



*Submission in Response
to the Draft Report of
the Competition Policy
Review*

November 2014

National Seniors

Australia

About National Seniors Australia

National Seniors Australia is a not-for-profit organisation that gives voice to issues that affect Australians aged 50 years and over. It is the largest membership organisation of its type in Australia with more than 200,000 members and is the fourth largest in the world.

We give our members a voice – we listen and represent our members' views to governments, business and the community on the issues of concern to the over 50s.

We keep our members informed – by providing news and information to our members through our Australia-wide branch network, comprehensive website, forums and meetings, bi-monthly lifestyle magazine and weekly e-newsletter.

We provide a world of opportunity – we offer members the chance to use their expertise, skills and life experience to make a difference by volunteering and making a difference to the lives of others.

We help our members save – we offer member rewards with discounts from thousands of businesses across Australia. We also offer exclusive travel discounts and more tours designed for the over 50s and provide our members with affordable, quality insurance to suit their needs.

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1. Introduction

National Seniors Australia is pleased to respond to the draft conclusions and recommendations contained in the Competition Policy Review Draft Report – including those of particular relevance to older Australians.

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.

As the consumer lobby for the over-50s, National Seniors has a significant interest in the effectiveness of Australia's competition laws and policies in driving better value for consumers. Older Australians represent a large and growing population of consumers for whom a healthy state of competition can deliver not only lower food, fuel, pharmacy and grocery prices, but also greater diversity and choice in health, aged care and public transport services.

In common with all Australians, seniors also have a key stake in ensuring that a refreshed competition policy agenda will drive a stronger, more productive economy capable of sustaining all generations of Australians into the future.

2. Overview

The Panel's Draft Report makes a compelling case that Australia's competition policy framework needs to be brought up to date so that it is fit for today's economy and responsive to emerging challenges and opportunities - including the rise of Asia, the ageing of the population and technological innovation.

As National Seniors argued in its initial submission, the Review should aim to:

- ensure that 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 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.

The directions outlined in the Draft Report strike a good balance between competition policy, competition law and institutional reforms.

We particularly welcome the Panel's clear focus on the long term interest of consumers.

National Seniors endorses the Panel's proposal for a set of competition policy principles to guide future government action and agrees that extending competition into human service domains has the potential to improve choice and drive better value for consumers. However, it must be remembered that the very reason governments are involved in the delivery of human services is because market failures prevent competition working effectively. That is why our initial submission urged caution in the design of health and community service markets. A particular challenge will be how to ensure that consumers are able to exercise informed choices in areas such as health and aged care, where there are significant consumer literacy challenges and information problems. While the Draft Report acknowledges this issue, we believe the final report should give greater

emphasis to the need for governments to hasten slowly and address information problems before introducing choice-based competition into human service markets.

Removing some obvious constraints to competition in these areas can nevertheless proceed on a 'no-regrets' basis, and the Panel's proposal that all governments take steps to separate policy, regulatory and service delivery functions and to refresh their competitive neutrality policies all represent sensible reforms.

In the meantime, we consider there are opportunities to drive better value for the health dollar through removal of other known barriers to competition - including in Pharmaceutical Benefits Scheme (PBS) procurement and pharmacy regulation, and in the supply of pathology services. Freeing up restrictive licensing conditions and addressing barriers to entry in the health professions – for example, to enable greater use of nurse practitioners - could also deliver significant benefits; while in aged care a key priority remains the relaxation of supply side restrictions on aged care places.

While supporting the Panel's view that further reform of energy, water and transport markets is a priority, we believe the next phase of utility reform needs to give greater emphasis to demand side participation. Greater consumer access to data on their own energy and water use, leveraging digital technologies, would empower them to better manage their utility costs and should be the focus of the next round of utility market reforms. In the transport sector, opening up bus and taxi services to greater competition and consumer choice should receive priority attention.

As we have submitted to both the Competition Policy Review and the Financial System Inquiry, addressing barriers to competition in the financial services sector – including vertical integration of financial advisory and product markets and a lack of fee competition between superannuation funds – are key priorities for senior Australians as the predominant consumers of these services.

Putting the long term interests of consumers first is also critical to reform of competition laws. In this regard we note that the introduction of an effects test into the misuse of market power provisions remains contentious, despite the proposed exceptions. There is continuing concern that this proposed change to the law could inadvertently inhibit conduct that is, in fact, in the interests of consumers.

National Seniors supports the proposal that the Australian Competition and Consumer Commission (ACCC) continue to regulate both competition and consumer law, while conceding that access and pricing regulation could potentially be handled by a separate agency.

Our response to specific draft recommendations is set out in the balance of this submission.

3. Competition policy

3.1. Competition principles

<i>Draft Recommendation 1: Support in part</i>

National Seniors strongly endorses the Review Panel's call for competition policy to focus on making markets work in the long-term interests of consumers.

The Panel's Draft Recommendation 1 sets out a proposed set of principles to guide Commonwealth, state and local governments in implementing competition policy, with these principles to be subject to a 'public interest' test, so that:

- the principle should apply unless the costs outweigh the benefits; and
- any legislation or government policy restricting competition must demonstrate that:
 - it is in the public interest; and
 - the objectives of the legislation or government policy can only be achieved by restricting competition.

National Seniors' initial submission to the Review called for a refreshed commitment by all Australian governments to the competition principles established under the earlier NCP agenda.

A number of the principles proposed by the Panel correspond closely with the NCP competition principles. Whereas in the main the NCP principles applied to legislation and to significant government business activities, we support in principle the Review Panel's proposal that the application of those principles be extended more broadly to government policy and to non-commercial areas of government activity.

A significant new principle proposed by the Panel is that *governments should promote consumer choice when funding or providing goods and services and enable informed choices by consumers*. To this end, the Panel further proposes that:

- the model for government provision of goods and services should separate funding, regulation and service provision, and should encourage a diversity of providers; and
- governments should separate remaining public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities.

The Panel also proposes the extension of competitive neutrality principles to areas where government service providers compete with not-for-profit providers, not just to firms operating on a for-profit basis.

While we support the principle of promoting consumer choice and diversity of provision of government funded services, we note that this will not always be feasible in areas of human service where consumers are poorly placed to exercise informed choice – particularly in professional services where it is difficult for the lay person to make informed judgments about the quality of the alternatives on offer.

It is also important to bear in mind that the very involvement of government in critical human service areas is to meet broader public good, access and equity objectives that would not be satisfied if the supply of those services was left to market forces. It is critical that careful thought go into the design of human service markets if the introduction of competition and choice is not to come at a cost to access, equity or service continuity.

Accordingly, while we support the principle that all governments take steps to separate policy, regulatory and service delivery functions and refresh their competitive neutrality policies, we consider it would be premature to apply a blanket principle of diversity and choice to all areas of government provision. Before user choice is introduced into human services, effective strategies must be developed for ensuring consumers are able to exercise informed choice.

3.2. Priority areas for reform

The Draft Report identifies the following as priority areas for competition reform:

- Human services
- Transport – roads, marine, taxis
- Intellectual property
- Parallel imports
- Planning and zoning
- Regulatory restrictions
- Competitive neutrality
- Electricity, gas and water

A number of these priorities were also identified in National Seniors' initial submission, which specified:

- unfinished elements of the NCP agenda, particularly:
 - electricity
 - water
 - taxis
 - pharmacies, and
- new areas for competition reform
 - financial services
 - public sector services, including health and aged care
 - ICT based industries, with a particular focus on international price discrimination

We also called for reform of competitive neutrality policies and of regulatory restrictions on competition.

Our responses to the Draft recommendations in each of these areas are set out below.

3.2.1. Human Services

Draft Recommendation 2: Support in part

The Panel proposes that Australian governments develop an intergovernmental agreement establishing choice and competition principles in the field of human services with guiding principles that include:

- user choice should be placed at the heart of service delivery
- funding, regulation and service delivery should be separate
- a diversity of providers should be encouraged, while not crowding out community and voluntary services, and
- innovation in service provision should be stimulated, while ensuring access to high-quality human services.

National Seniors agrees that there are a number of areas of government service provision that could potentially benefit from increased competition, noting that this can be achieved in a number of ways – from contestability, through competitive tendering to fully user choice-based approaches.

The Review Panel appears to go further in recommending a user choice model as the default.

While supporting the introduction of choice based approaches where feasible, as noted earlier National Seniors is mindful of the challenge of ensuring consumers are able to make informed choices, and that competition does not come at the cost of access, equity, continuity or quality of care. *In light of these challenges we remain of the view that initial priority should be given to reducing known barriers to competition in health and aged care markets where potential gains to consumers and taxpayers are large while risks are low. As set out in our initial submission, these include Pharmaceutical Benefits Scheme (PBS) procurement, pharmacy regulation, the supply of pathology services, restrictive licensing conditions and other barriers to entry in the health professions and, in aged care, the maintenance of supply side restrictions on aged care places.*

3.2.2. Transport

Roads

Draft Recommendation 3: Support in principle, subject to addressing distributional impacts

The Draft Report proposes that governments introduce cost-reflective road pricing with the aid of new technologies, with indirect charges and taxes on road users reduced as direct pricing is introduced, and with pricing subject to independent oversight and linked to road construction, maintenance and safety.

While acknowledging that there may be significant economic efficiency gains from direct user charging for road use through a shift from vehicle registration charges and fuel excise to road user charges, National Seniors notes that this would have major distributional impacts and could raise significant equity issues.

Depending on where people live, the minimum essential road use requirements of households might be quite considerable, and there may be no public transport alternatives. Those on lower incomes are more likely to live on the outskirts of cities where land is cheapest, thus the introduction of road use charges is likely to have a regressive effect by imposing relatively greater charges on lower income households.

The introduction of road use charges on existing freeways could also result in significant windfall gains and losses to property values as land closer to the city would become even more valuable, while properties on the fringes of metropolitan areas could suffer losses as the value of road charges avoided or incurred is capitalized into land values.

In addition, as in most states pensioners pay concessional rates of up to 50 per cent to register their motor vehicles, equivalent concessional rates would need to apply to road use charges for pensioner households to avoid them being worse off.

Public Transport

The Panel has observed that more franchising and privatisation of potentially competitive elements of public transport could provide services more efficiently and improve service levels.

National Seniors agree that there is scope to introduce more competition and choice into the supply of public transport services, including bus services on which many older Australians depend.

Taxis

Draft Recommendation 6: Support

The Panel has recommended that States and Territories remove regulations that restrict competition in the taxi industry, including from services that compete with taxis.

National Seniors strongly endorses this recommendation, the taxi industry being one of the areas of unfinished business from the NCP agenda that we identified as a priority area for reform. Taxis represent an essential service for many older Australians, particularly those suffering mobility problems who are unable to avail themselves of other public transport options. While we support the removal of regulations that restrict competition, it is essential that safety and consumer protection regulations – including effective complaint handling mechanisms - remain in place.

3.2.3. Intellectual property

Draft Recommendations 7 and 8: Support

The Panel has proposed an overarching review of intellectual property by an independent body, such as the Productivity Commission, focusing on competition policy issues in intellectual property arising from new developments in technology and markets. Such a review could also assess the principles and processes followed by the Australian Government when establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements, which should be informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed IP provisions.

National Seniors supports the Panel's recommendation for a comprehensive review of intellectual property, noting that there are difficult policy trade-offs between protecting IP (and thus encouraging innovation) and encouraging competition.

National Seniors also supports the Panel's proposal that subsection 51(3) of the *Competition and Consumer Act (CCA)* - which provides a limited exception from most of the competition law prohibitions for certain types of transactions involving IP – be repealed, noting that IP rights can potentially be used in a manner that harms competition.

3.2.4. Parallel imports

Draft Recommendation 9: Support

National Seniors supports the Panel's recommendation that remaining restrictions on parallel imports should be removed unless it can be shown that:

- they are in the public interest; and
- the objectives of the restrictions can only be achieved by restricting competition.

3.2.5. Planning and zoning regulations

Draft Recommendation 10: Support

The Panel proposes that all governments should include competition principles in the objectives of planning and zoning legislation so that they are given due weight in decision-making.

National Seniors supports this recommendation on the grounds that inclusion of competition principles in objectives for planning and zoning legislation has the potential to lower barriers to

entry to these markets, in the longer term interests of consumers. Not only can planning and zoning restrictions represent significant barriers to competition in retail markets, including supermarkets, they may also restrict new entrants to other markets of particular relevance to senior Australians, including markets for seniors housing eg retirement villages and aged care accommodation.

3.2.6. Regulation Review

Draft Recommendation 11: Support

While legislative restrictions on competition may in some instances be warranted in the public interest, more often such restrictions simply protect sectional business and professional interests at the expense of consumers and the community at large. As it is now almost a decade since the NCP program of legislative reviews was completed, the Panel's proposal that all Australian governments commit to a fresh round of reviews of regulatory restrictions on competition is timely. National Seniors supports the Panel's call for transparent identification and reporting of review outcomes and timetables for reform.

We agree that the regulations should be subject to a public benefit test to demonstrate that they are in the public interest and objectives can only be achieved by restricting competition. In addition to the need to review more recent legislative restrictions on competition, unfinished reforms from the earlier round of NCP reviews – including restrictions in taxi and pharmacy sectors - should also be progressed.

3.2.7. Competitive Neutrality

Draft Recommendations 13, 14 and 15: Support and propose commissioning an independent inquiry to develop guidelines on how to achieve competitive neutrality in human service markets

National Seniors supports the Panel's call for Australian government to review their competitive neutrality policies and strengthen their reporting and complaints mechanisms. With competition being introduced into new domains of the economy - such as human services - it will also be important to ensure that competitive neutrality policies extend to any area where government agencies may compete with non-government bodies. If incumbent providers enjoy competitive advantages simply by virtue of government ownership, this could prevent private firms and non-government organisations from winning contracts, even though they may be more efficient or offer services that are better tailored to consumer needs.

However, we do not under-estimate the challenge of achieving competitive neutrality where government agencies, for-profit and not-for-profit providers are all competing to supply government funded services, since each sector is affected by somewhat different competitive advantages and disadvantages, and each has something unique but valuable to offer.

So that a consistent and evidence-based approach is taken in all jurisdictions, *consideration should be given to commissioning an independent body (such as the Productivity Commission or an independent national competition body) to carry out a public inquiry into competitive neutrality issues and develop guidelines on how best to achieve competitive neutrality in markets for human service, whilst maintaining scope of services and ensuring quality of care.*

3.2.8. Electricity gas and water

Draft Recommendation 16: Support in part, noting that further reform of utility markets must focus more on the demand side

National Seniors' has previously identified electricity and water sectors as priority areas for further competition policy reform to address unprecedented recent growth in household energy and water bills. Our earlier submission pointed to new opportunities offered by smart-meter technologies for greater demand-side participation in electricity markets that could drive better customer outcomes.

The Panel's Draft Report acknowledges that markets work best when consumers are engaged and informed. It also notes that 'there is capacity to enhance Australian consumers' access to data on their own usage of utility services in a usable format to assist consumers to make better informed decisions' (pp128-129). It is therefore disappointing that the Panel's Draft Recommendation 16 calls only for the completion of the existing supply side electricity reform agenda, and is silent on priorities for demand side reform.

While finalising the existing energy reform agenda is important, *National Seniors considers the next phase of energy market reform should focus more on facilitating demand-side participation, leveraging smart meter technologies and greater consumer access to data on their own usage to enable them to better manage household energy use and costs. Barriers to competition in the supply of smart meter technology must also be removed to avoid electricity distribution businesses having an effective monopoly over the information flows associated with this technology.* Without competition in this market there will be little incentive to innovate or to ensure that smart meters benefit customers rather than the electricity distribution businesses themselves.

In the water sector, the potential efficiency benefits from moving to more cost-reflective pricing need to be weighed against the potential equity and distributional impacts of moving away from 'postage stamp' water pricing. Inconsistencies in billing for supply/infrastructure costs between regional and urban locations also need to be addressed.

4. Competition laws

4.1. Simplification of competition law provisions

Draft Recommendations 17 and 18: Support in principle, subject to further consultation

The Panel has concluded that the 'central concepts, prohibitions and structures' enshrined in the Australia's competition law are appropriate for the current and projected needs of the Australian economy, but has proposed some simplification to remove redundant provisions and clean up provisions that have become over-specified through sequential amendments over the years.

National Seniors is in-principle supportive of 'no regrets' measures to simplify the law, such as the removal of obviously redundant or duplicative provisions. However, we endorses the Panel's sensible proposal that there should be further consultation on achieving simplification given there is always some risk of unintended effects.

4.2. Extension of competition law to all government transactions

Draft Recommendation 19: Not supported without further analysis and consultation on impacts

A significant proposed extension of the reach of competition law is the proposal to amend the CCA to apply competition law provisions to all governments (including local government) ‘insofar as they undertake activity in trade or commerce’. Government procurement activities that have the potential to harm competition are identified as an example of the additional activities that would be caught by such an extension.

While this proposal may have merit, there could be unforeseen consequences of such a change. For example, it could unduly constrain governments from pursuing other legitimate policy objectives; or could discourage them from exposing their services to greater competition.

Governments clearly have significant market power in many areas of procurement – for example, defence, transport infrastructure, health and education services – and they sometimes leverage this power to promote other economic, social or environmental policy objectives that they consider to be in the public interest. While there is room for doubt about whether public interests are best served by these means, unlike private corporations, governments are subject to a range of other public interest tests and accountability arrangements, including the ultimate sanction of the ballot box. Extending competition law to government procurement activities could also hamper efforts to expose more general government services to competition. Competition issues will inevitably arise where government is both purchaser and a competitor for the supply of services in a market. However, it may be preferable to deal with these by enforcing compliance with stringent competitive neutrality requirements, as fear of contravening competition laws could otherwise discourage risk-averse governments from exposing public services to greater competition.

In light of these concerns, we consider this proposal should be subjected to further scrutiny and consultation with Commonwealth, state and local authorities to assess its practicability. In the meantime, an alternative means of achieving the same objective could be for all jurisdictions to agree to apply competition principles to their procurement policies and practices.

4.3. Price signalling

Draft Recommendations 24 and 25: Support

In view of ongoing evidence that metropolitan area fuel prices appear to move in concert over the course of the week, National Seniors’ earlier submission raised the possibility of extending price signalling provisions to retail fuel markets.

The Panel has considered a range of submissions on whether the ‘price signalling’ provisions of Division 1A of the CCA should be extended to particular sectors, to all sectors or repealed and has concluded the provisions should be repealed. The Draft Report argues that price disclosure helps consumers make informed choices and any general prohibition could capture pro-competitive as well as anti-competitive conduct.

The Panel also contends there are other provisions of the competition law capable of addressing anti-competitive price signalling, including the cartel provisions and Section 45, which prohibits contracts, arrangements and understandings that have the purpose, effect or likely effect of substantially lessening competition. This contention will be put to the test in the context of current litigation, in which the ACCC alleges that a party sharing pricing information between fuel retailers, and participating petrol retailers, have breached section 45.

National Seniors accepts that a specific prohibition on price discrimination carries some risk of unintended consequences that could negatively impact on consumers. As an alternative we consider there is merit in the Panel's recommendation to strengthen Section 45 by extending it specifically to cover concerted practices which have the purpose, or would have or be likely to have the effect, of substantially lessening competition.

4.4. Misuse of market power

Draft Recommendation 25: Not supported

In our initial submission to the Review we expressed reservations about proposals put forward by some stakeholders to introduce an effects test into Section 46 (the misuse of market power provisions) of the CCA. Based on our strong view that competition law should protect the competitive process rather than any class of competitor, our concern was that the insertion of a test of the effect on competitors could mean that competitive behavior that harmed competitors could be unlawful, even though it might benefit consumers.

The Draft Report proposes several changes to section 46. These changes would result in a substantially new formulation which removes the requirement that a corporation with substantial market power:

- 'takes advantage of that power' , and
- 'for the purpose' of damaging a competitor

and replaces the purpose test with the test that the conduct:

- 'has the purpose, or would have or be likely to have the effect, of substantially lessening competition' in any market

In addition, to guard against the risk that this new formulation would have a 'chilling' effect on competitive behavior, the Draft Report proposes the inclusion of:

- a rational business decision defence, and
- a defence that the conduct would benefit the long term interest of consumers.

These proposals would introduce significant changes with untested effects. While some stakeholders support the proposal, others (including many experienced in trade practices law) have raised some strong objections, including that the proposed new formulation would lead to significant uncertainty for corporations with substantial market power as to whether any decision they make that could have the effect of lessening competition, in any market, could be held to be unlawful.

In light of these uncertainties, and in the absence of more persuasive evidence that the current provisions are inadequate, *National Seniors reiterates its concern that proposed changes to section 46 could have unintended adverse effects on the competitive process.*

4.5. International price discrimination

Draft Recommendation 26: Support

International price discrimination means Australians pay more for many products and services than consumers in other countries. This practice is particularly prevalent in IT products, both software and hardware and digital music and videos where Australians pay up to 50 per cent more than in the US. The higher costs of these products can be a barrier to social and economic participation,

including for older Australians with limited resources. National Seniors' initial submission called for the Review to recommend reforms to address this issue.

While the Draft Report acknowledges the issue, the Panel has concluded that a legislative solution that would deal with the problem effectively would carry an unacceptably high risk that there could be unintended adverse effects on consumers.

We note the Panel's view that market solutions that empower consumers should eventually address problems of international price discrimination, and that these solutions would be facilitated by removal of restrictions on parallel imports. *Ensuring that consumers are able to take legal steps to circumvent attempts to prevent their access to cheaper legitimate goods is a key challenge.*

4.6. Competition law enforcement

Draft Recommendation 37: Support in principle

National Seniors' earlier submission called for the Review Panel to consider how the consumer protection objectives of the Act could be strengthened, including improving access to the law for consumers and other small claimants without the resources to engage lawyers.

The Draft Report concedes that private enforcement of competition laws is an important right, while pointing to a number of practical and legal impediments to the exercise of those rights. While noting that Section 83 of the CCA is intended to facilitate private actions, the Panel has suggested that the effectiveness of section 83 in reducing the costs of private actions would be enhanced if the section were amended to apply to admissions of fact made by a corporation in another proceeding, in addition to findings of facts as currently allowed.

National Seniors agrees in-principle with the recommendation that Section 83 be amended so that it extends to admissions of fact made by the person against whom the proceedings are brought in addition to findings of fact made by the court.

5. Small business

Draft Recommendations 49 and 50: Support

Consumers are not the only group who face significant barriers to access to remedies under competition law. Small businesses also lack the funds to engage lawyers or the corporate resources to take on potentially protracted court proceedings and we have previously suggested that steps be taken to improve small business access to the law, including low cost mediation services.

National Seniors therefore supports the Panels proposal that the ACCC take a more active approach in connecting small business to alternative dispute resolution schemes where it considers complaints have merit but are not a priority for public enforcement.

To strengthen the hand of small business faced with unequal bargaining power in dealing with larger businesses, we also support the proposal that the CCA be amended to allow more flexibility in the notification process for collective bargaining by small business.

6. Retail markets

6.1. Pharmacies

Draft Recommendation 52: Support

Review and reform of legislative restrictions on competition in the pharmacy sector remains unfinished business from the earlier NCP reform era.

National Seniors supports the Panel's view that present restrictions on ownership and location of pharmacies are unnecessary to uphold the quality advice and care provided to patients and agrees that pharmacy and location rules should be removed, with the forthcoming 6th Community Pharmacy Agreement providing the opportunity to remove location rules. As with any such reform, it is crucial that transitional provisions enable incumbents to adjust to the new arrangements and that access to services in areas that are not as attractive to business is supported by government.

7. Institutional arrangements

An appropriate institutional framework will be critical to drive a new competition policy agenda. In addition to the appropriate regulatory bodies, a nationally agreed institutional framework will be required to drive policy reforms that need the commitment of all levels of government. *At a minimum, this is likely to require a new national competition policy agreement, the establishment of a national competition body to oversee the agreement and a mechanism for ensuring that jurisdictions whose reform efforts boost productivity growth benefit from resultant revenue gains.*

7.1. A national competition policy body

Draft Recommendations 39, 40, 41 and 42: Support in part

The Review Panel has proposed the establishment of an Australian Council for Competition Policy (ACCP) to provide leadership and drive implementation of the evolving competition policy agenda. Given the importance of gaining the commitment of all Australian governments to the task, the Panel has wisely recommended that the ACCP be constituted as a genuinely 'federal' body, jointly established and funded by the federal and state governments and approved by all parliaments.

National Seniors supports the establishment of a new national competition policy body to oversee competition policy reform and agrees that it should be established as a genuinely federal body so that all governments can have confidence in the governance arrangements. While the enactment of enabling legislation by every Parliament would be an ironclad means of achieving this outcome, a fallback option could be an intergovernmental agreement to delegate the establishment of the body to one jurisdiction, which could be achieved in a more timely fashion than template legislation in every jurisdiction.

National Seniors agrees that the role of this body should include:

- being an advocate and educator in competition policy
- independently monitoring progress in implementing agreed reforms and publicly reporting on progress annually, and
- identifying potential areas of competition reform across all levels of government.

Whether this body should be empowered to make recommendations to governments on specific market design and regulatory issues, including proposed privatisations, or to conduct market studies

and competition reviews, should be left to the participating jurisdictions to decide. There is some risk that these functions would draw the ACCP into a more contentious policy role, which could undermine its chief function in championing the broader goals of competition policy and monitoring outcomes.

For similar reasons, we would suggest that proposed market design and market studies functions might better be undertaken by existing independent bodies, such as the Productivity Commission or its state and territory equivalents.

Market studies requests should be able to be originated by all market participants, but should be subject to COAG authorization in order to screen out proposals that might be trivial or vexatious. As noted earlier, we do not consider the national competition policy entity to be the appropriate body to carry out such studies. Rather these should be referred to existing entities with the relevant competencies – such as the Productivity Commission.

On the other hand, the proposed ACCP could be an appropriate body to undertake an annual analysis of domestic and international developments in competition policy and identify specific issues or markets that should receive greater attention.

An important lesson from the NCP reforms was the importance of allowing each jurisdiction to determine the content and pace of its own reform program. Penalties and incentives were important in helping jurisdictions win the necessary political support for reform. *Mandatory information gathering powers would represent a significant departure from the cooperative approach successfully adopted under NCP and would carry significant risk.*

7.2.Competition payments

Draft Recommendation 44: Support

National Seniors supports the proposal that the Productivity Commission estimate the effect on revenue in each jurisdiction of reforms agreed to by the Commonwealth and state governments. Our initial submission called for reform dividends as incentives to the states to complete key competition reforms. Such payments are justified on the grounds that the greater part of the revenue gains from a stronger economy will flow to the Commonwealth. Accordingly, we support the Panel's preference that competition policy payments should be made if disproportionate revenue effects across jurisdictions are estimated.

7.3.Competition regulator

Draft Recommendation 45: Support

National Seniors supports the Panel's view that competition and consumer functions should be retained within the single agency of the ACCC.

7.4.Access and pricing regulator

Draft Recommendation 46: Support in principle

While seeing no compelling case to separate competition and consumer functions, National Seniors does see some merit in moving access and price regulation functions to a separate agency. The remit of the ACCC is already very wide and the skills required to administer competition and consumer laws are different from those applied to access pricing and utility regulation.

Accordingly, National Seniors would not oppose the Panel's proposal to transfer of powers under the national access regime, the National Gas Law, the National Electricity Law and the Water Act to a separate access and pricing regulator. This would enable the ACCC to focus its energies on its core competition and consumer law functions.

7.5.ACCC governance

Draft Recommendation 47: Support option 2

The Panel has outlined two possible alternative approaches to strengthening the governance of the ACCC by bringing business, consumer and academic perspectives to the Commission:

- replacing the current Commission with a Board comprising executive members, and non-executive members with business, consumer and academic expertise (with either an executive or non-executive Chair of the Board); or
- adding an Advisory Board, chaired by the Chair of the Commission, which would provide advice, including on matters of strategy, to the ACCC but would have no decision-making powers.

National Seniors does not support replacing the current Commission with a Board that includes non-executive members drawn from business, consumer or academic backgrounds. Conflicts of interest would almost certainly arise at some point, particularly for business members, and even the perception of conflict would compromise the perceived impartiality of the ACCC. *The benefits of input from external parties could better be achieved through the option of adding an Advisory Board which would have no decision-making powers.*

8. Conclusion

In conclusion, National Seniors considers that the key directions and many of the specific recommendations set out in the Panel's Draft Report represent sensible reforms and would provide a sound foundation for making Australia's competition policies, laws and institutions fit for purpose in today's economy.

We particularly welcome the Report's core emphasis on the interests of consumers and its adoption of a principles based approach to reform.

In the final report, we look forward to seeing more detail on how the Panel's proposals would be implemented, including what must be done to address consumer literacy and other information problems before introducing more competition and choice into human service markets.