Competitive Neutrality Complaint Investigation

Final report

Ambulance Victoria — Rural non-emergency patient transport services

21 February 2012

Victorian Competition and Efficiency Commission

Level 14, 55 Collins Street Melbourne Victoria 3000

Telephone: (03) 9092 5828 Facsimile: (03) 9092 5845

www.vcec.vic.gov.au

Contents

Key points

- The Victorian Competition and Efficiency Commission (the Commission) received a complaint against Ambulance Victoria on 20 May 2011. The complaint raised questions, rather than specific allegations, about Ambulance Victoria's role and conduct in the provision of non-emergency patient transport in rural areas. Further discussion with the complainant clarified that the issues related to Ambulance Victoria's multiple roles (as purchaser, regulator and provider) in non-emergency patient transport, such as its role in allocating transports to private providers.
- The Commission found that some of the issues raised related substantially to competition, procurement and/or government policy (such as funding or the standards imposed on private operators) and are outside the scope of Victoria's Competitive Neutrality (CN) policy, despite the fact that they might affect competition, the prospects of individual operators and/or the structure of the non-emergency patient transport market.
  - For example, the change in Ambulance Victoria's approach to engaging private operators is likely to have affected the revenues of at least some operators. However, this change reflects a response to government policy requirements and/or objectives relating to tendering (sub-contracting), budgets and efficient use of ambulance resources, and is not a CN issue.
- The Commission found that the issues that may have CN implications are Ambulance Victoria's multiple roles in non-emergency patient transport services and the extent to which fees charged in rural areas reflect the cost of provision.
- The question of whether CN policy applies in these areas depends on the nature of the statutory and policy responsibilities of Ambulance Victoria, and whether rural non-emergency patient transport can be considered a significant business.
- In examining these issues, the Commission identified two distinct segments of the non-emergency patient transport market — the 'non-chargeable' and 'chargeable' segments.
- In both cases, it has concluded that the activity is not a significant business in the context of the CN policy.
- In light of this, the Commission has concluded that the non-emergency patient transport services of Ambulance Victoria are not within the scope of CN policy. As a consequence, the issues raised by the complainant — such as the pricing of Ambulance Victoria's services in the chargeable market — are not matters that can be addressed through the CN investigation process. The extent to which these issues are of concern and merit review would need to be determined through broader policy development processes, not the CN investigation process.
- This conclusion has been driven by the regulatory, policy and funding environment within which Ambulance Victoria and the non-emergency patient transport market operate. Should these circumstances change in future, the conclusion as to the business status of Ambulance Victoria's non-emergency patient transport activities — and, therefore, the applicability of CN policy — may also need to be revisited.

1 Competitive neutrality policy

Victoria's *Competitive Neutrality Policy Victoria* was released in October 2000. The policy integrates rigorous financial principles with a strong public interest test and transparency in decision-making.

The objective of competitive neutrality (CN) is set out in Clause 3(1) of the *Competition Principles Agreement* (CPA) as:

> … the elimination of resource allocation distortions arising out of the public ownership of entities engaged in significant business activities: Government business should not enjoy any net competitive advantage simply as a result of their public sector ownership. These principles only apply to the business activities of publicly owned entities, not to the non-business, non-profit activities of these entities. (COAG 1995)

CN is achieved by removing unfair competitive advantages that result solely from government ownership of a business activity (Government of Victoria 2000).

Consistent with the CPA, CN policy applies only to the significant business activities of publicly-owned entities, and not to the non-business, non-profit activities of those entities. Activities that do not result in the sale of a good or provision of a service — either directly to a purchaser or through an arm's length contract with another party or parties — should not be regarded as 'business activities' (DTF 2000).

In Victoria, it is the responsibility of government agencies and councils to determine if their business activities fall within the scope of CN policy. If the policy does apply, then the government agency or council must put in place CN measures for its business activities if it is in the public interest to do so. The CN policy provides for three measures to implement CN — corporatisation, commercialisation, and full cost-reflective pricing (appendix A provides a further description of these measures).

CN policy recognises that it is common for private businesses to exist with competing government business and that these do not always compete on equal terms: 'Such inequalities arise from a variety of circumstances and it is the goal of competitive neutrality policy to offset these where appropriate' (Government of Victoria 2000, p. 4). The policy states further:

> Competitive neutrality measures will be required where the expected benefits of introducing such measures outweigh the costs, and where there are net benefits from implementing such measures having regard to public policy objectives other than competitive neutrality. (Government of Victoria 2000, p. 6)

Under CN policy, prices should reflect the full cost of producing a good or service, after any adjustments for competitive advantages or disadvantages associated with government ownership. There should also be equalisation of non-price related competitive advantages.

Government businesses within the scope of CN policy are required to document the steps they have taken to ensure that they operate consistently with the policy, and make this documentation public on request (Government of Victoria 2000, p. 11).

Should CN measures jeopardise other public policy objectives, options for achieving all policy objectives, including CN, must be explored through a fully documented public interest test process.

1.1 Role of the Commission in the CN process

The Victorian Competition and Efficiency Commission (the Commission) carries out three complementary functions:

(1) undertaking inquiries into matters referred to it by the Victorian Government
(2) reviewing and advising on the economic impact of significant new legislation and regulation
(3) operating Victoria's Competitive Neutrality Unit.

The CN policy states:

> It is the role of the Complaints Unit to determine the extent to which an agency's actions comply or do not comply with competitive neutrality policy. (Government of Victoria 2000, p. 12)

The Commission has investigated this complaint consistent with CN policy, and the *Competitive Neutrality Guide to Implementation* ('Implementation guide') (DTF 2000). The Commission has no authority to investigate other concerns of complainants, for example:

- those relating to anti-competitive behaviour that is covered by the *Competition and Consumer Act 2010* (Cth)
- probity issues arising from tendering processes of government agencies or local governments.

The Commission also is not able to recommend any compensation or termination of contractual arrangements. Compliance with CN policy is about achieving CN or justifying departure from CN, and the Commission makes recommendations to achieve this end only. Commission reports are not intended to form the basis of, or contribute to, compensation claims.

1.2 Investigation process

The Commission received a complaint against Ambulance Victoria on 20 May 2011. After considering the facts and issues, the Commission wrote to the relevant parties on 14 June 2011 to advise that it had received and accepted for investigation a complaint, and requested that Ambulance Victoria respond to a range of questions by 1 July 2011. The Commission also requested further information from the complainant to clarify some aspects of the complaint. Both parties sought additional time to respond to the information request, to which the Commission agreed.

On 21 July 2011, the Commission received Ambulance Victoria's response to the allegations made by the complainant, and the response from the complainant was received on 1 August 2011. Upon reviewing these responses, as well as other information, the Commission requested further information from Ambulance Victoria. The response to this request was received on 2 September 2011.

The Commission held meetings with Ambulance Victoria to clarify aspects of its submissions and also with the Department of Health (the Department) to gather background information.

On 14 October 2011, the Commission issued a confidential draft report to the complainant, Ambulance Victoria and the Department. The Commission also held a teleconference with the complainant, to discuss the findings of the draft report and the complainant's views about these, and granted extensions of time for the complainant to provide a written response. Ambulance Victoria and the Department provided written responses to the draft report by the requested date, with the complainant also providing a written response. The Commission considered all three responses, and sought additional specific information from Ambulance Victoria, in preparing the final investigation report.

2 The complaint

The initial complaint received by the Commission raised questions, rather than specific allegations, about Ambulance Victoria's role and conduct in the provision of non-emergency patient transport in rural areas. These related to:

(1) the way in which Ambulance Victoria manages its multiple roles as a purchaser of non-emergency patient transport services, apparent *de facto* regulator (through its contractual requirements with providers) and provider of non-emergency patient transport services (in competition with private providers for allocated work)
(2) differing charging principles for metropolitan and rural non-emergency patient transport

(3) Ambulance Victoria having sole access to government-funded health care and pension card holders under its community service obligation (CSO).[1]

The complainant also noted the list of issues raised in the initial complaint was not exhaustive. The Commission subsequently sought clarification and more specific information about the concerns raised. The complainant's response to this request elaborated on the initial complaint in the following ways.

- In relation to point 1, the potential for at least a perceived bias in the allocation of jobs was highlighted — for example, private operators being given more long-haul cases that take the crew over its shift time (although specific examples were not provided).
- In relation to point 2, it was alleged the fees charged by Ambulance Victoria for non-emergency patient transport in rural areas:
  - do not cover the true cost of transport, and potentially reflect cross-subsidisation from Ambulance Victoria's emergency services
  - 'undercut' private operators, resulting in rural health services using Ambulance Victoria rather than private operators.
- In relation to point 3, it was suggested that funding arrangements for CSOs constrain the ability of private operators to make full use of their resources and offer a premium service to public health services.
- The complainant also raised concerns about:
  - the nature of Ambulance Victoria's contracts with private operators, and suggested the pricing structure potentially gave Ambulance Victoria an incentive to allocate jobs/workload differently to its internal resources compared with contractor resources
  - changes that appeared to have occurred in the allocation of non-emergency patient transport cases during the life of current contracts
  - prices not having kept up with the rising cost of providing non-emergency patient transport in the past decade.

Of the issues raised, some relate substantially to competition, procurement and/or government policy (such as funding or the standards imposed on private operators). As noted above, such issues are outside the scope of CN policy, despite the fact that they might affect competition, the prospects of individual operators and/or the structure of the non-emergency patient transport market. They are only mentioned further in this report to the extent that they help to determine whether Ambulance Victoria's non-emergency patient transport services are within the scope of CN policy.

[1] Community Service Obligations (CSOs) are 'non-commercial programs and activities … designed to meet community and social objectives determined by Government' (DTF 1994, p. 1).

The issues that may have CN implications — because they relate to potential advantages Ambulance Victoria derives in its provision of non-emergency patient transport as a result of its government ownership — are:

- the way in which Ambulance Victoria manages its roles as a purchaser of non-emergency patient transport services, apparent *de facto* regulator (through its contractual requirements with providers) and provider of non-emergency patient transport services (in competition with private providers for allocated work)
- the extent to which the fees charged in rural areas reflect the cost of provision.

The extent to which CN policy applies in these areas also depends on Ambulance Victoria's statutory and policy responsibilities, and whether rural non-emergency patient transport can be considered a significant government business. These issues are discussed in sections 4 and 5 respectively.

3 Background — ambulance services and non-emergency patient transport

This section outlines the nature of Ambulance Victoria's operations and obligations (in general and in relation to non-emergency patient transport), the non-emergency patient transport market more broadly, and the legislative and policy framework that govern these activities.

3.1 Ambulance Victoria

Ambulance Victoria was created on 1 July 2008, under section 23 of the *Ambulance Services Act 1986* (Vic.), following the amalgamation of Victoria's three former ambulance services — the Metropolitan Ambulance Service, Rural Ambulance Victoria and the Alexandra District Ambulance Service. Ambulance Victoria is now the only ambulance service in Victoria — and is the only organisation authorised to provide emergency patient transport.

Ambulance Victoria provides a number of services, in addition to emergency patient transport, including non-emergency patient transport, air ambulance, major incident management and response and community education. Non-emergency patient transport services can also be provided by licensed private operators (section 3.2).

3.1.1 The regulatory and policy environment

The Ambulance Services Act provides the broad framework under which ambulance services (Ambulance Victoria) operate. It sets out matters such as the

objectives of the ambulance service, responsibilities of the service, powers of the board, and the powers of the Secretary of the Department of Health in relation to ambulance services. The most relevant sections of the Act in the context of this investigation are reproduced in box 3.1.

Policy and funding guidelines issued by the Department of Health provide an insight into the operational and strategic issues that the Department considers important for Ambulance Victoria. In 2008-09, for example, the following were among the priorities identified:

- developing strategies to improve the non-emergency patient transport service, service delivery and the use of resources
- pursuing strategies to help meet increasing demand for ambulance and non-emergency patient transport services (such as through a demand management strategy including substitution of services)
- improving the sustainability of the ambulance revenue base and infrastructure replacement (such as by reassessing emergency and non-emergency fees against full-cost recovery principles) (Department of Human Services 2008).

In 2010-11, the key objectives of the ambulance services program included:

- developing strategies to improve the non-emergency patient transport service, service delivery and the use of resources
- pursuing strategies to help enhance and improve appropriate access and use of emergency ambulance and non-emergency patient transport services (Department of Health 2010b).

3.1.2 Funding arrangements

Ambulance Victoria is funded from a number of sources — including the Department of Health, direct revenue from the Ambulance Membership Subscription Scheme, fees from patient transport and treatment, and donations.

In 2009-10, 62 per cent of Ambulance Victoria's total revenue was provided by the Government, 19 per cent was derived from 'chargeable' transport revenue, and 17 per cent from memberships (Ambulance Victoria 2010b).

The policy and funding guidelines issued by the Department of Health (2010b) suggest that most government funding is allocated to emergency services (in 2010-11, $460.3 million was budgeted for emergency, and $103.8 million (or 18.4 per cent of the total) was for non-emergency services).

Box 3.1 **Ambulance Services Act**

Objectives of ambulance services. Under s. 15 of the Act, the objectives of ambulance services (Ambulance Victoria) are:

> (a) to respond rapidly to requests for help in a medical emergency;
>
> (b) to provide specialized medical skills to maintain life and to reduce injuries in emergency situations and while moving people requiring those skills;
>
> (c) to provide specialized transport facilities to move people requiring emergency medical treatment;
>
> (d) to provide services for which specialised medical or transport skills are necessary;
>
> (e) to foster public education in first-aid.

Powers of ambulance services. Under s. 16 of the Act, Ambulance Victoria may, among other things:

> (a) charge reasonable fees for services rendered;
>
> (b) operate or participate in a subscriber scheme;
>
> (c) provide services to members of, or contributors to, a health fund under an agreement with a health fund …
>
> (d) do all things that are necessary or convenient to enable it to achieve its objectives.

Functions of the board of ambulance services, include 'to develop arrangements with other health, emergency and community service agencies and providers to enable effective and efficient service delivery and continuity of care' (s. 18(1)(i)). In exercising its functions, the Board must consider, among other things, the need to ensure that

- the ambulance service uses its resources in an effective and efficient manner (s. 18(2)(b)); and
- resources of the Victorian public health system and emergency response services generally are used effectively and efficiently (s. 18(2)(c)).

Documents that must be prepared. The board of Ambulance Victoria must prepare and submit for approval to the Minister a strategic plan (section 22E), and an annual statement of priorities (section 22H). The current strategic plan (Ambulance Victoria 2010b) includes specific strategies for non-emergency patient transport. The statement of priorities 'ensures delivery of, or substantial progress towards the key shared objectives of financial viability, improved access and quality of service provision' (Department of Health 2010a, p. 3). It specifies, among other things, the services to be provided by, and the funds to be provided to, Ambulance Victoria, and key objectives, priorities, and performance outcomes, indicators and targets.

The powers of the Secretary in relation to Ambulance Victoria. Section 10(4)(i) of the Act allows the Secretary to give written directions to Ambulance Victoria in relation to matters including 'the extent to which, and the conditions on which, the ambulance service may make use of or purchase facilities, services, equipment or supplies provided by another ambulance service or by any other person or body'. Under s. 5(a) of the Act the Secretary may give directions to an ambulance service relating to the fees the service may charge.

Source: *Ambulance Services Act 1986* (Vic.).

These are, however, 'notional' amounts because, in practice, Ambulance Victoria's recurrent funding is allocated as a 'block grant'. In other words, funding is not explicitly allocated per patient transported, nor are specific proportions of the overall budget explicitly allocated to emergency and non-emergency patient transport. Activity targets for services such as emergency, non-emergency, and air ambulance transport are also specified as the 'collective and required outputs of the funding' (Ambulance Victoria 2011b, p. 9). Targets for non-emergency patient transport relate to all Ambulance Victoria's non-emergency patient transport services, whether provided in-house or outsourced.

Recurrent departmental funds are intended to help the ambulance service to meet CSOs, treatment and transport costs, approved enterprise bargaining agreements, Air Ambulance Victoria contracts, extension of services, and operation of community emergency response teams (Department of Health 2010b). There is also an annual allocation for capital projects, including minor works, vehicle replacement program, and the vehicle renewal and development program.

Again, however, because funds are allocated as a block grant, Ambulance Victoria advised that it is not possible to identify which portion of the funding is provided specifically for non-emergency patient transport services, nor to separate funding for the CSO portion of these services. Box 3.2 outlines the factors that underpin how the level of government funding of Ambulance Victoria is determined.

3.2 Non-emergency patient transport

Non-emergency patient transport services are defined in section 3 of the *Non-Emergency Patient Transport Services Act 2003* (Vic.) as services that offer or provide for the transport of people:

- on public roads, to or from medical services, using a stretcher-carrying vehicle; or where the people being transported are provided with specialist clinical care or monitoring during transport
- by air, to or from medical services, where the people being transported are transported on stretchers; and are provided with specialist clinical care or monitoring by the person operating the service.[2]

Non-emergency patient transport can be pre-booked or required on the same day but, in either situation, it must be medically required.

[2] Non-emergency patient transport is distinguished from non-urgent transport, in which patients require specialist medical transport but are not confined to stretchers.

Box 3.2 Determining Ambulance Victoria funding

According to the policy and funding guidelines issued by the Department of Health:

> A major aim of government policy is to foster long-term investment in the human services sector. The uncertainty caused by compulsory periodic competitive retendering of services can prove counterproductive to this goal; agencies have been unable to retain experienced staff and are reluctant to make longer-term investments in service systems and infrastructure.
>
> To address this, the department's funding policy promotes the rollover of recurrent funding to existing service providers, conditional on service providers meeting minimum performance targets and service quality standards. (Department of Health 2010b, p. 11)

Ambulance Victoria (2011d) noted, however, that this reflects a policy of the Department of Health, not of Ambulance Victoria. Instead, Ambulance Victoria's approach involves periodic tendering in accordance with Victorian Government Purchasing Board policy.

The ambulance service budget takes into account:

- the previous year's budget
- indexation of the eligible expenditure non-wage component
- adjustments to account for changes to awards or enterprise agreements, endorsed by the State Government
- funding received through the state budget process for agreed growth or new initiatives.

Sources: Ambulance Victoria 2011d; Department of Health 2010b.

The emergency and non-emergency patient services of Victoria's ambulance services were separated in 1993, following a review by the then Government of whether some ambulance functions could be privatised. Ambulance Victoria (2011b, p. 6) advised the Commission that the decision to separate emergency and non-emergency patient transport was driven by the significant cost of resourcing non-emergency patient transport with emergency resources.

Before the Non-Emergency Patient Transport Act was passed, private providers had to comply with the requirements of the *Transport Act 1983* (Vic.). This required them to be licensed as commercial passenger vehicles by the Victorian Taxi Directorate, with conditions attached to their licences regarding equipment and qualification requirements.

Since 1 February 2006, all providers of non-emergency patient transport services have needed to be licensed (except for Ambulance Victoria, public hospitals and denominational hospitals). Application and renewal fees, as specified in the Non—Emergency Patient Transport Regulations 2006, vary according to the number of vehicles operated by the provider, and range from just over $500 to

almost $6 500. The licensing system is administered by the Department of Health.

The Non-Emergency Patient Transport Regulations specify various matters including the following.

- The number and qualifications of staff needed to transport patients of different levels of acuity.
  - The specified staffing requirements do not apply where '(a) the service is operating at a rural location; and (b) it is not reasonably practicable for the service, by reason of its location, to comply with the requirements' (regulations 10, 13).
- Equipment standards.
- Licensing-related matters, including requirements for application and renewal of licences, and the process for cancellation.
- Records to be kept by licensed providers.
- Infringements and penalties.

The overall pool of private providers of non-emergency patient transport is, therefore, determined by the licensing process. Ambulance Victoria advised the Commission that 15 licensed providers of non-emergency patient transport operate in Victoria. Of these, seven operate in rural areas. These operators range in size from the very small (some operating only two or three vehicles) to the large (operating in the vicinity of 50 vehicles) (Ambulance Victoria 2011a).

The focus of this report is on road patient transport in rural areas, which is the subject of the complaint.

3.2.1 The procurement of non-emergency patient transport services

There are two groups of participants involved in the procurement of non-emergency patient transport:

- the providers of non-emergency patient transport services (i.e. the operators that transport patients — private licensed operators, hospitals and Ambulance Victoria)
- the purchasers of non-emergency patient transport (i.e. the organisations that have patients whom they need to transport — hospitals, healthcare networks and Ambulance Victoria).

The patients to be transported fall into various categories, as defined in the *Guidelines on Responsibility for Payment of Ambulance Fees* (Department of Health 2008). Some of these patients must pay for their transport, while others (such as Department of Veterans Affairs, and Transport Accident Commission

(TAC) and WorkSafe Victoria patients), are funded through other means. The following two-category classification was found to be the most useful distinction to make for the purposes of this investigation.

- 'Non-chargeable' patients who do not pay at the point of transport. These comprise:
  - pension and healthcare card holders, who (as noted above) are usually referred to as CSOs, because Government policy requires them to receive medically-necessary non-emergency patient transport for free, and provides funding for these transports to Ambulance Victoria through its budget
  - ambulance subscribers/members, who pay a membership fee that covers the cost of emergency and non-emergency transport.
- 'Chargeable' patients.

There are two main ways in which purchasers procure non-emergency patient transport services.

- The first is by contracting with a specific licensed private operator(s). The purchasing organisation then calls on its contracted operator(s) to provide transport as the need arises. Providers are generally selected through a tender process.
  - Ambulance Victoria (as a provider) does not participate in these tenders.
  - Metropolitan hospitals are more likely to have contracts in place than are their rural counterparts.
- The second is through Ambulance Victoria, which is used by purchasers who:
  - do not have their own arrangements/agreements with licensed operators
  - have their own arrangements with licensed operators but their contracted operators are not available to undertake a particular transport
  - need to transport a 'non-chargeable' patient, even where the purchaser has its own arrangements with private operators. As noted above, Ambulance Victoria is generally responsible for paying for the transport of those patients under the *Guidelines on Responsibility for Payment of Ambulance Fees*, reflecting the fact that it receives funding for concession-entitled patients through the State Budget, and membership payments from its subscribers. Thus, although there is no legislative constraint on private operators performing 'non-chargeable' work, there is no incentive for them to do so in practice because they cannot charge, and receive no government funding, for it.

Ambulance Victoria is obliged to provide free non-emergency patient transport services to certain patient categories and cannot reject a request — whether CSO

or otherwise — to provide non-emergency patient transport. However, where Ambulance Victoria is called to provide non-emergency patient transport, it does not have a statutory obligation to *directly* provide these transports — it may choose to do so directly or through one of its contracted private operators (Ambulance Victoria 2011b, p. 1).

> … there is a ***legislative obligation*** on AV [Ambulance Victoria] to provide ambulance services (both emergency and non-emergency services) by virtue of the Ambulance Services Act. Under the AS Act, AV is the "fail safe" provider that **must** provide non-emergency patient transport services when it is requested to do so (i.e. we cannot refuse to provide a service because we are busy, or the case is not cost-effective or convenient). (Ambulance Victoria 2011b, p. 2)

According to Ambulance Victoria, it must, therefore, be prepared to 'cover gaps in market capacity across the State (private providers do not operate in all areas, or have enough capacity to meet demand and/or will not service areas that are not profitable. They will also not perform work that is not billable)' (Ambulance Victoria 2011b, p. 6).

Drawing on information contained in annual reports, Ambulance Victoria estimated that approximately 30 per cent of the non-emergency patient (road and air) transport expenditure of rural and regional hospitals (for chargeable patients) is referred to Ambulance Victoria (for reasons including limits in market capacity and the need to refer to Air Ambulance Victoria). This suggests approximately 70 per cent of hospitals' chargeable non-emergency patient transport work is provided directly by private operators. (Ambulance Victoria 2011c)

3.2.2 Ambulance Victoria and non-emergency patient transport in rural areas

Ambulance Victoria's approach to its non-emergency patient transport is based on a service delivery model that is integrated: across its chargeable and non-chargeable work; and with its rural emergency services. According to Ambulance Victoria, this approach aims to help it meet all its obligations under the Ambulance Services Act. (Ambulance Victoria 2011c)

Reflecting this, Ambulance Victoria delivers its rural non-emergency patient transport in four broad ways.

- ***Using internal dedicated non-emergency patient transport crews.***
  - These are a combination of 'legacy' crews (i.e. those operating at the time Ambulance Victoria was established), and crews introduced since to meet Victorian Government policy commitments (as discussed below).

- ***Through dedicated non-emergency patient transport shifts, provided by private operators,*** with which Ambulance Victoria has contracted through a tender process.
  - These are 'guaranteed' shifts provided primarily on weekdays between 7.00 am and 10.00 pm.
  - Ambulance Victoria manages dedicated non-emergency patient transport shifts in 14 locations in Victoria. In eight of these locations, there is a single provider — either Ambulance Victoria (four) or a private operator (four). In the remaining six locations, the longest shifts (108 hours of shift availability per day) have been outsourced to private operators, with Ambulance Victoria allocated 90.5 hours of shift availability per day (Ambulance Victoria 2011a, p. 11).
- ***Using internal rural emergency patient transport resources.***
  - Ambulance Victoria (2011b, p. 6) advised the Commission that its emergency resources:

    > … are used for NEPT [non-emergency patient transport] service delivery wherever lower population means demand for both non-emergency (and emergency) services are reduced … Emergency resources are used to maximise the value of expensive resources in areas of lower demand, and ensure all patients in the community receive appropriate medical transport as required.

- ***Through* ad hoc *external resources*** that are used 'as and when required to supplement other resource types to ensure demand is met' (Ambulance Victoria 2011a, p. 7).
  - These resources are drawn from a panel of four operators, which includes all bidders 'for these services [from the last tender] with a conforming tender, to ensure all private providers would have the opportunity to supply ad hoc services'.
  - Under these arrangements, there is no obligation either on Ambulance Victoria to allocate work or on private operators to perform the service when requested (Ambulance Victoria 2011b, p. 3).

Some of the operators engaged by Ambulance Victoria have contracts with other organisations (including public hospitals and health networks, both metropolitan and rural, the TAC and WorkSafe Victoria), and some also operate in other Australian States/Territories.

Patient transport data

Ambulance Victoria currently has 28 dedicated rural non-emergency patient transport shifts — 14 internal and 14 external. In 2010-11, Ambulance Victoria was responsible for approximately 42 000 rural non-emergency patient transports. Of these, approximately 31 per cent were undertaken by its

emergency crews, 21 per cent by its non-emergency patient transport crews and 48 per cent by private operators (Ambulance Victoria 2011b, p. 5). Approximately 81 per cent of this work (approximately 34 000 transports) was non-chargeable (CSOs or ambulance members), with Ambulance Victoria undertaking about half the non-chargeable work directly (using emergency or non-emergency vehicles) and half allocated to private providers (Ambulance Victoria 2011b, p. 2).

How Ambulance Victoria selected its private operators

Ambulance Victoria's current arrangements with respect to non-emergency patient transport reflect decisions made and constraints faced at the time of its establishment in 2008. At that time, it had nine internal rural non-emergency patient transport crews, while also engaging a number of private operators to provide rural non-emergency patient transport. These private operators had not been selected through a tender process and all were engaged on an *ad hoc* basis.

Following the amalgamation that established Ambulance Victoria, and in response to the findings of a review conducted at the time (box 3.3), the first tender for rural non-emergency patient transport services was undertaken. The tender process began in 2009, and contracts with private operators were established in May and June 2010. The contracts were originally due to expire in June 2012, but this has been extended to the end of October 2012.

The overall number of dedicated non-emergency patient transport shifts, and the number to be put out to tender, was determined based on 'the limited data' available at the time, and reflected operational decisions of Ambulance Victoria as well as State Government policies and announcements (box 3.4). Thus, according to Ambulance Victoria:

> … AV sought to more effectively utilise the limited budget AV had available (for contracted rural NEPT activity) [as determined internally] by establishing in which areas there was sufficient NEPT workload to justify the creation of a shift. Of the 11 shifts that were required, all were outsourced except for the 4 required to support redeployment of AV OpCen staff (as required by Government budget announcements). (Ambulance Victoria 2011b, p. 4)

Six of the eight operators that submitted bids were awarded contracts (three of which were for dedicated shifts). One of these operators (contracted for *ad hoc* work only) has since ceased operations (Ambulance Victoria 2012).

How Ambulance Victoria allocates providers to specific jobs

Requests to use Ambulance Victoria's non-emergency patient transport services are directed to Ambulance Victoria by phone or fax. Once Ambulance Victoria has determined the request is appropriate (i.e. it is medically necessary), the booking is accepted, with the job allocated to a specific provider through

Ambulance Victoria's call taking and dispatch processes (Ambulance Victoria 2011a, p. 4).

Box 3.3 Ambulance Victoria's short-term rural non-emergency patient transport strategy

A review conducted when Ambulance Victoria was created identified risks with its rural non-emergency patient transport operations. These risks included: commercial risks associated with a lack of a tender process, financial risks associated with inconsistent and/or inadequate charging and budget overruns, and operational risks due to poor resource selection/allocation (with possible risks for emergency response times).

Ambulance Victoria subsequently developed a 'Short Term Rural NEPT Strategy' that was to operate within three key constraints:

- it had to be delivered within the existing rural non-emergency patient transport private provider budget
- Ambulance Victoria's rural emergency road resources would service the same number of non-emergency patient transport road cases as it had until that time
- Air Ambulance Victoria would service the same number of non-emergency patient transport cases as it had until that time.

Ambulance Victoria's key objective in implementing the strategy was to 'optimise arrangements' for its internal non-emergency patient transport crews and rural private operators 'so that the most effective way of servicing their combined caseload … could be achieved, whilst attempting to improve services to rural hospitals'.

Source: Ambulance Victoria 2011a.

Planner and Planning Guidelines (in Ambulance Victoria 2011b) provide the framework and criteria for selecting which resources are used for a particular transport, based on clinical and logistical considerations, such as patient acuity, crew skill levels, and days and times of operation. Specific allocation guidelines include the following.

- To keep non-emergency patient transport shifts (Ambulance Victoria's and those of private providers) well utilised each day. Ambulance Victoria (2011b, p. 8) advised the Commission:

  > … AV is committed to ensure effective utilisation of these resources (given there are significant fixed costs associated with having these shifts available, whether used or not). As such, AV closely monitors utilisation of all of its fixed shifts [whether internal or external] and seeks to maximise these shifts as much as possible.

- To allocate long and difficult trips (such as Melbourne to Eildon) to non-emergency patient transport shifts, as a way of protecting the availability of local emergency services (Ambulance Victoria 2010d).

- To allocate local work (such as Colac to Colac, or Yarrawonga to Yarrawonga) to emergency resources. (Ambulance Victoria 2011b, p. 11)
  - Emergency resources are allocated shorter distance cases so 'an overall area is not deprived of emergency coverage as a result of a day trip to Melbourne)' (Ambulance Victoria 2011b, p. 7).

Box 3.4 Influences on the number of dedicated non-emergency patient transport shifts

Cost considerations. Internal and external costs of providing non-emergency patient transport were investigated to provide an understanding of the relative costs of procuring services internally and externally.

Redeployment of staff. The restructure of Ambulance Victoria's call and dispatch services led to the closure of five rural operational centres, with the then Government 'guaranteeing' that no job losses would result. Redeployment of staff to non-emergency patient transport was one response to this change. On this, Ambulance Victoria noted:

> The five internal AV crews that have been introduced since AV's creation have all been introduced at the locations necessary to support the redeployment of existing AV staff to follow through on the government's commitment that there would be no job losses. (Ambulance Victoria 2011a, p. 13)

Additional shifts required and funded by the Government. During 2010-11, the then Government announced it would fund eight new dedicated rural non-emergency patient transport shifts, with the explicit aim of improving rural emergency service availability and response times. Ambulance Victoria outsourced seven of those shifts, with the eighth 'in-sourced to accommodate Ambulance Victoria OpCen staff from Bendigo who were seeking redeployment as government policy' (Ambulance Victoria 2011a, p. 8).

Use of emergency resources. Ambulance Victoria advised the Commission that its 'selective' use of emergency resources for non-emergency patient transport in rural areas aims to achieve Ambulance Victoria's broader objectives — supporting staff skills and morale, promoting close ties between Ambulance Victoria and the local community and health services, and improving the overall cost-effectiveness of its operations (as required under the Ambulance Services Act).

Source: Ambulance Victoria 2011a, 2011c.

The evidence presented to the Commission suggests that the guidelines do not give preference to the use of Ambulance Victoria's dedicated non-emergency patient transport resources over its contracted dedicated non-emergency patient transport resources.

It is only once all dedicated non-emergency patient transport options have been exhausted that jobs are allocated either to 'emergency (if a resource is available and if the case won't adversely impact on overall emergency availability) or to

ad hoc (if we can find a provider willing and able to undertake the transport in the required timeframe)' (Ambulance Victoria 2011b, p. 8).

In relation to the use of emergency resources, Ambulance Victoria summarised its approach as follows:

> Ambulance Victoria seeks to achieve the balance of "protecting" sufficient emergency resources in case they are required, whilst at the same time using them because they are available. (Often, in smaller rural locations, emergency crews would do very little work if they did not undertake any NEPT transports). (Ambulance Victoria 2011b, p. 7)

In relation to *ad hoc* resources, Ambulance Victoria commented that its choice among providers is influenced by cost, availability and suitability:

> In the event we seek to use ad hoc, different private providers offered us different prices for ad hoc work through the last tender. Some areas will not have ad hoc coverage by the market, or will only have it at certain times, or will have coverage but will be unavailable when we need it due to undertaking work for other customers such as hospitals with whom the private providers also have contracts. (Ambulance Victoria 2011b, p. 8)

Ambulance Victoria advised the Commission that whether the work is chargeable or non-chargeable is not a relevant consideration in allocating a case. Moreover, the fees Ambulance Victoria charges to chargeable patients do not differ according to how it provides the transport (i.e. internal or external dedicated non-emergency patient transport shifts, emergency resources or external *ad hoc* resources).

Ambulance Victoria's pricing of non-emergency patient transport

The Commission understands that Ambulance Victoria's agreements with private operators include a range of service provision and payment structures. Ambulance Victoria (2011a, 2011b) advised the Commission that its contracts for dedicated non-emergency patient transport shifts involve a fixed payment, as well as a payment for each transport undertaken, as specified in the terms and conditions of the contract with each provider. These per patient transport payments:

- are based on the tendered prices of each operator
- involve a distance calculation such that private providers receive a 'significantly' higher payment for longer trips than for local movements within a town between health facilities
- do not differ for 'chargeable' and 'non-chargeable' patient categories.

3.3 Summary of regulatory, policy and funding considerations

The operation of the non-emergency patient transport sector and Ambulance Victoria's role in it reflect a number of complex historical and policy influences. These influences are important considerations in understanding Ambulance Victoria's role in providing non-emergency patient transport services which, in turn, is helpful in assessing whether its non-emergency patient transport service is a significant business and, therefore, within the scope of CN policy.

3.3.1 The influence of the regulatory and policy environment

The Non-Emergency Patient Transport Act allows for private sector involvement for non-emergency patient transports. Other policy and funding considerations have, however, constrained private sector involvement in practice.

- The requirement that pension and healthcare card holder patients ('CSOs') be transported without charge, combined with funding for these transports being provided to Ambulance Victoria, means that a proportion of the potential market is effectively closed to private operators. (Likewise, under current arrangements, the direct market to transport ambulance members is effectively closed to private operators.)
  - Ambulance Victoria's contractual arrangements with private operators make part of this work available to the private sector, but this is at the discretion of Ambulance Victoria rather than in competition.
- The only potential area of direct competition between Ambulance Victoria and private operators is in the chargeable segment of the market.
- At a policy and funding level, a distinction tends not to be made between Ambulance Victoria's emergency and non-emergency services and resources — recurrent funding is, for example, provided as a block grant.
- Ambulance Victoria's approach to non-emergency patient transport reflects explicit and implicit government policy objectives and announcements. These include the following.
  - Requirements under the Ambulance Services Act, such as the need for the ambulance service to use its resources effectively and efficiently, and Ambulance Victoria's role as the 'fail-safe' provider.
  - A State Government commitment that no jobs be lost following the closure of rural operational centres.

3.3.2 Ambulance Victoria's role in non-emergency patient transport

Ambulance Victoria has a dual role in non-emergency patient transport — as purchaser and provider of services.

- It is not, however, a 'regulator' of non-emergency patient transport. Entry into the broader market is determined by the Department of Health which administers the licensing of private providers of non-emergency patient transport.
- Ambulance Victoria's relationship with its contracted providers is akin to that between any organisation and its contractors.

Unlike other providers of non-emergency patient transport, Ambulance Victoria must provide a non-emergency patient transport if requested.

3.3.3 Ambulance Victoria's influence on the non-emergency patient transport market

Ambulance Victoria exerts a direct influence on the market through its decisions about how many shifts to outsource, and how to outsource these.

Thus, the change in Ambulance Victoria's approach to engaging private operators (to one based on a tender process, and a move to using dedicated shifts and relying less on *ad hoc* resources) is likely to have affected the revenues of at least some operators. However, the change in Ambulance Victoria's approach reflects a response to government policy requirements and/or objectives relating to tendering (sub-contracting), budgets, and the efficient use of ambulance service resources, and is not a CN issue.

The rising costs of private providers that were noted by the complainant may be putting pressure on the profitability of private providers. However, such increases reflect a number of factors not directly attributable to Ambulance Victoria. These factors may include changes in regulation or general cost increases. The profitability of operators may also reflect broader issues around the structure of the market (including the number and size of operators). Even to the extent that some of the increases reflect changes in obligations imposed by Ambulance Victoria, this is a contractual issue, not a matter for CN policy.

4 Does competitive neutrality policy apply?

As noted above, the threshold issue in any CN investigation is establishing whether the government activity subject to the complaint is a significant business for the purposes of CN policy. The test is effectively a two-stage process in

which the following questions are answered.

(1) Is the activity a business?
(2) If the activity is a business, is the business significant?

The CN policy provides a guide as to the factors that need to be taken into account to determine whether a government activity is a business (Government of Victoria 2000; The Treasury 2004). These include whether:

- the activities of the entity result in the sale of a good or service
- the costs of providing the goods or services by the entity are predominantly met by users
- there is an actual or potential competitor
- the managers of the activity have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

In relation to the question of significance, CN policy (Government of Victoria 2000, p. 5) observes the factors that might be taken into account in determining whether a business is significant include:

- the size of the relevant business activity in relation to the size of the relevant market
- the influence or competitive impact of the business activity in the relevant market.

These factors are considered below in relation to Ambulance Victoria's rural non-emergency patient transport services.

4.1 Ambulance Victoria's significant business assessment

In recent years, Ambulance Victoria has periodically contacted the Commission to discuss the possible application of CN policy to its operations.

In March 2011 (before the complaint against it was lodged), Ambulance Victoria had asked for specific advice about conducting a significant business assessment for its non-emergency patient transport operations. In the meantime, the Commission received the complaint about the rural non-emergency patient transport services of Ambulance Victoria. Ambulance Victoria provided a draft assessment to the Commission on 2 June 2011.

In responding to the complaint made against it, and the questions raised by the Commission to help progress the investigation, Ambulance Victoria provided additional analysis about whether it considered its non-emergency patient

transport services a significant business. Ambulance Victoria's views are summarised below (Ambulance Victoria 2011b).

4.1.1 Ambulance Victoria's preliminary assessment

Ambulance Victoria's significant business assessment considered the organisation's whole operation across Victoria — metropolitan and rural services, chargeable and non-chargeable services, and different types of transportation (stretcher, clinic car and air ambulance).

The business test

In considering the first criterion of the business test, Ambulance Victoria assessed the chargeable and non-chargeable (CSO and ambulance member) transport categories separately. It viewed the non-chargeable category as not part of the contestable transport market.

> Private providers do not have access to this market as they cannot compete for these services as they do not receive any funding from the Government and the Government has established that AV should provide these services. Accordingly it can be firmly concluded that these are not in the scope of CN policy. (Ambulance Victoria 2011a, p. 25)

It commented further that only the chargeable part of its activities, which involves the 'sale' of the service to end users, might be within the scope of CN policy (by virtue of being a significant business).

In applying the second criterion of the business test to its chargeable activities, Ambulance Victoria advised the Commission:

> Based on our yearly funding analysis the cost per case is recovered somewhat through the fees we charge our chargeable customers taking into consideration direct and indirect costs. AV's current charging method may not necessarily be reflective of the costs actually incurred. (Ambulance Victoria 2011a, p. 25)

In its initial response to the complaint, Ambulance Victoria advised the Commission:

- fees are being reviewed 'to achieve a single billing method across the state on a more cost reflective and transparent basis to take into account the time and kilometres travelled with the patient including a flag-fall' (Ambulance Victoria 2011a, p. 25)
- the principles that form the basis of the formulae of the proposed fee structure include rates being based on full cost recovery plus a contingency amount (and, if required, CN will be considered) (Ambulance Victoria 2011a, p. 26)

It suggested further its intention was that its non-emergency patient transport fees will be structured so that costs are predominantly met by end users. Since then, Ambulance Victoria has reviewed its non-emergency patient transport costs and revenue sources. Ambulance Victoria (2011d) advised the Commission that this review confirmed that the costs of chargeable transports are met predominantly by end users. Given the VCEC's conclusions about the business status of Ambulance Victoria's chargeable non-emergency patient transport services (see below), the Commission did not review this costing exercise against the CN policy requirements.

In considering the third criterion, Ambulance Victoria noted that there are a number of potential competitors in rural areas. However, private providers do not service all regions of Victoria, reflecting factors including 'financial viability of NEPT market in those areas, location of business and individual business strategies' (Ambulance Victoria 2011a, p. 26).

In relation to the fourth criterion, Ambulance Victoria advised that it is required to provide non-emergency patient transport on a statewide basis and to respond to all requests directed to its call centres (Ambulance Victoria 2011a, p. 26).

The obligation does not, however, extend to the actual delivery of the service as Ambulance Victoria uses a range of internal and external dedicated non-emergency patient transport resources.

Although Ambulance Victoria is obliged to respond to non-emergency requests that are chargeable to the end-user, it advised that it does not contest tenders for non-emergency services by hospitals.

> AV has the ability to market and promote its NE [non-emergency] activity as a private business might, however, does not undertake any marketing activity nor compete with NEPT private providers in the many tenders regularly undertaken by public and private hospitals for such services. (Ambulance Victoria 2011a, p. 26)

Ambulance Victoria's non-emergency patient transport services business assessment concluded:

(1) the non-chargeable service did not satisfy the business assessment because Ambulance Victoria has exclusive access to this category of service and therefore is outside the scope of CN policy
(2) it is possible that the chargeable portion of its non-emergency transports could be considered a business.

The significance test — chargeable non-emergency patient transport

Accepting that the chargeable aspect of its activities could be considered a business, Ambulance Victoria applied the 'significance' test to the chargeable portion of its activities.

There were some constraints to Ambulance Victoria undertaking this assessment. Although Ambulance Victoria keeps data on the number of chargeable transports that it provides, it does not have data on the number of transports performed by third-party providers (under contract to hospitals, for example) (Ambulance Victoria 2011a, p. 27).

Ambulance Victoria advised the Commission that 9 per cent of its total non-emergency patient transports statewide (between 1 July 2010 and 30 April 2011) were chargeable. In rural areas, this figure was much higher, with 21 per cent of Ambulance Victoria's total rural-based non-emergency stretcher transports being chargeable. Nonetheless, the data show that Ambulance Victoria's chargeable non-emergency patient transport service is much smaller than its non-chargeable transports.

Despite the lack of data about the number of non-emergency patient transports provided by private operators, Ambulance Victoria concluded that, if the activity were considered a business, it would not be significant:

> Based on the number of Chargeable NEPT transports AV performs each year (…) and the fact that there are another 15 registered service providers servicing Victoria with a large range of clients, we believe that our Chargeable NEPT business activity should not be considered to be significant. (Ambulance Victoria 2011a, p. 27)

In considering the second significance criterion — the influence or competitive impact of the business activity in the relevant market — Ambulance Victoria advised the Commission that its aim was not to compete with private providers in an established market. Rather, its non-emergency patient transport services arose from a need to ease the burden of emergency crews performing non-emergency transports.

Overall, then, Ambulance Victoria concluded:

> AV believes that the Non Emergency activity where provided on a fee-for-service [basis] may be considered to be a business activity: however, due to the large number of other providers of the service and the large number of other customers of the service, the evidence shows that it can be concluded that the business activity is not significant. (Ambulance Victoria 2011a, p. 27)

Commission observations about Ambulance Victoria's preliminary assessment

Ambulance Victoria's broad approach to undertaking its significant business test — i.e. examining separately the chargeable and non-chargeable segments — is appropriate, and Ambulance Victoria considered the correct questions in undertaking its assessment.

As discussed below, the Commission also agrees with Ambulance Victoria's conclusion that the non-chargeable segment of its non-emergency patient transport activities is not a business and is, therefore, outside the scope of CN policy.

In relation to its chargeable non-emergency patient transport activities, Ambulance Victoria was inconclusive about whether or not this activity was a business — noting rather that it 'could' be considered a business.

However, its rationale for concluding that the activities would not be considered significant, even if they were considered a business, was not entirely correct. The presence of a 'large' number of potential competitors does not, of itself, mean Ambulance Victoria is not a significant part of the market. Instead, the relevant question is what proportion of the workload in the relevant rural non-emergency patient transport market (or markets) is undertaken by Ambulance Victoria relative to its competitors.

4.1.2 Ambulance Victoria's updated analysis

In August 2011, the Commission sought additional information from Ambulance Victoria to clarify whether or not it considered its non-emergency patient transport service to be a business in context of CN policy. In response, Ambulance Victoria advised that it did not consider its chargeable activities to be a business, citing reasons including that, as the 'fail safe' provider to cover gaps in market capacity across the State, it must accept all cases referred to it (Ambulance Victoria 2011b, p. 6).

This role, or obligation, was again emphasised at a meeting between the Commission and Ambulance Victoria staff on 2 September 2011.

In its response to the draft report, the complainant alleged that Ambulance Victoria does not, in practice, fulfil its fail-safe provider role for rural non-emergency patient transport. Rather, the complainant suggested that, since the 2008 amalgamation of Victoria's ambulance services, Ambulance Victoria has routinely rejected medically-necessary rural non-emergency transport where it does not have dedicated non-emergency patient resources available, and that it does not access *ad hoc* resources to provide transport in these circumstances.

Ambulance Victoria (2011e) rejected this allegation. As outlined in section 3.2.2, a number of considerations influence Ambulance Victoria's decision as to which resources to use for a particular transport, with *ad hoc* resources generally used when 'other options are not available and/or not feasible' (Ambulance Victoria 2011e).

Ambulance Victoria (2011e) noted further that the change in its 'governance and efficiency of rural non-emergency patient transport services' — involving the introduction of dedicated private provider shifts, and subsequent reduction in its need to access *ad hoc* services — 'did significantly alter the distribution of this work amongst the private providers'. It also commented:

> … since the time of the merger, AV has considerably reduced its use of rural ad hoc NEPT services, although it has simultaneously substantially increased the amount of rural NEPT caseload being allocated to dedicated rural NEPT private provider shifts. (Ambulance Victoria 2011e)

4.2 Is non-emergency patient transport a significant business? The Commission's assessment

The Commission has assessed whether Ambulance Victoria's non-emergency patient transport service is a significant business by applying the significant business test separately to Ambulance Victoria's non-chargeable and chargeable rural non-emergency patient transport services.

In making this assessment, the Commission has also considered the complainant's allegation, and Ambulance Victoria's response to it, about whether Ambulance Victoria acts, in practice, as a fail-safe provider of non-emergency patient transport.

The Commission considers it feasible that the change (as outlined above) in the way Ambulance Victoria engages private providers (including its reduced use of *ad hoc* services) could have led to a perception among some private providers that it does not, in practice, fulfil its fail-safe provider role. However, the Commission's assessment was undertaken on the basis that Ambulance Victoria has, and fulfils, an obligation to act as a fail-safe provider of rural non-emergency patient transport, because:

- the legislative objectives of an ambulance service, although not using the 'fail-safe' provider terminology, are specified to include providing 'services for which specialized medical or transport skills are necessary' (Ambulance Services Act, s. 15(d))

- the Commission was advised by the Department that Ambulance Victoria is expected to provide non-emergency patient transport when and where private sector providers are not available or would not be viable (Department of Health, communication, 14 February 2012).

The findings of the Commission's assessment are outlined below.

4.2.1 Non-chargeable non-emergency patient transport

The non-chargeable portion of the non-emergency patient transport market does not constitute a business for the purposes of CN policy.

- The transport of CSO patients is not provided on a for-sale basis, and Ambulance Victoria offers these services as part of its statutory obligation.
- The costs of providing non-emergency patient transport services for CSOs are met by the Government through its recurrent funding of Ambulance Victoria.
- There are no effective potential or actual competitors for the service. Although there are 15 private licensed providers of non-emergency patient transport (seven of which operate in rural Victoria), private operators have no incentive to service the non-chargeable market directly, because funding for CSOs is provided to Ambulance Victoria rather than being linked directly to the patient, and ambulance members also receive transport free-of-charge.
  - Ambulance Victoria provides private operators access to this work, through its contracting arrangements with them. Because non-chargeable non-emergency patient transport is not a significant business, the method of allocating specific work between itself and its contracted operators is not within scope of CN.
- Ambulance Victoria has an obligation to deliver these services (as the 'fail safe' provider), and to do so at no cost to the end-user (i.e. the patient being transported) — its managers do not, therefore, have independence in the supply or pricing of the service.

4.2.2 Chargeable non-emergency patient transport

The business status of the chargeable portion of the non-emergency patient transport market is less clear.

- In this part of the market, Ambulance Victoria's activity does result in the sale of a service.
- Ambulance Victoria (2010d) indicated that the costs of chargeable transports are met primarily by users.

- There are 15 licensed private non-emergency patient transport providers in Victoria, seven of which operate in rural areas of the State, so there are actual or potential competitors.
  - There are, however, areas of the State in which the low volume of work means it would not be viable for private providers to service these markets. As a fail-safe provider, Ambulance Victoria has an obligation to deliver services in these areas where there are no competitors.
  - The Commission understands customers (hospitals, etc.) do not actively choose between Ambulance Victoria and other providers for the chargeable part of the market. Hospitals would, in the first instance, call their own contracted provider/s (if they have one, selected through a tender process), turning to Ambulance Victoria only if their own provider is unavailable.
  - Where hospitals and health services tender their non-emergency patient transport work, Ambulance Victoria does not participate in these tenders, effectively excluding itself from the broader market. That said, because Ambulance Victoria is the 'fail-safe' provider, its standard pricing may influence whether or not a hospital or health service decides to go to tender and, if it does, whether it strikes a contract with a private operator.
- Ambulance Victoria determines the prices it charges for these transports — the Secretary's power to give directions about the pricing of ambulance services has not been exercised in relation to Ambulance Victoria's non-emergency patient transport.
- As the fail-safe provider, however, Ambulance Victoria does not have unfettered independence in choosing whether or not to provide specific transports (its discretion lies in whether it provides this work in-house or through its contracted providers). Government commitments to maintain staffing levels following the closure of rural operational centres also diminishes Ambulance Victoria's discretion as to how to provide non-emergency patient transport (i.e. effectively constraining it to provide more work in-house).

On balance, based on the information available to it, the Commission has concluded that the chargeable part of Ambulance Victoria's work is not a business for CN purposes.

The complaint is, therefore, outside the scope of CN policy. As a result, the complainant's concerns — about matters such as Ambulance Victoria's pricing of non-emergency patient transport and its use of emergency resources for non-emergency patient transport — cannot be addressed through the CN investigation process. The extent to which these matters are of concern and merit review would need to be considered in the broader context of the

Government's policy objectives for non-emergency patient transport, and Ambulance Victoria's general funding and service delivery obligations.

5 Conclusions

The threshold question in any CN investigation is whether the activities that are the subject of the complaint can be considered a significant business for CN purposes. If the answer to this is no, then the activity is outside the scope of CN policy, so the policy does not apply to it.

The Commission identified two distinct segments of the non-emergency patient transport market — the 'non-chargeable' and 'chargeable' segments — and applied the significant business test separately to each.

In both cases, it has concluded that the activity is not a significant business.

- In relation to non-chargeable (i.e. CSO and ambulance member) services, funding arrangements were the critical issue leading to this conclusion. Specifically:
  - the costs of transporting these patients are met by the Government through its recurrent funding of Ambulance Victoria, or through premium payments by members
  - because Government funding for CSOs is provided to Ambulance Victoria rather than being linked directly to the patient, private operators have no incentive to service these patients directly — hence, there is no effective competition for these transports. Similarly, under current arrangements, the lack of effective competition for transporting ambulance members arises because ambulance members receive free non-emergency patient transport from Ambulance Victoria.
- In relation to chargeable services, the Commission concluded that, on balance, the obligations placed on Ambulance Victoria — such as to act as a fail-safe provider of patient transport, which constrains the way in which Ambulance Victoria provides its services — were sufficient to suggest its chargeable non-emergency patient transport activities are not a significant business for CN purposes.
  - That Ambulance Victoria's non-emergency patient transport activities are not run as a business appears to be supported by the fact that Ambulance Victoria does not compete with non-emergency patient transport private providers in the tenders undertaken by hospitals and health services for non-emergency patient transport.

Table 5.1 summarises the conclusions regarding the scope of the CN policy and Ambulance Victoria's non-emergency patient transport service.

Table 5.1 **Summary of conclusions**	
Description	**Reason for being outside the scope of CN policy**
Non-chargeable (CSO and ambulance member) service — Organisation requiring non-emergency patient transport calls Ambulance Victoria	
Delivery option 1 — Ambulance Victoria in-house service provision	The service is not part of the contestable non-emergency patient transport market because Ambulance Victoria is either funded to provide the service as a CSO, or receives funding from payments made through its membership subscription scheme. Current arrangements, therefore, provide no incentives for private operators to provide these services directly.
Delivery option 2 — Ambulance Victoria outsources (sub-contracts) service provision	The method of allocating specific work between Ambulance Victoria and its contracted operators is not within the scope of CN. This is a tendering (sub-contracting) issue, rather than a CN policy issue.
Chargeable services — Organisation (hospital, health service, etc.) requires non-emergency patient transport	
Delivery option 1 — contracted provider (where organisation has tendered for non-emergency patient transport services)	Ambulance Victoria does not participate in tender processes administered by other organisations (although, as the 'fail-safe' provider, its 'standard' pricing may indirectly influence the tendering decision of organisations).
Delivery option 2 — Ambulance Victoria a — Ambulance Victoria outsources (sub-contracts) service provision b — Ambulance Victoria in-house service provision	Ambulance Victoria is a 'fail-safe' provider and is obliged to provide a service where requested. It may allocate internal or external (sub-contracted) resources based on logistical and clinical considerations. The method of allocating specific work between Ambulance Victoria and its contracted operators is not within the scope of CN. This is a tendering (sub-contracting) issue, rather than a CN policy issue.

In light of this, the Commission concluded that the non-emergency patient transport services of Ambulance Victoria are not within the scope of the CN policy. Thus, the issues raised by the complainant — such as the pricing of Ambulance Victoria's services in the chargeable market, its allocation of specific cases, and use of emergency resources for non-emergency patient transport — are not matters that can be addressed through the CN investigation process, or about which the Commission can make recommendations. The extent to which these issues are of concern and merit review would need to be determined through broader Government policy development processes, not the CN investigation process.

The Commission notes, however, that this conclusion has been driven significantly by the broader policy and funding environment within which Ambulance Victoria and the non-emergency patient transport market operate. Should these circumstances change, the conclusion as to the business status of Ambulance Victoria's non-emergency patient transport activities — and, therefore, the applicability of CN policy — may need to be revisited. To this end, the Commission acknowledges the stated willingness of Ambulance Victoria to comply with CN should it be found to be within scope of the policy, and that its undertaking of a significant business test was a step in complying with the policy.

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Appendix A: CN measures

The CN policy provides three measures for implementing competitive neutrality — corporatisation, commercialisation, and full cost-reflective pricing.

Corporatisation

'Corporatisation involves the creation of a separate legal business entity to provide the relevant goods and services' (Government of Victoria 2000, p. 7). The following characteristics of a corporatised entity are described in the CN policy:

- clear and non-conflicting objectives;
- managerial responsibility, authority and autonomy;
- independent and objective performance monitoring; and
- performance-based rewards and sanctions.

Corporatisation is the preferred way to address CN issues when the government agency operates a business in a market in which it has statutory monopoly functions. Full separation through corporatisation ensures the agency does not face conflicting objectives between its statutory monopoly functions and commercial objectives.

Commercialisation

Commercialisation 'involves organising an activity along commercial lines without creating a separate legal business entity' (Government of Victoria 2000, p. 7).

CN policy notes that commercialisation is typically achieved by applying a set of 'commercial practices' to the business functions of a government agency. These practices may include:

- clear delineation of commercial and non-commercial activities, typically through a business plan;
- clearly defined commercial performance targets and financial reporting requirements;
- separate accounting for, and funding of, non-commercial activities;
- separation of regulatory functions from commercial activities;
- an appropriate financial return on the assets used in the commercial activity;
- application of a tax equivalent regime; and
- appropriate financial arrangements for allocating profits from the commercial activity. (Government of Victoria 2000, p. 7)

Commercialisation is less costly than corporatisation. It is, thus, likely to be the preferred model for addressing CN issues when the government agency does not have statutory monopoly functions or decision-making powers that significantly affect the profitability of its business and competitors, or when the costs of corporatisation are high relative to the benefits. Examples of where commercialisation can be an effective instrument for achieving CN include council-operated aquatic and recreation centres.

Full cost-reflective pricing

Full cost-reflective pricing takes into account all the costs that can be attributed to the provision of the good or service (including the cost of capital), as well as the cost advantages and disadvantages of public ownership. The CN policy notes:

> The intention of full cost reflective pricing is to offset any net competitive advantages a government business may enjoy, thereby ensuring that resource allocation decisions are made on the basis of comprehensive and accurate costing. (Government of Victoria 2000, p. 7)

Full cost-reflective pricing, without corporatisation or commercialisation, may be sufficient if the main CN issues relate to cross-subsidies between commercial and non-commercial activities of government entities. It does not, however, address non-pricing concerns. It is the preferred model for addressing CN issues when the government business is small and the issue does not warrant taking on the relatively large costs involved in corporatisation or commercialisation. An example of where full cost-reflective pricing may be an effective measure to achieve CN would be the operation of a small cafeteria in a public hospital.