



26 May 2015

General Manager
Small Business, Competition and Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Manager

RE: National Farmers' Federation (NFF) Response to the Competition Policy Review: Final Report

The NFF welcomes the opportunity to provide a response to the Final Report of the Harper Review into national competition policy

NFF is the peak national body representing farmers and the agriculture sector across Australia. The NFF's membership comprises all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF welcomed the government's commitment to review competition policy and looks forward to continuing to engage with government beyond this initial process to ensure the concerns of the farm and agribusiness sector are addressed and that tangible amendments are delivered in the market place from this review.

In doing this, the NFF urges the Australian Government to remain informed of other processes, such as the current Senate Inquiry into the effect of Market Consolidation on the red meat processing sector, to inform its response to the Harper Review. In addition to this the Senate Economics Legislation Committee Inquiry into the Competition and Consumer Act 2010 - Competition and Consumer (Industry Codes -Food and Grocery) Regulation 2015 report is of particular interest. The NFF is of the view there is merit in further consideration of the Small Business and Family Enterprise Ombudsman replacing the Institute of Arbitrators and Mediators Australia under the Grocery Code and any costs of providing ombudsman services for dispute resolution to the grocery sector being funded by signatories to the Code.

Broadly speaking, the NFF supports the recommendations of the review, and believe implementation will help Australian farmers to compete on a more level fair playing field in domestic and overseas markets, and drive sector competitiveness into the future.

Particular recommendations that the NFF support include:

– **Recommendation 29 – Price signalling**

The NFF notes the recommendation in relation to price signalling and concerted approaches that has the purpose, effect or likely effect of substantially lessening competition. The NFF supports the principle but would like to understand the definition and impact of substantially lessening of competition.

Recommendation 30 - Misuse of market power

The NFF supports the reframing of section 46 to include an appropriate effects test. Such a reframing should assist in prohibiting firms with substantial market power from taking advantage of that power if the effect is to cause harm to the competitive process.

– **Recommendation 36 – Secondary boycotts**

The NFF supports the continuation and more rigorous application of existing secondary boycott rules.

– **Recommendation 54 – Collective bargaining**

The NFF supports sensible reform that seeks to provide greater flexibility to small business in the collective bargaining process, including the nomination and authorisation process of future members and counterparties with whom any group seeks to collectively negotiate with. A key concern with the current arrangements is that farmers can be authorised to collectively bargain but there is nothing to compel a processor to negotiate with the collective group. Where a company has contract farmers which have little or no competition or alternative market opportunities, processors have the capacity to practice “exclusionary conduct” i.e. deny individual farmer the right to join the collective on the basis that they will only offer individual contracts. Another concern relates to dispute resolution and NFF supports the consideration of a boycott provision to be granted with appropriate conditions to provide balance in the market place without contravening the law. Similarly issues relating to common terms for contracts which are important for the proper operation of the collective bargaining process. The provision for common terms should be incorporated in the authorisation process. In the absence of such measures, in practice a series of individual farmers can be coming out of contract sequentially who have no safeguard from the collective group provisions therefore negating the intent of collective bargaining. Finally, the NFF supports efforts being taken to raise awareness of the exemption process for collective bargaining within the small business community.

– **Recommendation 19 – Energy and gas market**

The NFF supports a more efficient and affordable energy and gas market that seeks to create a more competitive market place which will lower costs and assist in the ag sector becoming more competitive.

– **Recommendation 8 – Coastal shipping**

The NFF welcomes the recommendation to remove current restrictions on carbotage that are not in the public’s interest. Government should however go further and repeal the *Coastal Trading Act*.

Despite these positive recommendations, the NFF does hold reservations towards some of the Final Report recommendations and key areas that went unaddressed. Issues of particular importance in this regard include:

– **Industry codes**

The NFF maintains support for a mandatory supermarket code of conduct to monitor and improve relationships across the food supply chain. This should be pursued as it would ensure the capacity to regulate the conduct between participants in the industry in a transparent manner.

Recommendation 51 – ACCC Governance

The NFF believes that the ACCC should have a clearer focus on and responsibility to small and medium sized agri businesses. Within this, the ACCC should be resourced appropriately to better understand the issues facing the agribusiness sector as it contains distinctive market structures.

– **Recommendation 20 – Water**

More detailed consideration and consultation is required if the transfer of water regulation powers to the proposed National Access and Pricing Regulator is to be progressed further.

– **Recommendation 36 – Secondary boycotts and proceedings**

The NFF’s submission reflected concerns about unlawful animal activist conduct. In this regard, the NFF supported narrowing current exemptions so as to not cover conduct that seeks to damage a person’s capacity to engage in trade or commerce where conduct is not based on established facts or is based on material illegally obtained. This issue went unaddressed in the final report.

The NFF has developed a table assessing the recommendations from the Final Report against the outcomes sought by the NFF. Please find it as an attachment to this document.



Please do not hesitate to contact Mr. Tony Mahar, Deputy CEO, should you seek any further information. Mr Mahar can be reach by phone on 02 6269 5666 or by email at tmahar@nff.org.au.



Regards,






SIMON TALBOT
CHIEF EXECUTIVE OFFICER



The following table lists key NFF recommendations against the recommendations included in the Panels final report.


Issue	NFF Recommendation	Final Report	Commentary
<p>Competition Principles</p>	<p>Competition policy reforms most likely to generate large net benefits are those that:</p> <ul style="list-style-type: none"> • benefit a sizeable part of the economy – with links to other sectors; • remove a significant barrier to competition; and • where government involvement demands greater contestability. <p>The use of “public interest test” or “consumer or community benefit” are of significant interest to the farming sector. In general these provisions and terminology are well intentioned, have merit and should be supported. NFF is of the view that while these measures are useful and have merit, there should also be additional consideration beyond just public interest tests, to include the impact on the supply chain.</p> <p>In relation to services, especially in regional areas, the NFF notes the recommendation to place more emphasis on local government competition reform. On balance, NFF’s view</p>	<p>The Australian Government, state and territory and local governments should commit to the following principles:</p> <ul style="list-style-type: none"> • Competition policies, laws and institutions should promote the long-term interests of consumers. • Legislative frameworks and government policies and regulations binding the public or private sectors should not restrict competition. • Governments should promote consumer choice when funding, procuring or providing goods and services and enable informed choices by consumers. • The model for government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision, and should encourage a diversity of providers. • Governments should separate remaining public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities. • Government business activities that compete with private provision, whether for-profit or not-for-profit, should comply with competitive neutrality principles to ensure 	<p style="text-align: center;"></p> <p>The NFF supports the principles. However we believe that there should be a focus on community benefits as well as those to the consumer. Whilst consumers will always favour lower prices, this may come at the cost of long term market place competitiveness which will serve to ultimately harm consumers.</p> <p style="text-align: center;"></p>


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	<p>is that the local government sector has been lagging in reforms implementation, hiding behind regulation to justify service charges and facilitating duplication of services in some areas, such as environment management.</p>	<p>they do not enjoy a net competitive advantage simply as a result of government ownership.</p> <ul style="list-style-type: none"> • A right to third-party access to significant bottleneck infrastructure should be granted where it would promote a material increase in competition in dependent markets and would promote the public interest. • Independent authorities should set, administer or oversee prices for natural monopoly infrastructure providers. <p>Applying these principles should be subject to a public interest test, such that legislation or government policy should not restrict competition unless:</p> <ul style="list-style-type: none"> • the benefits of the restriction to the community as a whole outweigh the costs; and • the objectives of the legislation or government policy can only be achieved by restricting competition. 	
<p>Road Transport</p>	<p>The <i>Road Safety Remuneration Act 2012</i> and associated regulation should be repealed.</p> <p>One issue not raised in the report is the role of the Road Safety Remuneration Tribunal in increasing the regulatory burden on business and driving up costs.</p>	<p>Governments should introduce cost-reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety.</p> <p>To avoid imposing higher overall charges on road users, governments should take a cross-jurisdictional approach to road pricing. Indirect charges and taxes on road users should be reduced as direct pricing is introduced. Revenue implications for different levels of government should be managed by adjusting Australian Government grants to the States and Territories.</p>	 <p>NFF provides in principle support for the findings in relation to road pricing. However, it is critical to ensure that any process prioritises safer and better outcomes for rural road users.</p>



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			<p>The use of telematics to track heavy vehicle movements is fine for large interstate carriers who already have the technology in place, but for the large number of primary producer registrations (currently over 70,000 heavy vehicles – which is 15% of total national heavy vehicle fleet) there would need to be comprehensive industry consultations to ensure the impacts were fully appreciated.</p> <p>It is disappointing that the <i>Road Safety Remuneration Act</i> was not addressed in the report.</p>
Coastal Shipping	<p>The NFF called on government to:</p> <ul style="list-style-type: none"> • repeal the <i>Coastal Trading Act</i> without disrupting current importation rules; • repeal compulsory collective bargaining in connection with the Australian International Shipping Register; 	<p>Part X of the CCA should be repealed.</p> <p>A block exemption granted by the ACCC should be available for liner shipping agreements that meet a minimum standard of pro-competitive features (see Recommendation 39). The minimum standard of pro-competitive features to qualify for the block exemption should be determined by the ACCC in</p>	


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	<ul style="list-style-type: none"> repeal Fair Work Regulations extending the <i>Fair Work Act</i> to temporary licensed ships and majority-Australian crewed ships; and make new regulations excluding ships engaged in the coasting trade from Fair Work Act coverage. 	<p>consultation with shippers, their representative bodies and the liner shipping industry.</p> <p>Other agreements that risk contravening the competition provisions of the CCA should be subject to individual authorisation, as needed, by the ACCC.</p> <p>Repeal of Part X will mean that existing agreements are no longer exempt from the competition provisions of the CCA. Transitional arrangements are therefore warranted.</p> <p>A transitional period of two years should allow for the necessary authorisations to be sought and to identify agreements that qualify for the proposed block exemption.</p> <p>Noting the current Australian Government Review of Coastal Trading, cabotage restrictions on coastal shipping should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition.</p>	 <p>The NFF supports the wholesale repeal of current coastal shipping regulations to improve supply chain efficiencies.</p>
Electricity, Gas and Water	<p>Electricity</p> <p>Any move to a national framework must facilitate effective consumer advocacy. NFF strongly supports an approach that requires greater consultation with customers on their reliability needs to ensure that adequate reliability is established and there is no wastage or investment in overcapacity. NFF's view is that more detailed examinations of these issues is required to better understand how national reliability standards marry with the current national</p>	<p>State and territory governments should finalise the energy reform agenda, including through:</p> <ul style="list-style-type: none"> application of the National Energy Retail Law with minimal derogation by all National Electricity Market jurisdictions; deregulation of both electricity and gas retail prices; and the transfer of responsibility for reliability standards to a national framework administered by the proposed Access 	<p>The NFF supports sensible energy market reform that aims to benefit consumers and small business.</p>  <p>Water</p>



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	<p>regulation of network and transmission costs – and the likely benefits to competition and ultimately to consumers.</p> <p>Water NFF’s view is that nationalisation of water pricing regulation in the rural water sector is unwarranted. NFF’s view is that it is important that Governments maintain an ongoing commitment to the principles of the National Water Initiative.</p>	<p>and Pricing Regulator (see Recommendation 50) and the Australian Energy Market Commission (AEMC).</p> <p>The Panel supports moves to include Western Australia and the Northern Territory in the National Electricity Market, noting that this does not require physical connection.</p> <p>The Australian Government should undertake a detailed review of competition in the gas sector.</p> <p>All governments should progress implementation of the principles of the National Water Initiative, with a view to national consistency.</p> <p>Governments should focus on strengthening economic regulation in urban water and creating incentives for increased private participation in the sector through improved pricing practices.</p> <p>State and territory regulators should collectively develop best-practice pricing guidelines for urban water, with the capacity to reflect necessary jurisdictional differences. To ensure consistency, the Australian Council for Competition Policy (see Recommendation 43) should oversee this work. State and territory governments should develop clear timelines for fully implementing the National Water Initiative, once pricing guidelines are developed. The Australian Council for Competition Policy should assist States and Territories to do so.</p> <p>Where water regulation is made national, the responsible body should be the proposed national Access and Pricing Regulator (see Recommendation 50) or a suitably accredited state body.</p>	<p style="text-align: center;"></p> <p>NFF is pleased to see that the final report acknowledges the importance of the National Water Initiative as the foundation of rural water reform. The Government should pursue its intended reforms of abolishing the National Water Commission and instating the Productivity Commission as the institution responsible for overseeing the implementation of the NWI by the States, Territories and the Commonwealth.</p> <p>Under the Water Act 2007, the ACCC already has a role in regulating (approving, monitoring and enforcing) rural water charges, either directly or via accreditation of state based regulators.</p> <p style="text-align: center;"></p>



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			More detailed consideration is required if the transfer of these powers to a new regulator is being considered.
Misuse of Market Power	<p>The NFF view is that competition legislation in Australia must provide both a remedy to farmers who fall victim to unfair conduct in their individual dealings but must also provide a means to proactively address the issues of concern through the supply chain to ensure the farm sector can continue to be profitable through investment, innovation and certainty in business practices.</p> <p>NFF retains support for an 'effects test' that could, if used to replace the existing purpose test, shift the onus of consideration from what a company's purpose in undertaking any conduct was, to what effect that conduct has had on any given marketplace. NFF supports provisions that prohibit a firm with substantial market power from taking advantage of that power if the effect is to cause harm to the competitive process.</p>	<p>The primary prohibition in section 46 of the CCA should be re-framed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.</p> <p>To mitigate concerns about inadvertently capturing pro-competitive conduct, the legislation should direct the court, when determining whether conduct has the purpose, effect or likely effect, of substantially lessening competition in a market, to have regard to:</p> <ul style="list-style-type: none"> • the extent to which the conduct has the purpose, effect or likely effect of increasing competition in the market, including by enhancing efficiency, innovation, product quality or price competitiveness; and • the extent to which the conduct has the purpose, effect or likely effect of lessening competition in the market, including by preventing, restricting or deterring the potential for competitive conduct in the market or new entry into the market. <p>Such a re-framing would allow the provision to be simplified. Amendments introduced since 2007 would be unnecessary and could be repealed. These include specific provisions</p>	<p>The NFF supports the reframing of section 46 of the CCA to include an appropriate effects test.</p> 




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		<p>prohibiting predatory pricing, and amendments clarifying the meaning of ‘take advantage’ and how the causal link between the substantial degree of market power and anti-competitive purpose may be determined.</p> <p>Authorisation should be available in relation to section 46, and the ACCC should issue guidelines regarding its approach to the provision.</p> <p>This recommendation is reflected in the model legislative provisions in Appendix A.</p>	
Mergers	<p>The NFF supports the view that to take advantage of the much talked about export opportunities available to Australian farmers and agribusinesses scale and capacity is important to improve efficiencies and lower costs and build lasting commercial relationships. The legislative approach to mergers should take this into consideration but equally ensure there is no negative impact on the supply chain from any imbalances in market power.</p> <p>The NFF is of the view that specific features of the improved formal approval process should be settled in consultation with business, competition law practitioners and the ACCC.</p> <p>The NFF supports the general framework proposed in the draft report including the proposition that the ACCC be incorporated in the decision making and approval process</p>	<p>There should be further consultation between the ACCC and business representatives with the objective of delivering more timely decisions in the informal merger review process.</p> <p>The formal merger exemption processes (i.e., the formal merger clearance process and the merger authorisation process) should be combined and reformed to remove unnecessary restrictions and requirements that may have deterred their use. The specific features of the review process should be settled in consultation with business, competition law practitioners and the ACCC.</p> <p>However, the general framework should contain the following elements:</p> <ul style="list-style-type: none"> • The ACCC should be the decision-maker at first instance. • The ACCC should be empowered to authorise a merger if it is satisfied that the merger does not substantially lessen competition or that the merger would result, or would be likely to result, in a benefit to the public that would outweigh any detriment. 	<p>The NFF supports more timely decisions but also oversight by the ACCC and coordination with relevant agencies such as FIRB. The NFF looks forward to further information on how government will improve the alignment between various processes.</p> <p>It is imperative that we ensure Australian companies are not at a disadvantage to international competitors.</p> 



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	<p>and that it can be satisfied that any merger does not substantially lessen competition and/or if it is satisfied that the merger results in public benefits that outweigh any anti-competitive detriments.</p>	<ul style="list-style-type: none"> • The formal process should not be subject to any prescriptive information requirements, but the ACCC should be empowered to require the production of business and market information. • The formal process should be subject to strict timelines that cannot be extended except with the consent of the merger parties. • Decisions of the ACCC should be subject to review by the Australian Competition Tribunal under a process that is also governed by strict timelines. • The review by the Australian Competition Tribunal should be based upon the material that was before the ACCC, but the Tribunal should have the discretion to allow a party to adduce further evidence, or to call and question a witness, if the Tribunal is satisfied that there is sufficient reason. <p>Merger review processes and analysis would also be improved by implementing a program of post-merger evaluations, looking back on a number of past merger decisions to determine whether the ACCC's processes were effective and its assessments borne out by events. This function could be performed by the Australian Council for Competition Policy (see Recommendation 44).</p>	<div style="text-align: center;"></div> <p>The NFF supports the implementation of post-merger review to assess effectiveness and market impact.</p>
<p>Secondary Boycotts Enforcement and Proceedings</p>	<p>NFF supports the continued operation of secondary boycott prohibitions and the relevant employment exceptions in some limited circumstances.</p>	<p>The prohibitions on secondary boycotts in sections 45D-45DE of the CCA should be maintained and effectively enforced.</p> <p>The ACCC should pursue secondary boycott cases with increased vigour, comparable to that which it applies in</p>	<div style="text-align: center;"></div> <p>The NFF submission reflected concerns about</p>


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	<p>The NFF supports a narrowing of the exception so that it does not cover conduct that seeks to damage a persons' capacity to engage in trade or commerce where the conduct is not based on established facts or is based on material illegally obtained.</p>	<p>pursuing other contraventions of the competition law. It should also publish in its annual report the number of complaints made to it in respect of different parts of the CCA, including secondary boycott conduct and the number of such matters investigated and resolved each year.</p> <p>The maximum penalty level for secondary boycotts should be the same as that applying to other breaches of the competition law.</p>	<p>unlawful animal activist conduct. The report did not deal with our proposal.</p>  <p>The NFF supports more rigour behind existing the enforcement of secondary boycott rules, especially more proactive enforcement</p>
<p>Restricting Supply or Acquisition</p>	<p><i>Notifying the ACCC about enterprise agreements containing trading restrictions</i></p> <p><i>Changing the law to resolve the conflict in relation to sections 45E and 45EA</i></p>	<p>Sections 45E and 45EA of the CCA should be amended so that they apply to awards and industrial agreements, except to the extent they relate to the remuneration, conditions of employment, hours of work or working conditions of employees.</p> <p>Further, the present limitation in sections 45E and 45EA, such that the prohibitions only apply to restrictions affecting persons with whom an employer 'has been accustomed, or is under an obligation,' to deal, should be removed.</p> <p>These recommendations are reflected in the model provisions in Appendix A.</p> <p>The ACCC should be given the right to intervene in proceedings before the Fair Work Commission and make submissions concerning compliance with sections 45E and 45EA. A protocol should be established between the ACCC and the Fair Work Commission.</p>	<p>Enterprise agreements should not be used as a tool to restrict competition in the labour market.</p> <p>Protocols established between the ACCC and the Fair Work Commission should focus on outcomes and avoid onerous or unnecessary processes.</p>


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		The maximum penalty for breaches of sections 45E and 45EA should be the same as that applying to other breaches of the competition law.	
Australian Council for Competition Policy	<p>In NFF’s view, the case for this new intergovernmental body is overwhelming in that there are many examples of reform failing to be implemented due to a lack of focus and drive, resulting in significant variations in reform progress across jurisdictions. It will be important for a common view that translates state responsibility for competition reform to local government.</p> <p>NFF notes that the restructure and creation of a new body has the potential to create a larger bureaucracy, with the attendant increase in running costs. This should be avoided, in line with the general government trend toward constraining unnecessary expenditure and red tape.</p>	<p>The National Competition Council should be dissolved and the Australian Council for Competition Policy (ACCP) established. Its mandate should be to provide leadership and drive implementation of the evolving competition policy agenda.</p> <p>The ACCP should be established under legislation by one State and then by application in all other States and Territories and at the Commonwealth level. It should be funded jointly by the Australian Government and the States and Territories.</p> <p>The ACCP should have a five-member board, consisting of two members nominated by state and territory Treasurers and two members selected by the Australian Government Treasurer, plus a Chair. Nomination of the Chair should rotate between the Australian Government and the States and Territories combined. The Chair should be appointed on a full-time basis and other members on a part-time basis.</p> <p>Funding should be shared by all jurisdictions, with half of the funding provided by the Australian Government and half by the States and Territories in proportion to their population size.</p>	<p>The NFF supports however want consistency across jurisdictions and not further bureaucracy.</p> 
Role of the Australian Council for Competition Policy	NFF supports the ACCP function as the primary educator and advocate for competition reform and sees merit in separating out this function from the ACCC, leaving it with the primary responsibility of	<p>The Australian Council for Competition Policy should have a broad role encompassing:</p> <ul style="list-style-type: none"> • advocacy, education and promotion of collaboration in competition policy; 	


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	ruling on competition disputes, enforcement and responding to consumer complaints.	<ul style="list-style-type: none"> • independently monitoring progress in implementing agreed reforms and publicly reporting on progress annually; • identifying potential areas of competition reform across all levels of government; • making recommendations to governments on specific market design issues, regulatory reforms, procurement policies and proposed privatisations; • undertaking research into competition policy developments in Australia and overseas; and • ex-post evaluation of some merger decisions. 	
Market Studies Power	<p>NFF’s view is that the ACCP should have market study powers operating in a similar fashion to the Productivity Commission. An alternative approach might be to position the ACCP as an independent authority of the Productivity Commission, indirectly providing it with information gathering powers, should they be needed – as well as networks.</p> <p>The Productivity Commission currently undertakes research/ completes references on behalf of the Commonwealth, but has particularly strong research and advocacy skills in the area of competition policy.</p>	<p>The Australian Council for Competition Policy (ACCP) should have the power to undertake competition studies of markets in Australia and make recommendations to relevant governments on changes to regulation, or to the ACCC for investigation of potential breaches of the CCA.</p> <p>The ACCP should have mandatory information-gathering powers to assist in its market studies function; however, these powers should be used sparingly.</p>	<p>The NFF supports the role of the ACCP and information gathering powers.</p> 
Market Studies Requests	The NFF supports the ACCP cross-jurisdictional role in accepting requests to undertake market studies. The market studies	All governments, jointly or individually, should have the capacity to issue a reference to the Australian Council for	


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	priority list, analysis and findings of ACCP should be made public – in similar fashion to Productivity Commission references from the Commonwealth.	<p>Competition Policy (ACCP) to undertake a competition study of a particular market or competition issue.</p> <p>All market participants, including small business and regulators (such as the ACCC), should have the capacity to request market studies be undertaken by the ACCP.</p> <p>The work program of the ACCP should be overseen by the Ministerial Council on Federal Financial Relations to ensure that resourcing addresses priority issues.</p>	
Annual Competition Analysis	NFF's view is that the ACCP should complete an annual analysis with the Commonwealth, State and Territory Treasurers signing off on the specific priorities.	The Australian Council for Competition Policy should be required to undertake an annual analysis of developments in the competition policy environment, both in Australia and internationally, and identify specific issues or markets that should receive greater attention.	
Competition Payments	The NFF agrees with this recommendation.	<p>The Productivity Commission should be tasked to undertake a study of reforms agreed to by the Australian Government and state and territory governments to estimate their effect on revenue in each jurisdiction.</p> <p>If disproportionate effects across jurisdictions are estimated, competition policy payments should ensure that revenue gains flowing from reform accrue to the jurisdictions undertaking the reform.</p> <p>Reform effort should be assessed by the Australian Council for Competition Policy based on actual implementation of reform measures, not on undertaking reviews.</p>	
ACCC Functions	NFF supports the retention of competition regulatory (enforcement) tasks and consumer protection functions under the ACCC.	Competition and consumer functions should be retained within the single agency of the ACCC.	

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<p>Access and Pricing Regulator Functions</p>	<p>NFF’s view is that prior to further reform, a detailed case that clearly identifies the failures of the current arrangements should be made.</p> <p>NFF supports a comprehensive review the regulator and price setting processes including closer examination of:</p> <ul style="list-style-type: none"> • the Australian Energy Regulator (AER) network price determination process; and • the performance of networks in relation to global benchmarks and actual service delivered. <p>While the principles of independent economic regulation and transparent setting of prices is supported by NFF, a national takeover of water pricing would add cost and achieve very little additional reform.</p>	<p>The following regulatory functions should be transferred from the ACCC and the NCC and be undertaken within a single national Access and Pricing Regulator:</p> <ul style="list-style-type: none"> • the telecommunications access and pricing functions of the ACCC; • price regulation and related advisory roles of the ACCC under the <i>Water Act 2007</i> (Cth); • the powers given to the ACCC under the National Access Regime; • the functions undertaken by the Australian Energy Regulator under the National Electricity Law, the National Gas Law and the National Energy Retail Law; • the powers given to the NCC under the National Access Regime; and • the powers given to the NCC under the National Gas Law. <p>Other consumer protection and competition functions should remain with the ACCC. Price monitoring and surveillance functions should also be retained by the ACCC.</p> <p>The Access and Pricing Regulator should be constituted as a five-member board. The board should comprise two Australian Government-appointed members, two state and territory-nominated members and an Australian Government-appointed Chair. Two members (one Australian Government appointee and one state and territory appointee) should be appointed on a part-time basis.</p>	<div style="text-align: center;">  </div> <p>The NFF provides in principle support. ACCC should focus on price monitoring, surveillance, competition function and consumer protection.</p> <p>The NFF supports greater focus/investigation into energy market and price regulations.</p> <div style="text-align: center;">  </div>


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		<p>Decisions of the Access and Pricing Regulator should be subject to review by the Australian Competition Tribunal.</p> <p>The Access and Pricing Regulator should be established with a view to it gaining further functions if other sectors are transferred to national regimes.</p>	
<p>ACCC Governance</p>	<p>NFF favours the second option in supporting the incorporation of a wider range of business, consumer and academic viewpoints to improve the governance of the ACCC – but with the main focus on business and consumer views. Academic views may best be expressed within the ACCP.</p> <p>The credibility of the ACCC could also be strengthened with additional accountability to the Parliament through regular appearance before a broadly-based Parliamentary Committee that, ideally, would capture the cross jurisdictional nature of ACCC decisions. Additionally, the ACCC would also focus on reporting to the media on compliance and enforcement issues.</p>	<p>Half of the ACCC Commissioners should be appointed on a part-time basis. This could occur as the terms of the current Commissioners expire, with every second vacancy filled with a part-time appointee. The Chair could be appointed on either a full-time or a part-time basis, and the positions of Deputy Chair should be abolished.</p> <p>The Panel believes that current requirements in the CCA (paragraphs 7(3)(a) and 7(3)(b)) for experience and knowledge of small business and consumer protection, among other matters, to be considered by the Minister in making appointments to the Commission are sufficient to represent sectoral interests in ACCC decision-making.</p> <p>Therefore, the Panel recommends that the further requirements in the CCA that the Minister, in making all appointments, be satisfied that the Commission has one Commissioner with knowledge or experience of small business matters (subsection 10(1B)) and one Commissioner with knowledge or experience of consumer protection matters (subsection 7(4)) be abolished.</p> <p>The ACCC should report regularly to a broad-based committee of the Parliament, such as the House of Representatives Standing Committee on Economics.</p>	<p style="text-align: center;"></p> <p>The NFF does not support. The ACCC should have a clearer focus on and responsibility to small and medium sized business including the agribusiness sector given the market structures can be distinctive.</p>


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<p>Collective Bargaining</p>	<p>In summary the agricultural sector seeks to improve the collective bargaining and boycott regimes through:</p> <ul style="list-style-type: none"> • relaxing the 'public interest' test for boycott approvals, to consider the unique nature of agricultural markets; • increasing the threshold for primary production bargaining from \$5million; • allowing for a more accessible notification process for primary producers; and • increasing the ability for peak bodies to commence and progress collective bargaining and boycott applications, on behalf of their members. 	<p>The CCA should be reformed to introduce greater flexibility into the notification process for collective bargaining by small business.</p> <p>Reform should include allowing:</p> <ul style="list-style-type: none"> • the nomination of members of the bargaining group, such that a notification could be lodged to cover future (unnamed) members; • the nomination of the counterparties with whom the group seeks to negotiate, such that a notification could be lodged to cover multiple counterparties; and • different timeframes for different collective bargaining notifications, based on the circumstances of each application. <p>Additionally, the ACCC should be empowered to impose conditions on notifications involving collective boycott activity, the timeframe for ACCC assessment of notifications for conduct that includes collective boycott activity should be extended from 14 to 60 days to provide more time for the ACCC to consult and assess the proposed conduct, and the ACCC should have a limited 'stop power' to require collective boycott conduct to cease, for use in exceptional circumstances where a collective boycott is causing imminent serious detriment to the public.</p> <p>The current maximum value thresholds for a party to notify a collective bargaining arrangement should be reviewed in consultation with representatives of small business to ensure</p>	<div style="text-align: center;">  </div> <p>The NFF supports sensible reform that seeks to provide greater flexibility to small business in the collective bargain process, including the nomination of future members and counterparties with whom the group seeks to negotiate.</p> <p>Government should examine policy options for 'shared community interest' provisions, such as in the current ADF authorisation.</p> <p>Effort should be taken to allow for a Broadening of the scope of the buyers in the market place to negotiate with collective bargaining groups so it's not just limited to processors (eg. Brokers, wholesalers, retailers as well as farmers).</p>

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		<p>that they are high enough to include typical small business transactions.</p> <p>The ACCC should take steps to enhance awareness of the exemption process for collective bargaining and how it might be used to improve the bargaining position of small businesses in dealings with large businesses.</p> <p>The ACCC should also amend its collective bargaining notification guidelines. This should include providing information about the range of factors considered relevant to determining whether a collective boycott may be necessary to achieve the benefits of collective bargaining.</p>	<p>The NFF further supports efforts being taken to raise awareness of exemption process for collective bargaining.</p>
<p>Industry Codes</p>	<p>NFF is of the view that the development of a mandatory Code to monitor and improve relationships across the food supply chain should be pursued as it would have a specific and transparent capacity to regulate the conduct of participants in an industry towards other participants in the industry where required.</p> <p>Similarly, whether in relation to the proposed Grocery Code or any other subsequent arrangement, the Australian common law concept of ‘good faith’ is an important provision that covers honesty, cooperation, reasonableness and fairness in contractual dealings between suppliers and retailers. Such a ‘good faith’ clause has been inserted in the mandatory UK Groceries Supply Code</p>	<p>No recommendation.</p>	<p style="text-align: center;"></p> <p>The NFF supports a mandatory supermarket code of conduct to monitor and improve relationships across the food supply chain.</p> <p>This should be pursued as it would have a specific and transparent capacity to regulate the conduct of participants in an industry towards other participants in the industry where required.</p> <p>.</p>

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	<p>against the background of past retailer behaviour in relation to the exercise of superior bargaining power.</p>		
<p>Pharmacy</p>	<p>The NFF urges the Review Panel and the Government to consider the implications of any proposed reform to pharmacy regulation, to ensure the ongoing provision of timely and affordable pharmacy services to rural and regional Australians.</p>	<p>The Panel considers that current restrictions on ownership and location of pharmacies are not needed to ensure the quality of advice and care provided to patients. Such restrictions limit the ability of consumers to choose where to obtain pharmacy products and services, and the ability of providers to meet consumers' preferences.</p> <p>The Panel considers that the pharmacy ownership and location rules should be removed in the long-term interests of consumers. They should be replaced with regulations to ensure access to medicines and quality of advice regarding their use that do not unduly restrict competition.</p> <p>Negotiations on the next Community Pharmacy Agreement offer an opportunity for the Australian Government to implement a further targeted relaxation of the location rules, as part of a transition towards their eventual removal. If changes during the initial years of the new agreement prove too precipitate, there should be provision for a mid-term review to incorporate easing of the location rules later in the life of the next Community Pharmacy Agreement.</p> <p>A range of alternative mechanisms exist to secure access to medicines for all Australians that are less restrictive of competition among pharmacy service providers. In particular, tendering for the provision of pharmacy services in underserved locations and/or funding through a community service obligation should be considered. The rules targeted at pharmacies in urban areas should continue to</p>	<div data-bbox="1854 379 1960 478" style="text-align: center;">  </div> <p>The NFF supports deregulation in principle but holds concern around the impact on rural communities. The NFF is of the view that there should be an undertaking to demonstrate that deregulation wouldn't reduce availability of pharmacy services in rural communities. The focus should be maintained on access for those in rural communities.</p>

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		be eased at the same time that alternative mechanisms are established to address specific issues concerning access to pharmacies in rural locations.	
Human Services	<p>The NFF agrees with the Panel’s assessment (p.26) that despite regional and remote communities in some cases lacking sufficient demand for human service provision, it is important the people in such communities continue to have access to timely and quality human services. This principle must underpin consideration of any changes to competition policy in this area and ensure the end outcome of reform sees no diminishing of base-level service provision for regional Australians.</p> <p>It is important to note that beyond this basic service level requirement, the capability of human services in regional areas must also be able to cope with periods of increased demand.</p> <p>Competitive pressures from private sources will not lead to improved services in these situations due to a limited market. In light of this, appropriate government investment in the long-term resilience of human services is critical to ensure the infrastructure and systems are in place to deal with such periods and ensure positive outcomes for regional communities.</p>	<p>Each Australian government should adopt choice and competition principles in the domain of human services.</p> <p>Guiding principles should include:</p> <ul style="list-style-type: none"> • User choice should be placed at the heart of service delivery. • Governments should retain a stewardship function, separating the interests of policy (including funding), regulation and service delivery. • Governments commissioning human services should do so carefully, with a clear focus on outcomes. • A diversity of providers should be encouraged, while taking care not to crowd out community and volunteer services. <p>Innovation in service provision should be stimulated, while ensuring minimum standards of quality and access in human services.</p>	<p>It is critical to maintain minimum standards of quality and access in human services for regional and remote Australians. As long as these will be maintained, it would be reasonable to explore innovation in service provision.</p>

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<p>Planning and Zoning</p>	<p>Often the assessment criteria in the planning system is already overly complex, which adds cost to businesses in complying. Reducing unnecessary regulatory burden can lead to improved competitiveness.</p> <p>The planning permit application process can deter a farm from increasing their intensity or efficiency as a change in the operation of a business may trigger the need to obtain a planning permit.</p> <p>In NFF's view, there are opportunities to improve the competitiveness of businesses by reducing or streamlining planning permit requirements, and improving the scrutiny around how new planning requirements are introduced, through for example a regulatory impact statement.</p>	<p>Further to Recommendation 8, 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.</p> <p>The following competition policy considerations should be taken into account:</p> <ul style="list-style-type: none"> • Arrangements that explicitly or implicitly favour particular operators are anti-competitive. • Competition between individual businesses is not in itself a relevant planning consideration. • Restrictions on the number of a particular type of retail store contained in any local area is not a relevant planning consideration. • The impact on the viability of existing businesses is not a relevant planning consideration. • Proximity restrictions on particular types of retail stores are not a relevant planning consideration. • Business zones should be as broad as possible. • Development permit processes should be simplified. • Planning systems should be consistent and transparent to avoid creating incentives for gaming appeals. <p>An independent body, such as the Australian Council for Competition Policy (see Recommendation 43) should be</p>	<p>The NFF supports sensible reforms that seeks to reduce administrative burden but must not erode the ability of planning and zoning regulation to protect prime agricultural land.</p> 

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		<p>tasked with reporting on the progress of state and territory governments in assessing planning and zoning rules against the public interest test.</p>	
<p>Regulation Review</p>		<p>All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed.</p> <p>Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:</p> <ul style="list-style-type: none"> • 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. <p>Factors to consider in assessing the public interest should be determined on a case-by-case basis and not narrowed to a specific set of indicators.</p> <p>Jurisdictional exemptions for conduct that would normally contravene the competition law (by virtue of subsection 51(1) of the CCA) should also be examined as part of this review, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent.</p> <p>The review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform.</p>	<div style="text-align: center;">  </div> <p>The NFF supports deregulation in principle but holds concern around the impact on rural communities.</p> <p>The NFF is of the view that there should be an undertaking to demonstrate that deregulation wouldn't reduce availability of services in rural communities. The focus should be maintained on access for those in rural communities.</p>

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		<p>The review process should be overseen by the proposed Australian Council for Competition Policy (see Recommendation 43) with a focus on the outcomes achieved rather than processes undertaken. The Australian Council for Competition Policy should publish an annual report for public scrutiny on the progress of reviews of regulatory restrictions.</p> <p>Further to Recommendation 8, and in addition to reviewing planning and zoning rules (Recommendation 9), the following should be priority areas for review:</p> <ul style="list-style-type: none"> • Taxis and ride-sharing: in particular, regulations that restrict numbers of taxi licences and competition in the taxi industry, including from ride-sharing and other passenger transport services that compete with taxis. • Mandatory product standards: i.e., standards that are directly or indirectly mandated by law, including where international standards can be adopted in Australia. 	
Media Code of Conduct	NFF agrees with this recommendation.	The ACCC should establish, publish and report against a Code of Conduct for its dealings with the media with the aim of strengthening the perception of its impartiality in enforcing the law. The Code of Conduct should be developed with reference to the principles outlined in the 2003 <i>Review of the Competition Provisions of the Trade Practices Act</i> .	