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## National Competition Council

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### **Submission to the House of Representatives Standing Committee on Economics inquiry into promoting economic dynamism, competition and business formation**

The National Competition Council (NCC) welcomes the opportunity to provide a submission to House of Representatives Standing Committee on Economics inquiry into promoting economic dynamism, competition and business formation (the inquiry).

Competitive markets lead to greater productivity. They are the best mechanism to drive a resilient economy that delivers for businesses and consumers. Economic barriers to business participation can harm competition, and therefore productivity.

The Harper Competition Policy Review recognised that:

Competition policy reform is vital to achieving the productivity improvements necessary for higher incomes and jobs growth, most especially by making goods and services markets more competitive. More competitive markets maximise our capacity to adjust rapidly to changing circumstances, arising from both global and domestic sources. Strong competition in goods and services markets encourages innovation, growth in productivity and average income levels, and ultimately the number and quality of Australian jobs'.<sup>1</sup>

The Hilmer Competition Policy Review, likewise noted the economic benefits of competition policy:

Competition policy is not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.<sup>2</sup>

The landmark microeconomic reform program that followed the Hilmer review delivered significant improvements in economic growth and wellbeing. A renewed, well implemented program of competition policy reform could again deliver substantial benefits.

This submission will provide:

- an overview of the role of the NCC, including the National Competition Policy reforms and their benefits

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<sup>1</sup> Harper, Anderson, McCluskey, O'Bryan, Competition Policy Review – Final Report, March 2015, [https://treasury.gov.au/sites/default/files/2019-03/Competition-policy-review-report\\_online.pdf](https://treasury.gov.au/sites/default/files/2019-03/Competition-policy-review-report_online.pdf)

<sup>2</sup> Hilmer, Rayner, Taparell, National Competition Policy Review, <http://ncp.ncc.gov.au/docs/National%20Competition%20Policy%20Review%20report,%20The%20Hilmer%20Report,%20August%201993.pdf>

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- the NCC's view on the current state of reforms aimed at lowering barriers to competition
- a selection of outstanding recommendations of recent competition policy reviews
- the importance of coordination and monitoring mechanisms in the delivery of competition policy

### **Role of the National Competition Council**

The National Competition Council is a research and advisory body which was established in 1995 by agreement of the Council of Australian Governments (**COAG**). The NCC was established to assist in the delivery of the National Competition Policy (**NCP**) and associated reforms that followed the Hilmer Review.

The NCC is an independent expert body that has an important role in assisting Commonwealth Ministers to determine whether significant infrastructure services should be subject to regulation under the National Access Regime.

The Council is also empowered to carry out research and provide advice on other matters referred to it by the Minister.

Previously, the NCC had the role of assessing the performance of Commonwealth, state, and territory governments in implementing agreed reforms under the NCP.

While applications to the Council under the National Access Regime are sporadic, each is critically important as it effects the provision of essential infrastructure services that generate hundreds of millions or billions of dollars of economic welfare for Australians.

Decisions under the National Access Regime promote the welfare of Australians by promoting competition in markets dependent on access to infrastructure services while at the same time ensuring they do not discourage efficient investment in the infrastructure needed to provide these services.

Members of the Council are expert lawyers and economists who are well placed to balance these considerations when making recommendations to Ministers regarding whether services should be subject to regulation.

The Council is independent and has no vested interest in the outcome of its recommendations since it has no subsequent role in the act of regulating those infrastructure services a Minister decides should be regulated. This removes any real or perceived pro-regulatory bias.

By providing independent expert advice to Ministers on the regulation of nationally significant infrastructure, the Council ensures that the Government is best placed to make appropriate decisions for the economic benefit of Australians.

While the NCC is independent, it is a very small agency. It does not employ any staff directly, but rather obtains staffing and corporate support from the Australian Competition and Consumer Commission (**ACCC**).

### **The National Competition Policy reforms**

The NCP was a landmark Australian microeconomic reform program. A key principle of the program was that competitive markets will generally best serve the interests of consumers and the wider community. The NCP focused on removing unwarranted barriers to competition (where there was not a net public benefit from restricting competition).

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In its final assessment of government's progress in implementing the NCP and related reforms the NCC found that all governments had made substantial progress in meeting their commitments.

The Productivity Commission Review of National Competition Policy Reforms in 2005 found that the National Competition Policy had delivered substantial benefits – including a permanent increase of 2.5% to Australia's GDP<sup>3</sup> - to the Australian community which, overall, had greatly outweighed any transactional or adjustment costs.

### **Current state of competition reform**

The Hilmer Review was followed by the Harper Review in 2015. The Harper Review made a number of recommendations, some of which have not been actioned but remain relevant today.

The Hilmer review led to an agreement on competition reform by the Commonwealth and all states and territories, overseen by the NCC.

In contrast, the 2016 Intergovernmental Agreement on Competition and Productivity (IGACP), that followed the Harper Review, was not adopted by all States. There was also no mechanism by which to progress inter-jurisdictional reforms and no independent monitoring of progress.

The NCC believes that this contributed to the Harper Review having less impact than it could have.

### **The importance of coordination and reporting mechanisms to achieving reform**

Increased independent competition policy oversight and enabling was a key recommendation of the Harper Review. The NCC asks that the Committee consider the mechanisms by which progress on competition policy reform is to be made. This includes how interjurisdictional agreement on reforms will be obtained, responsibilities made clear, and progress monitored.

This will best enable any recommendations to be actioned in a way that captures the successful elements of the NCP reforms of the 1990's.

The Harper Review recommended some of the NCC's existing functions be expanded to create a body to provide leadership and drive implementation of the competition policy agenda including, for example:

- advocacy, education, and promotion of collaboration in competition policy
- independently monitoring progress in implementing agreed reforms and publicly reporting on progress annually
- identifying potential areas of competition reform across all levels of government
- undertaking research into competition policy developments in Australia and overseas.

As an independent national body with expertise and experience in delivering the NCP, the NCC is of the view that it could fulfil much of this role within its existing legislated remit and current funding.

The NCC is a long standing and independent agency that has a history of overseeing and

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<sup>3</sup> Productivity Commission Inquiry Report, No. 33, 28 February 2005, Review of National Competition Policy Reforms, <https://www.pc.gov.au/inquiries/completed/national-competition-policy/report/ncp.pdf>

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reporting on competition policy developments across jurisdictions (although this function has largely been untapped since the mid-2000's).

A renewed set of agreed competition principles, a forum to agree on and progress reforms, and a mechanism to monitor and report on these reforms could deliver significant benefits to the Australian economy and to Australian consumers, much as the NCP did.

### **Other Outstanding Harper Review recommendations**

The NCC believes there is value in revisiting the recommendations of the 2015 Harper Review. While the then Government agreed to implement most of the Harper Reviews 56 recommendations, many of these appear not to have progressed. Consistent with the Harper Review, the NCC believes renewed policy effort is required to ensure Australia's competition policy framework remains fit for purpose.

In particular, the NCC believes there is merit in considering the following recommendations:

- **Competition principles (recommendation 1)**

The Harper Review recommended the federal, state, territory and local governments commit to a new set of competition principles.

In December 2016, as part of the Government's response to the Harper Review, a new Intergovernmental Agreement on Competition and Productivity Enhancing Reforms (IGA), containing modernised competition principles, was announced.

However, given the IGA has not been agreed by Victoria, Queensland and South Australia, the new competition principles are not yet in place and the 1995 Competition Principles Agreement remains in effect.

- **Competitive neutrality policy (recommendation 15)**

*All Australian governments should review their competitive neutrality policies. Specific matters to be considered should include guidelines on the application of competitive neutrality policy during the start-up stages of government businesses; the period of time over which start-up government businesses should earn a commercial rate of return; and threshold tests for identifying significant business activities.*

As noted by the Harper Review, competitive neutrality is an important mechanism for strengthening competition in markets where government is a major provider of services. It is therefore important that policies remain up-to-date and relevant. The NCC notes that the Commonwealth competitive neutrality policy has not been updated since its release in 1996.

- **Government procurement and other commercial arrangements (recommendation 18)**

*All Australian governments should review their policies governing commercial arrangements with the private sector and non-government organisations, including procurement policies, commissioning, public private partnerships and privatisation guidelines and processes.*

*Procurement and privatisation policies and practices should not restrict competition unless:*

- *the benefits of the restrictions to the community as a whole outweigh the costs;*  
*and*
- *the objectives of the policy can only be achieved by restricting competition.*

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Government procurement decisions can contribute to the structure and function of competition in markets because of the large-value projects they often involve. In the opinion of the Harper Review, competition principles, particularly those promoting choice and a diversity of providers, should be incorporated into procurement, commissioning, public-private partnerships and privatisation policies and practices.

○ **Regulation review (recommendation 8)**

*All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed.*

While the NCP reforms substantially reduced the amount of anti-competitive regulation, submissions to the Harper Review raised many examples of regulatory restrictions on completion and the Review found that a new round of regulatory reviews is needed.

○ **Application of the law to government activities (recommendation 24)**

*Sections 2A, 2B and 2BA of the Competition and Consumer Act 2010 (CCA) should be amended so that the competition law provisions apply to the Crown in right of the Commonwealth and the states and territories (including local government) insofar as they undertake activity in trade or commerce.*

Under the NCP, governments agreed to extend the CCA so that it applied to the Crown insofar as it carried on a business, either directly or through an authority. The opinion of the Harper Review was that this reform should be carried a step further and the Crown should be subject to the competition laws insofar as it undertakes activity in trade or commerce. This is because of the potential the Crown has to harm competition through commercial transactions with market participants.

○ **Planning and zoning (recommendation 9)**

*State and territory governments should subject restrictions on competition in planning and zoning rules to the public interest test, such that the rules should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the rules can only be achieved by restricting competition.*

Further to recommendation 8, the Harper Review identified planning and zoning as a priority area for immediate review. Incorporation of competition policy principles in planning and zoning rules would be likely to provide economic benefits.

Yours sincerely

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President  
National Competition Council