

Queensland Government submission:

Competition policy review draft report

Key Points

The Queensland Government supports a renewed Australian competition agenda.

A well designed competition reform program should boost productivity and increase the living standards of Australians and Queenslanders.

Given the economic and policy importance, the Government will reserve its formal position until the Panel's final proposals. As preliminary comment:

- The Queensland Government supports the direction of the Panel's analysis and findings and sees the Draft Report as a good starting point for a new competition policy agenda.
- There are some proposals involving the application of competition policy to government commercial activities and human services reforms which would benefit from further development and analysis.

To succeed, a new set of competition reforms will need to:

- be of clear benefit both to people and to the economy generally. It must lead to measurable improvements in services, living standards and economic outcomes such as productivity;
- proceed carefully and be designed and implemented with a medium and long term focus. New reforms, especially in the areas of core government service delivery (eg health and education) will be complex and extend into fresh ground;
- be implemented fairly. No group of people, no State, no region should have to bear disproportionate transitional costs; and
- be a genuinely cooperative effort. The 'on the ground' impact of further competition reforms is likely to be in State and Territory and local government responsibilities and programs.

Competition, Productivity and Living Standards

The basis for the Queensland Government's support of competition is its benefit to Queensland people and the Queensland economy.

Competition increases productivity and productivity is the key determinant of long term prosperity. Competition drives innovation, increases choice, reduces prices and improves the quality of products and customer service.

In economic terms, more competitive market outcomes generally lead to better resource allocation (allocative efficiency); improved use of resources (productive efficiency); and improved incentives for innovation and investment (dynamic efficiency).

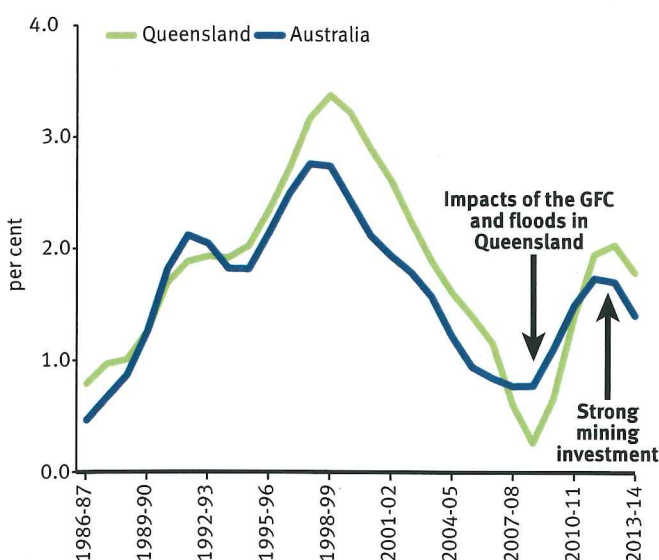
Economic case for new reforms

Past competition reforms have proven economically beneficial.

The National Competition Policy (NCP) of the late 1990s and early 2000s was a principal contributor to growth in productivity. The Productivity Commission (PC) found that productivity improvements in the decade to 1999-00, in key infrastructure sectors impacted by NCP reforms, generated a permanent increase of 2.5 per cent in Australia's GDP – or about \$40 billion per year in 2014.

However, the pace of microeconomic reform has slowed and this, combined with global and Australian macroeconomic factors, has led to a slowing in productivity growth.

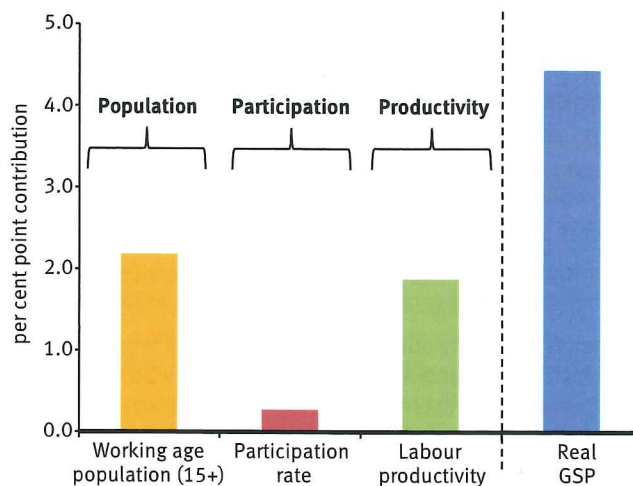
Figure 1: Labour Productivity growth, Trend, 1985-86 to 2013-14



Source: ABS and Queensland Treasury and Trade

From 1985-86 to 2013-14, productivity accounted for about half of Queensland's economic growth.

Figure 2: Sources of Economic Growth, Queensland



Source: ABS and Queensland Treasury and Trade

As with the rest of Australia, the Queensland economy will soon begin to be influenced by adverse demographic and structural shifts from the point of view of economic growth and productivity. Over the next decade:

- Queensland's rate of growth in the labour force is expected to slow. An ageing population is expected to detract around 1/3 of a percentage point per year from aggregate participation.
- Structural shifts are expected to detract from labour productivity growth – including a shift in the composition of employment towards service industries (eg health care and social assistance, and education and training) with lower than average labour productivity.

These trends underpin the case for a new set of competition reforms which aim to increase productivity. Such an increase in productivity would help counteract the structural trends and protect living standards and the competitiveness of Australian businesses.

Living standards

While productivity drives income, living standards depend on the cost of living as well as income.

In the longer term, effective competition policy will help with people's cost of living by: increasing consumer choice; driving product and service quality improvements; and containing prices.

However, direct government action can be helpful to ease immediate cost of living pressures and the Queensland Government has:

- committed funding of \$1.6 billion to: restrain electricity and water price increases; freeze car registration fees; reintroduce the residential stamp duty concession; and contain public transport fare increases; and

- released its final Strong Choices plan on 7 October 2014, which proposes to reduce the State debt balance through asset leases. Subject to the Government receiving an electoral mandate, as part of the plan, \$3.4 billion will be directed into a Cost of Living Fund which is to be dedicated solely to easing the cost of living pressures felt by Queenslanders.

Competitiveness of Australian and Queensland businesses

The Queensland Government considers that a renewed competition policy agenda can also help improve the competitiveness of Australian and Queensland businesses. Effective competition policy leads to:

- efficient economic infrastructure services pricing and investment and access to monopoly export infrastructure;
- better regulatory outcomes – the removal of regulations which directly and inappropriately constrain business practices; and the removal of anti- competitive regulation which has an impact on business costs;
- reduced monopolistic and anti-competitive market conduct – anti-competitive conduct ultimately leads to price increases, reduced innovation and business complacency; and
- some lowering of long term fiscal pressure on governments (ie through the revenue from increased economic growth and potential cost savings from improved general government productivity) and so less pressure for alternate revenue measures which could increase business costs.

Comment on Draft Report

Competition Principles

(recommendation 1)

The Queensland Government agrees with the case for updating of the present Competition Principles.

The present principles are overly long and dated, and they focus on government business enterprise reforms which have already largely occurred.

The Government also agrees that there is a case for consideration of the application of competition policy to human services.

It can see value in increased focus on consumer choice, as greater choice empowers consumers and drives competition among providers.

Change needs to proceed carefully in some areas (especially human services reform) and this should be explicitly recognised in the principles.

- The retention of an effective public interest test is essential.
- Government policy flexibility and State sovereignty need to be recognised.
- Increased choice will need to be balanced with several other objectives for service delivery, including access and equity, efficiency and responsiveness and cost effectiveness and value for money.
- The fiscal and intergovernmental implications will need detailed analysis before implementation can be considered.

Human Services Reform

(recommendation 2)

Human services reform is arguably the single most important economic opportunity for future competition policy.

Human services is the largest area of government expenditure and the area most untouched by national competition principles (aside from defence and security).

Human service expenditures, especially those related to health and ageing, are now the key drivers of Australia's fiscal sustainability concerns. Projections by the Australian Treasury in its Intergenerational Report (2010) estimate a doubling in Australian health and ageing related expenditures as a share of government spending over the next forty years.

Human service delivery is mainly a State and Territory responsibility. The Government's response to the Commission of Audit (2013) has already activated a State program of market and contestability reforms.

For example:

- The Government has restructured the State vocational and education training system. From 1 July 2014, most of the Queensland Government's investment in vocational

education and training (VET) is being managed through a fully contestable and demand-driven skills market.

- Queensland Health is working through a schedule of contestability reviews covering: aged care; central pharmacy; medical imaging; ophthalmology; fleet management; patient transport (non-urgent, non-ambulance); Patient Transport Subsidy Scheme; information technology desktop support and telephony. Further service areas are progressively being identified for consideration.
- The Department of Communities, Child Safety and Disability Services is similarly leading a schedule of reviews of investment in services for young people, women, seniors, men, children and families and in domestic and family violence services.

The Queensland Government considers that State reforms can be complemented by a national focus on competition related human services reform.

- A national focus would help institutionalise a competitive approach to the provision of publically funded services and programs, giving stakeholders confidence of continuity in the arrangements over time.
- It would help create a national market in the provision of publically funded services and programs (similar market rules and approaches in each State), which would strengthen the capability of the supply side and increase consumer choice.

The Queensland Government sees merit in further policy development. This includes the possibility of an Intergovernmental Agreement (IGA) covering competition and choice in human services with implementation to be undertaken individually by jurisdictions (recommendation 2).

There are complex and substantial issues to be worked through in the process of developing such an IGA and implementation plans.

- There could be significant transitional fiscal costs and a mechanism such as competition payments to manage these costs is important.
- Governance arrangements need to be considered. The initial framework could be developed through COAG but after that there would be issues of how changes are made and the policy and regulatory bodies (eg national or state regulators)?
- How will accountability issues be managed if there is national regulation and policy but with States being responsible for delivering the services?
- Program management will be more complicated as there will be a new overlay of competition requirements on States' management of programs and services.
- There will need to be effective integration of national competition principles with existing State competition policies/frameworks (such as Queensland's competitive neutrality and contestability frameworks).

Most importantly, the Queensland Government will need to be convinced that whatever is proposed will work in practice and improve the lives of human services consumers (people and families).

There are a number of questions that need good answers before serious and detailed proposals could be considered. These include but are not limited to:

- How, at a practical level, will competition between human service providers lead to better outcomes?
- How will conflicts between value for money and competition be managed?
- How capable and viable is the current human services market and what needs to be done to render it more capable and viable?
- How will it be decided which parts of the human services area should be priority areas for competition reforms?
- How would reforms work in areas that have universal entitlements such as school education? What degree of regulation of product specification and quality would be involved eg would curriculum requirements be flexible?
- What is likely to cause (and prevent) a contestable human services market to fail?
- On what basis could competition reforms be applied to services where there is currently no clear competition (due to crowding out), and/or competing governments.
- What risks (financial and policy) would governments be exposed to in the case that a market fails or a key provider becomes insolvent?
- How capable are human service users of making informed decisions (ie exercising choice) about purchasing services, what level of capability will be required, and what needs to be done to improve capability?
- Who would fund services to improve consumer capability?
- Who is the consumer (purchaser) when human services users have diminished or immature choice capacity ie some aged or disabled persons, school children?
- What are the special needs of regional, rural and remote communities and how will competitive models be adjusted to ensure that services are not compromised?
- How will transitional issues be dealt with – both in terms of maintaining service quality and in terms of costs to the existing State providers?
- How would the detailed reforms interact with the competitive market already being introduced in the human services sector through the NDIS and other related reforms such as aged care?
- On what basis would NGOs participate? Would competitive neutrality principles apply to them? Are NGOs structured and resourced to participate? In particular, the current workforces of NGOs are quite inflexible. What would be required to increase NGOs capability to participate? And who would bear the costs?

- How will access to social infrastructure and pricing be regulated? Will there need to be a new social services competition regulator(s)?
- How would progress be monitored and what will define success?

While there are many questions, a similar scenario existed prior to the introduction of the Hilmer Reforms. The Queensland Government considers that a new competition-related human services reform agenda is achievable and worthwhile given time and care.

Economic Infrastructure

Transport reforms

(recommendations 3, 4, 5 and 6)

The Panel proposes that Government should introduce cost reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and linked to road construction, maintenance and safety.

The Queensland Government considers that the immediate priority is better heavy vehicle charging. The Queensland Government considers that a reform package should be:

- cross jurisdictional;
- able to effectively address Commonwealth-State fiscal and road funding implications, including Commonwealth agreement to hypothecate its existing road user charging revenues;
- practical to implement in terms of the technology required;
- able to include changes to road funding and regulatory arrangements to facilitate cost reflective pricing and improved road investment choices ; and
- is suitably accepted as fair and rational by the road industry.

The Queensland Government generally supports the recommendations for liner shipping and coastal shipping competitive reforms, noting that while these are Commonwealth responsibilities, competitive shipping services aid Queensland's trade sectors.

On taxis, the Queensland Government remains committed to ensuring the community has access to safe, reliable, and cost effective taxi services. The Government is continuing to monitor the regulatory environment to ensure it is appropriate, striking the right balance between ensuring the safety of passengers and drivers while allowing sufficient flexibility for customer-focused innovation in service delivery. Red tape reduction also remains a key focus of taxi regulatory reform in Queensland.

The current Queensland Taxi Strategic Plan, which sets the strategic direction for the industry, expires in January 2016. The Queensland Government will be working with industry representatives and the community over the next 12 months to develop a vision for taxi service provision through to 2021, including consideration of whether the current regulatory framework supports the agreed vision.

Electricity, Gas and Water

(recommendation 16)

The Queensland Government supports the proposed completion of the energy reform agenda and the development of a new IGA on water reform.

The Queensland Government is implementing the following energy reforms:

- replacing prescriptive security and reliability standards as of 1 July 2014;
- changing from retail price regulation to market monitoring in South East Queensland from 1 July 2015;
- investigating and implementing where appropriate energy conservation and demand management measures to defer future network investment and reduce energy bills;
- developing a long term tariff reform strategy providing customers with a greater choice of options; and
- implementing the National Energy Customer Framework from 1 July 2015.

The infrastructure reforms are estimated to save \$7 billion in network capital and operating expenditure by 2030 comprising: \$5 Billion in network and business efficiencies; and \$2 Billion through changed reliability standards.

The retail reforms will reduce retail costs and encourage further retail competition and therefore customer choice, all of which will result in better deals for residential and small business consumers.

The Queensland Government has enacted legislation to apply the National Energy Retail Law as a law of Queensland. From 1 July 2015, energy-specific responsibilities currently undertaken by the Queensland Competition Authority (with the exception of retail pricing) and retailer authorisation functions undertaken by the Queensland Department of Energy and Water Supply will pass to the Australian Energy Regulator.

The Queensland Government supports in-principle progression towards a new national water framework.

- Queensland supports an investigation into greater harmonisation of State and Territory water regulations and would agree to amendments where there is a clear and evident customer benefit.
- A starting point for consideration of economic regulation changes would be to define which parts of the water sector could be covered by national economic regulation.
- It is important context that the majority of water service providers in Queensland are Council-owned and have small customer bases – a structure which lends itself to State economic regulation.

National Access Regime

(recommendation 38)

The Queensland Government notes the Panel's recommended changes to the National Access Regime Criteria.

A central element of the proposal is that a 'private profitability test' be retained in the access declaration criteria, as opposed to legislating to restore a (modified) natural monopoly test as proposed by the Productivity Commission (PC) in its review of the National Access Regime (2013).

The Queensland Government notes that access declaration criterion (b) currently reads 'that it would be uneconomical for anyone to develop another facility to provide the service'.

This criterion was interpreted by National Competition Council and Australian Competition Tribunal as a natural monopoly test from its enactment until 2012. The High Court's judgement in the Pilbara rail access case (2012) substituted a private profitability test.

A private profitability test is generally seen as harder to satisfy than a natural monopoly test. It makes declaration of a facility less likely.

There is a division of views on this topic.

- The National Competition Council (NCC), QCA, IPART, Fortescue, Anglo American and Glencore Coal support the PC's proposed change to criterion (b).
- BHP Billiton and Rio Tinto Iron Ore do not support the PC's proposal and support instead the retention of a 'private profitability' test.

The economic and policy arguments to be evaluated are:

- The Productivity Commission argues that its proposed test is better targeted at the underlying economic problem and more certainly promotes efficiency outcomes in dependent markets than the private profitability test.
- Conversely, a private profitability test is respectful of the High Court's judgement and expertise and could be a more practical and workable test than the alternative, which tends to require complex theoretical economic judgements.
- The Draft Report notes that Professor Hilmer has said: 'The PC approach may do better on public benefit, while the High Court approach may do better on certainty and speed of resolution'.
- An important consideration is the impact of a private profitability test on existing declarations (which have been based on the former monopoly test) if there is no legislation to restore a monopoly test.

This matter is likely to end up as an 'on balance' decision. The Queensland Government will reserve its position until more evidence is available, including the Panel's final proposal and consultation responses.

The Panel has invited comment on which categories of infrastructure the National Access Regime should apply to and whether coverage should be restricted to the categories of 'bottleneck infrastructure' identified by the Hilmer Review.

The Queensland government considers that the National Access Regime should apply to economic infrastructure but with scope for change as competition reforms progress.

- The Queensland access regime is not limited to specific industries. However, the legislation clarifies that facilities

which may be subject to the regime include those relating to the rail, port, energy and water sectors.

- These sectors are similar to the ones quoted by the Hilmer Review as examples of sectors with significant natural monopolies including 'essential facilities' ('bottlenecks').
- As competition in human services progresses, access arrangements for social infrastructure should also be considered.

The Queensland Government notes the Panel's recommendation to strengthen the arrangements for merits review of National Access Regime decisions while maintaining suitable statutory time limits. Suitable time limits are important given the lengthy periods of former merits review processes such as the Pilbara rail access case.

Regulatory Review and Competitive Neutrality

(recommendations 15, 51 and 52)

Regulatory Review and Competitive Neutrality systems

The Queensland Government is a strong supporter of regulatory review and competitive neutrality. The Panel's draft recommendations are already largely being implemented in the Queensland regulatory review and competitive neutrality systems.

The Queensland Government has set a target to reduce the burden of regulation by 20 per cent by 2018. Government progress towards achieving this target is reported on by the Office of Best Practice Regulation, within the QCA.

The Government has implemented, or is currently progressing, more than 500 red tape reduction initiatives, ranging from major legislative reforms to specific administrative changes. More than 370 of these reforms have already been implemented, delivering about \$425 million per year in economic benefit across all key sectors of the Queensland economy.

The Regulatory Impact Statement (RIS) system is the Queensland Government's regulatory development and review process applying to primary and subordinate legislation and quasi-regulation.

Under the RIS system, all new and existing regulation is periodically reviewed to evaluate the continuing relevance, effectiveness and efficiency of the regulation. The review needs to:

- identify the need for continued regulatory action;
- evaluate whether the regulation is achieving its objectives while meeting best practice regulatory principles and not imposing unnecessary burdens on stakeholders;
- consider competition impacts;
- consider whether the regulatory objectives could be achieved in a more effective and efficient way; and
- include consultation with stakeholders.

RISs are prepared by the government agency responsible for the legislation or regulation. They are then reviewed by an independent body (the Office of Best Practice Regulation) prior to publication.

On competitive neutrality, the Government is currently preparing amendments to the *Queensland Competition Authority 1997 (QCA) Act* (targeted for introduction to Parliament in 2014-15) which will reduce the involvement of general government in the investigation of competitive neutrality complaints and streamline the process.

- All complaints about Queensland Government significant business activities will be handled by an independent regulator (the QCA).
- The QCA will determine whether competitive neutrality should be applied to the activity in accordance with the Government's competitive neutrality policy (ie whether the activity is 'significant' having regard to a number of factors, such as market share, annual expenditure etc.).
- The existing 'principle of competitive neutrality' defined under the QCA Act will be broadened to ensure that the QCA can investigate all matters that a competitive neutrality complaint could relate to (including full cost pricing or whether a commercial rate of return should be sought).

The Queensland Government agrees that the proposed Australian Council for Competition Policy (ACCP) could consider regulatory review and competitive neutrality policies, including an annual review of regulatory restrictions.

Zoning and Planning (recommendation 10)

The Panel recommends that State and local government planning and zoning legislation be amended to include competition principles.

The State's planning reforms are currently at an advanced stage with the release of draft legislation for consultation in August 2014 and the results of that consultation under consideration.

The intent underlying the State's planning reforms is to make legislation simpler and more concise, and avoid specific policy overlays in legislation.

The proposed new planning arrangements have a strong focus on economic development, including streamlined assessment and approval processes and the removal of unnecessary regulation.

Shop trading hours (recommendation 51)

On shop trading hours, the Queensland Government recognises that the regulation of retail trading hours is an issue where there are many competing views within the community and the retail industry.

Queensland regulates its trading hours through the *Trading (Allowable Hours) Act 1990* and through orders made by an

independent tribunal, the Queensland Industrial Relations Commission (QIRC).

The Queensland Government does not currently have any plans to amend the arrangements governing trading hours. The Government remains concerned that full deregulation of trading hours may adversely affect small business. The ability for retailers to obtain orders through the QIRC provides a process whereby the interests of consumers, businesses and local communities are taken into account when setting the allowable trading hours.

Pharmacies

(recommendation 52)

The Panel has proposed that pharmacy ownership and location regulation be removed and replaced with regulations to ensure access and quality of advice on pharmaceuticals that do not unduly restrict competition.

Equitable access to pharmacy services and competitive pricing of pharmacy products is very important to the welfare of Queenslanders.

The Queensland Government recognises that there are mechanisms other than ownership restrictions which could ensure quality of advice, such as the development of standards and regulation of who can dispense medications and provide advice.

The Queensland Government considers that some caution needs to be exercised regarding regulation of the location of pharmacies. In urban areas where there is a range of potential service providers there is less need for locational regulation. In more remote locations, it is important to ensure that there is access to medication dispensing services, advice regarding medications as well as general health advice. In these locations, pharmacy services can have community service characteristics as well as being businesses and their continued operation is important to the local community.

Competition Institutional Structure

(recommendations 39 to 50)

The Queensland Government notes that the Panel is suggesting a new national tripartite structure for competition policy, regulation and governance consisting of a:

- peak body (new Australian Council for Competition Policy – ACCP);
- competition and consumer regulator (restructured ACCC); and
- new national access and pricing regulator.

The ACCP would provide policy guidance and undertake educational, monitoring and advocacy roles. Members of the ACCP would be nominated by all jurisdictions. The ACCP would report to a Commonwealth/State Ministerial Council and be jointly funded.

The Australian Competition and Consumer Commission (ACCC) would remain the main national competition and consumer regulator but lose its policy advocacy and access and pricing functions.

A new national access and pricing regulator would be established with immediate transfer of all ACCC access and pricing functions (including the Australian Energy Regulator and the ACCC's telecommunications access and pricing functions).

The Queensland Government recognises the logic in the proposed structure.

- The separation of the main institutional roles – policy and regulation – into distinct bodies (new ACCP and restructured ACCC) should lead to clearer operational focus and avoid conflicts of interest.
- The joint Commonwealth/State governance arrangements for the ACCP are welcomed and reflect the importance of States and Territory responsibilities.
- Establishing a specific regulator for pricing and access is sensible in terms of building technical expertise and consistency in approach, which will increase regulatory certainty.

The Queensland Government has some specific comment on the proposed structure:

- It sees merit in the proposal that Treasurers, through the Standing Committee of Federal Financial Relations, oversee preparation of an Inter-Governmental Agreement (IGA) and subsequent legislation to establish the Australian Council for Competition Policy.
- It considers that the IGA should cover consultation and governance arrangements for the revised ACCC and the proposed access and pricing regulator. Both of these, especially the latter, should involve State and Territory consultation.
- The Queensland Government supports the separation of the Australian Energy Regulator from the ACCC and its transfer into the proposed national access and pricing regulator.
- The Queensland Government does not see a case for immediate transfer of any of its current State (QCA) access and pricing functions – which are principally water, intrastate rail and port related – to the new national regulator. However, this is open to consideration over time as national frameworks and national markets develop.
- Consideration should be given to having one of the new bodies located in Queensland. This would recognise the size of Queensland's economy and its growing infrastructure sector. It would bring balance to a national competition regulatory system that is currently based in Canberra, Melbourne and Sydney.

The Queensland Government sees value in the proposals (recommendation 49 and 50) for greater focus by the ACCC on the interests of small business.

Competition Laws

Simplification and modernisation

(recommendations 17, 19, 21 and 37)

The Queensland Government considers that the current competition legislation is sound but would benefit from simplification and modernisation.

It agrees with the Panel's recommendation that 'the central concepts, prohibitions, and structure enshrined in the current competition law should be retained' (recommendation 17).

The Queensland Government notes the Panel's simplification and modernisation proposals for the *Commonwealth Competition and Consumer Act 2010 (CCA)*.

The Queensland Government has no specific comment on the proposals which mainly concern definitional or market conduct issues. However, it will monitor consultation feedback and undertake a further assessment of the proposals as they are set out in the Final Report.

Application of Competition and Consumer Act (CCA) to all governments insofar as they undertake activity in trade and commerce

(recommendation 19)

The Queensland Government has concerns about the proposal to broaden the coverage of the competition law provisions of the CCA to all governments (including local government) insofar as they undertake activity in trade and commerce.

The Queensland Government considers that there would need to be a whole-of-government audit to determine what activities would be captured in the new regime.

However, on the face of it, the change is likely to bring into scope:

- government tendering and procurement activities including those for infrastructure projects and general government (eg health and education);
- 'one-off' asset disposals;
- Public Private Partnerships; and
- market restructurings such as TAFE reform.

Preliminary legal analysis suggests that governments would need to undertake an analysis of the impact on competition of actions that could be considered activities in trade and commerce. If this analysis indicates the possibility of a breach of the CCA, governments would need to: restructure projects and activities; or seek an exception under section 51 (1) of the CCA on public interest grounds; or seek ACCC authorisation.

Each of these processes would be costly and add time and uncertainty to decision making.

The compliance burden on local governments in regional and rural areas where the amounts at stake are small and markets either thin or non-existent may be difficult to justify.

The change could inhibit government reforms which, while containing some element which is potentially restrictive of competition, would otherwise be strongly in the public interest.

The Queensland Government considers that the proposal requires further investigation. This needs to include a comprehensive assessment of whether benefits to the community outweigh the costs.

Employment related matters

(recommendations 31, 32 and 33)

The Queensland Government supports the Panel's proposed reforms to enhance the enforcement of secondary boycotts and clarify the scope of application of the CCA to anti-competitive restrictions in industrial agreements.

It considers the Panel should investigate the case for the development of ACCC protocols for the investigation and enforcement of secondary boycott matters to assist in the gathering of evidence to support enforcement of these matters.

The Panel should consider the case for conferring equivalent anti-secondary boycott powers to industries with a specific regulator, where that industry has a particular problem with secondary boycotts.

The Queensland Government is prepared to consider further the Panel's recommendation (no. 32) that jurisdiction in respect of the prohibitions in sections 45D, 45DA, 45DB, 45E and 45EA (secondary boycott provisions) be extended from the Federal Court to include State and Territory Supreme Courts.

The Queensland Government agrees with the Panel that sections 45E and 45EA of the CCA – which prohibit trading restrictions in industrial agreements – are important provisions that protect trading freedoms.

The Queensland Government supports the proposal to remove an outdated limitation of coverage of the provisions so as to allow it to apply forms of labour such as contractors and other forms of labour providers.

The Queensland Government notes the Panel's assessment that there is an apparent conflict between the intended operations of the CCA and *Fair Work Act 2009* (Cth) (with the latter potentially allowing certain anti-competitive industrial agreements to be made which the CCA would prohibit).

- The Queensland Government would consider supporting amendments of sections 45E and 45EA of the CCA to expressly include awards and enterprise agreements to ensure that awards and enterprise agreements that place restrictions on the freedom of employers to engage contractors or source certain goods or non-labour services are not able to be made by the Fair Work Commission.
- This would clarify the conflict between these sections of the CCA and the Fair Work Act which currently contribute to practices in Queensland which reduce productivity and drive up construction costs in the building and construction industry.

Misuse of market power – effects test **(recommendation 25)**

The Queensland Government notes the Panel's view that section 46 of the CCA should be extended from a prohibition on misuse of market power with the *purpose* of damaging competition to capture conduct with the *effect* of damaging competition.

It notes the Panel recommends a new defence be included namely, that the conduct: would be a rational business decision by a corporation that did not have a substantial degree of power in the market; and would be likely to have the effect of advancing the long-term interests of consumers.

The proposed change is contentious. There are contradictory arguments by stakeholders about the proposal's impact on: competition; workability; and consumer outcomes. In general, larger companies have opposed an effects test and smaller businesses and the ACCC have supported such a test.

The Queensland Government supports strong competition and pro-consumer reforms.

It considers that there is a need for further assessment of the proposal's potential impact on competition and consumer outcomes, and its workability. This should include the Panel's response to the present round of stakeholder comments.

Intellectual property and parallel imports **(draft recommendations 7, 8 and 9)**

The Queensland Government agrees generally that the design of intellectual property rights should take into account competition policy. It notes the pro-consumer benefits of the removal of parallel import restrictions.

Competition Payments **(recommendation 44)**

The Queensland Government considers there is a strong case for a new round of competition payments. The benefits (such as increased Commonwealth tax revenue) and the transitional costs of competition reforms need to be equitably shared.

The payments could be provided to support progress in the extension of competition policy into human service areas and the achievement of other State and local competition reforms (regulatory reforms, infrastructure reforms).

The Queensland Government strongly prefers a definite upfront commitment to competition payments (five or ten year schedule).

The Queensland Government notes that there was a total of about \$4.9 billion in competition policy payments over the payments' lifetime from 1998-99 to 2005-06, of which Queensland received about \$0.9 billion. If the size of the new task is greater, the competition payments will need to be commensurately greater.

Conclusion

The Queensland Government supports further economic reform in the State and national interest.

A well-designed competition agenda and competition reforms should boost productivity and increase the living standards of Queenslanders.

The Draft Report is a good starting point for further development of that competition agenda.

The Queensland Government especially seeks:

- clear and measurable benefits to Queenslanders; and
- careful and fair implementation arrangements including satisfactory management of social, economic and fiscal implications.

The Queensland Government looks forward to the next stage of the policy development process.

