



Australian Government
The Treasury



**Competition
Review**

Revitalising National Competition Policy

Consultation Paper

August 2024



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In the spirit of reconciliation, the Treasury acknowledges the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples.

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Foreword

There have been four major waves of competition policy reform in the past 50 years, and revitalising National Competition Policy is a fundamental part of the fifth.

All governments across Australia understand that increasing competition and dynamism is good for businesses, good for consumers and good for the economy; and that they have a role to play in boosting competition.

A more competitive economy means more, higher quality, cheaper goods and services, more jobs with higher wages, and more dynamic, innovative and productive businesses.

That's why the Commonwealth and states and territories agreed to revitalise National Competition Policy in 2023 and will seek to agree new competition principles by the end of the year.

The original National Competition Policy reforms were hugely important to strengthening Australia's economy and creating greater dynamism.

Thirty years on, we recognise the Australian economy has evolved and National Competition Policy needs to be updated to respond to the new players, new markets, and new disruptions of the modern world.

Competition is about leveling the playing field so that businesses create the most value and don't face unfair barriers to growth. The barriers we are dealing with today are different and call for different solutions.

Our economy is becoming more digital, and while this offers big opportunities to boost competition, we've also seen 'winner takes all' market dynamics in digital marketplaces and new barriers to consumer choice.

We are also in the middle of the biggest transformation in the global economy since the industrial revolution as the world moves to net zero – and we need to ensure competitive forces promote cleaner, cheaper, and more reliable energy.

Revitalising our National Competition Policy requires all Australian governments putting their shoulder to the wheel. This joint consultation paper is an important step in surfacing new ideas and reinforcing existing shared competition principles to ensure there's a shared understanding of the way forward.

This is the logical next step to reform competition policy nationally. It builds on actions governments are already undertaking including making Australia's merger control system stronger, simpler, more targeted, faster and transparent; abolishing around 500 nuisance tariffs, and productivity enhancing reforms to planning and zoning around the country.

We know that getting our competition settings right will make our economy more productive and more dynamic.

We are excited by the opportunity to revitalise the national competition conversation to ensure the defining decade ahead leads to a more prosperous country.



A blue ink signature of Jim Chalmers, written in a cursive style.

The Hon Jim Chalmers MP
Treasurer of Australia



A blue ink signature of Daniel Mookhey, written in a cursive style.

The Hon Daniel Mookhey MP
Treasurer of NSW

Executive summary

Competition is critical for lifting dynamism, productivity and wages growth. It puts downward pressure on prices and delivers more choice and higher quality for Australians dealing with cost-of-living pressures.

The landmark National Competition Policy (NCP) recommended by the 1993 National Competition Policy Review chaired by Professor Frederick Hilmer (the 'Hilmer Review') and agreed to by all Australian, state and territory governments in 1995 was a key driver of a decade of pro-competitive government reform action and it has shaped government policy ever since.

The core components of the original NCP agreed to through intergovernmental agreements included competition principles, related reforms, and institutional arrangements to oversee implementation. Three decades later, it is important that the NCP remains fit for the purpose of driving pro-competitive government policy and action towards the opportunities and challenges facing the modern economy. Challenges include digitalisation, the growth in human services, the net zero transformation and supporting Australia's most vulnerable.

Australia's productivity growth has slowed over the past decade, and reduced competition has contributed to this – with evidence of increased market concentration, a rise in markups and a reduction in dynamism across many parts of the economy. Australian, state and territory Treasurers agreed through the Council on Federal Financial Relations (CFFR) in December 2023 to work together to revitalise NCP to develop options for long-term pro-competitive reforms including identifying possible cost of living reforms.

This paper provides an overview of the original NCP and then seeks feedback on the three potential elements of revitalising NCP for the modern economy. First, revitalising the National Competition Principles to ensure they address contemporary economic and competition issues. Second, developing a 10-year National Competition Reform Agenda around competition themes to remove unnecessary barriers to competition while being flexible and tailored to the circumstances of each jurisdiction. Third, considering whether the institutional and governance arrangements for the NCP remain appropriate or could benefit from adjustment.

Feedback from all Australians is an essential step towards revitalising the NCP. This consultation paper provides background, outlines existing evidence and views and identifies questions to facilitate feedback. It does not represent Commonwealth, state, or territory government policy, nor is it binding on governments. Feedback received through the consultation process will be essential in informing the collaborative work by the Commonwealth, states and territories on what a revitalised NCP could involve, in addition to modelling by the Australian Government Productivity Commission (PC), advice from the Competition Review Expert Advisory Panel and other research.

Introduction

Competition is important for consumers, workers and the Australian economy. A more competitive economy promotes lower prices, more choice and higher quality for consumers. Workers have more opportunities to move to better jobs, grow their skills and develop their careers. Business owners have more opportunities to grow their enterprises, and entrepreneurs have better chances to create a new business or start-up.

Competition is key to a dynamic and innovative economy. It is an essential ingredient to ensuring our community benefits from emerging opportunities and transformations vital to a world moving to net zero and that is ever more digitised and connected.

Australia's economy must be competitive and dynamic, so we are well-positioned to do business effectively globally and are adaptable and resilient to future challenges and opportunities. As a national economy, the benefits and opportunities of competition are shared among all Australians, across all states and territories.

The National Competition Policy (NCP) emerged in the 1990s, a similarly transformative time for the Australian and global economy as we face today. Development of NCP in the 1990s recognised Australia was becoming increasingly integrated globally and domestically. A decade of landmark NCP reforms boosted and strengthened Australia's economy, helping to enhance productivity and consumer and business outcomes.

The benefits of NCP flowed to Australians of all income levels, across the cities and the regions. NCP helped address pressing economic issues that were weighing down economic and productivity growth.

The challenges that inspired NCP in the 1990s remain just as relevant today. New challenges and opportunities have arisen in the three decades since the NCP was developed, including digital technologies and the net-zero transformation. Governments have made substantial progress in modernising markets in light of these changes. Revitalising Australia's National Competition Policy will support Governments to continue and extend these efforts in coming years.

This consultation paper provides background, outlines existing evidence and views, and identifies questions to facilitate feedback. It does not represent Commonwealth, state, or territory government policy, nor is it binding on governments.

Consultation objectives

This consultation paper seeks feedback on the key elements of revitalising the NCP. These elements underpinned the success of the original NCP reforms delivered between 1995 and 2005, many aspects of which continue to operate today.

This paper seeks feedback on revitalising NCP across three core areas.

- **National Competition Principles:** how can the National Competition Principles be revitalised to address economic and competition issues?
- **National Competition Reform Program (NCRP):** do the proposed reform themes reflect the key areas of existing or emerging competition issues, and what are the key reforms that should be considered?
- **Institutions and Governance:** what institutional and governance frameworks would best support NCP?

This consultation paper is a first step in a longer-term process shaping the revitalised NCP. The Australian, state and territory governments have not taken any positions on the questions raised in this paper. The analysis and ideas presented are aimed at stimulating feedback. They do not represent Commonwealth, states, or territory government policy, nor are they binding on any governments.

This consultation paper asks questions on which feedback is invited. Stakeholders are not constrained to answering the questions listed and can provide feedback and evidence on any issues relevant to NCP.

Feedback from this consultation will inform collaborative work by the Commonwealth, states and territories towards revitalising NCP. The revitalised NCP will also be informed by PC modelling and other research.

Consultation process

Making a submission

Interested parties are invited to comment on the questions and issues raised in this paper. The consultation process is open until **Monday, 23 September 2024**.

There is no obligation to answer any or all of the consultation questions. We particularly invite respondents to provide evidence, case-studies, or examples in their responses to help to demonstrate issues on which they comment. There is no limit to the length of submissions or the prescribed form of submissions.

Submissions can be lodged electronically or by post, but electronic lodgement is preferred.

All information (including name and address details) contained in submissions will be made available to the public on the Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Submissions to this consultation will be provided to state and territory Treasuries to inform collaborative work by the Commonwealth, states and territories toward revitalising NCP unless you indicate that you would like all or part of your submission to remain in confidence to the Commonwealth. Automatically generated confidentiality statements in emails do not suffice either of the aforementioned purposes. Respondents who would like part of their submission to remain in confidence should provide this information marked as such in a separate attachment.

Legal requirements, such as those imposed by the Freedom of Information Act 1982, may affect the confidentiality of your submission.

View Treasury's [Submission Guidelines](#) for further information.

Closing Date for submissions: Monday, 23 September 2024

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1. Enhanced community outcomes and growth through National Competition Policy



National Competition Policy (NCP) has delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs. It has: contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes; directly reduced the prices of goods and services such as electricity and milk; stimulated business innovation, customer responsiveness and choice; and helped meet some environmental goals, including more efficient use of water. Benefits from NCP have flowed to both low and high income earners, and to country as well as city Australia...¹



Productivity Commission, *Review of National Competition Policy*, 2005

Boosting competition boosts the economy

Competition is essential for lifting dynamism and productivity, supporting sustainable real wages growth, putting downward pressure on prices, and delivering more and better choices for Australians.

Australia's productivity growth has slowed over the past decade. Reduced competition has contributed to this slowing productivity growth, and is accompanied by evidence of increased market concentration, a rise in mark-ups and reduced dynamism across parts of the economy.²

Analysis by the Treasury with the Reserve Bank of Australia indicates that if Australia returned to levels of competition equivalent to those prevailing during the early-to-mid 2000s reform period, it would boost the nation's GDP by 1-3%, equivalent approximately to \$2,000-6,000 on average per household.³ Revitalising NCP is a crucial step all governments can take to boost competition and productivity, deliver lasting cost of living relief and achieve a range of positive consumer outcomes.

Co-ordinated NCP reforms fundamentally changed and modernised Australia's economy. Through the 1990s and 2000s, an ambitious agenda of reforms including the removal of regulatory barriers and impediments to competition, introduction of competitive neutrality policies, and structural reforms (including in the telecommunications, electricity, gas and water sectors) promoted growth and made Australia's economy more competitive and productive.

Competition reforms are complex and have been difficult to implement. In some instances, competition reforms have not delivered the desired outcomes. However, competition reforms of this

1 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 31 July 2024, p XII.

2 I Day, Z Duretto, P Hartigan and J Hambur, 'Competition in Australia and its impact on productivity growth', *Treasury Round Up*, Australian Government Treasury, October 2020, accessed 31 July 2024; D Andrews and D Hansell, 'Productivity-Enhancing Labour Reallocation in Australia', *Working Paper No 2019-06*, Australian Government Treasury, 2019, accessed 31 July 2024; D Andrews, J Hambur, D Hansell and D Wheeler, 'Reaching for the Stars: Australian Firms and the Global Productivity Frontier', *Working Paper No 2022-01*, Australian Government Treasury, 2022, ISBN 978-1-925832-41-9, accessed 31 July 2024.

3 S Kennedy, *Address to the Australian Business Economists*, Australian Government Treasury, 30 May 2024, accessed 9 July 2024, p 14.; J Hambur and O Freestone, 'How Costly are Markups in Australia?', Forthcoming.

era are credited overall by the Productivity Commission with bringing down the prices of a range of products and services for households and businesses. They contributed to a surge in productivity and boost to Australia’s GDP of 2.5%,⁴ with benefits flowing to Australians of all income levels across cities and regions.

The need for National Competition Policy

In 1992, the Commonwealth, states and territories commissioned an independent National Competition Policy Review, which was chaired by Professor Frederick Hilmer (the ‘Hilmer Review’). The Hilmer Review delivered its report and recommendations in 1993 (the ‘Hilmer Report’).

The Hilmer Report emphasised the benefits of competition for enhancing living standards, jobs growth, productivity and making the most of emerging technologies. It recognised that in many important sectors, government ownership and regulations presented “the greatest impediment to enhanced competition.”⁵ Recognising this, on 25 February 1994, all Australian governments agreed, via the Council of Australian Governments (COAG), to the principles of competition policy articulated in the Hilmer Report.⁶

The Hilmer Report came at a time when Australia was opening to the global economy through trade reforms, improving our competitiveness internationally. There was growing recognition by all governments that Australia needed to be a more domestically integrated economy. Regulatory barriers were removed to enable an efficient single national market.⁷

NCP recognises that the best interests of consumers and the community can generally be well served by competitive markets that provide strong incentives for suppliers to operate efficiently, compete and be innovative. NCP ensures that competition is a relevant consideration when developing government policy and only allows for arrangements that detract from competition if those arrangements are demonstrably in the public interest.⁸

Importantly, NCP does not limit what governments are able to do. Effective application of competition policy requires the characteristics of relevant markets to be carefully considered, especially in markets that include public provision of services, where quality is hard for consumers to assess, or other complexities. The NCP provides a framework for governments to consider the impacts of their actions on competition and to explain departures from competitive practices to the community.

Creating a National Competition Policy

National Competition Policy was a landmark national reform program. The PC’s 2005 assessment of NCP attributed four key factors to its success:

1. all governments recognised the need for reform

4 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 9 July 2024, p XIV.

5 F G Hilmer, M Rayner, G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p XXIX.

6 Council of Australian Governments (COAG), *Council of Australian Governments’ Communique*, 25 February 1994, accessed via National Competition Council website on 4 July 2024.

7 F G Hilmer, M Rayner, G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p 14.

8 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 9 July 2024, p XIV.

2. governments agreed on the priority problems to address
3. NCP guided policy solutions with a solid conceptual framework including flexibility for jurisdictions in how to implement many of the reforms, and
4. the supporting institutions and procedural mechanisms effectively oversaw jurisdictions' implementation of reforms, including via transparent and independent monitoring of progress and outcomes, and the Commonwealth distributing fiscal dividends to the states, territories and local governments generated from meeting their reform commitments.⁹

The Commonwealth, state and territory governments made three intergovernmental agreements (IGAs) by which they committed to implement NCP (further information on the agreements is provided in [Appendix A](#)).

National Competition Principles

The National Competition Principles (the 'Principles') were created to address anti-competitive regulations and structures of some public enterprises and services at all three levels of government which were said to be dampening our country's economic potential.¹⁰

The Principles are the centrepiece of the NCP. They have been implemented by all governments and continue to be used today. The concept of the Principles was articulated in the Hilmer Report as a way for governments to deal with competition issues that the law could not or did not deal with.

National agreement to the Principles was coupled with jurisdiction-specific implementation.

Implementation of the Principles resulted in a range of significant reforms. Public monopoly business enterprises were reformed to open those industries up to competition, for example, telecommunications businesses. Government businesses needed to put measures in place to ensure they compete on a level playing field with private enterprises. A framework was created so systems could be established to enable access to services provided by monopoly infrastructure by other players in the market. Jurisdictions undertook a wide-ranging review of legislation to identify and reform anti-competitive laws.

The Principles resulted in one-off actions such as those above and embedded these policies and processes within governments for the purpose of preventing decisions that restrict competition.

Related reforms

A series of 'related reforms' to utilities and road transport were also rolled into NCP. These related reforms were brought under NCP through the Implementation Agreement by which jurisdictions agreed to progress pre-existing reforms in these areas consistent with the Principles. These related reforms helped established the National Electricity Market and approaches to pricing gas and water infrastructure charges.

9 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 9 July 2024, p XXIII.

10 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 9 July 2024, p XIV.

Significant reforms and outcomes

National Competition Policy was a transformational microeconomic reform program founded on the understanding that competition is an effective means to achieve economic progress and public benefits. The PC said that NCP exemplified the lasting benefits of enhancing the pro-competitive environment:

Apart from putting downward pressure on the prices of many goods and services, the more competitive market environment created by NCP and related reforms has contributed to improvements in service quality and reliability in some sectors. The reforms have also led to an expansion in the range of products and services available to consumers.¹¹

Revitalising NCP

Much has changed in the economy since the NCP was established thirty years ago. While road and rail, a focus of the original NCP's reforms, remain vital links connecting Australian cities and regions to one another and the world, information highways are now crucial for trade and improving productivity growth. The Hilmer Report referenced technological opportunities on the horizon at a time when less than 2% of Australians used the internet. Connectivity is now ubiquitous and essential to consumers, businesses, the economy, and the community.

The modern economy creates new opportunities and challenges for maintaining a competitive economy.

The challenges include realising on the opportunities associated with the net zero transformation, addressing market power and barriers to entry in the digital economy, and the need to deliver high quality, sustainable services. This is a particularly acute challenge for the care and support sector due to our growing and ageing population.¹² Innovations like robotics and Artificial Intelligence (AI) are reshaping economies and poses new challenges such as the capacity to employ data to its highest potential while upholding standards of privacy and quality.

The competition challenges identified by the Hilmer Report are also still relevant. Significant barriers still prevent the community from benefiting from competition and legal barriers prevent labour, goods and services flowing to their most efficient uses. For example, restrictive licensing regimes and standards regulations unduly limit the flow of labour, goods, and services across domestic and international borders.

Governments' decision to revitalise NCP recognises these challenges and opportunities, and the need for Australia to boost competition to increase productivity and economic growth in an efficient and sustainable way.

11 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005, accessed 9 July 2024, p XX.

12 Australian Government Treasury, *2023 Intergenerational Report*, Australian Government Treasury, 24 August 2023, accessed 4 July 2024, p8, 15.

The process for revitalising NCP

The Commonwealth, states and territory Treasurers have “agreed to revitalise national competition policy and committed to developing an agenda for long-term pro-competitive reforms” under the auspices of the Council on Federal Financial Relations (CFFR) — the national forum of Treasurers.¹³

CFFR’s decisions will be informed by this consultation process as well as the report produced by the PC on its analysis of the economic and other impacts of potential NCP reforms.

13 The Hon Dr Jim Chalmers, ‘*Treasurers meet in Queensland*’ [media release], Australian Government Treasury, 1 December 2023, accessed 1 July 2024.

2. Revitalising the National Competition Principles

Thirty years ago, the Hilmer Report noted that solutions to issues of national significance could not be solved exclusively through top-down national laws and policies. This holds true today. Cooperation between governments to coordinate their actions is needed.



[T]he Committee has focused on cooperative approaches, based on principles and processes implemented by individual governments, rather than proposing national laws.¹⁴



Hilmer, Rayner and Taperell, *National Competition Policy*, 1993

Governments' first priority in implementing the Hilmer Report was to facilitate greater competition in markets, including by making sure their own activities did not interfere with potential competitors. The *Competition Principles Agreement 1995* (CPA) sets out, among other things, agreed reforms and guidance for ongoing action that facilitated governments unlocking the benefits of competition. This part of the CPA is known as the National Competition Principles (the Principles). The Principles apply to all levels of governments, including local governments (CPA Clause 7).

The Principles establish foundations for how governments, through their actions and decisions, can remove impediments to and avoid restricting competition. In this way, they also make an important contribution to the framework of good public governance and decision making, particularly for managing governments' commercial entities.

The Principles detail the agreed actions by which governments put the Principles in place and maintain their intent.

Broadly, via agreement to the Principles, governments decided to:

- ensure that legislation did not restrict competition, for example regulation that unnecessarily restricts new businesses entering a market (CPA Clause 5: Legislation Review)
- put government businesses on a level footing with private businesses, for example, by ensuring government businesses are required to comply with the same regulation (CPA Clause 3: Competitive Neutrality)
- separate 'contestable' parts of government businesses, from monopoly and regulatory functions so it is possible for private businesses to compete fairly in those markets (CPA Clause 4: Structural Reform of Public Monopolies).

Governments also recognised that some markets would not be competitive so the Principles guide how some benefits of competition can be achieved in these circumstances, by:

- monitoring prices of government business enterprises to reduce the incentive to exercise monopoly power (CPA Clause 2: Prices Oversight)

¹⁴ F G Hilmer, M Rayner, G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p 28.

- setting up processes by which businesses can access significant monopoly infrastructure services, rather than needing to inefficiently duplicate those services (CPA Clause 6: Access to Services Provided by Means of Significant Infrastructure Facilities).

Three decades on, the Principles are still an enduring guide for governments implementing their ongoing NCP commitments.

The Principles have changed little since they were agreed. Changing the Principles unnecessarily could create uncertainty for stakeholders and risks of unintended consequences. In particular, changing the Principles would have flow on impacts for all the policies, practices, guidelines, and laws that the Principles are embedded in and the decisions that flow from those instruments. Revisions to the Principles must be well-informed by evidence and amendments limited to where evidence demonstrates that the change is in the public interest.

Elements of the Principles are outdated, including references to legislation that was superseded 20 years ago and detail to guide the implementation of reforms that were implemented between 1995-2005. As noted above, the landscape the Principles operate in has changed, and some of the competition problems they were designed to address have evolved.

Since the Principles were agreed, the economy has globalised and digital platforms and data ownership have become key sources of market power. The rapid evolution of new technologies, the net zero transformation, and the growing size of the care and support economy are key changes.

The Principles are heavily focused on Government Business Enterprises (GBEs). Their implementation had a substantial impact on these entities and has resulted in fewer GBEs due to many privatisations and the transfer of substantial overall market share and power to the private sector. Governments now use different business models to deliver services and goods to consumers.

The objective that drove the Hilmer Report and subsequent reforms, including governments' agreement to the Principles, was increasing economic growth and lifting living standards to create better opportunities that come with living in a productive, competitive nation. The Principles' role in achieving this objective was to guide governments' actions in areas that the law could not, or did not, reach. This objective remains equally valid today.

Competition policy is not about the pursuit of competition per se. Rather, it seeks to facilitate effective competition to promote efficiency and economic growth while accommodating situations where competition does not achieve efficiency or conflicts with other social objectives.¹⁵

Hilmer, Rayner and Taperell, *National Competition Policy*, 1993

Opportunities to revitalise the Principles

Legislation Review Principle

Clause 5 of the CPA requires governments to consider potential impacts on competition from their legislation (including subordinate legislation). This is known as the 'Legislation Review' Principle. The Principle requires jurisdictions to review, at least once every 10 years, legislation that restricts competition unless it can be shown that:

¹⁵ F G Hilmer, M Rayner, G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p XVI.

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

Two key reforms ensued from the Legislation Review Principle.

First, during the NCP reform period, jurisdictions reviewed their stock of legislation to identify and reform provisions that restricted competition. Provisions that restricted competition were only kept if governments could justify that they met the public interest test above.

Over the 10-year NCP reform period, governments collectively reviewed around 85% of their nominated legislation. An example of a resulting reform was the removal of the legal profession’s monopoly on conveyancing services, resulting in increased choice of service provider and reduced conveyancing fees. In New South Wales, fees reduced by 17% between 1994 and 1996 in NSW.¹⁶

Second, jurisdictions established a regulation impact assessment process to identify and measure the impacts (i.e. costs and benefits) of potential new regulations, including any competition impacts.

While the original legislation review program from 1995-2005 led to substantial benefits for the Australian community,¹⁷ multiple reviews have highlighted unfinished business and a growing need to address the impact of regulation, including on competition and business dynamism.¹⁸

The Harper Review also highlighted that government policies and processes, in particular government procurement, can have a significant impact on competition, and should not restrict competition unless the benefits to the community outweigh the costs and the objectives of the policy can only be achieved by restricting competition.¹⁹

The NCC reported that effective implementation of the Legislation Review Principle during the NCP reform period suffered from a lack of guidance in some jurisdictions and varying levels of detail about how to perform competition analysis to the required standard in others.²⁰

Considerations that could be taken into account in revitalising the Legislation Review Principle include those listed below.

- Broaden the scope of the Legislation Review Principle to government policies and processes that have the potential to significantly impact competition.
- Augment the Legislation Review Principle’s requirement to ensure legislation does not restrict competition with an agreement that the Legislation Review Principle also require competition to be promoted, where it is in the public interest.
- Targeted reviews under the Legislation Review Principle could take place to assess legislation (or policies/processes) that might impact competition in a particular market, or that might be creating barriers to entry of new technologies.

16 J Baker, *Conveyancing fees in a competitive market*, Justice Research Centre, 1996.

17 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 2005, p XII.

18 D Borthwick and R Milliner, [Independent Review of the Australian Government’s Regulatory Impact Analysis Process](#), Department of the Prime Minister and Cabinet, April 2012; I Harper, P Anderson, S McCluskey, M O’Byrne *Competition Policy Review – Final Report*, Australian Government Treasury, 2015.

19 I Harper, P Anderson, S McCluskey, M O’Byrne, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 277.



Questions about the Legislation Review Principle

Please provide case studies or examples to illustrate your views where possible.

1. Is the Legislation Review Principle and its implementation effectively ensuring regulation does not restrict competition unless it is in the public interest? If so, how? If not, why not?
2. Are changes required to the Legislation Review Principle or its implementation to make it more effective and/or to address new challenges. If yes, what changes could be made?

Competitive Neutrality Principle

Clause 3 of the CPA, known as the Competitive Neutrality Principle, aims to promote fair and efficient competition between public sector and private businesses. Competitive neutrality requires that government business activities should not enjoy any net competitive advantages (or disadvantages) because of their government ownership.

Government-owned businesses can have a range of advantages over private businesses, for example, advantageous tax treatment and lower financing costs. This can enable government businesses to offer goods and services at prices that are, or would be, hard for private businesses to compete with. The Competitive Neutrality Principle seeks to correct any advantages held by government businesses by requiring those advantages to be:

- accounted for in the prices those businesses charge
- neutralised by tax equivalent payments and government guarantee fees²¹
- neutralised through corporatisation or commercialisation, and/or
- removed altogether.

A key reform resulting from the CPA was the competitive neutrality policies put in place by all Australian jurisdictions. These policies outline obligations that governments are to impose on their significant business activities to create a level playing field for competitors.

Corporatisation and commercialisation have been the most common approach to applying competitive neutrality to government businesses. Policy requirements are in place to ensure that non-corporatised entities, including local government entities, are subject to competitive neutrality when significance thresholds are met.

Reviews have identified several issues in relation to competitive neutrality including insufficient transparency and reporting by relevant entities²² and the appropriateness of the Principle for newer government business models²³ or entities with novel ownership structures (such as multiple government owners or partial government ownership).

21 Government guarantee fees make up the difference between the cost of debt guaranteed by the government and what government businesses would have paid based on their standalone credit rating.

22 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 267.

23 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 262.

Stakeholders have also raised issues around the transparency, effectiveness, and timeliness of complaints processes.²⁴

Considerations that could be taken into account in revitalising the Principle include those listed below.

- Governments could review and update their competitive neutrality policies. This was also recommended by the Harper Review.²⁵ Any reviews could consider the issues highlighted above, including whether the content of the Competitive Neutrality Principle itself should be updated to guide policy changes.
- Consider how to provide requirements and/or guidance for applying competitive neutrality to cross-jurisdictional issues and multi-owner enterprises. A key consideration will be the extent to which the Competitive Neutrality Principle should include requirements on these issues to inform jurisdictional policies.
- Consider how to improve the transparency and reporting on entities' competitive neutrality obligations and compliance.
- Address concerns around some jurisdictions' Competitive Neutrality complaints bodies and processes, including their independence and the complexity of complaints processes.²⁶



Questions on the Competitive Neutrality Principle

Please provide case studies or examples to illustrate your views, where possible.

3. Has the Competitive Neutrality Principle been effective in supporting competition?
4. Do the Competitive Neutrality Principle and jurisdictions' related policies that flow from the Principle:
 - Capture the right government business activities?
 - Appropriately address government advantages and disadvantages to support competition?
 - If not, what changes could be made to improve the Principle?

Structural Reform of Public Monopolies Principle

In the 1990s, large public monopolies were often responsible for industry regulation, allowing them to set regulations that favoured their own business. These enterprises were often structured in ways that made it hard for competitors to enter relevant markets. For example, a vertically integrated monopolist servicing both a monopoly market (for example, telecommunications infrastructure) and a competitive market (for example, retail telecommunications) could price out potential retail

24 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 262; Independent Pricing and Regulatory Tribunal NSW, *Review of NSW competitive neutrality policies and processes – Final Report*, Independent Pricing and Regulatory Tribunal NSW, 2023, p 118.

25 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 50.

26 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, 2015, p 268.

competitors by cross-subsidising from their monopoly returns to provide services to retail customers at below-cost prices.

Through clause 4 of the CPA, also known as the “Structural Reform Principle”, governments committed to remove regulatory functions from public monopolies before they introduced competition into markets supplied by these monopolies. Governments also committed to review a range of issues before introducing competition to a market traditionally supplied by a public monopoly, or before privatising a public monopoly,²⁷ including separating competitive elements of the public monopoly into a standalone entity and determining the price and services regulations to be applied to the industry that would be opened to competition.

Most public monopolies that existed when the Structural Reform Principle was agreed have now been restructured, for example, by splitting monopoly and ‘contestable’ functions into separate businesses.²⁸

The ACCC has raised concerns that the Structural Reform Principle has not always been implemented well when restructuring some GBEs – in particular, the requirements for the actions that are to be taken prior to privatisation. Failure to properly implement the Principle’s requirements can adversely impact competition – for example, by largely unregulated private monopolies having scope to prevent new entrants into the market and the ability to charge higher than efficient prices.²⁹

There have been calls to extend the Structural Reform Principle to other areas where governments procure or provide goods and services.³⁰

Governments now often provide services through business models that fall outside of the scope of the Structural Reform Principle. However, these business models present the same policy problem for competitive markets that the Structural Reform Principle sought to solve with GBEs – they can produce monopoly (or near monopoly) outcomes if they are not structured to promote independence and transparency, guided by consumer interests.

Considerations that could be taken into account in revitalising the Principle include those listed below.

- Strengthening the requirements for activities that must occur before structural reform takes place. For example, more deliberate assessment of competition in the sector ahead of privatisations could be required, as well as greater transparency around how the Principle has been applied to structural reforms.
- Expanding the application of the Structural Reform Principle to cover activities that pose the same or similar challenges as it was originally created to address, for example, government procurement and provision of services (for example, human services). This could be done by agreeing to separate the interests of regulators, funders, and providers to ensure objectivity in funding and regulatory decisions.

27 The CPA was explicitly neutral between public and private ownership.

28 ACCC, Submission to Treasury [Competition Review](#), ACCC, February 2024, p 9.

29 ACCC, Submission to Treasury [Competition Review](#), ACCC, February 2024, p 9.

30 I Harper, P Anderson, S McCluskey, M O’Bryan, [Competition Policy Review – Final Report](#), Australian Government Treasury, 2015, p 33.



Questions about the Structural Reform of Public Monopolies Principle

Please provide case studies or examples to illustrate your views, where possible.

5. Has the Structural Reform Principle been effective in introducing competition to sectors traditionally supplied by a public monopoly? If so, how? If not, why not?
6. Do you think any potential changes to the Structural Reform Principle or its implementation should be considered? If so, what are those changes and why are they important?

Access to Services Provided by Means of Significant Infrastructure Facilities Principle

Competition is not always possible in every market. Natural monopolies exist where one firm owns infrastructure that is not economic to duplicate. This can impact competition in markets that depend on the services that the infrastructure provides.

Clause 6 of the CPA, known as the 'Access Principle', seeks to promote competition in upstream and downstream markets through economically efficient access to services provided by significant monopoly infrastructure. The Principle provides for the owner and operator of the infrastructure to provide access on reasonable terms, for instance, they can charge fees for providing access.

An access regime is typically implemented where an access-seeker's commercial negotiation with the infrastructure owner or operator has failed or is considered likely to fail. The Access Principle requires the Commonwealth to legislate for an access regime to enable third-party access to services provided by significant infrastructure facilities in the circumstances set out in the Principle. The National Access Regime (NAR) was created under what is now Part IIIA of the *Competition and Consumer Act 2010* (Cth) (CCA).

The NAR allows third-party access to services provided by significant monopoly infrastructure facilities by request to the NCC, seeking a 'declaration' of specific infrastructure services.³¹ Based on NCC's recommendation, the relevant Commonwealth Minister can declare a facility and then potential users can seek ACCC arbitration for access terms. The NAR is limited to the services provided by nationally significant infrastructure facilities.

The Principle also enables states and territories to operate access regimes for facilities provided they conform to the Access Principle. The Access Principle is lengthy and includes detailed requirements for these regimes.

The Commonwealth and states and territories have several sector- and jurisdiction-specific access regimes. For example, specific access regimes exist for electricity (provided for under the National Electricity Law and National Gas Law), telecommunications (section XIC of the CCA), water infrastructure, and rail infrastructure.

Where the infrastructure owner is not a competitor in a dependent market, it has no immediate profit-maximising incentive to restrict access to the facilities provided by its infrastructure,³² but could still use its market power to extract monopoly profits from those services. These 'non-

31 There are three other pathways that access may be provided under Part IIIA of the CCA; see NCC *Declaration Guide*, 2018.

32 It may still choose to restrict access for strategic or operational purposes or to attempt to weaken downstream operators to acquire them or in an attempt to acquire them.

vertically-integrated monopolies' can still have competition impacts in related markets, for example, by deterring investment, and broader economic costs. The current Principle and the CCA are worded relatively flexibly, and non-vertically-integrated infrastructure has been subject to access 'declarations' at times, albeit following long and complex legal processes.

Some issues raised by stakeholders about the Access Principle include:

- Part IIIA of the CCA, which lays the foundation for the NAR, has been reviewed and amended multiple times³³ and is due for another review in 2025.³⁴ Important aspects of the wording (for example, the criteria for declaration) are now different to the Principle.
- In the past 30 years, new forms of 'non-physical' infrastructure have emerged that are not necessarily economically feasible to duplicate or which require a degree of 'interoperability'³⁵ to facilitate meaningful competition. For example, digital platforms and large data holdings. Owners of this infrastructure can have large competitive advantages and prevent competitors in upstream and downstream markets from competing effectively in similar ways to physical infrastructure owners. It is not clear whether these competition problems are able, or well-suited, to be addressed by using the Access Principle.
- The Access Principle was designed to mitigate the competition impacts of infrastructure monopolies rather than address broader economic harms of monopoly pricing; although, rebalancing negotiating power on access terms is an important function of access regimes.³⁶ The Prices Oversight Principle likewise does not currently address monopoly pricing harms outside Government Business Enterprises (see below).
- Other reviews have identified implementation issues with access regimes at the national, state and territory levels. While recognising the importance of rigorous scrutiny, processes under access regimes can be slow, particularly for contentious matters which take an average of six years to resolve.³⁷ Complex matters have been increasing as a proportion of applications under the NAR since 2004.³⁸
- The National Significance Test (specified in paragraphs 6(1)(a)-(b) of the CPA) is subjective and can be complicated when considering whether infrastructure services ancillary to nationally significant infrastructure services are included.³⁹ Caution must be taken when making modifications because changes to the NAR that are not adopted by other regimes can lead to uncertainty.⁴⁰

33 See for example, Productivity Commission, *Review of the Prices Surveillance Act 1983*, 2002 and Productivity Commission, *National Access Regime*, 2013.

34 Productivity Commission, *National Access Regime Inquiry Report*, Productivity Commission, 2013.

35 Interoperability involves users of one network speaking to users of another network. An example is the interoperability between the owners and operators of Australia's telecommunications networks which allows Telstra users sending an SMS or call Optus or TPG Telecom users without needing to buy a separate 'Optus' phone or 'TPG' phone.

36 As envisioned in the Hilmer Report: F G Hilmer, M Rayner, G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p 251.

37 Australian Government Treasury analysis. This includes the 6 years of dispute over declaration of Port of Newcastle that was on going at the time of the Australian Governments review in 2021.

38 Australian Government Treasury, *Regulation impact statement – Timeliness of processes under the National Access Regime*, Department of the Prime Minister and Cabinet, 2021, p 5.

39 Productivity Commission, *National Access Regime Inquiry Report*, Productivity Commission, 2013, p 174.

40 Asciano, *Submission to the Productivity Commission Draft Report relating to the National Access Regime*, Productivity Commission, 2013, p 7.

Considerations that could be taken into account in revitalising the Principle include those listed below.

- An updated Access Principle could play a higher-level role, defining the function and characteristics of access regimes, but leaving details to the relevant legislation.
- The Access Principle could explicitly address modern infrastructure access problems, including those relating to non-physical infrastructure. This should involve considering whether the current Principle and NAR is adequate for these purposes or if stand-alone or revised requirements would need to be created.
- Review whether the range of policy instruments available (whether associated with this Principle, or the Prices Oversight Principle) is appropriate to mitigate harmful monopoly market power, focusing on significant infrastructure monopolies.
- Consider improving implementation and/or operation of the NAR. This might involve the speeding-up of its processes and guidance on the national significance test. These matters could be considered via a review of the Regime.



Questions about the Access to Services Provided by Means of Significant Infrastructure Facilities Principle

Please provide case studies or examples to illustrate your views, where possible.

7. Has the Access Principle been operating effectively? If not, why not?
8. Are there any issues with the Access Principle that have not been identified in this paper?
9. Do you think any potential changes to the Access Principle or its implementation should be considered? What are they and why are they important?

Prices Oversight Principle

Under a natural monopoly⁴¹ or near-monopoly market conditions where there are very high barriers to entry,⁴² monopolists have an opportunity to consistently charge above-efficient prices. The ‘first best’ solution is to address the underlying competition problem, but this is not always possible.⁴³ The Hilmer Report viewed that, in specific circumstances, following an appropriate process, prices oversight could be used as a disincentive for businesses to exploit their market power.⁴⁴

Prices oversight encompasses a range of instruments used by governments to examine, monitor and influence pricing by businesses. The Hilmer Report envisioned that NCP would include a price oversight mechanism limited to price monitoring and notification (a summary of prices oversight policies is provided at [Appendix B](#)). Stronger price regulation (such as direct controls) can be very

41 A natural monopoly is where one firm owns a piece of infrastructure that would not be economic to replicate e.g. a railroad.

42 Barriers to entry include high start-up costs, patents and licences.

43 F G Hilmer, M Rayner and G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p 272.

44 F G Hilmer, M Rayner and G Taperell, *National Competition Policy*, Australian Government Publishing Service Canberra, 25 August 1993, accessed via National Competition Council website on 4 July 2024, p 289.

costly, potentially creating inefficient prices and disincentivising new market entrants and investment.

Clause 2 of the CPA, known as the “Prices Oversight Principle”, focuses on how ‘softer touch’ oversight activities can improve efficiency. The Prices Oversight Principles was also limited to the Hilmer Report recommendations focused on improving the pricing of *government* businesses, reflecting the need for reform in the 1990s. Some jurisdictions, including the Commonwealth and New South Wales, already had Prices Oversight functions in place when the CPA was established.

The Prices Oversight Principle requires each state and territory to consider creating an independent source of prices oversight for its GBEs with a prime focus on efficient resource allocation. The Principle also requires these bodies to receive submissions from interested persons and publish reasons for its pricing recommendations.

By 2004, all jurisdictions had prices oversight bodies. These bodies vary in responsibilities, but many have the primary goal of protecting the long-term interests of consumers through prices oversight.⁴⁵ Some bodies have additional objectives, for example, in New South Wales, the Independent Pricing and Regulatory Tribunal (IPART) is required to ensure that regulated service providers remain financially viable and protect the environment. The powers of these independent bodies vary across jurisdictions and sector. For example, some have powers to make a maximum price determination, which is beyond the scope of the Prices Oversight Principle. Others can only recommend maximum prices, with the price decision resting with the relevant government.⁴⁶

At the Commonwealth-level, the ACCC is primarily responsible for prices oversight for Australian Government GBE monopolies. Its prices oversight powers exist in Part VIIA of the *Competition and Consumer Act 2010* (Cth) (CCA), are not restricted to GBEs, and can be exercised at the direction of the relevant Minister in markets where, in the view of the Minister, competitive pressures are not sufficient to achieve efficient prices and protect consumers. The CCA prices oversight powers are price inquiries, price monitoring, and price notification.⁴⁷

In exercising its powers, the ACCC has regard to:

- maintaining investment and employment
- discouraging a person in a position of power over a market from influencing prices, and
- discouraging cost increases due to labour force reasons that are inconsistent with industrial tribunals.⁴⁸

There is no general power to regulate or restrict monopoly prices, although governments have created laws and institutions to do this.⁴⁹

Some issues raised by stakeholders on this Principle are outlined below.

45 Some bodies have additional objectives, for example, in New South Wales, the Independent Pricing and Regulatory Tribunal (IPART) is required to ensure that regulated service providers remain financially viable and protect the environment.

46 For example, in New South Wales, IPART makes a price determination for water providers, whereas in Western Australia the Economic Regulation Authority can make recommendations for the pricing of water.

47 The ACCC has a general power to monitor prices in areas where there is not enough competition under Part VIIA of the *Competition and Consumer Act 2010* (Cth). It assesses notifications of price increases from firms that have been declared by the Minister and can object to the price increase. An objection does not in itself restrict a price rise.

48 Subsection 95(7), CCA.

49 Most retail price controls have been repealed over time, for example, the controls on retail prices for Telstra’s fixed telephone services in 2015.

- The Prices Oversight Principle only covers a small part of the Hilmer Report’s envisioned prices oversight mechanism (namely, for GBEs). It does not provide guidance, for example, on the appropriate use of broader price surveillance powers.
- Governments provide goods and services in other ways than through GBEs (for example, regulatory activities, access to public resources and infrastructure). There can be limited transparency about the efficiency, and potential competition impacts, of prices for these goods and services. The price charged for a service could be ‘inefficient’ by being:
 - too low — potentially leading to ‘over consumption’ and inhibiting competition, with the residual cost being borne by taxpayers or through reduced government service provision
 - too high potentially leading to ‘under consumption’ and opaque cross-subsidies for other programs.

Considerations that could be taken into account in revitalising the Principle include those listed below.

- An updated Prices Oversight Principle could have a higher-level role, providing guidance for the appropriate use of prices oversight. The Principle could focus on the broader function of prices oversight, as already exists in NCP (including Part VIIA of the CCA, and state- and territory-level powers) and how to balance the benefits with the costs of oversight. This would not include generic price regulation.
- The Prices Oversight Principle could evolve to guide governments’ pricing practices beyond monopoly GBEs where appropriate, complementing rather than replacing competitive neutrality policies for contestable businesses. It could encourage governments to identify and be transparent about decisions to price above or below efficient prices, many of which can be justified (e.g. community service obligations, broader societal needs or revenue raising).



Questions about the Prices Oversight of Government Business Enterprises Principle

Please provide case studies or examples to illustrate your views, where possible.

10. Has the Prices Oversight Principle and its implementation been effective?
11. Are changes required to the Prices Oversight Principle to make it more effective and/or to address new challenges? If so, what changes could be made and why?

Public Interest Test

NCP was designed to serve the public interest and several of the Principles are subject to what could be called a “public interest test” in subclause 1(3) of the CPA:

- Competitive Neutrality
- Structural Reform, and
- Legislation Review (which also includes its own public interest test, discussed above).

The Access Principle is not subject to the public interest test, but the criteria for the NAR in the CCA is clear that access must not be contrary to the public interest.

The public interest test is not exhaustive but requires a list of factors to be taken into account when making policy decision under the three Principles listed above. These factors include:

- ecologically sustainable development
- economic and regional development
- employment-related policies (for example, occupational health and safety)
- social welfare and equity considerations
- consumer interests
- the competitiveness of Australian businesses, and
- the efficient allocation of resources.

The presence of a public interest test in the Principles recognises that governments have policy objectives in addition to pursuing competitive and/or contestable markets. Competing policy objectives need to be balanced with achieving the public good delivered by competitive outcomes. A public interest test can help perform this balancing exercise and provide a consistent language for communicating how and why policy decisions were reached.

The drafting of the public interest test is relatively complex. There is also no specific guidance on how to apply the public interest test to inform decisions, and it not clear which Principles it should apply to. This could result in different interpretations of how to apply the test leading to varying results in the same situations. Reportedly, application of the test tends towards a narrow interpretation rather than a wider interpretation.

Decisions made under the test lack transparency. There have been reported to be no appeal mechanisms against decisions made under the test, outside of the competitive neutrality complaints mechanism.⁵⁰

Considerations that could be taken into account in revitalising the Principles include those listed below.

- Making the public interest test simpler and clearer. This could include specifying which Principles it applies to or providing a public interest test that applies to all Principles.
- Improving the guidance for applying the public interest test. Guidance could consider the factors listed above.
- Requiring decisions made under the public interest test to be transparent, including the reasons for decisions and how competition objectives were managed. The costs and benefits of this approach should be identified and weighed up.



Questions about the public interest test

Please provide case studies or examples to illustrate your views, where possible.

12. Has the 'public interest test' in the Principles been effective?
13. Are changes required to the 'public interest test' in the Principles to make it more effective? If so, what changes could be made and why?

50 Socio-Economic Consequences of the National Competition Policy Select Committee, [Report](#), Australian Parliament House, 2000, p 33.

Potential new matters for the Principles

Format of the Principles

Revitalising the Principles opens the opportunity to consider whether the CPA presents them in the most helpful and user-friendly way to enable them to serve their purpose.

The objective of each Principle is often not easy to determine. This can make it difficult to understand the overarching intent of the Principles from the CPA alone.

The individual CPA clauses that contain each Principle are long. They combine subclauses ranging from the intent of the Principle, to actions agreed to implement it, and/or agreed reforms tied to due dates. The level of detail across the Principles varies from broad to very specific and technical.

In revitalising the Principles, it could be useful to articulate a clear purpose for each Principle so that those implementing a Principle can more easily achieve its goals. There might be other ways to structure the Principles to ensure the purpose of the Principles collectively is clear and necessary implementation detail is retained.



Questions about the format of the Principles

Please provide case studies or examples to illustrate your views, where possible.

14. Is the format of the Principles in the CPA user-friendly?
15. In your experience, are there any issues related to the format of the Principles that have not been identified and should be considered?
16. Are changes required to the format and/or drafting style of the Principles to make them more user-friendly? If so, what changes could be made and why?

A Clear Purpose

The CPA does not include a clear overarching purpose for the Principles. A purpose statement could serve two objectives: telling readers about the role of the Principles and setting the intended outcomes for decisions made under, or pursuant to, the National Competition Principles. It could also provide guidance for governments when addressing complex policy matters under the Principles.

Examples of some considerations for improving the Principles are:

- Adding a purpose statement in the revitalised Principles.
- A purpose statement could be informed by the objective of promoting competition described above in this paper, i.e. to ensure consumers can access the benefits from competition. The Harper Report recommended updating the Principles to recognise the overarching objective of competition policy as promoting the long-term interests of consumers as a means to improve wellbeing.⁵¹ This was translated to the CPA, which has an objectives section that centres around improving the wellbeing of all Australians.⁵²

51 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, Australian Government Treasury, March 2015, p 96.

52 *Intergovernmental Agreement on Competition and Productivity - enhancing Reforms*, Part 2, accessed 22 March 2024.

- A purpose statement could explicitly require decisions under each of the Principles to have regard to how they will deliver on the Principles' purpose.



Questions about a purpose statement for the Principles

Please provide case studies or examples to illustrate your views, where possible.

17. Should the Principles include a purpose statement/principle?
18. In your experience, are there any issues related to purpose statement/principle that have not been identified and should be considered?
19. What considerations should be taken into account in drafting and implementing a purpose statement/principle?

Promoting Competition

There is scope for the Principles to have an increased focus on guiding governments to promote competition. A specific example is the Legislation Review Principle which, in addition to its focus on removing and preventing legislation that restricts competition, could include a requirement to promote competition. More broadly, other existing Principles could be subject to a new requirement to be implemented in a way that promotes competition, and any new principles could be established in this way.

An example of how this could generate competition benefits in practice is a more pro-competitive approach by governments in their role as purchasers, including through market design and stewardship, and procurement policies. If a public interest test is applied across all the Principles, it could be used to guide when and how a requirement to promote competition is pursued.

Examples of some considerations that could be taken into account for the Principles are:

- The Principles could include a general requirement to promote competition, for example, in a purpose statement.
- Consideration would need to be given to how governments would be expected to implement this requirement and what guidance would be necessary.



Questions about the Principles promoting competition

Please provide case studies or examples to illustrate your views, where possible.

20. Should the Principles include a requirement to promote competition?
21. In your experience, are there any issues related to promoting competition through the Principles that have not been identified and should be considered?
22. What considerations should be taken into account in drafting and implementing a requirement to promote competition?

Consumer Empowerment

Benefits for consumers and the community should be a central objective of competition policy. But consumers are also an important force in *generating* competition benefits – they are the ‘demand-side’ of the competition equation. The current Principles seek to activate competition through the ‘supply-side’.

To activate the demand-side, consumers need to have quality choices and be able to effectively exercise that choice. For example, consumers can put pressure on businesses to compete by switching or threatening to switch providers. Laws and government policies and programs designed to ensure consumers are informed, engaged, and protected from exploitative conduct are also essential to empower consumers.

However, relying on consumers to actively exercise choice is not sufficient. It is well understood that consumers will often not exercise choice proactively, even when it is available, in their best interests, and they are informed (or reasonably able to be). This ‘stickiness’ is sometimes attributed to reasons like lack of time or simple inertia, and factors like customer loyalty programs. There are also circumstances where consumers are not in a position to be well-informed, for example, due to market complexity or lack of transparent information.

Considerations that could be taken into account in establishing a new Principle include those listed below.

- Including a new principle by which governments agree to activate the ‘demand side’ of competition.
- Considering what actions such a principle would require, for example, actions to stimulate choice like informing and engaging consumers, or removing frictions that prevent consumers effectively exercising choice.
- These policy outcomes could possibly be achieved through the Legislation Review Principle, especially if that Principle requires regulation to promote competition as well as not restrict competition.
- A new overarching purpose statement/principle for the National Competition Principles could explicitly encourage delivery of consumer benefits – or community wellbeing – when applying the Principles. This approach could generate wider policy responses to activate the ‘demand-side’ of competition than a stand-alone consumer/demand-side principle because it would mean action under all the Principles would be implemented in a way that achieves consumer or community outcomes.



Questions about promoting consumer empowerment through the Principles

Please provide case studies or examples to illustrate your views, where possible.

23. Should the Principles promote ‘consumer empowerment’ or the ‘demand-side’ of competition? What are the costs and benefits?
24. In your experience, are there any issues related to promoting consumer empowerment or the ‘demand-side’ that have not been identified and should be considered?
25. What considerations should be taken into account in drafting and implementing a requirement to promote competition?

Market Design and Stewardship

Governments can have a significant role in establishing, shepherding, and maintaining markets through functions including regulator, purchaser, funder and provider of goods/services. Market design and ongoing market oversight and maintenance (or stewardship) is especially relevant to:

- complex quasi-markets (such as aged care and disability services)
- emerging markets (for example, new digital platforms), and
- markets closely related to government policy priorities (like water markets and those that play a role in the net zero transformation).

Governments' choice to engage in market design and stewardship functions, and the way they perform these roles, can impact the competitiveness or contestability of the markets and quasi-markets they engage with over the short, medium, and long term.

Considerations that could be taken into account in establishing a new Principle include those listed below.

- A new principle could guide governments' approach to market design and stewardship to facilitate competitive/contestable outcomes that are in the interests of the community.
- Consideration should be given to the circumstances in which such a principle should apply, for example, to complex quasi-markets, emerging markets and markets closely related to government policy priorities. Alternatively or additionally, it could be linked to situations such as market failures that indicate government could play a valuable role in shepherding the market, even for a while.
- Such a principle could provide guidance on leveraging competition through market design and stewardship to improve service delivery and/or achieve governments' policy objectives more efficiently with regard to the relevant market.



Questions on market design and stewardship

Please provide case studies or examples to illustrate your views, where possible.

26. Should a market design and stewardship principle be incorporated into the Principles? What are the costs and benefits?
27. In your experience, are there any issues related to market design and stewardship that have not been identified and should be considered?
28. What considerations should be taken into account in drafting and implementing a market design and stewardship principle?

Facilitating Competition through Data Sharing

More competition could be fostered through increased data sharing. In recent times, the importance of data has been increasing in markets. Data ownership creates the potential for a large first-mover advantage and network effects, which can prevent competitors entering markets and limit competition in future markets. These competition issues did not exist at the time of the Hilmer Report and were still emerging at the time of the Harper Review in 2015.

Government data is increasingly important to businesses and consumers, and unnecessary restrictions on access to this data can impede competition. Removing barriers to the access and use

of government data could promote more competition because, with care to minimising risks of misuse or misinterpretation, the scope for using government data is large. Opening access could increase the burden on governments to consider whether data can be shared in a way that maintains the public interest, including individuals' privacy, other policy and legal considerations and ensuring that any data governments share is of adequate quality.

Considerations that could be taken into account in establishing a new Principle include those listed below.

- Governments could foster more competitive outcomes by safely sharing their data. A new principle could establish a presumption in favour of governments providing access to data in appropriate ways.
- Competition could also be enhanced by private entities sharing their data, for example, by virtue of requirements stemming from the Principles. There are many relevant factors to be balanced when considering this idea, for instance, potential impacts on investment, for example, in research and development and intellectual property.
- These policy outcomes could possibly be achieved through application of the Legislation Review Principle, especially if that principle requires regulation to facilitate competition and not restrict competition. However, there are factors unique to data that may warrant a stand-alone principle. These could include a requirement for governments to not discriminate between data recipients, creating and enforcing data standards and potentially requiring interoperability to support competition and integration.



Questions about a data sharing principle

Please provide case studies or examples to illustrate your views, where possible.

29. Should data sharing be incorporated into the Principles? What are the costs and benefits?
30. In your experience, are there any issues related to data sharing that have not been identified and should be considered?
31. What considerations should be taken into account in drafting and implementing a data sharing principle?

3. A National Competition Reform Program

The second proposed element of a revitalised NCP is a National Competition Reform Program that would encompass a National Competition Reform Agenda (NCRA) and Jurisdiction-specific Reform Plans.

The National Competition Reform Agenda would complement the revitalised Principles by identifying reforms that remove unnecessary barriers to competition, increase choice for consumers and put downward pressure on prices.

Key elements of the National Competition Reform Agenda

Reforms will focus on improving living standards by removing barriers or impediments to competition that do not provide a net public benefit or are unnecessary to achieve the desired public policy outcome.

The development of reforms under each theme for consideration by CFFR will be informed by quantitative and qualitative analysis, including information about known competition issues, competition indicators, and detailed economic modelling.

Scoping and prioritising reforms

The Australian, state and territory governments will work collaboratively to develop a 10-year program of reforms. This long-term approach will provide a framework for ongoing and staged competition reforms, enabling governments to respond to emerging competition problems and ensure there is sufficient time to develop practical policy responses.

A subset of reforms that are important for addressing cost-of-living pressures will be prioritised for early implementation.

Each jurisdiction will have flexibility to develop its own Jurisdiction-specific Reform Plan that sets out its approach to implementing the NCRA to fit their circumstances, including which reforms they plan to undertake.

The NCRA will consist of reforms that address known competition problems, are expected to have a positive impact at a national level and are usefully advanced through NCP process (Figure 1).

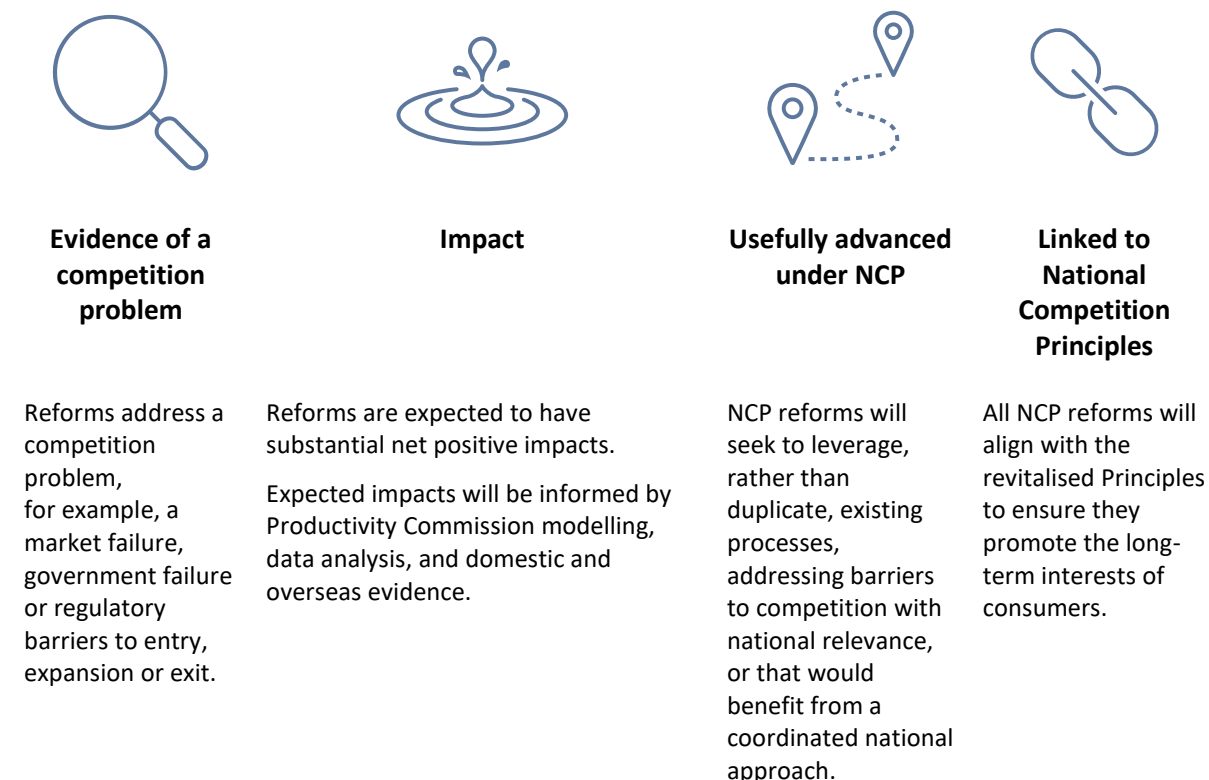
Economic modelling of reforms

CFFR has agreed that economic modelling of the impacts of proposed reforms – including on government revenue – should be undertaken. The PC will be undertaking this analysis,⁵³ to assess the impact of potential reforms on economic growth, productivity, government revenue, Australian households and consumer wellbeing. It will consider the scale of any benefits from the reforms, as well as distributional impacts across locations and sectors of the economy.⁵⁴ The PC's findings will help inform the shape and scope of reforms on the NCRA.

53 Productivity Commission 2024, National Competition Policy analysis: Terms of Reference.

54 Ibid.

Figure 1: Process for scoping and prioritising potential NCP reforms



Competition reform themes for the modern Australian economy

All reforms in the proposed NCRA will fall under one or more reform themes that signal key policy areas and will anchor the NCRA over its 10-year period.

The reform themes complement the Principles. While the Principles are sector-neutral and focus on governments’ policy interventions in markets, the reform themes are both sectoral and cross-sectoral in nature and:

- **are nationally significant** – each relates to a broad policy issue that affects competition and markets across Australia that all governments have an interest in undertaking productivity-enhancing reforms in to help achieve their broader policy objectives and create net public benefit
- **have enduring importance and relevance** – concern long-term characteristics or policy issues in the Australian economy that will address the key challenges of the next decade.
- **reflect evidence of poor outcomes due to lack of competition** – where there is strong evidence of a competition problem to justify reform.

To help support the development of the NCRA, five provisional reform themes have been identified for consultation and further analysis.

1. Promoting a more dynamic business environment
2. Harnessing the benefits of competition in the net zero transformation
3. Lowering barriers to labour mobility
4. Better harnessing choice, competition, and contestability in human services
5. Leveraging the economic opportunities of data and digital technology.

Reform theme 1: Promoting a more dynamic business environment

Enhancing business dynamism is key to restoring Australia's productivity. A more dynamic business environment directly supports competition, through encouraging innovation, information sharing, diffusing technological advancement, and greater choice for consumers. A dynamic economy can quickly adapt to changes in demand and supply by reallocating resources as needed.

The regulatory environment plays a crucial role. Good regulation can promote dynamism and achieve policy objectives such as safety and environmental protection. Poorly designed regulation and/or unnecessary compliance activity – that is, interventions that provide no improvement in meeting the regulatory objective – raise barriers to market entry and exit. Poor regulation can exacerbate adverse competition outcomes as businesses must devote more resources to navigating complex regulatory environments.

Some sectors are more prone to developing anti-competitive market structures, particularly where fixed costs are high, there are large network effects, and where there are significant first-mover advantages. Dominant firms can exploit this to reduce competition from new entrants or expanding firms. In these sectors, competition laws, regulation and policies play a critical role in ensuring a level playing field.

Governments can support and enhance competition across existing, new, and emerging markets by fostering market conditions that are favourable for the entry and growth of new businesses, and product and service offerings. Governments should ensure regulations do not unnecessarily raise costs of doing business or inhibit innovation or industry growth.

What can NCP reforms under this theme achieve?

The NCP reform agenda will consider the evidence for improved community outcomes from actions that:

- Objective 1: Reduce barriers to business entry, expansion, and exit.
 - Ensure regulatory systems and processes do not unnecessarily or unintentionally raise or impose barriers for businesses aiming to enter, expand or exit markets, promoting level playing fields.
- Objective 2: Ensure businesses do not face excessive or unnecessary compliance costs to participate in markets, including for smaller and nascent businesses.
 - Design regulation and compliance processes that promote public policy objectives such as safety and environmental protection in a way that minimises unnecessary administrative costs.
- Objective 3: Promote national coherence of regulatory frameworks and/or mutual recognition of regulatory approval and accreditation processes across jurisdictions where the benefits outweigh the costs.
 - Coordinate and align across separate and distinct regulatory structures where possible to minimise complexity for businesses and people working across borders and systems.

What actions have been suggested by previous work?

Some examples of potential actions to address competition issues that are consistent with the objectives of this theme include:

- The PC recommended that business and industrial zoning should be standardised to increase competition across local government areas.⁵⁵
- Nous Group suggested amending the *Food Safety Australia New Zealand (FSANZ) Act 1991* to enable FSANZ to recognise and adopt the assessments and determinations of appropriate overseas bodies and simplify the regulatory experience for business.⁵⁶
- The 2024 Fels *Price Gouging and Unfair Pricing Practices* inquiry recommended import-related reforms to the *Road Vehicle Safety Act 2018*, citing Mandala analysis that showed second-hand electric and hybrid vehicles are 41 per cent cheaper on average in New Zealand than Australia.⁵⁷

Reform theme 2: Harnessing the benefits of competition in the net zero transformation

Australia is participating in a global net zero transformation that will present significant new opportunities and challenges. The Commonwealth, states and territories are all developing net zero plans and strategies that include initiatives to manage the transformation, particularly in the biggest emitting sectors.

The huge scale of the net zero transformation demands concerted action and cooperation between governments. The strong policy impetus to decarbonise will encourage economy-wide public and private investment that will drive the extensive adoption of low and zero-emissions technology, and the rapid evolution of industries and markets. Nationally coherent policy settings that foster competition and create enduring market-based incentives will improve the chance of successfully achieving these goals.⁵⁸

Competition has a key role to play in advancing the net zero transformation. Competitive markets drive the innovation and adoption of technologies needed to dramatically reduce emissions.⁵⁹ Unnecessary regulatory requirements that reduce efficiency, and limit access to low emissions technology, will undermine efforts to capitalise on net zero economic opportunities and increase the costs of the net zero transformation.

There are also substantial risks to competition that may materialise as entirely new markets and industries emerge. The rapid development of new public infrastructure and novel products to support the transformation has the potential to advantage certain first-mover firms and cement anti-competitive market structures.

Effective competition policy settings are therefore vital to ensuring a least cost whole-of-economy transformation. Competition will foster opportunities for innovation and support the development of new businesses and technologies. Governments can act to lower barriers to competition that hinder the diffusion of low emissions technology, as well avoid local and technical monopolies that will result in long term harm to Australian markets and consumers.

55 Productivity Commission, *5-year Productivity Inquiry: Advancing Prosperity, Report no. 100*, Commonwealth of Australia 2023.

56 Nous Group, *Modernising the Food Standards Australia New Zealand Act 1991: Impact Analysis*, 25 January 2024.

57 Australian Council of Trade Unions, *Inquiry into price gouging and unfair pricing practices*, chaired by Professor Allan Fels AO, February 2024.

58 Productivity Commission, *5-year Productivity Inquiry: Managing the climate transition Vol. 6, Inquiry Report no. 100*, Commonwealth of Australia 2023.

59 G Zachmann, *The Role of Competition in the Transition to Climate Neutrality*, Bruegel Working Paper 2022.

What can NCP reforms under this theme achieve?

The NCP reform agenda will consider the evidence for improved community outcomes from actions that:

- Objective 1: Lower barriers that hinder the diffusion of low and zero-emissions technology
 - Ensure businesses have a low cost, timely and efficient pathway to bring innovative products to the Australian market where there are no significant safety risks.
 - Ensure consumers have access and choice – and the ability to exercise that choice – with respect to the most efficient and sustainable products and services.
- Objective 2: Ensure businesses do not face excessive compliance costs to participate in the low carbon economy
 - Including through streamlined regulatory processes that are easier for all participants (including SMEs) to navigate.
- Objective 3: Ensure long term competitiveness in markets when delivering net-zero initiatives
 - Governments should avoid creating anti-competitive market structures (for example, granting exclusive supply rights) unless there is clear and demonstrated public interest.
 - Governments should seek to promote competition when allocating public funds to emissions reduction initiatives, undertake regulatory evaluations of market outcomes and respond to changing conditions (including transiting to open market access arrangements where possible).

What actions have been suggested by previous work?

Some examples of potential actions to address competition issues that are consistent with the objectives of this theme include:

- In its 2021 review into the ‘right to repair’, the PC found there were significant and unnecessary barriers to third party repair for some products in Australia. It recommended policy approaches that would encourage greater competition from third party repairers, including amending Copyright laws to ease repair information sharing.⁶⁰
- In its 2023 Electric Bus Evaluation, the National Transport Commission found dimension/load limits were limiting competition and increasing costs for the supply of electric buses in Australia.⁶¹
- The ACCC has stressed the need for new and emerging markets that support net zero (such as EV charging infrastructure) to develop competitive structures and avoid anti-competitive consolidation.⁶²

Reform theme 3: Lowering barriers to labour mobility

A flexible and mobile labour force is a key driver of a productive, dynamic and resilient economy.

60 Productivity Commission, [Right to Repair, Inquiry Report no. 97](#), Commonwealth of Australia 2021.

61 National Transport Commission, [Electric Bus Evaluation, 2023](#), pp 31-32.

62 Cass-Gottlieb, G. [Competition stewardship in markets transforming for environmental sustainability](#), 8th Meeting of High-Level Representatives of Asia Pacific Competition Authorities, OECD, delivered 6 December 2023.

Increased labour mobility encourages competition amongst firms for skilled workers, helping to allocate labour toward its most productive use, reducing critical skills shortages and addressing regional disparities.

Competition for workers improves employment conditions and can lift real wages (even for those who stay in their existing job).⁶³ A more mobile workforce can improve the dissemination of new ideas and knowledge to more workers and businesses, fostering innovation and entrepreneurship.

Increased labour mobility will be particularly important for managing emerging pressures from significant structural changes in our economy, including the net zero transformation, increased process automation, the proliferation of artificial intelligence, and an aging population.

Australia has experienced a general decline in job mobility over the past 30 years.⁶⁴ The pace of labour reallocation from less to more productive businesses has slowed over the past 12 years. This accounted for about a quarter of the slowdown in aggregate labour productivity growth in Australia.⁶⁵ Indeed, the unexpectedly low wage growth from 3-4% (pre-GFC) to 2% can be explained by declining labour market dynamism.⁶⁶ The percentage of workers taking up new jobs each year is declining. This raises important questions about barriers to labour mobility, including the impact of contractual restraints on employees and differences in occupational licensing.⁶⁷

There is also evidence that rising market concentration in some parts of the economy is shifting bargaining power from workers to employers.⁶⁸ This can lead to employers exercising bargaining power to restrict labour movement within the industry.⁶⁹

Barriers to labour mobility also means incumbent firms face less competitive pressure to improve their productivity, limiting innovation and the creation and success of start-ups.⁷⁰ Unnecessary barriers to labour mobility can place upwards pressure on prices and impact service delivery, particularly when critical shortages exist, and workers are unable to transition to high-demand sectors. For example, limited labour mobility can worsen skills shortages in the construction sector, which can inflate building costs directly and place upwards price pressure in related markets (such as, building insurance).⁷¹

The Commonwealth, states and territories are interested in reforms that could address unnecessary regulatory and administrative barriers that prevent workers with relevant skills, experience and competencies from moving between jobs.

What can NCP reforms under this theme achieve?

The NCRA will consider the evidence for improved community outcomes from actions that:

- Objective 1: Streamline regulations that have unintended impacts on labour mobility.

63 N Deutscher, 'Job-to-job transitions and the wages of Australian workers', Treasury Working Paper, Australian Government, 2019.

64 Australian Treasury, *Working Future: The Australian Government's White Paper on Jobs and Opportunities*, Australian Government, 2023.

65 D Andrews and D Hansell, 'Productivity-Enhancing Labour Reallocation in Australia', Treasury 2019.

66 D Andrews and D Hansell, 'Productivity-Enhancing Labour Reallocation in Australia', Treasury 2019.

67 Standing Committee on Economics, *Inquiry into promoting economic dynamism*, Parliament of Australia, 2024.

68 J Hambur, 'Did Labour Market Concentration Lower Wages Growth Pre-COVID', RBA Research Discussion Paper, 2023.

69 Australian Treasury, *Issues paper: Non-competes and other restraints: understanding the impacts on jobs, business and productivity*, Commonwealth of Australia, 2024.

70 D Andrews, *Committee Hansard*, e61 Institute, 2023, p 10.

71 European Insurance and Occupational Pensions Authority (EIOPA), *Impact of inflation on the Insurance sector*, EIOPA, 2023.

- Ensure regulatory processes (e.g., licencing, accreditation, compliance) are efficient, necessary, and do not impose duplicative costs (e.g. financial, time and effort) on those who navigate the system.⁷²
- Objective 2: Better recognise the skills, experience and qualifications of workers.
 - Reduce barriers to the recognition of skills and qualifications of domestic and overseas workers in accreditation and licencing processes. This would address scenarios where workers with relevant skills in sectors with capacity constraints or workforce shortages are excluded or face unnecessarily onerous or duplicative processes to gain accreditation.⁷³
- Objective 3: Increase geographic and occupational mobility.
 - Ensure workers can move between jobs, firms and jurisdictions, unless there is a reasonable justification aligned with the public interest (i.e. safety and quality) for preventing them.⁷⁴

What actions have been suggested by previous work?

Some examples of potential actions to address competition issues that are consistent with the objectives of this theme include:

- The House of Representatives Standing Committee on Economics asked the government to consider the appropriateness of constraints and bans on non-compete clauses and other restraint of trade clauses.⁷⁵
- The PC's 2023 Productivity Inquiry report found that reducing unnecessary occupational licensing requirements improved labour mobility and made recommendations to review and improve licensing policy and address boundary issues.⁷⁶

Reform theme 4: Better harnessing choice, competition, and contestability in human services

The human services sector encompasses dynamic parts of the Australian economy that are vital to the wellbeing of our population. The sector covers a wide range of services, including health, education, community services, social housing, aged care and disability services.

Demographic and social change, including an ageing population, is shifting community expectations and demand for health, social, care and support services. Technology is changing the nature of these

72 The Senate Red Tape Committee (2018) considered that a nationally consistent approach would be preferable to the current regulatory regimes that is complex, duplicative, inconsistent and burdensome. The PC (2023) modelled a real GDP increase by 0.3% when unnecessary occupational licensing requirements were removed, simulated by increasing labour productivity in the model.

73 For example, the Health Practitioner Regulatory Setting Review (2023) considered that better recognition of qualifications and experience of overseas practitioners would facilitate increased mobility of international health practitioners to address shortages while maintaining quality and safety.

74 The PC Inquiry report into Geographic Labour Mobility (2014) explores how geographic labour mobility can improve efficiency and community wellbeing by alleviating labour shortages and regional disparities in labour market conditions, and increase skills utilisation and incomes. Lobel suggests that permitting workers to start new businesses or move between businesses within the same industry can improve the worker's own productivity (and consequently wages). See Lobel, Orly, 'Non-Competes, Human Capital Policy & Regional Competition', *Journal of Corporation Law*, Vol. 45, No. 4, 2020, San Diego Legal Studies Paper No. 19-417, 2019.

75 House of Representatives Standing Committee on Economics, [Better Competition, Better Prices: Report on the inquiry into promoting economic dynamism, competition and business formation](#), Parliament of Australia 2024.

76 Productivity Commission, [Advancing Prosperity: 5-year Productivity Inquiry report](#), Australian Government Productivity Commission 2023.

services and consumer preferences are shifting, including for digital healthcare and education services. Total government spending on health, aged care, and the NDIS are projected to rise from 8.8% of GDP currently to 14.4% by 2062-63.⁷⁷ Competition policy and robust market stewardship can help governments deliver quality and sustainable services that meets Australians' changing needs. In designing human service markets, governments need to appropriately employ choice, competition, and contestability, and empower consumers to ensure access to quality and sustainable services. This approach recognises that that competition and contestability in human services can support innovation in service delivery, driving service providers to innovate and provide better quality, more responsive or lower cost services. It also recognises that a laissez-faire approach to competition and contestability in human services markets is unlikely to deliver better outcomes for service users and the community.

There is no one-size-fits-all approach to market design in human services. The structure of regulation, providers, and government funding/service provision will vary across different human services, cohorts, and locations.

What can NCP reforms under this theme achieve?

The NCP reform agenda will consider the evidence for improved community outcomes from actions that:

- Objective 1: Allow consumers to choose the most suitable service provider.
 - Reduce barriers such as asymmetric information and technological constraints to promote informed choice and empower consumers to access services that best suit their needs.
- Objective 2: Streamline regulations that have unintended impacts on labour mobility in human services.
 - Remove unnecessary barriers to entry and labour mobility, including duplication and inflexible requirements, that are not proportionate to the risks.
- Objective 3: Reduce costs and improve access to necessary health services and products.
 - Improve and streamline government regulation and intervention to better manage the price and accessibility of services and goods.

What actions have been suggested by previous work?

Some examples of potential actions to address competition issues that are consistent with the objectives of this theme include:

- The Kruk Review 2023 made several recommendations to address regulatory barriers to labour mobility and entry in the health care professions, including to streamline, remove duplication and align standards, evidentiary requirements and policy settings across agencies for internationally qualified health practitioners.⁷⁸
- With telehealth now a permanent part of Australian general practice, it has been suggested that governments should look to reduce barriers to telehealth uptake and accessibility.⁷⁹

77 Australian Government Treasury, *2023 Intergenerational Report*, Australian Government, 24 August 2023, accessed 4 July 2024, p 143.

78 Robyn Kruk, *Independent review of health practitioner regulatory settings*, Department of Health and Aged Care, 2023, accessed 9 July 2024.

79 Katie Fisher, Andrew R Davey, Parker Magin, 'Telehealth for Australian general practice: The present and the future', *Australian Journal of General Practice*, 2022, 51(8):626-629.

- Australian governments have committed to empower people through health literacy under the National Health Reform Agenda – improving their capacity to understand health information and the infrastructure and availability of information.⁸⁰

Reform theme 5: Leveraging the economic opportunities of data and digital technology

Digital technology is crucial to the productivity and growth of most Australian businesses – over 85% of Australian businesses rely on it to operate.⁸¹ Technology including digital records, cloud computing and generative AI have transformed how people and businesses interact with each other, access information, and participate in markets. Productive use of technology can enhance international trade, improve government service delivery, and enhance the quality of goods and services businesses can offer.

Australia is trailing behind in adopting data-driven technology, ranking 26th in the world for business use of using analytics, and 23rd for business use of AI.⁸² Businesses that face unnecessary barriers to adopting digital technology or cannot use the best available data to innovate and improve their efficiency, will fall behind businesses from overseas that embrace digital technology to gain a competitive advantage.

Digital markets can be reliant on large networks which preference incumbents and tend toward consolidating market power, limiting competition and harming consumers and smaller businesses. Barriers to public access to data, particularly large volumes of data held by incumbent firms, can create information asymmetries that disempower consumer choice and restrict efficient matching of service providers and users.

Optimal data flows enable greater competition in markets. Productive use of data increases transparency and choice, helping to match consumers with businesses that best meet their needs and preferences. It also drives innovation by giving evidence backed insights into product improvement and market gaps.

There is a tension between data collection, use, security, and personal privacy. If policy settings are proportionate to risks, Australians will be more likely to realise the large economic benefits and competition enhancing impacts of data while managing the risk of harm.

Governments have a key role to play in promoting policy settings that maximise the value consumers and businesses can realise through data and digital technology, while managing the risks it can pose to users.

What can NCP reforms under this theme achieve?

The NCRA will consider the evidence for improved community outcomes from actions that:

- **Objective 1:** Enable a dynamic and inclusive digital economy that encourages businesses to innovate and use technology and data to improve the efficiency, quality and utility of their goods and services.

80 Department of Health and Aged Care, *2020–25 National Health Reform Agreement (NHRA)*, 2020, Department of Health and Aged Care, accessed 9 July 2024.

81 Australian Bureau of Statistics, *Characteristics of Australian Businesses*, 2023.

82 Productivity Commission, *5-year Productivity Inquiry: Australia's Data and Digital Dividend*, Inquiry Report – Volume 4, 2023.

- Objective 2: Help consumers make more informed choices and allow them to switch providers more easily, to apply downward pressure on prices and improve product quality.
- Objective 3: Empower consumers and businesses to make productive use of data.
 - Improve data flows (when appropriately balanced against risks) which can boost innovation, lower barriers to entry in data-rich markets, and improve consumer access to goods and services that best meet their needs and preferences.
- Objective 4: Promote flexible and responsive regulatory models that ease the adoption of new technology to enhance efficiency and consumer outcomes.

What actions have been suggested by previous work?

Some examples of potential actions to address competition issues that are consistent with the objectives of this theme include:

- The Harper Review considered that informed decision making from engaged consumers leads to the best market outcomes. It recommended governments work with stakeholders to improve the way consumers can access information needed for informed choice. It also recommended governments draw on behavioural insights in presenting information to consumers.⁸³
- The PC found that greater data sharing between the public and private sectors would help both businesses and consumers (provided safety and security was maintained). It recommended the Australian Government work to enable secure government data sharing to aid research and boost product and service innovation.⁸⁴
- The PC has warned that poorly targeted regulation of emerging AI technology could dampen investment and innovation, or lead to entrenched anticompetitive conduct. It highlights the need for nationally consistent, well designed AI regulations to encourage competition and reduce public harms.⁸⁵



Questions:

32. Do the reform themes adequately capture existing and emerging competition issues? Are there any additional objectives under each theme that you consider are important to improve community outcomes? What would you change?
33. What specific reform actions could governments pursue in the National Competition Reform Agenda? What are the potential benefits and costs?

83 I Harper, P Anderson, S McCluskey, M O’Bryan, *Competition Policy Review – Final Report*, The Treasury, 2015, pp 304-305.

84 Productivity Commission, *5-year Productivity Inquiry: Volume 4 - Australia’s Data and Digital Dividend*, 2023, p 56.

85 Productivity Commission, *Making the most of the AI opportunity, Research paper 2: The challenges of regulating AI*, 2024, p 13.

4. Implementation arrangements



The successful implementation of a substantial reform program is heavily reliant on robust institutional frameworks and related procedures and effective leadership from key governing bodies.⁸⁶



Productivity Commission, *Review of National Competition Policy*, 2005

Effective implementation arrangements are necessary for governments and the community to realise the full value of a revitalised NCP. As part of revitalising the NCP, the Commonwealth, states and territories will identify implementation arrangements, including institutional and governance arrangements, that will best support the operation of the NCP, both in the near term and into the future.

When NCP was agreed in 1995, governments established a set of institutional and governance arrangements to support its implementation. These are outlined below.

- The National Competition Council (NCC) oversaw implementation of NCP. This included advising governments on competition policy broadly and on approaches to reform implementation (see Box 1).
- The NCC assessed whether jurisdictions had met the milestones in the *Agreement to Implement the National Competition Policy and Related Reforms* (the Implementation Agreement). Based on this assessment, the NCC made recommendations to the Commonwealth Treasurer on what portion of the maximum possible payments should be paid to jurisdictions.
- The Australian Government made competition payments to jurisdictions upon successful completion of reform milestones.
- Council of Australian Governments (COAG) provided Ministerial oversight of the NCC's activities and work program, and the COAG Senior Officials Group provided officials-level oversight.

Revitalising NCP is an opportunity to consider whether the institutional arrangements set up for the original NCP would be appropriate for today's circumstances or benefit from adjustment. This section considers what governance and institutional arrangements might be needed to deliver a revitalised NCP.

Institutional arrangements to support a revitalised NCP

In considering how institutional arrangements could best support a revitalised NCP, the first set of questions for consideration concerns how to best support the implementation phase of a revitalised NCP – that is, embedding revitalised Principles and enacting competition reforms.

The second set of questions relates to the best set of institutional arrangements to support the advancement of NCP more broadly. This encompasses both support for continued adherence to enduring competition Principles agreed under a revitalised NCP, as well as questions of whether there would be benefit in an institution having an ongoing responsibility to act as a steward of NCP.

⁸⁶ Productivity Commission, *Review of National Competition Policy Reforms*, 2005, p 373.

Supporting implementation of the NCRA and revitalised Principles

Box 1 The National Competition Council

The NCC was established in 1995 under Commonwealth legislation (now known as the *Competition and Consumer Act 2010* (Cth)). It is funded by the Australian Government. The NCC's councillors are appointed with the majority support of states and territories.

During the implementation period of the original NCP, the NCC's primary roles were to assess jurisdictions' progress in implementing the NCP commitments and make recommendations to the Australian Government Treasurer on competition payments to be made to jurisdictions.

The NCC's other functions included:

- making recommendations to the Australian Government Treasurer on applications for the declaration of services under the National Access Regime
- undertaking Commonwealth and national legislation reviews
- providing advice to governments on implementing the commitments of the NCP.

The NCC's work was determined by a work program agreed by all governments. The CPA established the arrangements for agreeing this program – proposals for the NCC to undertake work were to be shared among governments and agreed by majority. COAG provided oversight of this process.

Between June 1997 and 2005, the NCC produced nine reports on progress in implementing the NCP, including two supplementary reports. Following the expiry of competition payments in 2005, however, reports to inform competition payments were no longer needed, and the NCC's funding was significantly reduced. Today, the NCC primarily performs its access-related functions.

Several inquiries have examined the implementation of the original NCP, including the 2000 Senate Select Committee on the socio-economic consequences of the NCP and the 1999 PC Report on the Impact of Competition Policy Reforms on Rural and Regional Australia.

These inquiries point to several key institutional features of NCP that were critical to its success. One is an accountability framework. The NSW Government observed that “[a] strength of the NCP agreements has been the establishment of a framework in which governments are made accountable for implementing reforms and an external body is made responsible for monitoring governments' compliance.”⁸⁷

The PC considered this framework established pressures, via inter-jurisdictional demonstration effects, to maintain commitment to reform over time and to adhere to agreed review processes.⁸⁸ The PC also noted that the assessment and monitoring framework delivered ancillary benefits: promoting ‘learning by doing’ experiences across jurisdictions, aiding fine-tuning of implementation processes and identifying problem areas in need of follow-up work to progress reform satisfactorily.⁸⁹

87 NSW Government, *Submission to the Productivity Commission Review of National Competition Policy Arrangements*, 2004, p 21.

88 Productivity Commission, *Review of National Competition Policy Reforms*, 2005, p 144.

89 Productivity Commission, *Review of National Competition Policy Reforms*, 2005, p 144.

Competition payments have also been cited as important to NCP's success. The PC reports that the importance of competition payments in progressing reform was "endorsed by many participants, including State and Territory governments. In general, they saw the regime as a core element of NCP and as an appropriate mechanism to share the revenue benefits of the reforms with the States and Territories."⁹⁰

The NCC also emphasised the key role of these payments, particularly that "[u]sing competition payments to leverage reform outcomes in areas of State and Territory responsibility has proven highly effective. ... Reform would have been far slower and less comprehensive without competition payments." The NCC considered that, without such payments, jurisdictional competition policy units would have been less empowered to support implementation of NCP commitments.⁹¹

These inquiries also identified some concerns in relation to the role played by the NCC.

- The NCC was seen as having conflicts in its dual role as 'assessor' and 'advisor' – it was tasked with assessing progress against NCP commitments and providing jurisdictions with advice on implementation. Concerns were raised that the NCC was simultaneously an active participant in reform development processes (in some cases, seen as 'championing' certain reforms) *and* assessing the progress of these reforms.⁹²
- Some considered that COAG did not provide sufficient oversight of the NCC's work program and activities. Several states considered that, as a result, the standards against which the NCC assessed progress did not accord with what governments had agreed, and that the NCC was unilaterally imposing its own views.

The 2015 Harper Review, which undertook the first 'root and branch' review of competition policy since the Hilmer Review, questioned whether the governance arrangements of the NCC were sufficiently 'national'. For instance, it noted that while the CPA provides for states and territories to nominate candidates for NCC President or Councillor and specifies that the candidate the Commonwealth puts to the Governor-General must have majority support from the states and territories, in practice these positions were largely managed by the Australian Government.⁹³

The Harper Review also suggested that a perception of greater accountability to the Australian Government might have arisen as a result of the NCC's role in recommending what proportion of the maximum amounts payable under the Implementation Agreement should be paid by the Commonwealth to states and territories.⁹⁴

Ongoing support for the revitalised Principles and competition reform

The Harper Report noted that commitment to the Principles waned after the expiry of payments in 2006, notwithstanding that many required ongoing action.⁹⁵ The enduring nature of the Principles raises the question of how institutional arrangements can best support ongoing adherence beyond the horizon of the 10-year reform agenda.

90 Productivity Commission, *Review of National Competition Policy Reforms*, 2005, p 152.

91 NCC, *Submission to the Productivity Commission, Review of National Competition Policy Arrangements*, 2004, pp 35.

92 Productivity Commission, *Impact of Competition Policy Reforms on Rural and Regional Australia*, 1999, pp 339-341; Select Committee, *Socio-Economic Consequences of the National Competition Policy*, Parliament of Australia, 2000, pp 122-124; SA Government, *Submission to Productivity Commission Inquiry into the Impact of Competition Policy Reforms on Rural and Regional Australia*, 1998, p 5.

93 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, The Treasury, 2015, p 455.

94 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, The Treasury, 2015, p 455.

95 I Harper, P Anderson, S McCluskey, M O'Bryan, *Competition Policy Review – Final Report*, The Treasury, 2015, p 117.


Potential mechanisms could include providing an institution with the responsibility to investigate and report on the ongoing compliance of jurisdictions with the Principles. This could be carried out through periodic review and reporting. It could also encompass receiving, investigating and reporting on complaints regarding non-adherence with the Principles.

More broadly, competition policy in Australia has tended to be spearheaded by those conducting one-off reviews (for example, the Hilmer and Harper Reviews), rather than by an institution with competition policy as its business-as-usual function. The Harper Review saw an opportunity for an institution to play a leadership role in advocating for competition policy, driving implementation of the decisions made, and conducting independent, transparent reviews of progress.⁹⁶

Potential responsibilities for such an institution could include those outlined below.

- Proactively recommending policy changes where there is a net community benefit from a more seamless national economy or where a national approach is needed. This institution could be a promoter of a seamless ‘common’ market in Australia – investigating, reporting and advising governments on removing barriers to trade between states and territories along similar lines to the Inter-State Commission provided for in the Constitution.⁹⁷
- Providing advice to governments on potential competition issues as policy is being formulated. For example, where preliminary analysis (for example, through regulatory impact or other assessment processes) identifies potential competition issues, advice could be sought from a national competition institution to supplement the analysis of an individual jurisdiction. Alternatively, or in addition, a competition stewardship role could encompass providing advice on market design principles. This source of advice could supplement existing impact assessment processes, providing advice on market design and competition considerations at an early stage of policy development.
- Educating and drawing awareness to potential areas for national competition policy reform by undertaking studies of specific markets. These studies would have a high-level policy focus – for example, where government intervention or interaction with a market was causing competition problems, or where big structural changes were raising the need for a revised policy approach.

A prominent overseas example of an institution that operates in this way is the Monopolies Commission in Germany. It is a permanent, independent expert body which advises the German government and legislature in the areas of competition policy making, competition law, and regulation. Its reports are published.⁹⁸



Questions:

34. What institutional, governance and other arrangements, including mechanisms to share the economic growth and revenue benefits of reforms, would best support the implementation phase of a revitalised NCP?

35. What institutional arrangements would best support continued adherence to the competition principles beyond the end of the 10-year reform agenda?

⁹⁶ I Harper, P Anderson, S McCluskey, M O’Bryan, *Competition Policy Review – Final Report*, The Treasury, 2015, pp 76-77.

⁹⁷ ss 92 & 101, *Commonwealth of Australia Constitution Act*.

⁹⁸ See Monopolies Commission: [Monopolkommission](#).

Glossary and Abbreviations

AI	Artificial Intelligence
ACCC	Australian Competition and Consumer Commission
CCAg	Conduct Code Agreement
CCA	Competition and Consumer Act 2010 (Cth)
CFFR	Council on Federal Financial Relations
CN	Competitive Neutrality
COAG	Council of Australian Governments
CPA	The Competition Principles Agreement 1995
Cth	Commonwealth
FSANZ	Food Safety Australia New Zealand Act 1991 (Cth)
GBE	Government Business Enterprise
IGA	Intergovernmental Agreement
IPART	Independent Pricing and Regulatory Tribunal
NCC	National Competition Council
NCP	National Competition Policy
NCRA	National Competition Reform Agenda
NCRP	National Competition Reform Program
PC	Productivity Commission
PEXA	Property Exchange Australia Ltd
TPA	Trade Practices Act 1974 (Cth)

Appendix A: Elements of the original NCP

Intergovernmental agreements

The Commonwealth, state and territory governments made three intergovernmental agreements (IGAs) that formally committed them to implement the NCP. The three IGAs were the National Competition Principles Agreement (CPA), the Conduct Code Agreement (CCAg) and the Agreement to Implement the National Competition Policy and Related Reforms ('Implementation Agreement'). Further information on each is provided below.

The National Competition Principles Agreement (CPA)

The CPA is still an active IGA. It commits governments to nationally consistent and complementary competition law and policy. The CPA sets out a framework for promoting competition that applies to all levels of government through five microeconomic competition principles relating to: prices oversight of government business enterprises, competitive neutrality policy, structural reform of public monopolies, review and reform of legislation that restricts competition, and third-party access to facilities provided by significant infrastructure.

The CPA also established the National Competition Council (NCC) and provides for the structure of its funding, appointments, work program, and institutional review.

Conduct Code Agreement (CCAg)

The CCAg is still an active IGA. It commits governments to apply competition law uniformly across all jurisdictions – a key Hilmer Report recommendation.

The CCAg also establishes the funding obligations and process for appointments to the Australian Competition and Consumer Commission (ACCC). Under the CCAg, the Commonwealth is required to consult with, and seek the approval of, the states and territories for proposed changes to Part IV of the CCA and appointments to the ACCC.

Agreement to Implement the National Competition Policy and Related Reforms ('Implementation Agreement')

The Implementation Agreement is no longer an active IGA. It set out the implementation and related financial arrangements for NCP and related reforms.

The Implementation Agreement established a regime through which the Commonwealth provided financial assistance (known as 'competition payments') to states, territories and local government if they implemented the NCP reforms identified in the Implementation Agreement to the required standard, as assessed by the National Competition Council (NCC).

Broadly, competition payments were available for implementing legislation to extend the TPA, implementing the related infrastructure reforms (for example, electricity, gas, and transport) and implementing the Principles as required by the CPA.

Institutions

The NCP IGAs created two key institutions, the ACCC and the NCC.

The ACCC formed as an amalgamation of the Australian Trade Practices Commission and the Prices Surveillance Authority to administer the TPA (now replaced by the Competition and Consumer Act (CCA)) and to protect the rights and obligations applicable to consumers and businesses. The ACCC has a presence in each Australian state and territory reflecting the multijurisdictional nature of NCP.

The NCC was formed as an independent advisory body whose purpose and powers are now defined by the CCA. The NCC undertook research and reporting related to NCP including, importantly, reporting on jurisdictions' progress on NCP reforms required to qualify for the financial incentives in the implementation agreement.

The NCC assessed implementation of the NCP and related reforms in accordance with the Implementation Agreement from 1995 to 2005, initially in tranches and then through annual reviews. NCC assessments ranged from verifying a government had implemented an agreed component of the CPA (for example, published a policy) to judging the quality of a process, evidence of outcomes, and commitment to reform agendas.

Appendix B: Range of prices oversight policies

Price oversight policy	Description	Where it could be applied
Price inquiries	The regulator investigates or examines the pricing practices of a specific industry, sector or market to understand how prices are determined, whether there are anticompetitive behaviours, and whether consumers are being treated fairly.	Government can request the regulator to undertake an inquiry where pricing and competition concerns are identified. For example, the recent announcement of supermarket inquiry into prices. ⁹⁹ The goal is to enhance transparency, competition and consumer protection.
Price monitoring	The regulator collects and reports data on prices, costs and profits in various sectors (for example, petrol, airports, gas, electricity, insurance) at the Minister's direction.	Independent monitoring could be applied wherever a government considered there was a public benefit in doing so.
Price notification	The regulator monitors prices in areas where there is not enough competition. It assesses notifications of price increases from firms that have been declared by the Minister. It can endorse or object to a price notification. If the regulator objects, the firm remains free to increase its prices.	This could be applicable to essential services or wherever the government considers competitive forces are weak. While notification is not direct price regulation, it is a greater level of intervention than price monitoring due to more burden being placed on the firm.

⁹⁹ Competition and Consumer (Price Inquiry – Supermarkets) Direction 2024.