public sector problems and requirements.

At its heart, contestability exposes public sector service delivery to competition, or at least the potential for competition. Generally, exposing service provision, public or private, to competition brings three types of benefits:

1. It imposes a competitive discipline on suppliers by rewarding superior performance and punishing poor performance;
2. It accommodates diversity of supply, which facilitates product and process innovation and also increases resilience; and
3. It generates information-as inputs and outputs can be observed, allowing better decision-making, both by the competitors themselves (as the poorer performers learn from better performers) and by regulators (a category which includes consumers as well as officials).

At the same time, the mere fact of needing to test the provision of a service can provide benefits itself, notably in terms of forcing governments to better define the outcomes that are being sought, identify a benchmark level of performance and carefully analyse the economics involved in delivering the service.

As a result, improvements can be achieved in both the service being delivered and in the process by which government designs, implements and reviews the range of services it offers.

As Sturgess notes, a range of service and sourcing models exist including direct contracting/outsourcing, public private partnerships, public private joint vehicles, public sector mutuals, integration contracts, other hybrids, social benefit or impact bonds, to name a few.

It is important to also acknowledge what contestability is not. Contestability is not code for ‘contracting out’, or ‘outsourcing’ or ‘privatisation’. It is simply a process for government to commission services and assets, assess whether the public, private or not for profit sector is best able to deliver that asset or service, and then hold the provider accountable for delivery.

The private and third-sector service market is unlikely to have a standing service solution for everything that government might want done – because there is no pre-existing market for such a thing. However, the market will have the elements of skill and capacity and the incentive to put these together to meet the challenge, including elements that do not exist in government.

Creating a contest generates an incentive for competing parties to innovate and improve their own product and systems. And the beneficiaries are citizens and taxpayers who are being served by a

supplier who is more productive, less costly, and delivers a better customer experience.

The most successful of the competitors might well be the public sector providers. Contestability enables the public sector to expose itself to constructive scrutiny and comparison, to innovate, and potentially to grow.

There are few private sector dominated areas, where a single supplier is considered a better option than a competitive market for consumers and the broader economy. These markets, usually capital intensive infrastructure markets, such as electricity, telecommunications or gas pipelines are subject to significant government oversight and regulation to minimise the distortions and costs caused by monopoly producers.

In the private sector dominated industries it is recognised that competitive markets are more likely to provide better outcomes for consumers, and therefore legislative and regulatory settings have been established to promote competitive markets and to protect against monopolistic provision unless there is a compelling reason why competition is not possible or desirable.

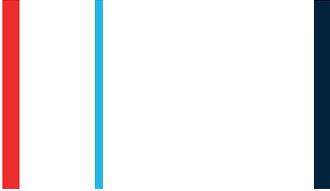
In public sector markets, the same approach should be true. There will be some areas where a single, State controlled provider of services is the only approach that is possible or acceptable. There are a number of reasons for this, including:

- Democracies elect people with specific and unique responsibility to perform legislative functions, allocate public money, and appoint judiciaries; and
- Functions where there is no other possible supplier ('thin markets') and a service needs to be provided. This might include some services in very small and remote communities.

However, these areas should be tightly defined, to ensure that they do not extend to potentially contestable services both upstream and downstream. They should also remain under review, as expectations and community standards on these matters can change over time.

Other than these areas, contestable provision of services should not just be the preferred approach to the delivery of services but should be the default expectation from citizens and governments.

Contestable approaches can take a number of forms. In some areas, where there is only one supplier possible (perhaps in a geographic area), the approach might be 'competition for the market', under which suppliers, or consortia of providers compete to win the right to provide the service over a defined period of time. This is generally true in areas where there is a large infrastructure, or capital cost involved in providing the service.



Alternatively, there are opportunities for ‘competition in the market’, where a number of providers can offer services and directly compete with one another. This approach, where possible, offers the benefits of choice, specialisation and the empowerment of consumers.

Importantly, contestability promotes diversity in the marketplace of suppliers. The global pandemic of 2020-21 illustrates how important a diverse marketplace is to community and economic wellbeing. Small and medium businesses were able to quickly re-gear to meet urgent and life saving public sector requirements such as the manufacture of PPE and hand sanitiser. Private hotel and logistics operators quickly converted hotels, airlines and security facilities to provide quarantine facilities for returning travellers. Importantly, contestability promotes diversity in the marketplace of suppliers.

Customer Service - Sydney Metro North West



The metro line to Sydney's North West is Australia's first fully automated passenger rail service. The system is operated by Hong Kong Metro operator MTR under a 15 year contract with Transport for NSW.

The public private partnership approach adopted for Sydney Metro North West that also included the delivery of 22 fully-automated, six-carriage metro trains, eight new railway stations, upgrading five existing stations, 23-kilometres of new track and converting 13 kilometres of existing track, 4,000 new commuter car parking spaces, stabling, maintenance and operations facilities as well as maintenance of the line for 15 years.

The project was successful on many fronts, opening on time and under budget, with an estimated saving of 21.6 per cent over the life of the contract, when compared to public sector delivery.^[5]

However, for the travelling public, it is the service experience of the Metro line that is its most defining feature, and distinguishes it from other parts of Sydney's rail network. While overall satisfaction of the rail network has improved significantly in recent years, the Metro service experiences satisfaction ratings of 99 per cent and a significantly higher proportion of users who were very satisfied.

	Sydney Metro	Overall train network
Overall satisfaction	99%	94%
% that were 'very satisfied'	66%	45%

While these ratings may be seen as the result of the standard of the new infrastructure, ratings were also higher in areas not related to the quality of the product. On customer service measures, the Metro service also rated higher.

	Sydney Metro	Overall train network
Willingness of staff to help	95%	89%
Knowledge of train staff	95%	90%
Presentation of staff	97%	91%

⁵ http://nswtreasury.prod.acquia-sites.com/sites/default/files/2017-02/NWRL_OTS_PPP_Contract_Summary_Dec_2014.pdf
<https://www.transport.nsw.gov.au/news-and-events/reports-and-publications/customer-satisfaction-index>



SA Pathology

The South Australian public sector pathology service, SA Pathology, is a useful example of the use of a credible threat of contestability to improve the performance of a public sector organisation. The South Australian Government had been concerned about the ability of the South Australian health system to meet allocated budgets and achieve savings targets. The 2018-19 South Australian Budget papers noted “Previous external reviews analysing the efficiency of public pathology services suggested that South Australia delivers services at significantly higher cost than similar services interstate and in the private sector. The level of inefficiency has previously been estimated at more than \$40 million per year.”

In response to this concern, it commissioned PWC to review the competitiveness of SA Pathology in a contestable environment.

PWC’s report found^[6]:

- SA Pathology plays a key role in the delivery of healthcare across South Australia, helping to support clinical outcomes. Current performance however is variable and presents significant opportunity for improvement.
- Local Health Networks were dissatisfied with SA Pathology’s customer service, and they desire closer clinical relationships, more responsive service delivery, improved cost transparency and greater value for money.
- Within SA Pathology, there is a lack of good business management processes and structures in place including strategic and annual business planning processes. Furthermore, commercial practices are inadequate to support close management of service costs, revenues and productivity levels. The absence of these processes constrains organisational performance.
- In FY18, SA Pathology’s operating expenses were \$230m, with an operating deficit of \$83.0m. SA Pathology would be unlikely to be sustainably competitive in a contestable environment without extensive changes to its operating model, putting the organisation on a more commercial footing and improving performance across the organisation.
- Analysis suggests the majority of SA Pathology’s services could be supplied by alternative providers with appropriate contract conditions and risk management arrangements. Sensitivities and concerns are highest for services traditionally delivered by Government.
- SA Pathology should pursue the opportunities available and improve its operating model and performance. This should be done outside of a competitive environment, but with the prospect of competition if improvement is not successful or if progress is not maintained.

In response to this review, SA Pathology has vastly improved performance while delivering cost savings. SA Pathology reduced costs by \$7.3m in one year with a target cost reduction of \$18m over 2 years. Services levels have also either been maintained, or improved. For example, on-time delivery for time critical diagnostics rose from 66% to 90%^[7].

6 <https://www.sahealth.sa.gov.au/wps/wcm/connect/public+content/sa+health+internet/resources/review+of+the+commercial+competitiveness+of+sa+pathology+in+a+contestable+market>

7 <https://www.premier.sa.gov.au/news/media-releases/news/sa-pathology-to-remain-in-public-ownership>

Why is Contestability important?

‘In most situations, competition (or a credible threat of competition) is better than monopoly’(Sturgess^[8])

‘Competition rewards innovation: monopoly stifles it’ (Osborne and Gaebler^[9])

Contestability in the provision of public sector services is a method to improve both the quality, the efficiency and the effectiveness of public sector services. In other words, it is a tool to improve public sector productivity. In turn, productivity is the most important of the three elements to drive long term economic growth, along with population growth and labour force participation. The productivity of public service expenditure affects the level of economic growth and therefore the wealth and standard of living of Australians. As economist Paul Krugman has noted, “Productivity isn’t everything, but in the long run, it’s almost everything.”^[10]

It is estimated that in Australia today around 50-60 per cent of Australian government spending on goods and services is commissioned through external providers, around \$90-100 billion in 2017-18,^[11] according to Australia New Zealand School of Government (ANZSOG) research. This level has changed little in recent years.

Public sector expenditure makes up a significant and growing proportion of the Australian economy.

The Australian Bureau of Statistics (ABS) states that health care and social assistance, education and training, and public administration make up 17 per cent of the Australian economy and support 3,782,100 jobs^[12], a proportion that has been rising steadily over the last 30 years. In the context of an ageing population this growth in expenditure, and in jobs is likely to continue.

The 2021 Commonwealth Government Intergenerational report^[13] forecasts that Australian Government spending on health services will rise from 4.6 per cent of GDP in 2021-22 to 6.2 per cent in 2060-61. Commonwealth payments for aged care would rise from 1.2 per cent of GDP in 2021-22 to 2.1 per cent of GDP in 2060-61, while the National Disability Insurance Scheme (NDIS) would rise to 1.5 per cent of GDP in the medium term.

Good quality public services are also an essential input into private sector productivity - better quality, more reliable infrastructure with cheaper access costs is a core input into many private sector

8 Sturgess 2012:10

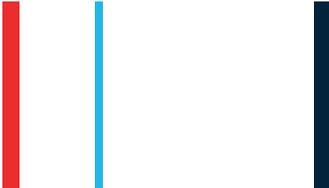
9 Osborne and Gaebler 1992:83

10 Paul Krugman, The Age of Diminished Expectations, p11

11 ANZSOG 2019

12 <https://www.abs.gov.au/statistics/research/enhancing-measures-non-market-output-economic-statistics-roadmap>

13 <https://treasury.gov.au/publication/2015-igr>



businesses. Better quality and more effective health and education services improve human capital.

While there is significant debate on the drivers of productivity growth, it is generally agreed that productivity growth has been slowing in recent decades as has structural reform that supports future advances in productivity and therefore economic growth.

However, measuring both the outputs that are produced and more importantly the outcomes and quality of public services provided has been challenging for statistical organisations in Australia and around the world^[14].

The Office of National Statistics (ONS) in the UK have been leaders in measuring public sector productivity, including indicators of the quality of the outputs produced by the public sector, rather than just activity. Latest data from the ONS shows a consistent pattern of increasing productivity from 2010 to 2018, averaging 0.6 per cent a year in an environment of constrained growth in expenditure of on average 0.3 per cent a year. This contrasts with the period between 1998 and 2009, which had significantly higher expenditure growth of 3.6 per cent a year but negative productivity growth of on average 0.1 per cent a year.^[15]

The Australian Bureau of Statistics (ABS) has been focused on the measurement of public sector productivity, and has been seeking to improve its measurement of the ‘non-market’ sector since 2001. However, for much of the public sector, productivity is not rigorously measured. The ABS has noted that it is “particularly important to measure productivity in the case of health care, where large-scale technical progress has occurred and is ongoing”.

In its latest update, the ABS has noted that it is working towards directly measuring outputs as well as inputs, and therefore productivity for the non market sector, with the exception of goods and services that are consumed collectively by the community, such as defence.”

For the foreseeable future, non-market output that is consumed collectively by the community (such as national defence services) will continue to be measured as equal to the inputs consumed in producing them.... For the remainder of non-market activity, the ABS is working towards direct output volume measurement..^[16]

At every level, data and measurement is important to understand the performance of the delivery of public services, hold governments to account, and to compare and innovate on the delivery of public services.

14 Sturgess 2012:10,11

15 <https://www.abs.gov.au/statistics/research/non-market-output-measures-australian-national-accounts-conceptual-framework-enhancements-2020>

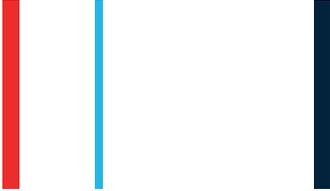
16 Julius 2008:32

Improving, understanding and measuring public sector productivity is critical to Australia's economic welfare. Contestability provides a path to not only improve the quality of public services, but to improve public sector productivity overall, and therefore the strength of the overall economy.

What are the benefits of contestability?

Generally, the benefits of a contestable approach over a single government monopoly provider have been shown to be:

- **Choice.** Allowing the users of government services a choice of providers is valuable in itself. Different approaches may appeal to different people, and in situations where a citizen has had a poor experience with one provider, the power to choose a different provider of a service can be very highly valued. This also provides government with a greater choice of providers.
- **Innovation.** Contestable approaches have consistently been a pathway to introduce new ideas and new approaches to the provision of public services. This is sometimes seen through the introduction of international best practice, or the collaboration of multiple companies in a consortium to develop new and innovative ways to address a particular problem, or provide a service more efficiently.
- **Expertise.** Contestability provides the opportunity to bring in expertise that the State may otherwise be unable to access. That may be through bringing in best practice providers from around the world, or enabling talented providers in other fields to transfer their experience and successful models of operation. The competitive process incentivises the search for relevant expertise in areas that may not be immediately obvious or accessible to a single State provider.
- **Customer experience.** Customers are a larger and more important stakeholder in contestable markets and the interest, preferences and experience of customers is valued by contestable providers. The consistent experience of customers in contestable markets is higher.
- **Diversity of approach.** Multiple suppliers will take a range of approaches to service provision. Not only does this provide opportunities for customer choice and specialisation, but it also provides opportunities for suppliers to learn from each other and improve the overall standards of service provision. By experimenting with different methods of service provision, multiple suppliers are in a better position to learn and adapt to what works. This is simply not possible for a single supplier.

- 
- **Flexibility.** A contestable market with a diverse group of suppliers is more likely to be more flexible in response to changes in demand for a service, changes in customer preferences or an unexpected development. In a market with multiple providers, there is capacity for others to step in when the situation changes or a moment of crisis arises.
 - **Benchmarking.** A contestable market also provides the opportunity to benchmark existing public sector providers. Even in an area where contestable providers make up a relatively small part of overall service provision, valuable information can be gained to compare with existing incumbent public sector providers. This might include cost benchmarking, as well as benchmarking of customer outcomes, service quality, or in other areas.
 - **Improved quality of service.** Well-designed contestable markets and contracts will improve quality of service, often by setting clear and accountable service quality metrics, combined with financial incentives. Often these kinds of targets and incentives are not possible to set credibly in an environment of public sector provision.
 - **Risk transfer.** One of the major benefits in adopting a contestable approach is the ability to transfer the risks to parties who can manage those uncertainties at the lowest cost. This can be the risk of a project being delivered on time and on budget, or the operational risks of delivering a particular service. Not all risks can be contracted out, and there are many risks that the public sector can manage most effectively. However, the ability to understand, quantify and allocate risk through a contractual method is vital to many contestable approaches.
 - **Investment in fit for purpose facilities.** Contestable approaches will often allow for a better and more efficient trade-off between capital and operating costs than is possible through traditional public sector budgeting approaches. That can mean less costly or more focused capital projects designed around service delivery. Alternatively, it might mean investing more in better facilities, if existing aged and constrained facilities add to operating costs.
 - **Whole of life approach.** As many contestable approaches involve contracts for the provision of services over time, they provide better opportunities for a whole of life approach to infrastructure and service delivery combinations. This can allow better cost effectiveness over time as providers are incentivised to think about longer term outcomes. This can include investing in more hard-wearing facilities up front to minimise maintenance and replacement costs over time, or ensuring that future costs are planned for upfront.
 - **Benefits for employees.** There can also be significant benefits for employees in contestable markets. This can include a range

of employers to choose between, opportunities for promotion and advancement, and better engagement and satisfaction from their employers. Julius^[17] cites a Serco survey 2006 saying ‘that 86 per cent of former public sector managers now working in the private sector agreed that they had more freedom to experiment and innovate than they had in the public sector’. As observed by Sturgess^[18] organisations such as Ramsay Health Care (with 40 hospitals in the UK and France and Indonesia, and Australia) providing public sector services, could offer employees an international career path with extensive opportunity.

- **Efficiency and value for money.** The process of competition forces providers to find the most efficient way of providing a service, and importantly, in a well designed contestable market, to reveal those costs to the benefit of the public sector commissioners. This might be through a competitive tender process, where parties are incentivised to bid the lowest sustainable price in an effort to win a contract, or in a market based context where quality and price can be varied over time. According to Julius, benefits in engagement with the public service industry^[19] include cost savings of up to 20 per cent (including services delivered by in-house winning teams), prison contracting can save even higher to 30 per cent.
- **Accountability and transparency** can be enhanced when governments and suppliers enter into enforceable contracts as a result of contestable processes. Qualitative and quantitative expectations can be refined through the negotiation process and be a starting point for continuous improvement over long periods. Sound accountability frameworks can provide protection and assurance for stakeholders (including employees), and have a mature approach to balancing commercial confidentiality with public transparency.

In the Australian context, multiple reviews by State Auditors-General, and reviews of public private partnership (PPP) contracts by State Treasuries have shown significant savings through well structured contestable processes. These have included:

- The franchising of Sydney Ferries in 2012 resulted in a saving of 12 per cent per annum.^[20]
- Outsourcing of road maintenance in south and western Sydney resulted in savings of 5.5 per cent per annum.^[21]
- Recontracting of bus services in NSW 2013 resulting in savings of 16.2 per cent for private operators and 5.4 per cent for public operators.^[22]
- Port Phillip and Fulham privately operated prisons in Victoria

17 Julius 2008:32

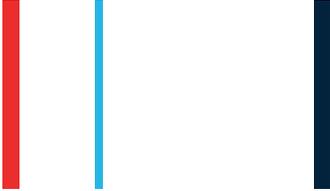
18 Sturgess 2012:14

19 Julius 2005:25, 32

20 <https://www.audit.nsw.gov.au/media-release/franchising-of-sydney-ferries-network-services>

21 <https://www.audit.nsw.gov.au/our-work/reports/sydney-road-maintenance-contracts>

22 https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/2015_Sep_Report_Sydney_metropolitan_bus_contracts.pdf



cost up to 20 per cent less than similar publicly operated prisons.^[23]

- A Western Australian Schools PPP in 2015 saved \$100 million, or 14 per cent compared to public sector delivery.^[24]
- A South Australian Schools PPP saved 24 per cent in 2019.^[25]
- The Northern Beaches Hospital PPP in Sydney is forecast to save 39 per cent when compared to public sector delivery.^[26]
- The new Perth Stadium PPP saved 21 per cent compared to public sector delivery.^[27]

This approach has been used in Victoria, where additional services and facilities are specified as options (a “scope ladder”), and can be taken up in situations where savings on the overall project allow it. As a result, the public can benefit from a better project than would be possible under public sector delivery.

23 <https://www.audit.vic.gov.au/report/safety-and-cost-effectiveness-private-prisons>

24 https://audit.wa.gov.au/wp-content/uploads/2018/06/report2018_11-PPP.pdf

25 <https://www.premier.sa.gov.au/news/media-releases/news/schools-project-shows-south-australias-ppp-reputation-being-rebuilt-under-liberal-government>

26 http://nswtreasury.prod.acquia-sites.com/sites/default/files/2017-02/NBH_-_Contract_Summary_Executive_Summary.pdf

27 <https://www.wa.gov.au/sites/default/files/2020-01/new-perth-stadium-dbfm-project-summary.pdf>



Case Study - Value for money and flexible staff practices – Victorian Prisons

Ten of Australia's 98 prisons are operated by private sector operators, holding around 20 per cent of Australia's prisoner population.

The Victorian Auditor General reviewed two of the State's three private prisons in 2018 – Port Phillip Prison and Fulham Correctional Centre. Port Phillip Prison is the State's largest prison and due to its large proportion of remand prisoners, has more prisoner movements, in and out, than any other prison in the corrections system. It also provides statewide prison medical services and specialist services for intellectually disabled prisoners.

The Auditor General found these prisons cost up to 20 per cent less to run than the average for publicly operated prisons of the same security rating, and that they have largely met the service delivery and performance requirements under the contracts.^[28]

The reasons for this saving were identified as largely due to more efficient staff shift patterns. This included more flexible staff scheduling to better accommodate the day's structure, with shifts of various lengths between 7.60 hours and 12.40 hours and shorter shift-overlap periods. It was also identified that these prisons operated with lower operational staff-to-prisoner ratios, particularly during daylight hours. The Auditor General did not find significant differences in the staff pay rates between the public and private prisons for the most common roles, such as correctional officers.

The finding of savings of around 20 per cent is consistent with the experience of the New Grafton Correctional Centre in NSW, which is also being operated by a private operator under a PPP contract. The Contract Summary on that project found the cost of the successful private sector proposal was 22.6 per cent, or \$579m less in Net Present Cost terms than the Public Sector Comparator.^[29]

Private prison operators are subject to a regime of performance standards linked to financial outcomes. While these performance indicators have evolved over time, modern contracts incentivise operators on a range of indicators, both in the operation of the prisons, and in some cases – such as Parklea in NSW and Ravenhall in Victoria – in the outcomes of prisoners after they leave prisons, through measuring and incentivising reductions in recidivism.^[30]

Competitive tension and the threat of competition can act as an incentive to improve cost efficiency and standards in public sector prison delivery. The John Morony Correctional Centre in NSW was subject to a market testing process in which the internal public sector team was determined to be the best provider, when compared to private sector alternatives. It has been noted that the reasons for the success of the public sector team was that the process allowed them to develop a range of service innovations^[31], to think creatively about how they might better deliver value for money and simultaneously the process gave them a mandate for change. The successful proposal also included a partnership with 12 not-for-profit organisations to provide pre-and post-release services, underpinned by industrial reform^[32].

28 <https://www.audit.vic.gov.au/sites/default/files/2018-03/20180328-Private-Prisons.pdf>

29 <https://www.treasury.nsw.gov.au/sites/default/files/2017-09/New%20Grafton%20Correctional%20Centre%20-%20Project%20Summary.pdf>

30 <https://ipa.org.au/wp-content/uploads/2019/10/IPA-Cutting-costs-and-reducing-reoffending-Redesigning-private-prison-contracts-for-better-results.pdf>

31 <https://www.parliament.nsw.gov.au/lcdocs/submissions/59956/0022%20Prof%20Gary%20Sturgess.pdf>

32 <https://www.tsamgt.com/projects/john-morony-correctional-centre/>

Is the idea of Contestability new?

Ideas that public services are best supported through a diverse and competitive market are not new^[33].

‘Contestability’ and ‘competition’ was not the jargon of 18th and 19th century enlightenment, liberal and free-market philosophers, but notions of decentralising of power, and enabling a diverse and energetic civil and economic domain with individual choice, were central to thinkers including Adam Smith^[34] and JS Mill^[35].

“What governments can and should do, when encountering some new problem or developing state of affairs, is not to say “the Government will run this”, but first of all to seek the private enterprise answer, to help the individual to help himself, to create, by legislation and administration, a social economic and industrial climate favourable to his activity and growth”

Robert Menzies, First Baillieu Lecture, 6 July, 1964

Smith held a role of government is to uphold rules, to create certainty for agreements. Free trade was a logical ideal of an anti-centralist approach, including for Australia’s own Father of Federation, Sir Henry Parkes^[36]. Economists Friedrich Hayek and Milton Friedman expanded on these ideas, demonstrating the power of competitive capitalism in social mobility and reduction in inequality^[37] and the importance of freedom of choice^[38] – the enemy of which is monopoly, public or private.

A ‘mixed economy’^[39] of public, private, non-government and volunteer suppliers have operated in many countries for decades and longer. These include from the earliest convict journeys to Australia, and private water reticulation infrastructure in London such as the Lambeth Waterworks Company in the late 1700’s^[40]. In past centuries welfare, education and health services have been offered by philanthropists and faith-based institutions, not by government. In India, an extensive public emergency response service (GVK EMRI^[41]), arose as a public private partnership from the philanthropic energy of infrastructure leader Dr GVK Redd, with 85 to 90 per cent of patients treated being the poorest people in India^[42].

The great western economic expansion of the United States was

33 Sturgess 2012:10

34 The Wealth of Nations Adam Smith and the Morality of Free Markets

35 ‘On Liberty’ ‘Their choice of pleasures, and their mode of expending their income, after satisfying their legal and moral obligations to the State and to individuals, are their own concern, and must rest with their own judgment’.

36 Clune and Turner (ed) 2006 :132

37 Friedman 200:169

38 Hayek 2007:127

39 Sturgess 2012:10

40 http://www.ph.ucla.edu/epi/snow/1859map/lambeth_waterworks_a2.html

41 <http://www.emri.in/>

42 <https://www.gvk.com/aboutus/boardofdirectors.aspx>, <https://fsi.stanford.edu/news/shp-research-indicates-nonprofit-ambulance-service-reduces-neonatal-and-infant-mortality-india>

fuelled by private investment in railways, just as the British rail network was privately owned until after WWII ^[43]. Technology innovators (and abolitionists) such as Josiah Wedgwood and James Brindley catalysed the privately built, owned and operated canal transport system that underpinned the industrial revolution in the 1770's ^[44]. Private merchant ships and personnel supported the military in WWI and WWII ^[45].

It was the shift to post war public service models in the 1950's – 1970's that saw the nationalisation of many previously privately provided public services or the creation of new publicly owned services ^[46]. Populations who had become used to high levels of government intervention and public debt in war time and post war reconstruction found these models familiar and the failures of these organisations and models over time (for example the mid nineteen-eighties UK miners' strike) highlighted the inefficiencies and risks of monopoly government production.

Crossing Political Boundaries

In the last 5 decades, policies to enable contestability and choice have crossed political boundaries in jurisdictions including the UK, USA, Australia and New Zealand. These policies focussed on undoing monopolies, raising standards in essential public services (such as education), and enabling user choice (such as in telecommunications and aviation).

Undoing Monopolies

Former UK Prime Minister Margaret Thatcher's instinct for the power of competition was clear saying:

'The two great problems of the British economy are the monopoly nationalised industries, and the monopoly trade unions'^[47].

In the area of public education Labour Prime Minister Tony Blair adopted his Conservative predecessor's principles in education and led an agenda of choice and diversity in his 2005 Schools White Paper, Higher Standards, Better Schools for All: More Choice for Pupils and Parents. Targets were set to increase the number of Academy model schools (a 'state funded independent school') to at least 200

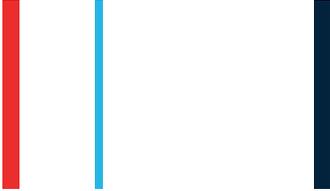
43 Crafts et al June 2007

44 <http://www.wedgwoodmuseum.org.uk/learning/discovery-packs/pack/lives-of-the-wedgwoods/chapter/transport-innovation>

45 <https://www.rmg.co.uk/collections/research-guides/research-guide-c10-merchant-navy-world-war-two>

46 Hayek (2007:215 warns against institutional monopolisation of industrial economies and says in 1944 it is " it should never be forgotten that the one decisive factor in the rise of totalitarianism on the Continent, which is yet absent in England and America, is the existence of a large recently dispossessed middle class', - which he attributes to command and control policies that redistribute, rather than grow income.

47 Young 998:207



and aimed to help turn school performance in poor areas. Blair also proposed the Trust school model, giving parents ‘the right to request new schools; moving local authorities into commissioning roles rather than setting up and running their own schools; encouraging more faith schools; and encouraging schools to federate’ and a role for local authorities as ‘a powerful champion of parents and pupils in their area, commissioning rather than providing education’.

The UK House of Commons Education and Skills Committee said ‘we have established that Trust schools are not a new concept^[48]’, confirming that concepts such as choice and diversity established in the Conservative Government years continued to be endorsed in Labour policy. In 2011, Free Schools (Trusts) and Academy schools became a flagship policy of the Coalition/Cameron government. Led by Education Secretary Michael Gove, around 700 free schools were opened or approved^[49].

In the United States a similar quest for increasing parent choice and raising education standards and performance, was behind the Bush Government’s ‘No Child Left Behind’ laws, which attracted bipartisan support. Amongst other things it allowed for children to move to better schools if improvements were not made in their own^[50].

The 1970’s – 1990’s were a period of major reform of government monopolies crossing political boundaries, including telecommunications and aviation.

In Australia, Telecom’s monopoly delivered appalling service outcomes – waits of many months to have a phone line installed, and refusal to provide itemised call charges, until the threat and then the actuality of competition when the Howard Government proposed the one third float of (the renamed) Telstra in 1996^[51].

The Australian two-airline policy (which ceased in 1990^[52]) regulating government-owned Qantas/TAA and private competitor Ansett ‘provided stability in service levels and industry participants, but stifled innovation and price competition’ and ‘worked against the interest of consumers^[53]’. The reformist Hawke Labor Government and then Transport Minister Kim Beazley commenced the de-regulation of Australian aviation and the sale of Qantas (1995), and sale of government owned airports^[54], a process continued by the Howard Government^[55].

48 First Report 2005/2006 <https://publications.parliament.uk/pa/cm200506/cmselect/cmmeduski/633/633.pdf>

49 <https://ipa.org.au/ipa-review-articles/free-schools-david-camersons-radical-idea>, <https://neu.org.uk/policy/free-schools#:~:text=Free%20schools%20are%20a%20type,former%20Education%20Secretary%20Michael%20Gove.&text=Like%20academies%2C%20free%20schools%20can,higher%20rate%20than%20other%20schools>.

50 <https://georgewbush-whitehouse.archives.gov/infocus/bushrecord/factsheets/No-Child-Left-Behind.html>

51 Richardson, David https://www.aph.gov.au/sitecore/content/Home/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/CIB/CIB9697/97cib8#INTRODUCTION

52 John Kain and Richard Webb June 2003 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0203/03RP10#aair

53 Johnston and Trembath 2005:6

54 Paul Gregory Hooper, Robert Cain, Sandy White. The privatisation of Australia’s airports September 2000 Transportation Research Part E Logistics and Transportation Review 36(3):181-204 DOI: 10.1016/S1366-5545(99)00032-0

55 <https://www.smh.com.au/national/sydney-airport-sold-for-5-58-billion-20020625-gdfefl.html>

New Zealand's Labour Finance Minister Roger Douglas, observing monopolist Air New Zealand's positive customer approval on international routes but negative perception in its domestic monopoly, invited Australia's private airline Ansett to contest New Zealand's domestic air routes. Almost overnight, 'grotty' airports, rain-soaked tarmac boarding, and excruciating luggage delays smartened up with the competitive tension catalysing infrastructure and service upgrades^[56].

The Hilmer and Harper reports on Competition (see later section) were significant in the opening up of both private and public services to contestability, with the additional effect that services (such as international education) are second to mining commodities as Australia's major export^[57]. Services are a significant export from NSW^[58].

Contestability Policy - Thought Leadership and Regulatory Reform

In parallel with practical reforms to public sector service delivery by conviction politicians, a body of research driven theory and regulatory reform recommendations were produced in liberal democracies including the UK, USA, and Australia.

In the early nineties, phrases like 'steering not rowing', 'entrepreneurial government' and 'voice of the [government] customer' hit the public policy vernacular as governments started to navigate a post-Iron Curtain world.

New ideas on public service delivery have a strong lineage in the United States. Osborne and Gaebler^[59] (a former public sector city manager) in their assessment of emerging approaches in the United States' public sector, argued for the reinvention of systems, a rethink of 'how they operate' rather than 'what they do', in order to optimise what by-and-large good people needed to change to succeed in the new flexible knowledge-based post-industrial economies.

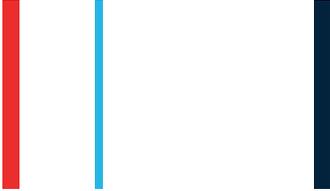
Their influential book 'Reinventing Government' recounts a now famous contestability case study in which the city of Phoenix, Arizona, in a tax/revenue crisis, decided to tender out the garbage collection service district by district. The public sector workforce decided to bid too and lost the first few rounds (in which the low hanging fruit like investment in one-person mechanical pickup was taken by private bidders). The government garbos undaunted and after careful analysis

56 Osborne and Gaebler 1992:83

57 <https://www.dfat.gov.au/sites/default/files/australias-goods-services-by-top-25-exports-2019-20.pdf>

58 <https://www.dfat.gov.au/sites/default/files/nsw.pdf>. In 2017/18, NSW coal exports were \$16.9 billion. A combination of travel/education and management consulting totalled around \$23 billion. Overall, NSW all mining commodities outweigh the value of all services exported.

59 Osborne and Gaebler 1992



of more efficient pickup routes, smarter work schedules, incentives such as rewarding colleagues who proposed successful innovations, improved their pitch and over a period of time won back all five district contracts. Taxpayers won with overall lower waste service costs. The catalyst was the decision to open the traditional service to other contestants. They conclude ‘competition boosts the pride and morale of public employees’ ^[60].

Governments could do worse than to revisit Osborne and Gaebler’s 36 alternate service delivery options, a primer of tools and choices to facilitate new ways of thinking about the role of government in delivering public services with customer and market in mind ^[61].

US President Barack Obama embraced the principles of cross-sector collaboration on his first day in office in 2009, saying ‘Collaboration actively engages Americans in the work of their Government. Executive departments and agencies should use innovative tools, methods, and systems to cooperate among themselves, across all levels of government, and with non-profit organizations, businesses, and individuals in the private sector’^[62]. Government trade agencies, long resistant to change, were reformed to improve the competitiveness of the United States in a rapidly changing global economic context ^[63].

President Obama’s 2014 ‘MyRA’ concept – an optional low cost retirement savings account for people on low earnings without access to employer savings schemes – challenged the private sector’s offerings in a contestable manner ^[64]. As Dean Baker^[65] observed ‘the debate is often presented as between people who like the government and people who like the market. It isn’t.’^[66] The relatively low administrative costs of some public sector financial services (such as postal banking) was seen as a positive competitive tension to help provide services where the private market had demonstrated less inclination to serve.

Since the Thatcher years (1979-1990) the principles of customer choice and devolution of UK Government decision-making and services have evolved across subsequent administrations. Thatcher’s ‘Next Steps’ agenda aimed to re-shape the civil service and its capabilities, including by separating policy making and service delivery, with advice from senior private sector advisors^[67].

The Blair Labour Government (1997-2007) took a continuing interest in the way public services were designed, commissioned, evaluated, and improved. Blair opposed the privatisation of Her Majesty’s Stationery Office and the Recruitment Services and Assessment Agency but did

60 Osborne and Gaebler 1992:84

61 Osborne and Gaebler 1992:332

62 <https://obamawhitehouse.archives.gov/administration/eop/sicp/initiatives/prizes-challenges>

63 <https://www.theguardian.com/commentisfree/2014/feb/18/free-market-competition-public-private-sector>

64 <https://obamawhitehouse.archives.gov/blog/2014/02/11/myra-helping-millions-americans-save-retirement>

65 Dean Baker, then co-director of the Centre for Economic and Policy Research

66 <https://www.theguardian.com/commentisfree/2014/feb/18/free-market-competition-public-private-sector>

67 <https://www.instituteforgovernment.org.uk/sites/default/files/case%20study%20next%20steps.pdf>

not oppose ‘Next Steps’^[68].

The Prime Minister’s Delivery Unit (PMDU), created in 2001, focused on evidence-based solutions to systemically poor public sector outcomes. To successfully expose public sector services to competition requires complex management including flexibility, appropriate procurement process, and people management. Under Sir Michael Barber, the PMDU tracked and improved performance in priority areas around health, education, security and transport, and was a source of central agency expertise, with political support for rapid left-field innovation and practicality ^[69]. Key to PMDU thinking was that a failing public sector service needed fresh eyes and solutions. Thus, the PMDU provided expertise, and contestable tension in design and delivery of public services^[70].

In 2005 the UK public service industry (PSI) (all private and third sector enterprises that provide services to the public on behalf of government or to the government ^[71]) accounted for 5.7 per cent of GDP and directly employed around 1.2 million people^[72].

A focus on contestability also continued under the Cameron Government. A key focus of the Cameron/Clegg agenda was the health system. Conservatives worked with Liberal Democrats on an agreed framework to deliver health service improvements. Clegg and Cameron said ‘in the (National Health Service) NHS, [he would] take Conservative thinking on markets, choice and competition and add to it the Liberal Democrats belief in advancing democracy at a much more local level, and you have a united vision for the NHS that is truly radical: GPs with authority over commissioning; patients with much more control; elections for your local NHS Board’.

‘Partnership between public, private and voluntary sectors is of critical importance in generating diversity. But let me emphasise I mean ‘partnership’. Some people assume that there are only two ways of delivering a service: entirely in the public sector or entirely in the private sector. This always was a nonsense ... In the real world, virtually every public service engages private partners to a greater or lesser extent.

What matters is the quality and value of the service on offer.

We will make it possible for schools to be managed against a performance contract by organisations with real expertise in school improvement’.

(Prime Minister Tony Blair, May 2001).

Source Tony Blair: Third keynote speech on public service investment and reform Woodville Halls Gravesend 21st May 2001
<https://www.theguardian.com/politics/2001/may/21/labour.tonyblair>

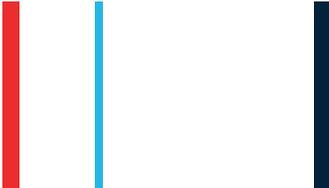
68 Laine 1997

69 Led by Sir Michael Barber. See Barber 2015, and <https://www.instituteforgovernment.org.uk/sites/default/files/publications/Global%20Delivery%20report.pdf>

70 Barber 2015

71 Julius 2008:5, also pg 10

72 Personnel numbers stand at 3.388 million in December 2020 <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/publicsectorpersonnel/timeseries/g6nq/pse>



Patient feedback on the consumer experience in health was enabled through the UK Care Quality Commission's^[73] 'rate your hospital', so customers can highlight the good and bad in whatever part of the system they were in – public, private or hybrid.

In Australia, the National Competition Policy (NCP) agenda was one of the most significant reforms of 1995-2005. Its legislation review was 'to place the onus of proof with proponents of restrictive regulation to establish that there is a net public benefit from restricting competition'^[74].

The Hilmer Report 1993^[75], commissioned by Labor Prime Minister Paul Keating, catalysed essential rethinking of national competition policy. Fred Hilmer, (a lawyer, former McKinsey consultant and business leader) was tasked with considering, amongst other principles, 'develop[ment of] an open, integrated domestic market for goods and services by removing unnecessary barriers to trade and competition'. It unleashed a raft of reform, agreed across state borders, that engaged every Parliamentarian in unpicking their own jurisdiction's barriers to competition. This was a painful process also for industry, who had to let go of some unique sector practices, often with short term but significant impact on family businesses and towns, but with a broader public interest benefit. Industry restructure support was a feature of these reforms.

The Hilmer Report focussed strongly on enablers of competition in the non-government sector^[76]. However, as Sturgess points out^[77], the notion of a public service economy and the recognition of its mixed and diverse character, adds significance to 'questions of regulatory design and the application of competition policy'^[78] in the public sector – a point which the Hilmer review addressed on the question of price regulation in government businesses.

Hilmer's 2010 productivity wake-up call noted that the previous two decades of competition reforms lifted productivity by close to 2 per cent, but productivity growth had now slumped to around 0.4 per cent per annum^[79]. The buffer from the 1993 competition reforms scaffolded Australia's economy from the Global Financial Crisis before (GFC) and other global hits.

In 2013 Prime Minister Tony Abbott initiated a sequel to the Hilmer era reforms, with the Competition Policy Review (Harper Review 2015). A key Harper principal is to 'foster diversity, choice and responsiveness in government services'^[80]: Harper's recommendations include:

73 <https://www.cqc.org.uk/>

74 Johnson and Trembath 2005

75 <https://www.australiancompetitionlaw.org/reports/1993hilmer.html>

76 <https://www.australiancompetitionlaw.org/reports/1993hilmer.html> TOR 2a

77 Sturgess 2021

78 Sturgess 2012:10

79 Prof Fred Hilmer 'What's Wrong with Microeconomic Reform today?' Address to the Sydney Institute, 12 October 2010.

80 Harper 2015:15 (recommendation 24).

- expanding the application of the Competition and Consumer Act 2010 to all levels of government insofar as they undertake activity in trade or commerce. (The government supported the recommendation in principle)^[81];
- adopting choice and competition principles in human services^[82].
- separating the interests of policy (including funding), regulation and service delivery;
- governments commissioning human services should do so carefully, with a clear focus on outcomes;
- a diversity of providers should be encouraged, while taking care not to crowd out community and volunteer services; and
- innovation in service provision should be stimulated, while ensuring minimum standards of quality and access in human services.

This influenced, among other things, major shifts towards great person-centred service design, mobility and choice in the architecture of some Commonwealth services, a framework to elicit a diverse market. The National Disability Insurance Scheme (NDIS), the Hearing Services Program (vouchered entitlements), and Job Network employment services put purchasing power in individual hands.

Consistent with this approach the Royal Commission into Aged Care Quality and Safety ^[83], recommends that people entitled to aged care be enabled to exercise choice and control in the planning and delivery of their care. This and other recommendations were accepted by the Australian Government in May 2021 and will form part of a new Aged Care Act.

In 2013 the Abbott Government commissioned then Business Council of Australia (BCA) President Tony Shepherd AO to lead a National Commission of Audit^[84] (hereafter the ‘Shepherd Audit Report’), to support the Government in efforts to ‘live within its means and begin to pay down debt’ and to ‘assess the role and scope of Government, as well as ensuring taxpayers’ money is spent wisely and in an efficient manner’^[85].

The Shepherd Audit Report identified the trend risks of a burgeoning national welfare and pension commitment, the growth in demand for public health services and the need to repair national finances, seeing the ‘dependency ratio’ (number of workers and taxpayers available to support the financial needs of non-workers) worsening. It is estimated that 2.7 people working in 2055 would have to

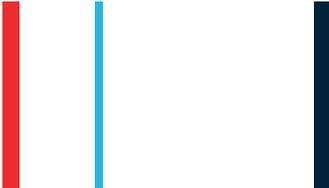
81 Competition Policy Review | Treasury.gov.au and <https://treasury.gov.au/publication/government-response-to-the-competition-policy-review>

82 Harper 2015:16 (recommendation 2)

83 <https://www.health.gov.au/sites/default/files/documents/2021/05/australian-government-response-to-the-final-report-of-the-royal-commission-into-aged-care-quality-and-safety.pdf>

84 https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1314/CommOfAudit

85 https://parlinfo.aph.gov.au/parlInfo/download/library/prspub/3102584/upload_binary/3102584.pdf;fileType=application/pdf



contribute as much as, if not more than, 4.5 people today to support the health and welfare demands of an ageing population at today's levels ^[86].

Amongst its 'Principles of Good Government' the Report recommended that:

- “Competition and contestability drive lower costs, improve quality and give people what they want. Government should act in the public interest and only intervene in markets where market solutions fail to produce the best outcome for the nation as a whole^[87]’ and
- “Outsourcing and contestability are well recognised for their potential to increase government efficiency. Key questions for the Commission are how much outsourcing and contestability already occurs, in what areas, and where are the future opportunities.”

Shepherd also highlighted the need to ‘protect the truly disadvantaged, respect personal responsibility and choice, reduce complexity, ensure value for money and be open to the use of markets and contestability in the provision of services’ and noted the role of not for profit and informal non-government services in delivering contestable choice and control for people with a disability.

Health service delivery was a major focus, with contestability urged among the short to medium term proposals for improving government services through markets and technology. On the subject of ownership, the Commission noted ‘the Commonwealth currently holds around \$13 billion of equity in government business enterprises’ and ‘consider[ed] that Commonwealth bodies that operate in contestable markets should be privatised’.^[88]

Shepherd emphasised acquiring ‘market-based and technological solutions to improve the quality and efficiency of its services and making greater use of private sector expertise in the design and delivery of services including e-Government services’.^[89]

In 2017, the Menzies Research Centre revisited the Shepherd Audit Report. ‘The Shepherd Review: Statement of National Challenges; Why Australians are Struggling to get Ahead’ provided an update on policy responses to its key findings.^[90]

Noting the urgency of structural changes to address the looming imbalance between numbers of future taxpayers and future service-comers, Shepherd said ‘We need to be clear about what we expect from government and how we measure success before we can decide if we’re getting value for money. Our task is to work out

86 Shepherd Review 2017:9

87 Shepherd Audit Report 2014 (pg iv, 8, 97, xxxix, 94, 303)

88 Shepherd Audit Report 2014 (pg 221)

89 Shepherd Audit Report 2014 (pg xiii)

90 <https://www.menziesrc.org/report-store/shepherd-review>

what government should be doing, and then make sure it is doing it efficiently.^[91]

Building on Shepherd's concern on the diminishing ratio of working age people to service-dependent people, Australian Treasurer Josh Frydenberg noted when releasing the Fifth Intergenerational Report in June 2021 that 'productivity is the most vital ingredient in lifting our long term living standards and wages.'^[92]

As fewer people recall the transformative productivity and reform debates, the dramatic intervention of governments to support jobs in the 2020 pandemic – around \$200 billion in Australia alone^[93] – could lead to a false sense of comfort on the benefits of government market support.

It is timely (and especially in the current COVID economic context) that the role of contestability and a diverse public sector economy, and market, be recommitted if we are to avoid a trend towards refuge in intramural public sector service delivery and its adverse customer and productivity consequences.

Contestability is not new:

- In the UK, USA, and Australia/New Zealand, both sides of politics initiated regulatory reforms to undo public sector monopolies, and provoke competition in public service design and delivery since the 1970's
- Reforms to diversify supply have transformed consumer choice and innovation in education, health, transport, aviation, telecommunications and other services
- Contestability, including the credible threat of competition, has resulted in some public sector service providers successfully competing and winning contracts, whilst improving consumer outcomes and driving down costs

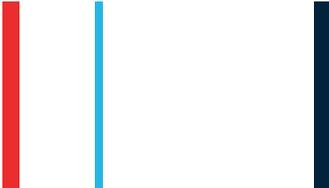
What are the ingredients for successful contestability?

Contestability should not be seen as a simple answer in all cases. For a contestable approach to be effective, there is a clear role from government in designing an effective contestable market and then administering this market well. This section considers the factors that are necessary for governments to achieve the benefits from a contestable approach.

91 Media Release MRC 18 December 2016

92 <https://ministers.treasury.gov.au/ministers/josh-frydenberg-2018/speeches/2021-igr-release-speech-melbourne>

93 This brings the Government's COVID-19 Response Package since the onset of the pandemic to a total of \$198 billion, including \$184 billion in economic response measures and \$14 billion in health response measures'. <https://budget.gov.au/2020-21/content/covid-19.htm#:~:text=The%20Government%20is%20committing%20an,billion%20in%20health%20response%20measures.>



For governments to get the most potential from contestable approaches to service delivery, there are several factors that need to come together. These are:

- **Leadership.** Contestable markets require confidence from all involved that the market is worth the time and effort in investing in. That is true for potential employees, customers, service providers and investors. In a public service market, this confidence can only come from political and public sector leaders explaining and demonstrating their commitment to a contestable approach. Without strong leadership and a commitment to reform, potential providers may not be attracted to compete in a market, employees may decide that it is easier and less risky to stay with current employers, and customers may not invest the time to understand new arrangements. Public sector leadership de-risks the process for engaging in a competitive market and sends signals about the long term commitment to such an approach. This is vital to not just the success of the process, but also to the competitiveness of the outcomes. Stronger leadership will drive wider and deeper engagement and better competition.
- **Trust and transparency.** The users of services need to have confidence in both governments to establish fair and effective contestable markets and in service providers, whether they are public, private or not for profit providers. Trust can be developed through transparency in contracting and through the reputation of providers. Negative views about diminishing trust in public institutions can be readily found^[94] although some academics find no evidence to support popular notions of historic decline in public trust in public administration, citing sentiment fluctuation and lack of data^[95]. The reality is likely much more nuanced and influenced by context. For example research^[96] at the start of the COVID pandemic reported a heightened level of trust in government and its initial response.
- **Setting boundaries.** Coupled with leadership is also the responsibility of governments to be clear on what is, and what is not, part of the market. Uncertainty around which approaches will be acceptable to government and which will not, adds cost and risks which are ultimately borne by customers or taxpayers.
- **Clarity of the outcome** that government is commissioning. Governments that adopt a contestable approach need to have a clear understanding of the outcome they are procuring. While this may seem self-evident, clear outcomes provide a framework for providers to engage in a contestable process. Without a clearly defined outcome, measurement of success or failure is not possible, and it becomes easy or convenient to confuse or

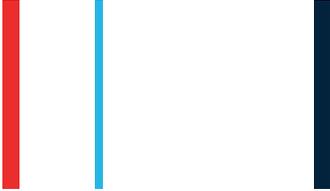
94 http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

95 Van de Walle, et al. (2008)

96 Research by Essential Research reported in <https://www.theguardian.com/australia-news/2020/apr/07/australians-trust-in-government-and-media-soars-as-coronavirus-crisis-escalates>

substitute the activity that is being funded for the outcome that is sought to be achieved.

- **Taking a true outcome-based approach**, that allows different approaches to solving a defined problem or achieving a particular outcome. Contestable models are often successful at delivering innovation in service delivery, by taking new approaches or new models to solve a particular problem. However, where a commissioner is too specific about the approach that should be taken in delivering the service or outcome, it can inhibit the search for better, more effective or more cost-effective approaches. This is often seen in circumstances where governments will define inputs or limit the scope for non-traditional approaches.
- **Skills and expertise in government on writing and administering contracts** for market services. When government is commissioning a service as opposed to delivering it, a different set of skills are required. Successful contestable projects have relied on skilled public servants on the government side to negotiate clearly defined contracts that allocate risk and responsibilities fairly and appropriately. Ongoing administration of contractual relationships is also critical. This can include getting the right balance in monitoring and intervention to protect public interest and providing space for providers to innovate and test new approaches.
- **Clear, well structured contracts**, that establish clear rules and incentives for performance, and a process without unreasonable costs. Successful partnerships rely on well understood rules and incentives for performance, with a shared understanding between the State as a commissioner and service providers of what is expected. Poorly written contracts can provide opportunities for dispute or misunderstanding of roles and allocations of risks.
- **Level playing field**. A commitment to high standards of probity and competitive neutrality is also critical to success. Providers must be confident that they have a chance of success, that proposals will be evaluated on their merits, and that the reasons and rationale for choosing a provider, either public or private, are clear to all participants in the market.
- **An understanding of the true costs** of the current service delivery model. In many cases, while the direct costs of service provision may be understood, indirect costs, management, overheads, the cost and use of capital and the risks carried are not understood. Many of the opportunities for better service delivery through contestable processes come through reimagining service design, and simple comparison with the direct costs will misunderstand the opportunity.
- **Informed customers**. Contestable markets that have multiple suppliers and allow customer choice can only operate well with customers who understand and are confident in exercising their right to choose. This can involve education and cultural change



in understanding how to navigate markets and understand the value propositions of different providers and how they may meet individual needs.

- **Motivated and skilled providers.** For contestability to work effectively, a diverse and capable supply side needs to be supported and developed by government. It also means that government should take a long term approach to considering the depth of the market, and avoid ‘winner take all’ approaches that may limit the ability to keep viable competitors available for future procurements.



UK: Greenbooks and Playbooks

A range of measures and methods developed in jurisdictions such as the UK and Australia offer pathways to new thinking on outcomes-based procurement of public services including contestability-based solutions.

Improved comparators, accurate measures of productivity and the development of new methodologies to measure public sector policy and service success (such as the UK PMDU) have informed this evolution. These initiatives inspired public sector officials in NSW who invited Sir Michael Barber and leaders of the No 10 'Nudge Unit' to NSW to share their learnings.

Current policies and instruments supporting procurement in the UK include:

- HM Treasury Green Book¹ guidance on how to appraise policies, programmes and projects, and evaluation throughout implementation. It includes appraisal of alternative policy options, applicable to all proposals for the use of public resources.
- The 2020 Outsourcing Playbook, dubbed the 'procurement Bible', provides guidance on public sector service delivery, including outsourcing, insourcing, mixed economy sourcing and contracting, including detail on the 'social value' objectives noted earlier.

The end of the Brexit Transition period prompted a review of the UK Government's procurement framework and Green Book, which supports £290 billion of public spending a year. The December 2020 Public Procurement Green Paper, was recently put out to public consultation, indicates the Government's direction and priorities: the paper canvasses ways to leverage this public spending to assist economic recovery, improve agile supply capability, open up public contracts to more small businesses, charities and social enterprises to innovate in public service delivery, and meet the UK's net-zero carbon target by 2050.

Simplifying the regulatory framework is a key theme.

Sources: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938046/The_Green_Book_2020.pdf What are the barriers to contestability?

What are the barriers to contestability?

Given the benefits of a contestable approach, why are there still so many un-executed opportunities to improve the way government delivers services? Some of the reasons for opposition to evidence-based contestability benefits are ideological, political or cultural.

There are genuinely held concerns from some on the impact that change has on the delivery of services to sensitive and vulnerable communities. This may include concerns for the impact that a contestable process has on existing workers, a lack of trust in new service providers, concerns about the quality or availability of services after reform, a concern of losing favourable industrial arrangements or losing leverage in industrial negotiations. Further concerns with the motives and agendas of governments and new providers that undertake contestable processes could also be a factor. Whether or

not these concerns are based in evidence and experience, they create political, cultural and operational barriers to contestability.

The challenge of this opposition is reinforced by the nature of the benefits (and costs) of contestability. The benefits of taking a contestable approach are generally shown over time, while the opposition to taking such a path is immediate. Benefits also generally accrue to a wide group of customers, but the impacts of change and uncertainty are felt by a narrow group of affected existing suppliers and workers. This can create strong incentives for political campaigns against reform.

Opposition can take the form of ‘scare campaigns’ against reform by organised labour leaders, according to former Australia Labor Party (ALP) Victorian State Secretary Nicholas Reece ‘Voters regularly report they hate election-time scare campaigns, but campaign professionals keep running them. There is a simple reason for this: scare campaigns work.’

MEDISCARE



‘Mediscare’ has entered the political and policy vernacular and actively prevents many good ideas, with significant community benefits, ever seeing the light of day.

The confected hyperbole of a series of ‘Mediscare’ campaigns in Australian elections illustrate the effective combination of skilled election-campaign research and social media appetite for such messaging.

Prior to the 2016 Federal election, government plans to contract out Medicare back-office payments administration and technology, and service outcomes were seized on by opposition campaign strategists^[97]. Specialist ‘spinners’ understand that voters are behaviourally more sensitive to negative than positive messages^[98], and used this behavioural axiom to suggest this would lead to privatisation of Medicare – which had never been a government policy.

‘Mediscare’ torpedoed a long-overdue operational update that would have improved delivery of benefits to eligible people, of the sort that the same voters use and enjoy in their private sector interactions every day. And taxpayers, not private investors, would continue to have to fund in-house technology investment (and risk) with budget allocations that might otherwise be spent on priorities that voters may prefer.

97 <https://www.smh.com.au/politics/federal/medicare-architect-hits-out-at-privatisation-plan-reports-20160209-gmpe0r.html>

98 <https://theconversation.com/why-scare-campaigns-like-mediscare-work-even-if-voters-hate-them-62279>

There is evidence of the political effectiveness of these campaigns. In the corrections sector, where there has been private sector involvement over decades, corrections systems in Australia are still public sector dominated^[99]. In Queensland in 2019, two prisons were transferred from private sector to public sector control, in a decision expected to cost the State an additional \$111 million over 4 years.^[100] This is despite the Queensland Audit Office finding in 2016 that “The private provision of public services in the state’s prison system is realising significant cost savings while providing a level of service commensurate with publicly run prisons.”^[101] This transition would appear to be ideologically driven, rather than a reflection of the performance of the private operators of either prison.

Centre left administrations and labour representatives have brought contracting into political focus

US President Joe Biden’s decisions was to end private prisons in the Federal criminal justice system^[102], but also provide education and drug rehabilitation to inmates. It is not clear if the end to current prison contracts, which generally do not include incentives to reduce recidivism, are an opportunity for outcomes-based service design in the future^[103].

In California’s Assembly Bill 5^[104] bans on contracting classify large numbers of independent contractors as employees, with attendant entitlements. Despite the preference of many workers for the flexibility and freedom of the ‘gig economy’, the impact of such reforms can be to remove these job opportunities, while adding costs that are ultimately borne by consumers. Many types of contractors are now seeking exemptions^[105].

In 2005 the Australian Manufacturing Workers Union (AMWU) claimed that labour hire and contracting has a deleterious impact on the wages, conditions, and safety of workers, nominating public sector corporatisation and privatisation as a contributor to outsourcing practices^[106] and called for statutory control of independent contracting. Some unions have considered^[107] offering membership to independent contractors.

99 Sturgess 2012: 13 notes that at that time, 17% of Australian prisoners are held in private-managed prisons, in Victoria this is 34%.

100 <https://www.abc.net.au/news/2019-03-26/queensland-private-prisons-to-be-run-by-state-government/10938192>

101 https://www.qao.qld.gov.au/sites/default/files/reports/rtp_management_of_privately_operated_prisons.pdf

102 <https://joebiden.com/justice/>

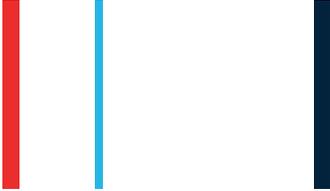
103 Chandra Bozelko Feb. 4, 2021 10:59 am ET BARRON'S NEWSLETTERS The Barron's Daily <https://www.barrons.com/newsletters>

104 <https://www.hoover.org/research/california-knives-gig-economy>

105 Robert Gottlieb The Australian 12 February 2021 <https://www.theaustralian.com.au/business/economics/how-albanese-would-transform-business-if-elected-pm/news-story/39957a5925f1eabdab7212f3d280949c>

106 AMWU Submission to HOR Inquiry into Independent Contracting and Labour Hire Arrangements March 2005 [http://www.aphref.aph.gov.au_house_committee_ewrwp_independentcontracting_subs_sub46%20\(1\).pdf](http://www.aphref.aph.gov.au_house_committee_ewrwp_independentcontracting_subs_sub46%20(1).pdf) page 17

107 <https://www.theaustralian.com.au/nation/amwu-in-bid-to-take-on-contractors/news-story/8bd54e875e76cb071d3fc3842d816fd4>



A political obstacle to contestability is the question of what happens to the existing workforce and claims that the gains are made at the expense of those individuals. However, this is despite the lived experience of many employees in these projects. Julius reports some cases of poor wages experienced in the short term, however, ‘there is no systematic evidence that contracting leads to an increase in long term unemployment’. In the UK during the decade of rapid Public Service Industry (PSI) growth after 1995, the unemployment rate fell, and the employment rate grew.

In the Australian context, a reduction in wages is unlikely to be the case, particularly given the nature of the Australian workplace relations system. In their review of public and private sector run prisons in Victoria, the Victorian Audit Office stated “We did not find significant differences in the staff pay rates between the public and private prisons for the most common roles, such as correctional officers.”^[108]

Infrastructure Partnerships Australia has released an independent research report into the experience of public private partnerships in social infrastructure, such as schools, hospitals and prisons. This report found employees working in PPP facilities “prefer working in a PPP facility and service contract over a traditional government-owned and operated facility”. The report stated “To paraphrase one school-based service provider, “I like that in a PPP we have a FM expert that does the FM and that the educators do what they are experts in. And, I like that maintenance and upgrades are funded and carried out. PPP schools work better for students, and with better facilities the students take pride and treat the buildings better”.^[109]

Visible political support for public service change is a vital key in the success of the reforms; but once the direction or course of the reform process has been set by political leaders, the intrusion of political considerations into the details of the reform strategy can work to undermine, contradict, or limit the scope of reform.

While opposing reform and running scare campaigns might be effective political tactics and be useful in engaging and motivating union members, these campaigns can ultimately disadvantage employees and the broader community.

Rather than being actively hostile to reform, there is a significant opportunity for employee and community stakeholders to shape and contribute to the delivery of better services. Service providers, governments and the community value an engaged, trained, talented and committed workforce, and strong employee engagement and motivation is more likely to deliver better public services.

110 <https://www.audit.vic.gov.au/sites/default/files/2018-03/20180328-Private-Prisons.pdf>, p88

109 <https://infrastructure.org.au/social-infrastructure-pps/#anchor-report>, p16 Laine 1997

This can be through giving employees a voice in the design and delivery of contestable services. Those on the frontline, and their managers, often have powerful insights into ways to improve service delivery and make their work more effective, more productive and more satisfying.

There is evidence of this model working successfully at the John Morony Correctional Centre in NSW, where an in-house public sector bid, designed in collaboration with staff with the endorsement of the Public Service Association, was preferred to proposals from three private providers in 2017.^[110]

This type of approach can constructively and transparently address genuine and legitimate concerns of unions and employees, and can be effective with both public sector providers, not for profit providers and private sector providers. Constructive dialogue can be based on real data, and real evidence, rather than rhetoric and fear. Unions, and community groups should engage with a contestable model and be encouraged to produce their own vision of how public services can be improved better in a changing environment. At the same time, governments should be able to address the genuine concerns of employees while delivering service improvements.

What can go wrong?

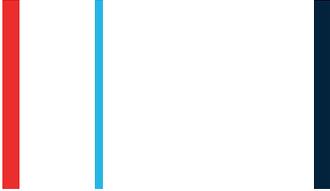
Contracting is not a panacea. It has its limitations, not only where they can be applied, but how' Sturgess 2012:28

Contestability does not guarantee success in all cases. Just as traditional public sector methods can lead to service delivery failure, there are cases where things can go wrong in contestable processes as well. While the risks are different between delivery models, there is not evidence that contestable processes fail more often than traditional service delivery. This section considers the risks in contestable delivery, and how they might be mitigated and managed.

When things go wrong in the delivery of services, by both the public and private sector as well as non-government providers, the responsibility can usually be traced back to poorly specified outcomes, inappropriate incentive structures or poor monitoring of performance. All of these challenges can be, and should be, managed by government acting as an informed and effective commissioner of services.

Not all early 'public private partnerships' were successful, including tragic consequences for the Second Convict Fleet to NSW which was commissioned on performance indicators which failed to incentivise

110 <https://www.justice.nsw.gov.au/Pages/media-news/media-releases/2017/CSNSW-named-as-preferred-bidder-for-John-Morony-Correctional-Centre.aspx>



prisoner wellbeing and survival.^[111]

Sometimes, when governments attempt to mimic competition in a highly regulated framework, costs can be high, as was the case with the ‘managed competition, two airlines policy’ in Australia^[112].

Critics of contestability might point to the example of private COVID quarantine operators in Victoria in 2020. The mismanagement of quarantine security saw a COVID outbreak on which basis the Victorian Premier locked down the state with catastrophic economic impact after a cluster emerged at a meat business in May 2020^[113].

The subsequent inquiry into hotel quarantine in Victoria found there were systemic problems with the way that the government contracted with the private sector. This included that “the role performed by private security was ill-defined from the beginning and was, ultimately, a role not suited, without close monitoring and extensive and continued training, to the cohort of guards that was engaged”^[114] and that “it was not appropriate for the State to place contractual responsibility for infection prevention and control on hotels and commercial cleaners...It was not appropriate for the State Government to seek to impose the risk of transmission of COVID-19 onto the hotel and cleaning providers in the way in which these contracts purported to do.”^[115]

However, reviews in other jurisdictions have been supportive of the role that private providers should play as part of the hotel quarantine system. The review of the Western Australian hotel quarantine system noted “Quarantine remains a complex public health function, with strong program elements of logistics, security, compliance and risk management. It requires the highest levels of corporate and clinical governance, and continuous attention to fundamental IPC principles throughout the end-to-end process. It is government’s responsibility but requires private sector partnerships.”^[116]

There may be cases in which outputs are hard to measure and even harder to monitor on an ongoing basis.

In those instances, contracting is likely to be complex and contentious, and when targets are set, there is the risk of “hitting the target while missing the point”. Moreover, public pressure is then likely to result in steadily increased regulation over time, eliminating the benefits contestability was intended to introduce.

Attention also needs to be paid to whether there is realistic scope for

111 Donaldson, David notes research by Sturgess et al on the differences in commissioning the First Fleet (cost plus) and Second Fleet (fixed price per head) and the incentives that produced a mortality rate of 5.4% and 40% respectively, transporting convicts to the colony of NSW. <http://www.powertopersuade.org.au/blog/contracts-and-convicts>, 13/02/2017

112 Johnson and Trembath 2005

113 <https://www1.racgp.org.au/newsgp/clinical/ending-the-second-wave-how-did-victoria-get-to-zero>

114 COVID-19 Hotel Quarantine Inquiry, Final Report, p 22 https://content.royalcommission.vic.gov.au/sites/default/files/2020-12/0387_RC_Covid-19%20Final%20Report_Volume%202_Intro%20Pages_Digital.pdf

115 Ibid, p27

116 <https://www.wa.gov.au/sites/default/files/2021-04/Review-of-Hotel-Quarantine-Arrangements-in-Western-Australia-Final-Advice.pdf>

contestability over time. This issue most often arises when providing a service involves incurring substantial sunk costs, for example in dedicated facilities and specialist staff. Once those costs are incurred, an incumbent supplier may have so large a lead over potential rivals in the next bidding round as to effectively be an entrenched monopolist.

Finally, there can be situations where the effective transfer of risk is impossible, because the project is too crucial to fail. In those circumstances, the government may be transferring the upside to the supplier while being left carrying the downside.

While these issues are important to acknowledge, they can often be addressed through careful consideration of the market and design. To commission services through contestable models places an important obligation on governments to design processes and write contracts that effectively describe the outcomes that they are seeking. This allocates the risks in achieving those outcomes, and establishes incentives and penalties that are directed at achieving required outcomes.

There is also a strong responsibility on government to actively monitor provider performance to ensure that the contracted outcomes are being delivered, providers are held to their obligations, success is rewarded and poor performance is penalised.

Government should also monitor the quality and performance of its own commissioners.

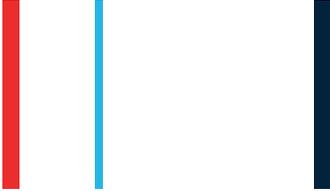
Governments can express good intentions in contestability but fail to run truly open processes that attract a diverse range of suppliers. For example, start-ups can be ruled out because they have not been on a government supplier panel before or don't have sufficient insurance or lengthy tenure in the industry.

Wider Contestability Models

Contestability is not just the process of commissioning services from a market of government, and non- government providers. Contestability also provides the opportunity to harness alternative sources of capital, expertise and social organisation, and potential to achieve wider outcomes as part of a contestable process. This section gives some examples of this broader scope of contestability.

Charities and Contestability

The not for profit and charities sector in Australia delivers many services locally and overseas, and the sector with its more than 48,000 entities, 3.7 million volunteers and 1.3 million staff could be understood as an important contributor to a diverse non-commercial sector economy.



The 2018 Australian Charities Report^[117] showed combined revenues have increased from \$146 billion in 2017 to \$155 billion in 2018 with government funding nearly 50 per cent of this revenue. Although growing, private donations to charities totalled \$10.5 billion. The charities sector grew by 6.4 per cent in the same period – more than the Australian economy in the same period.

Charities play a significant role in delivering services on behalf of government including education and the NDIS and are significant players in many contestable markets for government services, particularly in the delivery of social welfare services.

Charities are an obvious source of constructive diversification in the public sector market. To make the most of the opportunity their capabilities offer consistent accountability should be established that will sustain legitimate public and taxpayer interest, governments should ensure that their approach to grant-giving and commissioning is consistent with best practice.

Philanthropy

Philanthropy provides contestable tension to public services.

Described as a ‘trillion dollar market for doing public good’, Bill Eggers^[118] notes the innovative contributions of corporate philanthropy to solving life-changing problems, such as malaria and toilet design, making the point that ‘today, private philanthropy to the developing world surpasses the monetary contributions of all governments combined’, tackling the problems ‘that historically have been the province of government’.

Traditional governmental foreign aid is susceptible to corruption and leakage. According to Bill Gates ‘Private money can take risks in a way that government money often isn’t willing to^[119], with philanthropy creating benchmarks for government whether they like it or not.

For example, in the US, singer Dolly Parton donated US \$1 million to Vanderbilt University medical centre to fund research that resulted in the Moderna COVID vaccine^[120].

117 <https://www.acnc.gov.au/tools/reports/australian-charities-report-2018>

118 Eggers and Macmillan 2013 The Solution Revolution: How Business, Government and Social Enterprises are teaming up to solve Society's Toughest Problems Harvard Business Review Press 2013/Deloitte Global Services

119 Eggers and Macmillan 2013:18

120 <https://www.theguardian.com/commentisfree/2020/dec/01/dolly-parton-fund-covid-vaccine>

Social Benefit Bonds – Newpin



In 2013, the NSW Government pioneered Australia's first two social impact bonds, seeking to deliver better services and results for families at risk.

The first of these bonds, the Newpin Social Benefit Bond has now reached maturity after seven years of operation. A partnership between Uniting, Social Ventures Australia, Department of Communities and Justice, the Newpin SBB has had a significant positive impact for children and families experiencing disadvantage, and delivered excellent results. Over its term, the Newpin Program restored 391 children to the care of their families, representing an overall restoration rate of 60.9 per cent.

The Newpin Program to Australia in 1998, based on its early success in the United Kingdom.

The purpose of the program is to restore children in out-of-home care to the care of their parents by creating and supporting safe family environments, and to prevent children at risk of significant harm from entering out-of-home care in the first place. It is an intensive 18-month therapeutic program for families with at least one child aged five years or less, with parents and children attending a Newpin Centre two days each week.

There was uncertainty on the effectiveness of the program prior to its implementation, so a payment for results structure transferred this risk from the Government to investors. Under the outcomes based contract, payments are made based on the number of children restored to the care of their family relative to the counterfactual situation. The bond structure allowed funds to be raised upfront from investors to provide working capital and for investors to share in performance risk, with both interest payments and the proportion of capital repaid dependent on performance.

The success of the program has meant that the Newpin program is now embedded in the Department's approach to child protection and is being continued under an outcomes-based contract. However, investor capital is no longer required to co-fund and share the performance risk of the program.^[121]

¹²¹ https://www.socialventures.com.au/assets/Newpin-NSW-SBB_Annual-Report-2020.pdf

Reintroduction of Locally Extinct Marsupials



In 2014, the NSW Government announced plans to return up to 8 marsupials species that had been extinct in the state to national parks in NSW, including the bilby, numbat and bridled nail tail wallaby. The project was delivered by partnering with the non-profit sector to deliver these conservation outcomes through innovative approaches. Two organisations were selected to partner with the NSW National Parks and Wildlife Service: the University of NSW and Australian Wildlife Conservancy. The NSW Government committed \$40 million over 10 years to the project and will leverage a multimillion-dollar contribution from Australian Wildlife Conservancy and University of New South Wales – achieving a larger financial commitment to the program than could have been achieved by the Government acting alone.

Nearly 130,000 hectares across 3 national parks reserves are dedicated to the project. Within these areas, the Australian Wildlife Conservancy and University of New South Wales have established and are managing large fenced areas of several thousand hectares where marsupials are being reintroduced following the removal of feral cats and foxes. The partner organisations are also delivering complementary park management activities in collaboration with the National Parks and Wildlife Service.

The project also has additional benefits in creating new and unique visitor opportunities for the public to engage with these parks and the threatened species they protect.^[122]

¹²² <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program/threatened-species-conservation/featured-projects/reintroducing-locally-extinct-mammals>

Public Sector Mutuals

A public sector success story can be found in the performance of UK public sector mutuals. Their establishment is one way to step towards contestability of public service delivery.

These are social enterprises, generally activity units within government, that supply government with services and compete to win other commissions public and private. By becoming separate from government they help establish benchmarks which underpin a developing contestable marketplace. UK mutuals operate largely in social and health-related areas and employ high proportions of women. 96 per cent of them are profitable and 80 per cent trade with the public sector. As reported by the UK Office of National Statistics, (ONS) their productivity outstrips the general public sector (3.7% v 0.3%)^[123].

ESG and Social Value

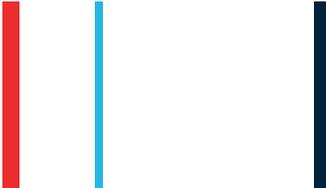
Many jurisdictions use procurement policy to catalyse the building of social value. Environmental, Social and Governance (ESG) principles, whilst rarely calculable on a bottom line or reflected in regulation, is sought after by a growing number of private investors and governments.

Some bidders voluntarily build elements of ESG into service design and delivery proposals to government, giving consideration to the broader public policy objectives of a government. For example, designing a bid that meets all contract criteria but which seeks also to alleviate local unemployment, skills gaps, or build sustainability or public amenity. Many private and non-government businesses pride themselves on their capacity to build social value in successful project delivery.

Many government procurement processes mandate that a proportion of staff, or suppliers must be sourced from a particular group (eg Aboriginal and Torres Strait Islander people or suppliers, apprentices and trainees), or from a particular place (eg a regional area). This can have the effect of helping diversify the public service market or producing a public good (eg targeted employment stimulus), although it is acknowledged that this can be at a cost to optimum efficiency for the delivery of a specified service. However, this approach can result in multiple public policy outcomes being packaged into a single contractual relationship.

The UK Government has established guidance for a Social Value Model

113 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951811/Public_Service_Mutuals_-_The_State_of_the_Sector_2019_V2.pdf page 17-19 on public sector productivity



and how to take account of social value in awarding government contracts^[124]. The delivery of government policy objectives, the economic challenges and COVID-19, and certain international treaty obligations have been folded into the Social Value Model. The Public Services (Social Value) Act 2012 requires Welsh and English public authorities to include social value requirements in procurement processes.

Saying there ‘should be a clear ‘golden thread’ from government priorities to the development of strategies and business cases for programmes and projects, through to procurement specifications’, the policy claims to ‘encourage market collaboration’^[125]. A recent change in policy now means all government procurement must give a minimum weighting of 10 per cent for Social Value outcomes when scoring bids for contracts.

While commissioning can be an effective model to deliver wider ESG goals, care must be taken that introducing these goals does not undermine the overall value of a contestable approach by reducing accountability for core service delivery requirements, and create targets that do not represent value for money for the outcomes achieved. Care must also be taken to not create so many goals that it makes contracts overly complex to assess and manage, and provides grounds for unnecessary disputes.

Infrastructure Contestability

The delivery of public infrastructure, asset management and maintenance, and the delivery of services enabled by that infrastructure are an important area for innovation and contestability. All public services rely on assets to support service delivery – whether that is police stations, courthouse and prisons to support law enforcement, or hospitals, and medical centres to support health care or schools, universities, vocational colleges and early childhood centres to support education. Careful and contestable design of the asset can have a significant effect on the quality, efficiency and effectiveness of the service provided. More efficient design, maintenance and asset management can release taxpayer dollars to be reinvested in service delivery.

However, the ability to innovate in asset and service delivery, and the ability manage the risk of uncertainty in demand for services is often limited by government being overly prescriptive in designing and specifying the outputs it requires. Government still largely stipulates that the infrastructure will be a certain thing, in a certain place, a

124 <https://www.gov.uk/government/publications/procurement-policy-note-0620-taking-account-of-social-value-in-the-award-of-central-government-contracts>

125 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940827/Guide-to-using-the-Social-Value-Model-Edn-1.1-3-Dec-20.pdf

certain length, certain capacity. It will often complete detailed designs and specifications that become too costly or uncertain to contest with alternative 'non-conforming' proposals or ideas.

Rarely if ever does a government say 'we need to serve a population in this or that location, growing at x rate, needing water, power, transport, communications, health and education' – and invite high level concepts before a project outline is even drafted. Infrastructure project outlines set by government can often rule out innovation before the project starts.

Governments seek to tightly control infrastructure delivery for a range of reasons, including concerns about allocation and management of costs, sensitive community and stakeholder management or the need to ration and sequence delivery giving competing community demands. However, where outcome specifications are established, innovative solutions can be developed, risks can be transferred to the private sector and efficiencies can be gained.

Person Centred Service Contestability

Another area where contestable approaches have the potential to offer significant benefits is through the use of person-centred approaches. The structure of governments often means that service design is 'siloed' with Departments and agencies focusing on their areas of individual responsibility, without taking into account the impact of their service delivery choices on other agencies or government objectives, or recognizing that wider and more complex factors can have a significant impact on successful service delivery in their area of responsibility.

Person-centred approaches put the interest of the person at the centre of service delivery, rather than the approach that might be most administratively convenient for government. This may mean considering a broader range of options to achieve outcomes, or investing in prevention and addressing the underlying causes of social problems.

Contestability has much to offer in this area, by being able to bring together innovative approaches, and a range of service providers to both better address the needs of the individual and achieve outcomes specified core service delivery requirements, and create targets that do not represent value for money for the outcomes achieved. Care must also be taken to not create so many goals that it makes contracts overly complex to assess and manage, and provides grounds for unnecessary disputes.

Contestable markets - NDIS



The National Disability Insurance Scheme operates as a contestable market with a vision of empowering people with a disability to have choice and control over the services and supports that they need. The NDIS was created to replace a fragmented system that gave people with a disability little ability to make their own determinations on the services that best supported their needs. The NDIS also sought to move away from the institutionalised practice of providing block funding directly to service providers, with little accountability on how funding was to be spent, and few incentives to respond to changing needs or desires of clients.

There are around 4.3 million Australians who have a disability. Within the next five years the NDIS will provide an estimated 500,000 Australians who have a permanent and significant disability with funding for supports and services. For many people, it will be the first time they receive the disability support they need.

Funding is provided through individual plans that specify goals for the individual NDIS participants to help frame and support service delivery choices as well as funding allocations in support categories to deliver what is reasonable and necessary for individual needs. Within the limits of these approved plans, participants are free to choose between approved providers for the services they need.

As at December 2020, there are 15,708 active providers providing services for 432, 649 participants. In the December 2020 quarter, 84 per cent of participants rated the planning process as either good or very good. 78 per cent of the participants in the quarter rated the access process as either good or very good, 78 per cent rated the pre-planning process as either good or very good, and 75 per cent of participants rated the plan review process as either good or very good^[126].

¹²⁶ <https://www.ndis.gov.au/media/2942/download> <https://www.ndis.gov.au/media/2940/download>

Where are we now?

Contestability continues to deliver valuable public outcomes in many jurisdictions, however its application and profile is uneven.

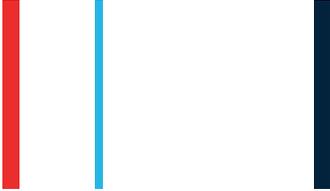
NSW

The NSW Government since 2011 has been a leading example of the use of contestability to reform and improve service delivery to the significant benefits of its citizens. Over the course of a decade, the use of a variety of contestable models has been the backbone of the NSW reform agenda.

The incoming government faced a combination of challenges - a state with a major infrastructure backlog, rigid and inefficient service delivery leading to poor outcomes, a parlous budget position, along with an economy at the bottom of all Australian States.

With a landslide mandate and a transparent agenda, the incoming O'Farrell Government delivered a bold reform agenda focused on turning the state around. The policy tools that have been the foundation of the NSW reform agenda were established early in the government and have been used consistently. These were:

- **Accountability and transparency.** Using data to measure service outcomes, empower citizens and hold government agencies to account for service delivery.
- **Fiscal discipline.** Rebuilding a strong budget position has been the key to being able to respond to crises, invest more in infrastructure and deliver better services. Key strategies were focused on ensuring that expense growth was less than revenue growth, and active management of the balance sheet through asset recycling.
- **Performance management.** Active intervention and focus where services were not meeting standards, particularly at the local and regional level.
- **Customer service culture.** Putting the customer at the centre of government decision making has been a hallmark of the government, breaking down rigid delivery models focused on administrative convenience and allowing services to be redesigned with the customer in mind.
- **Decentralisation and localism.** Giving flexibility and authority for local decision makers to use their budgets and resources to address their local circumstances, and collaborate with others at the local level to deliver better outcomes.
- **Contestability and choice.** The NSW Government formally introduced the expectation that contestability be applied to all new program proposals in 2011, brought in new suppliers and supported citizens exercising choices in service providers.



The NSW Government took an historic step in 2011 to produce the first coherent and integrated view of the outcomes of spending the then around \$80 billion of taxpayers money each year. Cabinet approved a strategic plan and priorities for the new administration, NSW 2021: Making NSW Number One Again^[127]. Whilst other state governments had worked to versions of published strategic priorities, ‘NSW 2021’ was different because it was integrated with the Budget and the entire Budget process. This approach was continued with the framework of Premier’s Priorities and State Priorities under Premier Baird, drawing on the work of Sir Michael Barber and the UK Prime Minister’s Delivery Unit, and the implementation of outcome-based budgeting in recent years, with 37 defined State Outcomes, and supporting indicators that support the State’s budgeting process^[128].

Importantly, these plans provided clear strategic direction for the government, while maintaining flexibility in delivery. Charter letters to Ministers in April 2011 set out the expectation that Cabinet having committed to the priorities and targets in the NSW State Plan^[129] would be encouraged to work within their clusters to stick to their approved budgets and collaborate to deliver outcomes. This could be done by reprioritising funding between agencies, within and outside their cluster, to meet strategic objectives.

Progress against each priority and targets was measured centrally by a dedicated unit and reported annually on Budget day^[130]. Under the performance reporting requirements, for the first time, the entire NSW public sector was being held to performance measures. These included outcomes (such as rates of recidivism, and childhood obesity, as well as retaining the AAA credit rating). This was to encourage thinking and accountability about different ways of solving problems effectively, rather than programme maintenance.

This framework enabled the delivery of a many transformative reforms, including:

- The creation of Service NSW and its digital architecture which has underpinned the state’s standout performance on COVID contact tracing. In the first 12 months since the Pandemic was declared, 4 million people (nearly 75 per cent of NSW citizens) downloaded the Service NSW app, and logged 117 million COVID registrations.^[131] Service NSW brought together the customer interactions of multiple government agencies, invested in improving the customer experience, and provided a platform for customer centred service redesign, utilising data and digital infrastructure.

127 For example, https://www.parliament.nsw.gov.au/tp/files/20373/2014-15_Performance_Report_-_2021.pdf https://media.opengov.nsw.gov.au/pairtree_root/c6/a6/e2/3f/a0/52/42/ed/be/3b/47/cd/80/5a/ca/b8/obj/110906_NSW2021.pdf

128 NSW Budget, Budget Paper 2, Outcomes Statement

129 NSW State Plan 2021: A Plan to make NSW Number One Again ISBN 978-0-7313-3999-0 NSW Department of Premier and Cabinet, Crown Copyright 2011

130 https://www.treasury.nsw.gov.au/sites/default/files/pdf/2013-2014_Budget_Related_Paper_No1_-_NSW_2021_Performance_Report.pdf

131 We note the 3 March date of that media release, and the WHO declared the Pandemic on 11 March 2020

- Contestability was underpinned in infrastructure delivery by the establishment of a statutory body, Infrastructure NSW, tasked to make evidence based and non-political assessments of 20-year infrastructure priorities. Infrastructure NSW has delivered three State Infrastructure Strategies, guiding both investment decisions and infrastructure policy reform. Governments are required to respond to these recommendations, creating a new discipline to make infrastructure decisions less political and more transparent.
- The creation of 15 local health district boards to oversee the performance of their hospitals and services, devolving decision-making closer to communities. Unlike in the UK where health foundations and trusts have considerable autonomy in service design and expenditure^[132], the NSW model seeks to deliver economies of scale in ‘whole of service’ non-medical goods and services procurement through HealthShare, while devolving service delivery.
- The creation of a new Customer Service Commissioner role, and subsequently the creation of a Department of Customer Service. This enabled a view from the customers perspective, resulting in end-to-end transaction design (eg registering a business, managing a bereavement), and saw long overdue scrutiny of numerous customer pain points such as forms and compliance.
- Transition of statutory out of home care of vulnerable children from the public sector to non-government providers.
- Transition of the management of social housing from the public sector to community housing providers.
- Asset recycling of electricity generation, distribution and transmission networks as well as ports to private sector operators better positioned to continue to invest in their continued growth, while releasing public sector capital to invest in new infrastructure.
- Reform of the Workcover scheme (compulsory employee injury insurance), avoiding premium increases of an estimated 28 per cent at a cost of 12,500 jobs to reverse a \$4 billion deficit, and resetting the scheme to focus on returning workers to health and work faster.
- Opening up of Application Programming Interface (APIs) of real time government data, such as train timetabling and live on-time running data, allowing the development of apps, and integrating this data into other services. A Data Analytics Centre (DAC) and ‘data hub’ was also created which consolidated multi-departmental program and grant data, including from NGOs, to better understand where expenditure was made, and assess its effectiveness.
- Tools such as processes for receiving Unsolicited Proposals and Social Impact Bonds, also helped to give effect to the government’s contestability aims.

SERVICE NSW – A CUSTOMER SERVICE AND COVID SUCCESS STORY



Service NSW has been credited as NSW's powerful weapon in COVID-19 management. Whilst never anticipating its future application in a pandemic, the hard decisions made in 2011-12 established multi-functional digital infrastructure that enabled NSW to track and trace infections effectively minimised the need for physical lockdowns that were the only tool available in some other jurisdictions.

Creating the architecture for Service NSW involved shaking up traditional processes and involved;

- An open recruitment process that brought private sector recruits to shake up thinking including transforming customer experience;
- A commitment to a 'single shopfront' for government and a commitment to invest in the quality of the customer experience.
- Political leadership to push through long-standing data territory wars; and
- Investment in systems and platforms that can use data analytics to inform effective service and intervention designs.

Commonwealth and other States

Competition and contestability forms part of the stated policy approach of Commonwealth, State and Territory governments, and there has been significant, if mixed process in jurisdictions across Australia.

The Commonwealth Department of Finance has had contestability guidelines since 2017. The current APS Contestability Framework^[133] encourages entities to ask:

1. Should the government continue this function?
2. Could its efficiency be improved?
3. Are there alternative means for providing the function?

The Independent Review into the Australian Public Service^[134] 2019, whilst noting some exceptional public sector qualities and successes, observed the service's general 'ill-preparedness' to meet rapidly developing challenges and expectations, including in the digital space, and reported that 'Only 3 in 10 Australians trust government services'.

The Report echoed Osborne and Gaebler's 'how not what' mantra, saying 'The APS is essential to Australia's prosperity, security and liberal democracy. What the public service does is largely uncontested. How the public service does its work, however, must be critically examined to ensure that the APS is fit for purpose for the coming decades.

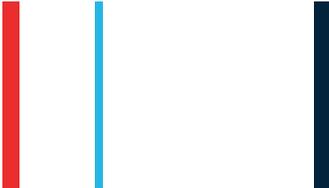
Amongst its findings is that the 'APS needs to work meaningfully and effectively with people, communities, organisations and other governments, with an emphasis on co-design and collaboration, to achieve greater impact and more durable solutions', and outlined transformation priorities including a united clear purpose, building its professionalism and expertise, embracing data and digital, looking out and working with partners to solve problems, getting rid of the excessive silos and hierarchy, and strengthening service-wide leadership and governance, and encouraging the contestability of ideas across the service.

ANZSOG^[135] produced recommendations to assist the APS Review¹²⁵ encouraging the APS to become 'apolitical and professional, agile, innovative and efficient', including with capabilities relating to commissioning and contracting, with 'a wider range of tools to deliver on outcomes' by 2030. ANZSOG concluded that public sector commissioning and contracting is important: noting the need for agile complex bespoke solutions. Rather than think just of the potential to

133 <https://www.finance.gov.au/publications/policy/contestability-public-sector>. This current version is an evolution of frameworks that existed from 2017

134 <https://www.pmc.gov.au/sites/default/files/publications/independent-review-aps.pdf>

135 ANZSOG 2019



shift from simple transfers of delivery, it should consider shaping the market of suppliers, and be driven by a more intelligent and mature expression of outcomes, and how to achieve them.

The Commonwealth public service has delivered contestable processes in a number of areas, and has maintained a strong interest in using contestable processes to deliver improved outcomes. Examples at the Commonwealth level include:

- Hearing Services Programme^[136] which provides vouchers for hearing services to eligible people, who may choose their own provider.

In Victoria, contestable processes also have a long legacy. Public transport in Victoria has been provided by private providers for over 20 years, under both Coalition and Labor Governments. Victoria has also regularly used the public private partnership model to deliver social and economic infrastructure. 32 PPPs have been delivered in Victoria, representing over \$30 billion in capital investment.^[137] Projects have included:

- The new Footscray Hospital
- Ravenhall Prison
- Victorian Comprehensive Cancer Centre
- 12 new schools delivered in 2017 and 2018

As noted earlier in this report, South Australia threatened contestability in the delivery of pathology services, and has used the PPP model to deliver two new state-of-the-art schools, with contracts signed in 2020.^[138] SA also let a contract for the operation of its Land Titles Office under the previous Labor Government in 2017.

The 2013 Commission of Audit conducted for the incoming Newman Government in Queensland contained numerous recommendations for the provision of contestability in the delivery of government services, which were accepted by the government.^[139] However, with a change of government in 2015 many of these proposed reforms were not enacted.

Western Australia transferred its Land Titles Office to private providers in 2019. However the Western Australian Government has also acted to bring 256 Water Corporation outsourced jobs back into public sector delivery.^[140]

¹³⁶ http://hearingservices.gov.au/wps/portal/hso/site/HSOHome/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOK9A03NDD0NjLwtwvzdDBwd_UJ9vNxMjAy8DYAKIoEKDHAARwNC-sPto_AqMTCFKsBjRUfuhEGmo6liAGbW_L4!/dl5/d5/L2dBISEvZ0FBIS9nQSEh/

¹³⁷ <https://www.dtf.vic.gov.au/public-private-partnerships/partnerships-victoria-ppp-projects>

¹³⁸ <https://www.premier.sa.gov.au/news/media-releases/news/schools-project-shows-south-australias-ppp-reputation-being-rebuilt-under-liberal-government>

¹³⁹ <https://www.parliament.qld.gov.au/documents/tableOffice/TabledPapers/2013/5413T2501.pdf>

¹⁴⁰ <https://www.themandarin.com.au/114511-privatisation-of-perths-water-to-be-reversed/>

The Opportunity

Surely it could be assumed that with the breadth of contestability and public sector contracting already noted, and the weight of expert recommendations, there is unstoppable momentum to expose public sector service delivery to even greater and more systematic testing and discipline?

Regrettably this is not the case.

The 1980s and 1990s were a time of smashing tariffs, ending centralised wage fixing, and privatising banks and airlines, undertaken by reformists across political boundaries such as the Hawke/Keating Government. In NSW (Greiner) and Victoria (Kennett), basket case state banks, state-owned boot and desk factories and abattoirs were sold, and stifling regulations such as how many eggs you could produce or when you could bake bread, sell meat, or open your store, were abolished.

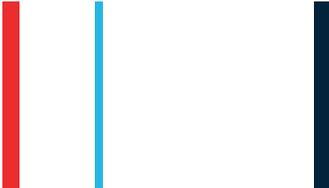
Despite compelling evidence for its benefits, the level of engagement with the contestability issue inside and outside government has noticeably waned. It is no longer a water-cooler topic in the 'beltway', perhaps due to a level of complacency following a generation of policy enthusiasts in the 1990's.

And more concerning, the tsunami of public stimulus and spending in the face of the COVID pandemic in 2020 has added to a lack of interrogation of how public services can best be delivered.

To take a few examples, it is notable that across various Australian jurisdictions public servants at a time when there are numerous successful market models to supply equivalent services, and potential productivity gains of as much as 5-30 per cent^[141] still:

- wash hospital sheets;
- drive buses and trains;
- provide nursing services;
- masterplan and own airports;
- drive prisoners to the doctor, and to court;
- undertake business processing in numerous bureaucracies;
- own and operate call centres; and
- treat urban sewage.

This is not because public sector agencies have been judged to be the best, most efficient and most effective provider through an open and contestable process, but because the services have not been market



tested at all, and the preference for the public provider has been determined behind closed doors.

In many of these cases, there are strong and successful alternative providers, who would be well positioned to compete with, and successfully operate services currently run by the public sector. As examples:

- In the transport sector, there are a range of private sector public transport providers, including private bus companies, the operators of light rail services in Melbourne, Sydney and the Gold Coast, ferry operators in Sydney, freight transport services and the entire airline industry.
- In the education sector, besides the private school sector, there are a number of public schools that are managed under PPP arrangements. There is also a vibrant market of vocational training providers who operate in the formal vocational education sector, as well as many training businesses. Yet no schools in NSW have been built under a PPP model since 2010^[142].
- The health sector has a vibrant array of non-public sector providers of health services, from the private hospital sector, to GPs, pharmacists, allied health, pathology and pharmaceutical providers.
- In prisons and justice sector, there are multiple private providers of correctional service facilities, as well as court buildings managed by private providers.

Despite the diverse and capable range of providers that are available directly within many areas of government responsibility or in adjacent markets, take-up of contestable approaches remains limited, relative to the scale of the opportunity.

'It is clear that if we want better living standards and higher wages, the time for a new wave of reforms has arrived' Dominic Perrottet, NSW Treasurer 2018.

It is clear that there is significant scope for better outcomes from greater utilisation of contestable methods in service delivery in Australia, and other countries. Leading analysts have published recommendations for governments on how to enable successful public service contestability. These recommendations have been adopted unevenly in recent years. The following recommendations draw strongly on the work of Julius^[143] and Sturgess^[144].

At the core of any approach to improving public sector service delivery should be a strong principles based framework. This report recommendations centre around five principles for public service

142 <https://www.treasury.nsw.gov.au/projects-initiatives/public-private-partnerships/awarded-projects>

143 Julius 2008

144 Sturgess 2007, 2012

design and acquisition:

- the customer should be at the centre of service design;
- taxpayers' interests must be at the centre of procurement and quality;
- processes must be transparent, open and more accountable;
- honestly evaluate performance and results; and
- exercise the most rigorous fiscal discipline with every taxpayer's dollar.

Importantly, contestability is a process, not an outcome. It is a way to assess, compare and consider alternatives to achieve policy goals. It is not prescriptive on what those policy goals should be, or in the methods to achieve them. It is compatible with constraints that might be necessary to deal with community or political expectations, but works best when parties are free to innovate and compete on the most open field.

The following recommendations are intended to provide a framework for the wider adoption of a contestable approach to service delivery.

Recommendation 1

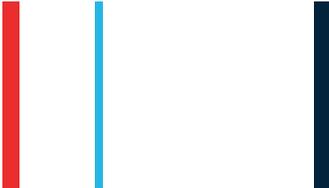
Contestable processes should be the default strategy for service delivery. Governments and government agencies should not just be required to consider a contestable process, but be required to justify and document their reasons if they choose not to contest the delivery of services and select a non-market tested public provider. This will require leadership from political leaders to embed a long-term commitment to the pursuit and execution of contestability in public services. It will also require central agency budget and finance processes to actively monitor, seek and evaluate agency proposals to ensure this strategy is enforced (for example, in Cabinet expenditure review committees).

Recommendation 2

Give employees a voice in contestable processes, by ensuring that the interests of current and future employees are taken into account in contestable processes. The concerns of unions and employees should be constructively and transparently addressed, based on real data, and real evidence, rather than rhetoric and fear. Unions should be encouraged to produce their own vision of how public services can be provided better in a changing environment.

Recommendation 3

Make it easy and non-prejudicial for non-government providers to identify new opportunities for successful contestability. This could include an annual summit process with an independent committee chaired by an eminent person to provide advice to be put to



Commonwealth and state/territory governments with a requirement that governments respond publicly to these recommendations within 6 months.

Recommendation 4

Create a 'commissioning culture' through more systematic education in the public sector broadly in the principles of good service design and evaluation, and increase the skill level of public sector managers to be both confident in identifying opportunities and initiating contestable processes, and skilled in managing and evaluating their results.

Recommendation 5

Empower citizens to make their own choices on both which services they want, and which providers they choose to use. This can be done through the use of vouchers, data and systems to give citizens a portable instrument of public value, building and improving upon models such as the NDIS, Medicare, and some hearing services (in which a citizen can take a 'voucher' or 'entitlement' to a provider they choose in a public sector service market).

Recommendation 6

Build capacity in the supply side by providing a clear and predictable pipeline of opportunities, and encourage a diverse range of suppliers. This may include explicitly encouraging new providers, and providing opportunities for the upskilling and scaling of smaller NGOs and private providers.

Recommendation 7

Better measure and report on public sector productivity at a national level, and at state/territory level. Invest in data and methodologies that can track the links between inputs and outcomes in a meaningful way that reflects the value that citizens place on those outcomes.

Recommendation 8

Adopt a systematic approach to formally commission services with clear outcome measures and establish benchmarking of service providers to track performance, and intervene where necessary to recommission services to provide a realistic competitive threat.

Recommendation 9

Collate data in a centralised database on commissioned services to understand 'who does what where' and to allow joined up and complementary processes that would support scale and efficiency. This should be location based and include Commonwealth, State and Local data, as well as NGO funded and provided services.

Recommendation 10

Improve the procurement process to remove impediments to bidders to speak up about problems in the service design, without facing a probity minefield or risking a non-compliant bid. Create opportunities

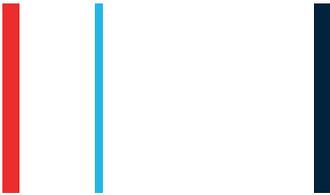
for bidders to provide early feedback on outcome specification to ensure opportunities for innovation.

Recommendation 11

Provide more opportunities for innovation in project and service delivery models at the conceptual stage. This should include identifying options for joined up, person-centred service delivery and expanding the scope of infrastructure project commissioning to include from the conceptual stage of an infrastructure project. This would create a process where the private sector has an opportunity to propose supply of an integrated solution to government's objectives.

Recommendation 12

Commission services based on outcomes and objectives (not inputs), enabling responders to develop innovative solutions, and encourage a diversity of commissioning service models to test different approaches, and match the right models to the service delivery opportunity.



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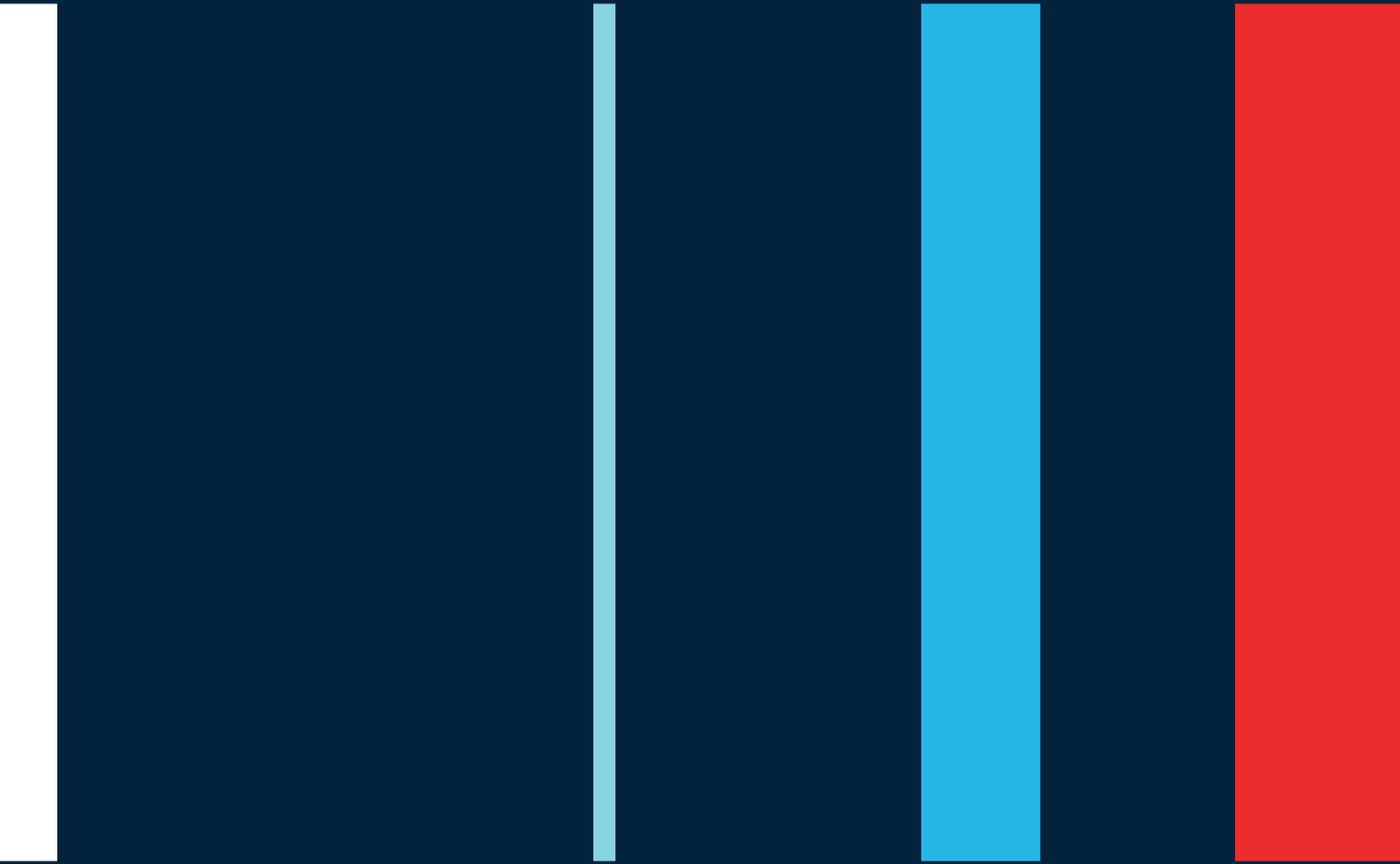
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