



Regulation in human services: the challenge and way forward?

ACCC Regulatory Conference 2023



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Market design and regulation in human services has often fallen short

- Reforms over the past three decades put strong emphasis on the benefits of choice and competition
- BUT competition is imperfect and resulting outcomes have often been poor
- Major deficiencies in the approach have included: rorting, quality-shading, perverse incentives, complexity and rent-seeking behaviours
- These have been felt in many sectors including aged care, employment services, VET, disability and childcare

What can we learn?

- Can't rely on consumer choice and market forces alone to ensure good outcomes
- Regulatory settings and culture matter
- Move toward the idea of commissioning or market stewardship to provide greater stake for government in outcomes and more scope for systems improvement
- Do we have the skills to implement?

Administration and delivery of human services has evolved over time

Mode of public administration

Public administration

From 1870s
Hierarchical
Direct delivery or NFPs
Emphasis on implementation



New public management

From 1980s
Market-based
Contracting
Emphasis on inputs and outputs

Goal

- Establish and deliver public services / public goods



- Efficiency
- Innovation

Perceived deficiencies

- Costly services
- Unresponsive to consumer needs and preferences
- Lack of innovation



- ?

Deficiencies of choice model

(1) Rorting

When governments are giving out money, there will always be some actors looking for weaknesses to rort the system

Rorts include :

- (1) Enrolling false participants
- (2) Not providing a proper product
genuine participants
- (3) Misclassifying participants to take
advantage of higher rate of subsidy
- (4) Providing unnecessary services to
generate additional revenue

Bad program design and poor oversight can cost billions

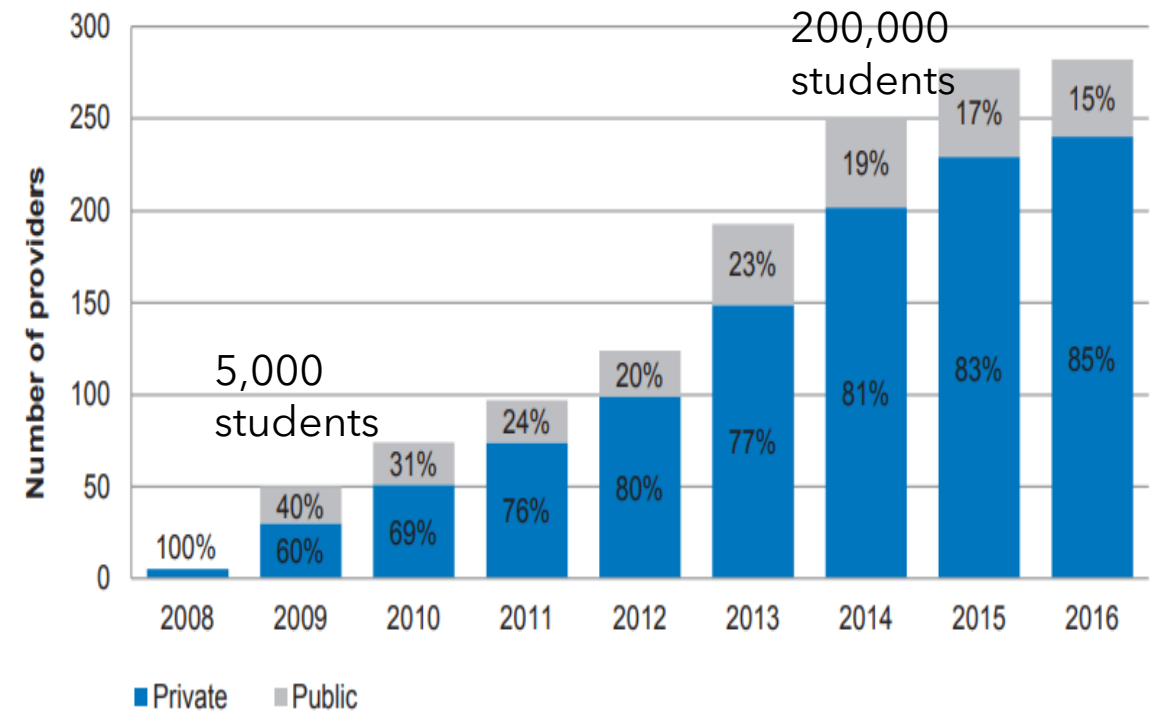
Our priority is to ensure the government is cracking down on “morally bankrupt” NDIS providers who were “ripping off workers, short changing NDIS participants and cheating the Australian taxpayer”.



Example: Vocational education and training

- Opening up of VET-FEE-HELP scheme allowed training organisations to offer students deferred payments.
- This led to an influx of providers offering low quality courses
- Sign up incentives such as free i-pads were used to target vulnerable consumers (who also accrued debts for training)

Approved VET FEE-HELP providers, 2008 to 30 June 2016



Source: Department of Education and Training *Provider Details* report.

An aside: textbook case of regulatory failure

PERFORMANCE AUDIT REPORT AUDITOR-GENERAL REPORT NO.31 OF 2016-17

Administration of the VET FEE-HELP Scheme

PUBLISHED Tuesday 20 December 2016



Portfolio

Across Entities

Entity

Department of Education and Training; Australian Skills Quality Authority; Australian Competition and Consumer Commission;

Contact

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Activity Service delivery

Sector Education Industry Training

VFH providers were not effectively monitored and regulated by Education. The department acknowledges that there was not an effective compliance framework for the scheme, noting the serious limitations in its compliance powers under the VFH legislation. In effect, there was very limited and reactive compliance activity, including of the expanded VFH scheme from 2012. Education did not act promptly at that time to clarify the roles and regulatory powers of the department and other regulators, to ensure a sound regulatory framework for VFH.

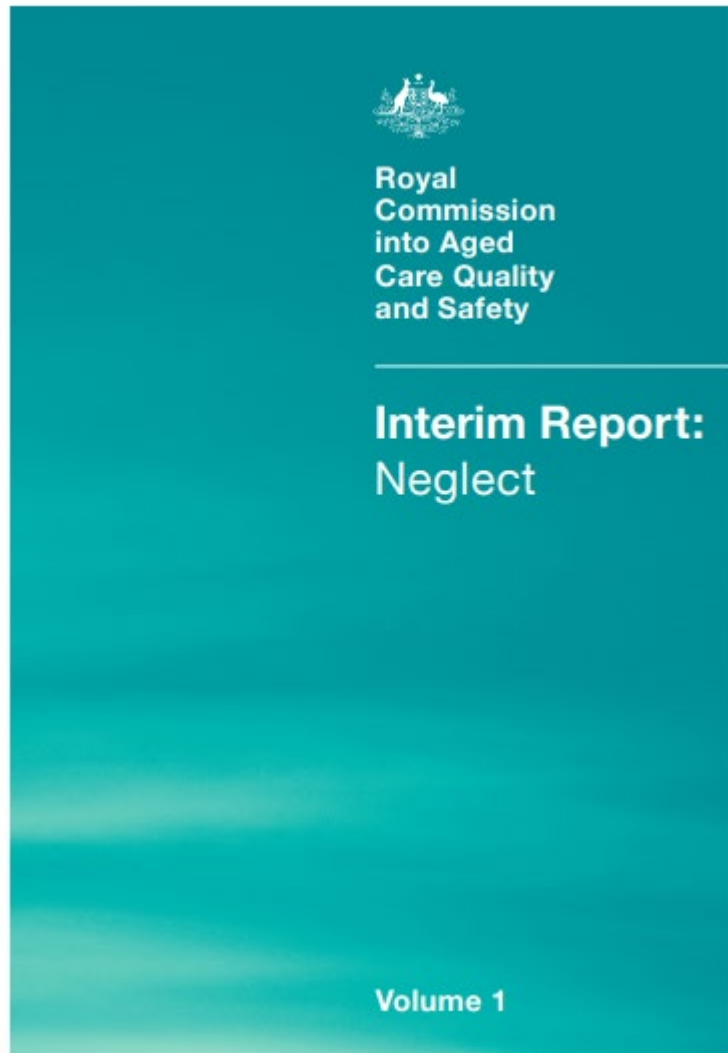
(2) Quality shading

If contracts are incomplete, the private provider has a stronger incentive to engage in both quality improvement and cost reduction than a government employee has. However, the private contractor's incentive to engage in cost reduction is typically too strong because he ignores the adverse effect on noncontractible quality.

Hart, O; Shleifer, A and Vishny, R, The Proper Scope of Government: Theory and Application to Prisons



Example: Aged care



At least 1 in 3 people accessing residential aged care and home care services—or over 30%—have experienced substandard care.

- the incidence of assaults may be as high as 13-18% in residential aged care
- there is a clear overuse of physical and chemical restraint in residential aged care
- in residential aged care, some 47% of people have concerns about staff, including understaffing, unanswered call bells, high rates of staff turnover, and agency staff not knowing the residents and their needs

According to a range of measures of quality and residents' outcomes, government-run residential aged care providers perform better on average than both not-for-profit and, in particular, for-profit aged care providers

(3) Perverse incentives

Policy makers have attempted deliver better outcomes through subsidy design, price and quality regulation but perverse incentives hard to avoid:

- 'Cream skimming' and 'parking' (e.g. employment services)
- Price lists create a focal point for coordination (e.g. disability services)
- Attempt to game quality standards (e.g. employment services, childcare)

[Just] because an NDIS package is taxpayer-funded, it is not fair game for the doubling and tripling of prices. It shouldn't be treated as some sort of wedding tax.



(4) Complexity

- Human services markets are complex – many potential interventions and providers
 - Choices can be complex to navigate, particularly where standardised information is limited and providers create a 'confusopoly'
- Many of the regulatory controls add to complexity for consumers – e.g. the need to identify higher cost consumers means that lots of paperwork/process needed to navigate funded services

Navigating the [NDIS] system is leaving participants and their families exhausted and stressed



Why has competition failed to deliver expected outcomes?

Competition has been a very imperfect constraint on provider behaviour and has failed to deliver promised outcomes.

Why?

- Lack of consumer engagement (proximity often most important e.g. childcare, employment services)
- Poor information (aged care, health care, disability care)
- High costs of switching (childcare, aged care)
- Thin markets, particularly in regional areas (all services)
- Government subsidies can weaken consumer price sensitivity (disability care, childcare)

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What can we learn?

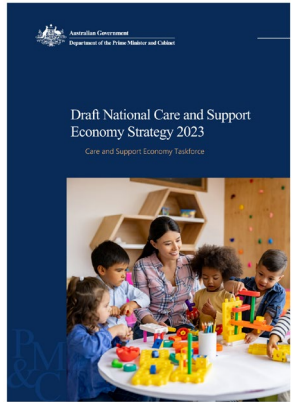
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A framework for thinking about the likely outcomes from choice-based model



In human services we are not often in the 'green zone'

All of this means that competition-driven market incentives and dynamics don't always work to achieve efficient outcomes [in care markets]. The Australian Government will be a good steward of these markets.



A new way?

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Public governance

From 2000s
Market stewardship via commissioning
and market design
Trust or relational contracts
Emphasis on processes & outcomes

Goal

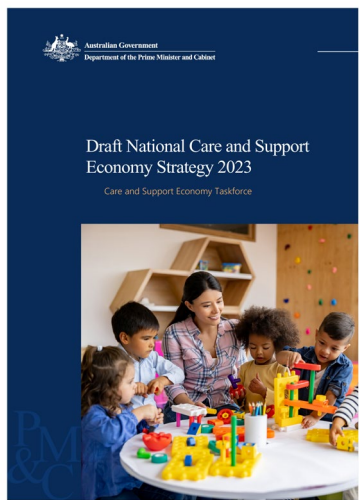
- Establish and deliver public services / public goods
- Efficiency
- Innovation
- Achieve outcomes / address 'wicked' problems
- Integrate services
- Improve equity

Perceived deficiencies

- Costly services
- Unresponsive to consumer needs and preferences
- Lack of innovation
- Cost rather than outcome focus
- Rorting and perverse incentives
- Thin markets and underserved groups
- Complexity and fragmentation
- Limited implementation of commissioning functions (market development, quality improvement, integration)?
- Limited evidence of success?

Market stewardship means a more active role for governments

The role of market stewardship is to ensure the market is delivering policy objectives, including by addressing market deficiencies or failures and by creating incentives that shape market behaviour towards desired outcomes.



Not set and forget

- Government actively shape markets, including identifying underserved segments (e.g. after schools hours care)

Ongoing collaboration between government (commissioner) and providers:

- Government understands end users (including outcomes data)
- Shares information on best practice with providers
- Continuously monitors and evaluates providers
- Builds integration between services

Very different to the normal contracting/regulatory role

- Do we have the skills to implement?
- What will be the impacts on competition?

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