



National Seniors Australia Submission to Competition Policy Inquiry

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Executive Summary and Recommendations

As the major consumer lobby for Australians aged 50 and over, National Seniors Australia welcomes the opportunity to make an initial submission to the Harper Competition Policy Review.

National Seniors is Australia's largest organisation representing the interests of those aged 50 and over, with around 200,000 individual fee-paying members nationally. This broad based support enables National Seniors to provide a well informed and representative voice on behalf of its members and contribute to public education, debate and community consultation on issues of direct relevance to older Australians.

Consumers stand to benefit most from competition. Competition provides powerful incentives for suppliers to offer competitive prices. Competition also drives the search for new and better products and services, resulting in greater choice and creating enduring value for consumers.

Competition reforms initiated during the 1980s and 1990s delivered a significant boost to productivity, lowered prices for consumers and helped propel more than two decades of sustained economic growth. However, over the past decade productivity has languished, prices for some essential services have escalated and Australia now faces significant economic and fiscal pressures as a result of declining competitiveness and growth in demand for services as the population ages.

Against this background, National Seniors believes a refreshed competition policy agenda could rekindle the incentives needed to drive a stronger, more productive economy.

Scope of Review

To realise this promise the Review must look beyond sectoral or small business concerns to broader competition reforms that can drive growth in productivity and living standards and enduring benefits for Australian consumers. The Review should aim to:

- Ensure the scope and administration of competition laws are fit for today's economy,
- Identify legal, policy and institutional barriers to competition whose removal would deliver net public benefits, including unfinished National Competition Policy (NCP) reforms,
- Restore compliance with competition principles in policy and regulatory design,
- Address information and adjustment issues associated with competition reform, and
- Identify institutional arrangements to drive a new competition policy agenda.

Competition law

The Review provides a fresh opportunity to assess the effectiveness of the *Competition and Consumer Act (CCA)* in preventing anti-competitive conduct.

Among issues of concern to older Australians that the Review should consider are:

- whether the law is working as effectively as it might to ensure genuine price competition in automotive fuel retailing, including whether price signalling provisions - which currently apply only to the banking sector – should be extended to fuel and other sectors,
- how Australian competition law might address international price discrimination, which is resulting in Australian consumers paying significantly more for certain goods – such as IT products - than consumers in other jurisdictions, and

- how smaller claimants without the means to engage lawyers might get better access to the protections of the law.

There may also be scope for “cleaning up” anti-competitive conduct provisions, which have become cluttered by numerous additions and amendments over the years.

However, the ultimate focus of competition law must be on the competitive process and on promoting the interests of consumers, not on the interests of any specific class of competitor. National Seniors would therefore be concerned at any change to competition laws that specifically sought to protect small business. For example, the introduction of an “effects” test into the misuse of market power provisions could mean that competitive behaviour that harms competitors becomes unlawful, even though it benefits consumers.

Overbearing conduct by dominant market players would be better addressed by other means, including improving small business access to the protections of the existing law and strengthening the tools available to the Australian Competition and Consumer Commission (ACCC) to investigate contraventions of unconscionable conduct.

More generally, the Review should consider how to improve access to the law for smaller claimants without the resources to engage lawyers – for example, through greater use of mediation.

Recommendation 1: *Priorities for reform of competition law or its enforcement should include: ensuring effective price competition in automotive fuel retailing; addressing international price discrimination; and consideration of how smaller claimants without the means to engage lawyers can get better access to the law to enforce their rights and seek remedies.*

Removing legal, policy and institutional barriers to competition

The biggest economy-wide gains from a refreshed competition policy agenda are likely to come, not from changes to competition law, but from the removal of other legal, policy and institutional barriers to competition that exist in many domains of the economy. Identification of the most important of these should point the Review to priority areas where a refreshed competition policy agenda can deliver the greatest benefits.

Firstly, priorities should include the more important unfinished NCP reforms, in particular those that:

- address unprecedented recent growth in household energy and water bills,
- remove ownership and locational restrictions on competition to reduce costs in pharmacy medicines, and
- drive much needed improvements in the quality and affordability of taxi services.

Recommendation 2: *Competition policy priorities should include completion of NCP reforms in energy, water and pharmacy markets and in the taxi industry.*

Secondly, significant new impediments to competition that have emerged in the context of ongoing change to regulations, technologies and economic structures should also be targeted for reform. The financial services sector is one area of particular concern for older consumers. While structural and technological changes in financial services over recent decades have generally made for increased competition and greater choice for consumers, there are important exceptions, including:

- a lack of price competition in superannuation fund fees,
- a lack of competition in supply of retirement income products that could insure retirees against longevity risk

- control of financial advisory services by major financial product providers, and
- lack of transparency and increasing difficulty for consumers to exercise informed choice.

Recommendation 3: *The Review should examine emerging barriers to competition in the financial services sector, including: a lack of price competition in superannuation fees; lack of competition in the supply of retirement income products; vertical integration of financial advisory and product markets; a lack of transparency to inform choice; and significant information disadvantages faced by financial service consumers.*

Thirdly, the Review should identify the potential for harnessing competitive incentives in public service markets, where productivity improvements of the order of 20-25 per cent are believed possible. Health and aged care services are two rapidly growing areas of government spending where removal of barriers to competition could deliver increased choice and lower costs for both consumers and taxpayers.

In health care, priority areas for reform should include:

- the Pharmaceutical Benefits Scheme (PBS), where Australian consumers and taxpayers are paying unacceptably high prices for generic drugs,
- the market for pathology services, where high rents paid by incumbents for collection centre space is reducing competition and adding to costs for consumers and taxpayers,
- occupational licensing reforms to free up more highly qualified professionals to focus on tasks requiring higher skill levels, and
- ensuring specialist medical colleges are not unreasonably restricting entry to specialist medical professions, including by overseas trained professionals.

In aged care, a major impediment to increased competition and choice is the maintenance of supply side restrictions on the availability of subsidised aged care services. Until these restrictions are relaxed, there will be little scope for new entrants to drive greater innovation and choice and meet growth in demand for aged care services.

Recommendation 4: *The Review should consider opportunities for competition to improve services and reduce costs in the supply of services where governments play a major funding role, including health and aged care. In health care, priorities should include: reform of PBS procurement arrangements; review of barriers to entry to the supply of pathology services; reform of occupational licensing in health care professions; and increased regulatory oversight of specialist medical professional colleges. In aged care, there should be an early review of supply side restrictions.*

Restoring competition principles in policy design and decision-making

Under the National Competition Policy agreements all Australian governments agreed to adopt a set of pro-competitive policy principles that were intended to be enduring. However, adherence to these has waned since incentives to comply were removed with the ending of competition payments to the states in 2006. The current Review provides the opportunity to restore compliance with these principles.

To limit the growth of new restrictions on competition, all governments should recommit to the two part legislative principle that legislation (including regulation) should not restrict competition

- unless the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can only be achieved by restricting competition.

To ensure a level playing field between government and non-government businesses, governments should also consider structural reforms to remove barriers to new entrants and should extend their competitive neutrality policies to any area where government agencies may compete with private or not-for-profit bodies for the supply of services.

Recommendation 5: *All Australian governments should recommit to removing legislative restrictions on competition that do not provide net community benefits; consider structural reforms to remove barriers to new entrants; and extend the application of competitive neutrality policies to any area where government agencies may compete with non-government bodies for the supply of services.*

Addressing information and adjustment issues

Gaining community support for a renewed competition policy agenda will require a compelling narrative about the benefits of competition and clear principles and processes for addressing adjustment costs.

Recommendation 6: *The Review should develop principles for addressing adjustment costs associated with competition reforms.*

If competition is to be introduced into domains of the economy that have not previously been exposed to market forces, better means must also be found to ensure that consumers are equipped to exercise informed choice. Competitive markets need informed consumers and this cannot be assured in markets such as health, aged care and financial services, where there are significant information asymmetries.

Recommendation 7: *The Review should examine options for ensuring that consumers are able to make informed choice in markets where there are significant information problems.*

Institutional arrangements

As a refreshed competition policy agenda will require action at both federal and state levels, a new national compact agreed by the Council of Australian Governments (COAG) should be developed. Further, given that the economy-wide gains from a comprehensive competition policy agenda would yield greater revenue gains for the Commonwealth than the states, states should receive a “dividend” on completion of agreed reforms. The NCP system of reward payments proved to be a highly effective strategy for keep all states committed to the reform agenda and should be reinstated.

An independent body responsible for measuring compliance with competition principles and reform targets, including enforcing compliance with competitive neutrality principles (though in the case of state owned businesses, this may be best delegated to existing state economic regulators).

National Seniors sees no compelling case for new institutions to administer competition law or for any institutional separation of Australian Consumer Law from competition law. On the other hand, there is scope for further rationalisation of state consumer affairs activities.

Recommendation 8: *Institutional and governance arrangements to drive the delivery of competition policy objectives should include: a new federal state agreement to a competition policy reform agenda; reinstatement of reform dividends for the states; and the establishment of independent oversight of compliance with the reform agreement, including compliance with competitive neutrality policies.*

1. Introduction

As the major consumer lobby for Australians aged 50 and over, National Seniors Australia welcomes the opportunity to make a submission to the Harper Competition Policy Review.

Competition provides powerful incentives for suppliers to operate efficiently so that they can offer competitive prices. Competition also drives productivity growth. As less efficient firms and industries lose market share, scarce resources are reallocated to more productive uses. Competition also drives the dynamic search for new and better products and services, resulting in greater choice and creating enduring value for consumers. For all these reasons, it is the consumer who ultimately stands to benefit from greater competition.

There is no doubt that Australia benefited greatly from the earlier era of National Competition Policy (NCP) reforms, which significantly boosted productivity, lowered the cost of essential services and helped propel more than two decades of strong economic growth (Productivity Commission 2005).

Today, Australia faces significant new challenges as the economy adjusts to the end of the mining boom, falling productivity and declining international competitiveness. At the same time, strong growth in demand is increasing pressure on federal and state budgets, including demand for health and aged care services as the population ages. In this context, a refreshed competition policy agenda could rekindle the incentives needed to drive a stronger more productive economy.

A more productive, more resilient economy will benefit all Australians – including older Australians - through increased income and employment opportunities and stronger government revenues to fund essential services. Provided adequate consumer safeguards are put in place, senior Australians also stand to benefit from specific applications of competition policy to areas that most affect the goods and services on which they rely.

2. Scope of competition policy review

The Harper Review will be the first comprehensive review of competition policy in Australia in the two decades since the Hilmer Report (Hilmer F, Raynor M et al. 1993) . The Review presents a timely opportunity to develop a new, broadly based competition reform agenda focused on benefits for consumers and driving ongoing productivity growth and improvements in the living standards of all Australians.

The Review's terms of reference also require examination of certain sectoral and small business-specific issues.

2.1. Review focus and priorities

In order to achieve its goal of driving growth in productivity and living standards, the Competition Policy Review Panel must go beyond specific sectoral or small business concerns to a systematic analysis of impediments to competition across the economy.

Key priorities for the Review should be to ensure Australia's competition laws remain relevant and effective in light of ongoing changes to the economy, reinvigorate competition principles, complete unfinished business from the NCP agenda and identify opportunities to drive competition it into new domains of the economy. In particular, the Review should encompass the following key elements:

- Reviewing the scope and administration of competition laws to ensure they are fit for purpose in today's economy,
- Identifying significant legal, policy and institutional barriers to competition whose removal would deliver net public benefits,

- Restoring compliance with competition principles in policy and regulatory design and decision-making,
- Addressing information and adjustment issues associated with competition reform, and
- Identifying key institutional arrangements to drive a new competition policy agenda

In undertaking the review, the Panel should maintain a clear focus on the interests of consumers.

3. Review of competition law

The Review provides a fresh opportunity to assess the effectiveness of the *Competition and Consumer Act (CCA)* in preventing anti-competitive conduct.

Specific issues of concern to older Australians in the operation of competition law include:

- how well the law is working to ensure genuine price competition in automotive fuel,
- how competition law might best address international price discrimination, and
- how smaller claimants without the means to engage lawyers can get better access to the law.

Above all the Review should focus on what is needed to protect the competitive process, in the interests of consumers, not of particular classes of competitor. In particular, National Seniors considers it would be against the interests of consumers to amend misuse of market power provisions of the Act in order to afford greater protection for small business.

3.1. Automotive fuel

National Seniors questions whether competition law is working effectively to ensure genuine price competition in automotive fuel retailing, where weekly price movements posted by the major distribution companies appear to move in tandem. The Review should consider whether price signalling provisions - which currently apply only to the banking sector – should be extended to fuel suppliers and other sectors.

3.2. International price discrimination

The Review should recommend reforms to address international price discrimination, including the pricing of Information and Communication Technology (ICT) products. An inquiry into IT pricing in Australia by the House of Representatives Standing Committee on Infrastructure and Communications found an average price difference of 50 percent for software, while for hardware, Australian prices were found to be 46 percent higher than in the US. The Committee concluded that many IT products are more expensive in Australia not because the costs of providing these products in Australia are higher but because of regional pricing strategies implemented by major vendors and copyright holders.

It is unreasonable that Australian consumers pay significantly more for these goods than their counterparts in other jurisdictions. As the House of Representatives Committee pointed out:

High IT prices make it harder for Australian businesses to compete internationally and can be a significant barrier to access and participation for disadvantaged Australians (in particular Australians with a disability) (Commonwealth of Australia 2013)(1)

Improving competition in ICT product markets would also help overcome affordability barriers to the take up of these technologies by older Australians.

3.3.Consumer rights

While a primary object of the CCA is to protect consumers by prohibiting certain anti-competitive conduct, the ACCC cannot bring proceedings for compensation for consumers. The Review should consider how the consumer protection objectives of the Act could be strengthened, including strategies for improving access to the law for consumers and other small claimants without the resources to engage lawyers.

3.4.Small business concerns

In addition to a general review of the effectiveness of various provisions of the Act, the Review terms of reference encompass issues specific to small business, requiring the Panel to:

‘examine the competition provisions and the special protections for small business in the CCA to ensure that effective businesses, both big and small, can compete effectively and have incentives to invest and innovate for the future’.

Concerns have been raised by small businesses that firms with significant market power— such as the two major supermarket chains - may be misusing that power to drive smaller competitors out of the market, for example through predatory pricing practices. Small businesses who supply goods and services to dominant firms also complain of unconscionable conduct or unfair contract terms that render them powerless to negotiate prices that would sustain their businesses.

National Seniors has considerable sympathy for the plight of small businesses to the extent that they are subjected to overbearing conduct by dominant market players. If dominant market players are so effective in attracting custom away from - or taking over - competitors that they entirely eliminate competition, this would clearly also be to the detriment of consumers¹.

That said, it is important to recognise that the principal object of the CCA is *‘to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection’*. Whereas it is in the interests of consumers that the rules of the game promote competition and fair trading and that conduct not be unconscionable, it would not be in the interests of consumers if the law were to be drafted so as to protect any particular class of business from competition.

3.5.Misuse of market power

A number of previous reviews of section 46 of the CCA have focused on the alleged difficulty of establishing beyond doubt that a dominant market player has taken advantage of its power *for the purpose* of lessening competition. This has led to periodic calls for the inclusion of an *effects* test that would make it unlawful for a dominant market player to take advantage of its power *with the effect* of substantially lessening competition in a market.

The 2003 Dawson review argued strongly against an effects test on the grounds that it could render unlawful vigorous competition yielding significant consumer benefits simply because it resulted in some less competitive firms exiting the market: *‘Part IV seeks to prevent conduct that may lessen competition, not to protect less competitive businesses’* (Commonwealth of Australia 2003).

Former ACCC Chair Graeme Samuel also argues against an effects test, noting that: *‘In contrast, the existing purpose test makes it clear that unlawful behaviour involves more than just strong competitive conduct. It requires anti-competitive intent’* (Monash Business Policy Forum 2013)(13).

¹ In considering market power, due weight must be given to the fact that some smaller localities are unlikely to be able to sustain more than one supplier of particular goods or services.

An effects test could also have unintended anti-competitive consequences: *'Having to assess what the outcome of their actions might be introduces huge compliance costs to anyone at risk of being considered to have market power'* (Trindade R, Merrett A et al. 2013)(7). While the ACCC might issue guidance as to the types of conduct that might be caught by an effects test, this could itself: *'chill competitive conduct as regulators ...tend towards ... erring on the side of good conduct ... in order not to mistakenly give a safe harbour to bad conduct'* (Trindade R, Merrett A et al. 2013)

As there would appear to be a significant risk that dealing with overbearing behaviour by large firms through the introduction of an effects test would harm the competitive process itself, alternative remedies should be fully explored.

3.6. Other means to assist small business

While there may be scope for improving access for small business to the protections that the law offers, the ultimate focus of competition law must be on the competitive process and on promoting the interests of consumers, not on the interests of particular classes of competitor.

Better mechanisms for addressing small business concerns about overbearing behaviour by dominant players firms could include:

- industry codes of conduct, supported by the ACCC, including enforceable penalties;
- unconscionable conduct provisions of Australian Consumer Law; and
- unfair contract provisions of Australian Consumer Law.

Recent developments in each of these areas show promise.

- The force of the *Franchising Code of Conduct* - a mandatory industry code that applies to the parties to a franchise agreement – is to be strengthened with the proposed introduction of penalties. While the franchise sector has been regulated by the compulsory code since 1998, it has not previously included any penalties for breaches.
- In April 2014 the Food and Grocery Council agreed to a voluntary code with Coles and Woolworths to help protect its members from unfair treatment by the major supermarket chains. The code - which prohibits the supermarkets from using suppliers' intellectual property to develop their own products and from changing contracts retrospectively - is to be a prescribed code under the Competition and Consumer Act, so that ultimately a breach of the code will be a breach of the CCA.
- The Competition and Consumer Commission has recently taken legal action against the Coles supermarket chain over the way it treated smaller grocery suppliers using the unconscionable conduct provisions of Australian Consumer Law, rather than relying on the misuse of market power provisions of the CCA.
- Australian Consumer law protections against unfair contract terms are to be extended to small business, with \$1.4 million announced in the 2014-15 federal budget for a package that will include legislative reform to make unfair terms in standard form contracts with small business void. (Although it should be noted that no other major unfair terms regime in any other country extends protection to business customers.)

There are also steps that could be taken to improve small business access to the protections of competition law, including assisting small business complainants to bring their concerns to the ACCC without having to engage costly trade practices legal advice (Trindade R, Merrett A et al. 2014). The Productivity Commission has similarly proposed that regulators develop processes for dealing with small business complaints, including low cost mediation services (Productivity Commission 2013).

The role of the proposed new Small Business and Family Enterprise Ombudsman is also expected to improve avenues of redress for small business.

Finally, proposed changes to the way in which the CCA deals with ‘creeping acquisitions’ may help to address concerns that the big supermarket chains have been buying up smaller grocery stores in order to increase their market share.

Recommendation 1: *Priorities for reform of competition law or its enforcement should include: ensuring effective price competition in automotive fuel retailing; addressing international price discrimination; and consideration of how smaller claimants without the means to engage lawyers can get better access to the law to enforce their rights and seek remedies.*

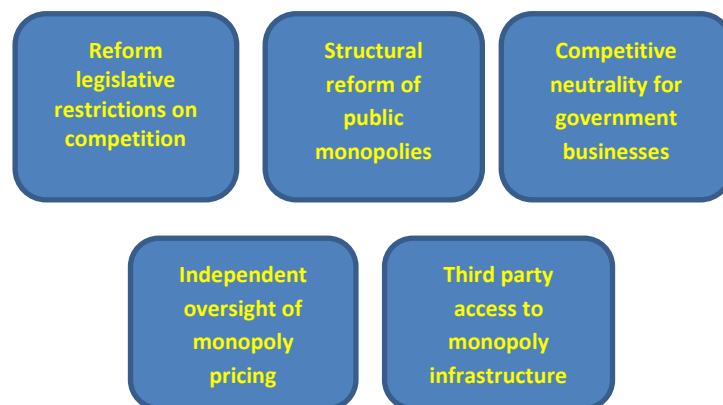
4 A broader competition policy agenda

Promoting competition requires not just the administration of laws to prevent anti-competitive conduct, but also the removal of barriers to competition that may exist in any other areas of the law or policy. Indeed, it is in its broader application that competition policy can deliver the largest economy-wide gains.

Although the NCP reforms did extend competition laws to areas of the economy that were previously immune, it was the removal of a range of other legislative and structural impediments to competition (including the dismantling of statutory monopolies in agriculture, energy and transport) and the adoption by all Australian governments of a set of pro-competitive policy principles (see Figure 4.1) that delivered the largest, economy wide gains.

The Productivity Commission found those reforms increased Australia’s GDP by 2.5 per cent above levels that would otherwise have prevailed; directly reduced the prices of goods and services such as electricity and milk; stimulated business innovation, customer responsiveness and choice; and even helped meet some environmental goals, including the more efficient use of water (Productivity Commission 2005)(xii-xx).

Figure 4.1
Elements of NCP Competition Principles Agreement



Source: COAG Competition Principles Agreement 1995

A key task for the Harper Review will be to identify priority areas where a refreshed competition policy agenda can unleash the largest economy-wide gains. This should include:

- priority areas of unfinished business from the National Competition Policy era;

- new barriers to competition arising from subsequent changes to regulation, technology and economic structures; and
- opportunities to introduce competition into new domains – including public sector services.

The next two sections address these policy reform priorities.

5 Unfinished business from National Competition Policy

Reform of energy, water and transport sectors were among the most important of the NCP related reforms and much was achieved through structural and legislative reform to improve efficiency and productivity and increase customer choice in each of those sectors. The reforms brought substantial real reductions in most utility prices – of the order of 19 per cent in electricity charges, between 8 per cent and 42 per cent in rail freight costs and 50 per cent in port charges. Even in urban water markets, where prices rose in order to fully recover costs, labour productivity increased by more than 60 per cent over the 1990s.

However, these price reductions were reversed over the five years to March 2013 when electricity prices rose by 83 per cent, more than six times the rate of inflation and water and gas prices by more than four times CPI.

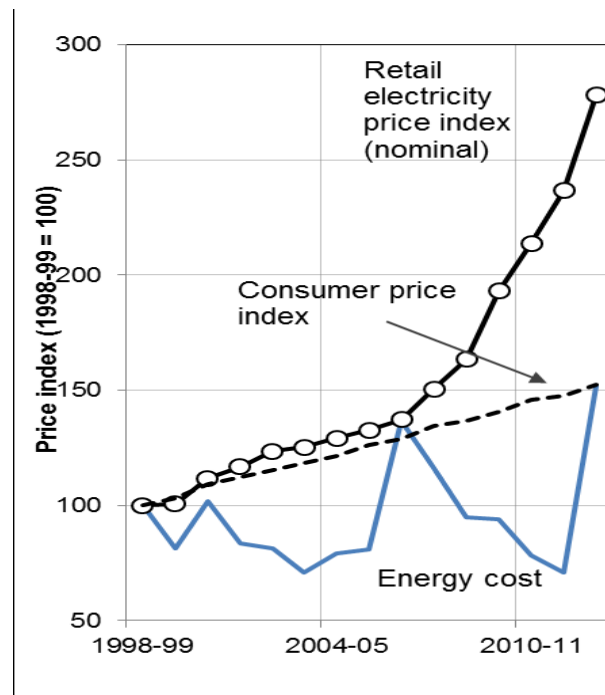
Utility bills represent a significant component of the household budgets of older Australians on low or fixed incomes. In 2011, 245,000 senior households said they had been unable to pay their utility bills on time (National Seniors Productive Ageing Centre 2013).

5.1 Electricity

With rapidly increasing network costs the main contributor to recent electricity price rises, the Productivity Commission (Productivity Commission 2013) recommended significant policy changes to produce better outcomes for consumers, including:

- modified reliability requirements to promote efficiency,
- improved demand management to yield savings of \$100–\$200 per household each year,
- more efficient planning of large transmission investments, and
- changes to state regulatory arrangements and network business ownership.

Figure 5.1
Capital city prices 1998-99 to 2012-13 (forecast)



Source: (Productivity Commission 2013)

Network services (the transmission and distribution systems) are the most costly component of electricity supply, accounting for around 45 per cent of total electricity prices. A key driver of network service costs are regulatory requirements governing system reliability.

The extra cost of high reliability standards could be avoided through better use of demand management, including peak load pricing and contracts allowing customers who do not wish to pay for high reliability levels to 'switch off' or moderate their usage to avoid system outages during peaks in demand.

Demand management can significantly delay or avoid network investments and reduce the need for peaking generators....In combination, direct load control, smart meter rollouts and critical peak pricing can significantly reduce critical peak demand if well implemented (Productivity Commission 2013)(1)

Proper utilisation of smart meter technology would allow households to better manage their electricity usage and reduce their power bills. However, the rollout of this technology to date has only added to costs for purchase and installation without enabling households to realise the benefits that the technology has to offer. Where electricity distribution businesses have an effective monopoly over the information flows associated with the technology, the absence of competition means there is little incentive to ensure that smart meters benefit customers rather than the businesses themselves.

Numerous reviews of the state of the electricity market have also urged governments to complete the program of reforms to enable competition to work effectively, including deregulation of retail prices. While NSW has recently agreed to follow Victoria and South Australia in deregulating retail electricity pricing, Queensland has yet to do so.

While price deregulation remains a necessary condition for competition to be effective in retail electricity markets, this will not by itself result in better outcomes for consumers unless they are equipped to exercise their right to choose the supplier, and the contract, that best meets their

needs. A benefit of greater competition has been the emergence of a greater range of contracts amongst which customers may choose; a downside of this, however, is greater complexity and a greater onus on consumers to inform themselves of all the options. Regulators in some jurisdictions providing access on their websites to choice engines and price comparators that can help consumers select the contract that best fits their circumstances. However, the availability of these aides may not be widely known and, for those without access to computers or the internet, they are of limited use.

To ensure that competition in retail energy markets genuinely works to the benefit of consumers, the Review should consider what additional strategies are needed to assist consumers exercise informed choice.

In undertaking further reform of electricity markets, care must also be taken to protect vulnerable consumers who have conditions requiring heating or cooling or who must operate continuous medical devices and are unable to avail themselves of savings by avoiding peak usage times.

5.2 Water

Major urban water supply investments in response to the once-in-100-year millennial drought have led to steep increases in water prices in most states. This, too, is an industry where fixed infrastructure costs account for a major component of water bills, and the costs of these new investments must be recovered from customers regardless of how much water they use.

While this means that the rise in water prices seen in recent years is unlikely to be reversed for the foreseeable future, there is scope for further efficiency improvements that could moderate future price rises. The potential for greater use of competition in the water sector should be fully explored to this end. Some options could include:

- establishing property rights to storm water and wastewater and third party access arrangements for the use of monopoly water and wastewater distribution network infrastructure to enable new entrants to supply water services;
- competitive procurement of water and wastewater services in greenfield developments; and
- creating tradable bulk water entitlements to encourage efficiency gains from trade between water businesses.

Pricing reforms to better balance supply and demand for water are also required to defer investment in costly water supply augmentations and/or further recourse to water restrictions. Again there should be more scope for consumers to choose the level of water service they require, and more thought given to how best to assist consumers make informed choices among alternative contracts.

5.3 Taxis

Taxi services throughout Australia remain heavily regulated with constrained supply of licence plates creating significant barriers to entry, limiting competition that could generate pressure to offer lower fares or better customer service. A recent Victorian Taxi Industry inquiry received many complaints about the quality, reliability, cost and availability of services, with services for people with a disability considered particularly poor (Taxi Industry Inquiry 2012). In response to the inquiry, Victoria has announced reforms to progressively deregulate the sector and introduce greater competition.

Although other states are yet to follow suit, the digital revolution – including the growing use of mobile telephone applications in combination with satellite navigation technologies - is giving rise to

opportunities for new entrants to breakdown existing taxi network monopolies, enabling consumers to exercise greater choice and receive prompter service. It will be important to ensure that these innovations are not stifled by further anti-competitive regulation aimed at protecting incumbents.

5.4 Pharmacies

Two major restrictions on competition in Australia's pharmacy market that warrant review are:

- Location rules, which restrict the number of pharmacies that can operate within a given geographic area, and
- Ownership restrictions (where pharmacy businesses must be owned by a qualified pharmacist).

These restrictions increase the prices of medicines for consumers and the cost of the Pharmaceutical Benefits Scheme to taxpayers. While the nature of pharmaceutical products makes it desirable that their distribution be subject to some regulatory constraints, this does not mean that competition should not be permitted to ensure that consumers can benefit from greater choice and lower prices.

Where consumers are insured against the prices of pharmaceuticals competition may not always ensure the widespread availability of pharmacy services. This has led a number of countries to regulate entry to and location of pharmacies in order to ensure access to pharmaceuticals regardless of location. As a consequence of these restrictions on competition, prices for pharmaceuticals are higher than they would be under competitive market conditions.

In 2003 the UK Office of Fair Trading reviewed location restrictions on pharmacies in the UK and found them to be to the ultimate detriment of the public. In particular, they: restricted consumer choice and convenience; restricted price competition on over the counter medicines; reduced incentives for pharmacies to compete on additional customer services; and resulted in consumers paying £25-£30 million per year more for medicines than if competition were freer. www.of.gov.uk/Market+investigations/Investigations/pharmacies

An alternative way of leveraging competitive incentives whilst still maintaining some area restrictions in order to ensure the availability of pharmacy services to all communities regardless of location would be to periodically conduct a competitive tender for the right to provide pharmacy services in a location (OECD 2000).

The case for ownership restrictions on the supply of pharmacies is weak. Provided those dispensing medicines are appropriately licensed so that the consumer is protected, alternative ownership arrangements would permit a wider range of business models to evolve to provide increased consumer choice and lower prices through economies of scale. The National Commission of Audit concluded that:

'Encouraging greater competition within the sector ... would be expected to lead to more efficient delivery and the development of alternative retail models - such as pharmacists available to dispense medicines at supermarkets' (Commonwealth of Australia 2014)(Phase 1, 112)

Other restrictions on competition in the supply of pharmaceuticals to Australian consumers that warrant review are parallel importation restrictions and restrictions in relation to on-line purchases of medicines.

Recommendation 2: *Competition policy priorities should include completion of NCP reforms in energy, water and pharmacy markets and in the taxi industry.*

6 New areas for competition reform

As the services sector continues to grow, accounting for the lion's share of the economy, the biggest potential gains from competition reform should be found in key service industries, particularly in public sector services and financial services.

6.1 Financial services

Financial services are one of the fastest growing sectors of the Australian economy. The sector has undergone significant change over the past two decades driven by globalisation, strong growth in demand and technological advances that have transformed not only financial products and services but also the structure of the industry.

In the main these forces have made for increased competition, with consumers benefiting through lower costs and increased choice and convenience.

However, there are aspects of the financial services system where competition may not be working effectively in the interests of consumers – including in the mandatory superannuation system. More generally, the sheer complexity of the financial system is now a significant barrier to informed consumer choice, and the lack of a level playing field between suppliers and consumers is further exacerbated by lack of transparency regarding potential conflicts of interest.

Key areas of particular relevance to senior Australians are:

- a lack of price competition in the supply of superannuation (fund management) services,
- lack of competition in the supply of retirement income products that could better insure retirees against longevity risk,
- increasing control of financial advisory services by major financial product providers, and
- limited capacity of consumers to exercise informed choice in financial product and advisory service markets.

Legislative exemptions enjoyed by banking and insurance sectors - including exemptions from elements of competition law - should also be examined to assess whether these are still warranted.

6.1.1 Superannuation fees

Exposure of Australia's superannuation funds to genuine competitive pressure to perform well and operate efficiently relies on consumers exercising informed choice. Although it was the employer's responsibility to choose when the superannuation guarantee was introduced in 1992, since 2005 superannuation fund members have been able to choose between funds. Those who fail to choose are allocated a 'default fund'.

However, the compulsory nature of the scheme means that employee savings will continue to flow into superannuation funds regardless of whether employees actually exercise their choice – and most do not.

The take-up of fund choice has been minimal. most new fund members 'defaulted' into the fund chosen by their employer ...few members actively choose their superannuation fund (Bateman 2009)

A consequence of this lack of engagement by members in the choice of their fund is that superannuation funds are under little pressure to contain operating cost in order to offer competitive fees. One consequence is that fees charged by Australian superannuation funds are on average three times the median OECD rate.

High fees reduce the amount of superannuation at retirement by more than 20 per cent.

These payments to the superannuation industry can and should be reduced by at least half, saving Australians at least \$10 billion a year. It is the largest single opportunity for micro-economic reform in the economy (Minifie J, Cameron T et al. 2014).

The Australian Treasury has also expressed the view that superannuation in Australia is far too expensive:

The Australian superannuation sector is characterised by high operating costs and limited product innovation. These clearly affect the retirement incomes of Australians (Department of The Treasury 2014).

While the Cooper Review recognised the need to strengthen competition in the selection of super funds, and the *Stronger Super* reforms were designed in part with this in mind, competition in the superannuation market still relies on employees and employers being engaged, and there is little evidence of this occurring.

Recognising this, the Grattan Institute believes a more effective strategy for increasing competition in the superannuation sector would be for government to conduct a regular fee-based tender to select one or more non-government funds to be the default fund. To complement this reform, employees should periodically be prompted to consider switching to the winning fund. To this end '*... the Australian Tax Office should add a stage in the annual tax return process at which taxpayers can compare their current superannuation fees with the fees charged by the winner of the wholesale tender, and switch on the spot if they so desire*' (Minifie J, Cameron T et al. 2014).

Other 'touch points' should also be utilised to prompt members periodically to review their choice of fund, including on starting a new job, in the pre-retirement phase, and through more regular engagement by superannuation funds with members in the post retirement phase.

6.1.2 Integration of financial advice and product markets

Recent years have seen significant concentration and vertical integration of the financial advice sector. More than 80 per cent of financial advisers now operate under an Australian Financial Services Licence (AFSL) of an institution – mainly through the major banking and insurance institutions. Quite apart from the conflict of interests inherent in this business model, vertical integration of financial advisory services with the companies that are manufacturing financial products has the potential to result in a significant lessening of competition and innovation within the industry.

National Seniors Australia expressed concern at this development in its submission to the Financial System Inquiry, as did several professional bodies. CPA Australia regards it as a major flaw in the existing regulatory system that there is no separation between financial products and financial advice (CPA Australia 2014); while the ICAA considers registration and licensing of advisers should be on an individual basis rather than through a corporate structure to ensure consumers are provided with a wider choice of providers (Institute of Chartered Accountants of Australia 2014).

6.1.3 Information requirements of consumer choice

In any market, effective competition depends on consumers exercising informed choice. However, the information requirements of consumers in this complex market are just too onerous, and current disclosure requirements are ineffective in helping consumers make informed decisions as the level of financial literacy required to interpret them is well beyond the average consumer.

To assist in overcoming the significant market failures associated with information problems in financial product markets, ASIC believes more use could be made of information intermediaries:

'choice engines', such as decision-making or comparison websites, can provide consumers with an interface to more easily compare products and to interpret disclosure information to help them find a product or service that best meets their needs. Where designed responsibly,

they can also increase competition between product and service providers by giving consumers potentially greater choice, better quality and competitive prices' (Australian Securities and Investment Commission 2014).

The Australian Treasury has similarly emphasised the need to 'unlock the power of markets' through greater use of on-line 'information intermediaries' (Department of The Treasury 2014).

The development of choice engines to guide consumers towards products and services that best align with their circumstances is a welcome development. However, older Australians who lack access to the internet are unlikely to be able to avail themselves of this form of assistance. Additional avenues of support are required using communication channels that do not rely on internet access.

Greater independence of financial advisers is also critical to assist consumers exercise informed choice.

Recommendation 3: *The Review should examine emerging barriers to competition in the financial services sector, including: a lack of price competition in superannuation fees; lack of competition in the supply of retirement income products; vertical integration of financial advisory and product markets; a lack of transparency to inform choice; and significant information disadvantages faced by financial service consumers.*

6.2 Public sector services

In 2012, public administration, education and health services accounted for over 26 per cent of total employment in Australia – the largest share of any industry (Gruen D 2014). As these services claim a growing share of the economy, poor public sector productivity performance will increasingly drag on national productivity performance and on taxpayer funds.

In common with jurisdictions around the world, Australian governments are increasingly looking to greater use of competition in the delivery of these and other publicly funded services. Based on the available evidence, productivity improvements of the order of 20-25 per cent could be achieved through the introduction of competition into the supply of government funded services (Sturgess G 2012). Greater use of competition also offers the prospect of increasing innovation and choice while reducing costs to consumers and taxpayers.

Government services can be exposed to competitive discipline in a number of ways, including:

- contestability – where government service providers must benchmark their costs against alternative suppliers and face the threat of competition if unable to provide similar value for money;
- competitive tendering – where government purchases services from the market on behalf of its clients through a competitive process for selecting who can serve those markets; or
- choice-based approaches – where government provides funding directly to clients to enable them to choose from among competing service providers. Increasingly, governments are looking to this last approach to drive more competitive service markets. However, for these markets to work effectively, consumers or their advocates must be able to exercise informed choice.

Health and aged care are two rapidly growing areas of government spending where, with appropriate safeguards, greater use of competition could be used to drive improved outcomes. Pro-competitive reform of health and aged care services has the potential to drive greater innovation and choice while exerting downward pressure on costs to service users, of whom older Australians represent a significant and growing proportion.

Whether these benefits are realised in practice depends critically on how well competition reforms are designed and implemented. Poorly executed reforms could carry particular risks for older Australians, including:

- risk of poor quality providers entering health and aged care markets, and
- risk of service disruptions due to business failure.

6.2.1 Health

Market-based health care reforms are being adopted in a number of countries, prompted by rising demand for health care services and increasing expectations for quality. In the UK, for example, reforms to the National Health Scheme have given patients a choice over where they receive care, encouraging public hospitals to compete with each other and with private sector providers to deliver care to publicly funded patients.

The presence of market failures in health care and health insurance makes the use of competition to drive improved outcomes particularly challenging. Many health services are *public goods* which, if left to the market alone, would be under supplied; *externalities* are common – with the benefits of health interventions extending beyond the patient to other members of the community; and *information problems* abound – impeding the ability of patients to make informed choices among alternative service providers and making it difficult for service funders and insurers to know whether providers are delivering services efficiently and effectively.

Nevertheless, there are areas where there are clear opportunities for better leveraging competitive market forces in the health system. Three such areas – Australia’s Pharmaceutical Benefits Scheme, the market for pathology services, and occupational licensing in health services – are considered here.

6.2.1.1 Pharmaceutical Benefits Scheme

Reliance on medications increases sharply with age and some older Australians struggle to afford prescribed medicines. The 2012 National Seniors Social Survey (National Seniors Productive Ageing Centre 2012) found that 81 per cent of seniors use prescription medicines and, of these, almost a quarter are taking five or more medicines. While overall 17 per cent of those taking prescription medicines report that the cost of these causes financial strain, for those in poor health over 40 per cent struggle with the cost of medicines.

Australia’s PBS scheme costs the federal government over \$9 billion per year and consumers a further \$9 billion. Costs have doubled since the mid-2000s, with recent OECD data showing that Australia now pays more than most other countries for pharmaceuticals. As the Grattan Institute has revealed (Duckett 2013), Australians are paying unacceptably high prices for generic drugs (those that are no longer under patent) - up to eight times as much as New Zealanders pay for some common medicines. Yet pharmacies themselves have been able to strike much better deals on generic drug prices than the PBS has achieved, indicating that the PBS procurement process is failing to take full advantage of competitive markets.

6.2.1.2 Pathology services

High rents being paid by dominant pathology laboratories for ‘collection centre’ space in medical surgeries are adding to the costs of pathology services to both consumers and taxpayers.

Pathology services involve costly equipment which must be upgraded frequently to keep pace with technological change. As a result, the industry is subject to significant economies of scale, with larger laboratories able to achieve market dominance. This has given rise to oligopolistic competition, where a few large corporate players compete for market share.

A key strategy for securing market share has been the payment of inducements to medical practices to establish affiliated collection centres in their surgeries. Previously the number of collection centres that any one pathology service could control was limited by regulation. However, in 2010 the licensing of collection centres was deregulated in the expectation that this would increase competition in the sector. However, incumbents were instead able to increase their market dominance by outbidding smaller providers for collection centre space. The result has been a further increase in the degree of concentration in the industry, prompting the ACCC recently to reject a merger proposal in Queensland that it deemed would lead to a significant lessening of competition in the market for pathology services in that state.

6.2.1.3 Occupational licensing in health services

Occupational licensing arrangements govern many professional, para-professional, trade and technical occupations. There are sound consumer protection reasons for ensuring that those offering particular specialist services are suitably qualified to do so; but occupational licensing regimes can also represent a form of protection from competition that may not always be justified in the public interest. The scope of activities covered by particular occupations may also become outdated over time as a result of changes in technology and management practices.

One area where reform of occupational licensing arrangements has the potential to yield significant economy-wide gains as well as lowering costs for taxpayers and consumers is the health care labour market. For example, in some jurisdictions the use of nurse practitioners to perform a range of functions formerly restricted to medical practitioners has enabled the delivery of some health services at lower cost without increased risk to patients. According to the Grattan Institute:

'Doctors, nurses and allied health professionals such as physiotherapists and occupational therapists are all squandering their valuable skills on work that other people could do...Enabling less highly-trained hospital workers to play a bigger role could improve jobs for doctors and nurses, save public hospitals nearly \$430 million a year and fund treatment for more than 85,000 extra people' (Duckett S, Breadon P et al. 2014).

With Australia's arrangements for the scope of professional practices and the appropriate skills mix for health professionals found to be less flexible than in other countries, the National Commission of Audit also called for stronger action to address occupational licensing constraints to improving productivity, efficiency and effectiveness of health care services. In addition to the redesign of roles of the health workforce being considered by Health Workforce Australia, the Commission suggested that:

'...pharmacists and nurse practitioners could, in an expanded range of settings, provide immunisations, monitor blood pressure and diabetes tests, issue medical certificates for certain conditions (such as colds or hay fever) and undertake some prescribing for chronic conditions following an initial diagnosis and prescription by a doctor' (Commonwealth of Australia 2014)(Phase 1, 104)

The role of specialist medical colleges in potentially limiting competition in the selection, assessment, training and accreditation of medical specialists also bears greater scrutiny. While they perform an important role in ensuring a safe and competent workforce, the practices of these colleges may unduly restrict entry for the purpose or with the effect of lessening competition in medical specialist markets. In 2003 the ACCC granted immunity from competition laws to the Royal Australasian College of Surgeons in relation to its processes for selection accreditation and assessment of trainees and overseas trained surgeons *subject to* a number of important conditions. Subsequently the ACCC and the Australian Health Workforce Officials Committee worked with other specialist medical colleges to encourage them to comply with the same conditions. However, the ACCC continues to receive complaints relating to:

- non-recognition of specialist qualifications and experience obtained overseas,
- restrictions on numbers of training placements,
- restrictive quotas on college examinations, and
- the consequences of college non-membership for specialists.

This suggests the need for stronger action – including closer oversight by the ACCC - to ensure that medical specialist colleges are not unreasonably restricting entry to their professions, which would have the effect of keeping fees higher than would otherwise be possible.

6.2.2 Aged care

Finding the aged care sector stifled by over-regulation and unable to grow at the rate required to meet growth in demand, the Productivity Commission's Aged Care Inquiry concluded that increased competition would foster growth while enhancing incentives for greater efficiency, innovation and quality. To this end the Commission recommended removal of caps on the supply of aged care places and the redirection of current provider subsidies to consumers to enable them to exercise choice (Productivity Commission 2011). The Commission also recommended increased financial contributions by consumers to prevent unsustainable growth in government expenditure.

The *Living Longer Living Better* reform package announced in response to this inquiry fell well short of the Commission's proposals. In particular, the two critical elements to drive a competitive aged care market – the introduction of an aged care entitlement in which funding is allocated to individual consumers and the phasing out of supply rationing – are not even to be considered until after 2016-17.

While it is important that the introduction of a more competitive market for aged care services includes a managed transition path to ensure the reform is financially sustainable, maintenance of supply side restrictions will inevitably inhibit much needed new investment in aged care facilities. The current reform package falls well short of the sort of consumer directed care that would enable consumers to choose among a range of services; nor can it ensure that Australia's aged care system is able to meet significant growth in demand as the population ages.

6.2.3 Competition in other government services

With both the National Commission of Audit and the federal budget pointing to greater contestability of government services, there is the potential for a range of other government functions to be tendered to private providers. Among the considerations that should guide these decisions is the need for appropriate safeguards on third party access to and use of private information to which government agencies have to now been entrusted.

6.3 ICT based industries

The digital revolution means the ICT industry continues to grow in importance and to transform the way business is done in every sector of the economy.

Aspects of the ICT industry present new challenges for competition policy – with network infrastructure displaying some parallels with natural monopolies in physical network industries.

There are also issues of international price discrimination that result in Australian consumers paying more for their IT products than consumers in other countries.

On the other hand, technological advances associated with the digital economy are a key to breaking down barriers to entry to some markets that have hitherto been susceptible to monopoly influences.

In the taxi industry, for example, the development of new mobile device applications is enabling customers and drivers to transact directly, bypassing the taxi communication network providers that have been able to use those networks to exercise significant market power. In a similar way, smart meters have the potential to enable customers to participate more actively in energy markets. To ensure that these technological innovations do indeed benefit consumers, it will be important to ensure they are not held back by further anti-competitive regulation aimed at protecting incumbents.

Recommendation 4: *The Review should consider opportunities for competition to improve services and reduce costs in the supply of services where governments play a major funding role, including health and aged care. In health care, priorities should include: reform of PBS procurement arrangements; review of barriers to entry to the supply of pathology services; reform of occupational licensing in health care professions; and increased regulatory oversight of specialist medical professional colleges. In aged care, there should be an early review of supply side restrictions.*

7 Restoring competition principles in policy decision-making

While COAG set a ten year time frame for the delivery of the majority of NCP reforms, there was an expectation that the momentum of competition reform would be sustained by the continuing application of competition principles in government policy processes. However, compliance with these principles appears to have waned, with a number of commentators attributing Australia's lacklustre productivity performance over the past decade to the progressive re-regulation of the economy.

In order to entrench competition principles in government policy, the Review should give particular focus to the following two principles to which the parties to the NCP agreements are technically still bound but to which there appears diminishing commitment:

- the principle that legislation (including regulation) should not unnecessarily restrict competition, and
- the principle of competitive neutrality.

7.1 Legislation should not unreasonably restrict competition

Governments are under constant pressure to respond to a variety of industry and community concerns through regulation. It is not uncommon for such regulation to apply some form of restriction on the supply of goods and services with the effect of lessening competition.

In recognition of this, the NCP legislative review principle effectively reversed the onus of proof on the benefits of competition. It did this by requiring proponents of legislative or regulatory restrictions on competition to demonstrate both:

- that the benefits of the restriction to the community as a whole outweighed the costs, and
- that the objectives of the legislation could only be achieved by restricting competition.

While legislative reviews delivered significant reform over the decade to 2006, when the National Competition Council (NCC) delivered its final assessment report in 2005 it identified more than 170 pieces of 'priority' anti-competitive legislation where governments had failed to meet their review or implementation obligations. New restrictions on competition enacted since then should now also be reviewed against these criteria, along with others that may have been overlooked, such as restrictions buried in planning regulations.

The two part competition test was also intended to apply prospectively to all new legislation that proposed restrictions on competition. However, since the termination of NCP incentive payments in the mid-2000s adherence to the principle appears to have waned. Whereas between 1998 and 2002 the OECD Product Market Regulation Indicator registered a 27 per cent fall in anti-competitive regulation in Australia, between 2008 and 2013 the indicator showed Australia became less competition friendly.²

Reinstatement of the two part competition test on all new legislative and regulatory proposals should form a core part of a refreshed competition policy agenda.

7.2 Structural reform of public monopolies

Structural reforms are sometimes required before competition can be introduced into industries where public monopolies have predominated. For example, structural reform of public utilities was an essential precondition for introducing competition into electricity, gas and rail industries due to the natural monopoly characteristics of the network infrastructure upon which those industries depend.

Technological advances that have occurred since the reform of public utilities may have opened up fresh opportunities to strengthen competition through additional structural reforms. Consumers might reap greater benefits from electricity smart meters, for example, were their supply to be separated out from monopoly distribution businesses.

As competition is pushed into new areas where government monopolies predominate, consideration should again be given to addressing any significant structural or institutional barriers to competition. For example, where competition is being introduced into public service markets, regulatory and policy functions should be clearly separated from service delivery activities.

7.3 Competitive neutrality

The principle of competitive neutrality requires that, where a government business activity competes with the private sector, it must do so on an equal footing. If government businesses enjoy competitive advantages simply by virtue of government ownership, custom may be drawn away from more efficient businesses, scarce resources will not be allocated to their most efficient use and consumers will pay more or experience an inferior service to what would otherwise occur.

Competitive neutrality requires that services offered by government-owned businesses in competition with private sector entities:

- are priced on a fully cost-reflective basis, with no cross subsidies from monopoly elements of the business,
- prices incorporate a debt guarantee fee to offset competitive advantages provided by government guarantees,
- prices incorporate the equivalent of any taxes or charges that would apply to a private sector competitor,
- the business is required to achieve a commercial rate of return on assets, and
- the business is required to comply with any regulations to which private sector competitors are subject.

While all Australian governments have published competitive neutrality policies to apply to their significant government owned businesses, these have mainly applied to the network infrastructure industries that were first exposed to competition during the NCP reform era. As more areas of

²<http://www.oecd.org/economy/growth/indicatorsofproductmarketregulationhomepage.htm>

government activity are subject to contestability – such as vocational education and training, higher education, health and aged care - it will be important to ensure that competitive neutrality principles are also extended to those activities.

In the case of services such as health and aged care where there is significant not-for-profit involvement, a different set of competitive advantages and disadvantages of government ownership would need to be considered, and also where government owned, not-for-profit and private sector businesses are all competing in the same market. There are some significant challenges here³ and any new competitive neutrality guidelines or requirements would need to be developed in consultation with all the sectors.

It may also be timely to revisit the compliance framework for competitive neutrality. Although all jurisdictions have a mechanism for considering complaints, these mechanisms can only make recommendations to their respective governments to address concerns where competitive neutrality principles are not adhered to. As these recommendations have no legal force, governments are at liberty to ignore them and this may help to explain why so few complaints are received or acted on. It may also be the case that businesses adversely affected by competitive advantages enjoyed by government-owned business are simply unaware of the existence of competitive neutrality policies or the availability of a complaints mechanism (Merrett A and Trindade 2013). If so, this would need to be rectified as part of a revamped competitive neutrality initiative.

Recommendation 5: *All Australian governments should recommit to removing legislative restrictions on competition that do not provide net community benefits; consider structural reforms to remove barriers to new entrants; and extend the application of competitive neutrality policies to any area where government agencies may compete with non-government bodies for the supply of services.*

8 Addressing communication, information and adjustment issues

The NCP experience highlighted the challenges for governments in undertaking pro-competitive reforms where benefits are diffused across the community while costs are borne by those who have benefited from the restrictions on competition that the reforms seek to remove. A key requirement for the success of a refreshed competition policy agenda will be a compelling narrative about the benefits of competition and good processes for addressing adjustment costs.

The Review should identify principles to inform the design and implementation of microeconomic reforms that may impose adjustment costs on particular groups or regions. Where government services that rely on personal information are subject to pro-competitive reform, there should be explicit consideration of how to safeguard individual privacy and security.

Recommendation 6: *The Review should develop principles for addressing adjustment costs associated with competition reforms.*

In any market, effective competition depends on consumers exercising informed choice. A significant barrier to effective competition in some markets is the presence of information asymmetries. In

³ For example, in Victoria where public hospitals enjoy tax exemptions (including significant fringe benefit tax advantages for employees) available to charities, this helps neutralize competitive advantages they may have over not-for-profit competitors, but makes it more challenging to achieve a level playing field with potential private sector providers.

financial and professional service markets, for example, information problems make it virtually impossible for consumers to navigate systems and exercise informed choice without professional assistance. As competition is extended into areas where government has traditionally been the predominant supplier, similar problems are certain to emerge, particularly in health, aged care and disability services where consumers will inevitably be at an information disadvantage due to the specialist knowledge required to assess service quality.

There is a role that information intermediaries can usefully play in each of these markets. Ideally, the emergence of information intermediaries should also be subject to competitive market disciplines. However, to be sure that this gap is filled, governments undertaking pro-competitive reform of information-sensitive services should consider incorporating information intermediaries and mechanisms in market design and calling for initial tenders for their supply.

It is also critical that the introduction of competition into the supply of services with public good characteristics is accompanied by appropriate consumer safeguards in relation to access and equity, service standards and continuity of services in the event of business failure.

Recommendation 7: *The Review should examine options for ensuring that consumers are able to make informed choice in markets where there are significant information problems.*

9 Institutional arrangements

An appropriate institutional and governance framework will be critical to drive a new competition policy agenda.

First, a new federal state compact – endorsed by COAG - is needed to underpin the program.

Second, there should be an independent authority with overall responsibility for monitoring and reporting on compliance with competition principles and the delivery of reform targets.

Third, either the same oversight body, or existing independent regulatory authorities in each jurisdiction, should be assigned responsibility for ensuring compliance with competitive neutrality principles.

Fourth, there should be incentives to help drive reform. In particular, given the states are likely to be responsible for a significant share of the reform agenda, yet the greater part of the revenue gains from a stronger economy will flow to the Commonwealth, the states should receive a reform ‘dividend’ on completion of key reforms. The NCP system of reward payments is widely acknowledged to have played a significant part in keeping all states committed to the reform agenda and should be reinstated.

Lastly, as the remit of the ACCC is very wide, consideration could be given to reducing its scope of work by separating out the Australian Energy Regulator as a stand-alone energy regulator. However, National Seniors does not see a compelling case for separating the administration of consumer law from the administration of competition law. There is, however, scope for further rationalisation of state consumer affairs functions as there remains considerable overlap with national consumer law.

Recommendation 8: *Institutional and governance arrangements to drive the delivery of competition policy objectives should include: a new federal state agreement to a competition policy reform agenda; reinstatement of reform dividends for the states; and the establishment of independent oversight of compliance with the reform agreement, including compliance with competitive neutrality policies.*

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