

26 September 2024

Jason McDonald
First Assistant Secretary
Competition Taskforce Division

By email: nationalcompetitionpolicy@treasury.gov.au

Dear Mr. McDonald

Revitalising National Competition Policy

The Insurance Council of Australia (Insurance Council) welcomes the opportunity to respond to the '*Revitalising National Competition Policy*' consultation paper ('the consultation paper').

The Insurance Council is the representative body of the general insurance industry in Australia and represents approximately 89% of private sector general insurers. As a foundational component of the Australian economy, the general insurance industry employs approximately 60,000 people, generates gross written premium of \$64.5 billion per annum and on average pays out \$147 million in claims each working day (\$36.5 billion paid out per year).

The introduction of the National Competition Policy in 1995 led to significant competition reform that benefited both consumers and businesses. We support the Government considering appropriate changes and reform to competition policy settings.

We agree with Treasury that competition is essential for listing dynamism and productivity, and we support policy settings that encourage fair competition and enable markets to function efficiently.¹ We acknowledge that robust competition frameworks are critical to enable innovation and provide strong consumer outcomes.

We recognise that regulation is an important tool to help moderate evolving risks and challenges in the economy and wider society. The regulatory landscape in Australia has changed significantly since the National Competition Policy was first implemented, with some industries now highly regulated.

It is important to note that high levels of regulation can create significant burdens, particularly for smaller businesses which can lead to reduced and restricted competition. This is due to the resource and cost impacts of regulatory requests and enforcement activities that require access to appropriate data and funds. The disproportionate impact of this on large and small businesses can prohibit competition within a given industry.

Competition Principles Agreement Format

There is an opportunity to revise the Competition Principles Agreement ('the Principles') in a way that provides more clarity to a broader spectrum of readers. The Insurance Council supports amending the Principles to provide this clarity in a way that enables consistency in understanding and application. This extends to the inclusion of a clear purpose and consistent level of detail for each of the Principles.

¹ Treasury. 2024. *Revitalising National Competition Policy*. Page 10.

Doing so will help ensure consistent understanding of the role of the Principles in driving competitive outcomes and acting as guide posts when complex issues or interpretations arise.

Legislation Review Principle

The Insurance Council recommends that Treasury re-consider the Legislation Review Principle in its current form as it does not accommodate for the regulatory environment that has emerged since the Principles were first established.

The Insurance Council supports the proposal to revitalise the Legislation Review Principle to extend to government policies and processes that have the potential to significantly impact competition.² Further, we support augmenting the requirement to ensure legislation does not restrict competition to requiring competition to be promoted when it is in the public's interest. Government procurement practices is one area the Insurance Council believes competition could be better promoted. We are aware of instances where insurance requirements to tender for government contracts are overly onerous and unnecessary for the size of the project and for smaller businesses to access.³ This creates an anticompetitive barrier that favours larger businesses who can more readily absorb associated costs.

As a part of their legislative review obligations under a revised National Competition Policy, all state and territory governments and the Australian government should be required to undertake reviews of government activities that operate in areas where private sector companies have demonstrated capabilities. Examples within the general insurance sector include the underwriting and claims management of personal injury accident schemes. That these activities can be undertaken by the private sector is evidenced by the fact that private sector insurers successfully underwrite insurance or manage claims in a significant portion of motor accident or workplace injury schemes in Australia.⁴

Governments that undertake such insurance activities through government entities should be required to regularly (e.g. five yearly) review the need and justification for maintaining government participation in insurance markets.

In considering revitalising the Legislation Review Principle, we encourage the Australian Government to consider mechanisms which ensure legislative reviews create an impetus to pursue clear legislative reform. For State and Territory governments, this could include tying payments from the Commonwealth to necessary reforms.

Where a legislative review finds that competition elements of specific legislation can be improved through opening government activities to competitive markets, we encourage the Government to consider pilot programs that test approaches to opening government activities to competitive markets. These pilot programs should consider and embed a holistic approach to the best value for Australian taxpayers.

Competitive Neutrality Policy and Principles

Since the *Competition Principles Agreement* was agreed in 1995, and amended in 2007, the instruments through which Australian governments deliver services have shifted. These changes mean that some government activities may not be considered a business activity despite competing, often

² Treasury. 2024. [Revitalising National Competition Policy](#). Page 17.

³ The Australian Small Business and Family Enterprise Ombudsman's [Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules](#) found that "excessive requirements in tender documentation disadvantage SMEs". Page 15.

⁴ Motor accident schemes in NSW, QLD, SA, and the ACT and NT have private sector involvement as do workplace injury schemes in NSW, VIC, WA, TAS and the ACT and NT.

unfairly, in existing, well-functioning markets. For example, Housing Australia, which is a corporate commonwealth entity not a government business enterprise, delivers the Home Guarantee Scheme (the 'HGS'). The HGS is designed to facilitate government-backed, early access to the housing market for a segment of first home buyers.

The HGS operates as a government competitor to the private lenders mortgage insurance ('LMI') market, however, it does not compete on a level playing field with LMI products given the differential regulatory capital treatment. As the Productivity Commission has noted, government backed low deposit products "represent a public competitor" to LMI, reducing the industry's potential market.⁵ Economic analysis undertaken by Deloitte Access Economics on behalf of the Insurance Council shows that between 2019 and 2023 (the period the HGS has been in existence), the LMI market has declined by 39%.

Additionally, an independent statutory review of the HGS's operation recommended that if changes to the number of guarantees offered or substantial changes to the eligibility criteria were to be considered, the potential impacts on the viability of the private LMI sector should be carefully considered.⁶ As noted, the HGS has since been significantly expanded with minor consideration given to the implications for the LMI market.

Over the medium to long term, there is a risk that further expansion of the HGS could erode the LMI market. This could result in some or all LMI providers withdrawing from the market and therefore limit competition. Limited competition would be an undesirable outcome for those unable to access the HGS in place of LMI, including ineligible first home buyers and non-first home buyers.

There would further be secondary competition impacts flowing for a degradation or cessation of the LMI market. These secondary impacts would be felt in the residential lending system, where LMI is an important feature in the home lending market, enabling smaller lenders to effectively participate and compete against larger lenders in high loan to value ratio residential mortgages. Notably, LMI covers 100% of losses against the relevant loan for a lender, whereas the HGS only covers 15%. This additional exposure for the banking sector should be considered carefully in the context of a severe economic downturn.

Further, consideration should be given to the important role of LMI in the residential mortgage-backed securities ('RMBS') supply chain. RMBS programs are used by non-bank and smaller lenders as part of their funding model.⁷ We note the Australian Office of Financial Management, on behalf of the Australian Government, has previously invested in RMBS "to support competition in lending for housing".⁸ LMI is an important element of risk protection in the RMBS supply chain.

The Competitive Neutrality Principle is essential to ensure that any market distorting effects of government activities are given appropriate due consideration.

⁵ Productivity Commission. 2022. *In need of repair: The National Housing and Homelessness Agreement*. Page 390.

⁶ Chris Leptos AM. 2021. Australian Government. *Statutory Review: Operation of the National Housing Finance and Investment Corporation Act 2018*.

⁷ Ivailo Arsov, In Song Kim and Karl Stacey. 2015. Reserve Bank of Australia. [*Structural Features of Australian Residential Mortgage-backed Securities*](#).

⁸ Treasury. 2010. [*Australian Office of Financial Management Budget Statements*](#). Page 113.

Public Interest Test

The public interest test within the National Competition Principles plays an important role in balancing policy objectives including competitive outcomes that help achieve public good. Greater transparency on the use and application of the public interest test would help to enhance the effectiveness of the public interest test.

The Insurance Council supports changes to the National Competition Principles that enable simplification and transparency. We support making the public interest test simpler and clearer, providing improved guidance and requiring decisions made under the test to be transparent.

Promoting Consumer Empowerment

We agree with Treasury that benefits for consumers and the community should be an objective of competition policy.⁹ When consumers are empowered to proactively exercise their right of choice, this can help to generate competition across markets.

It is also important to balance the need to enable markets to function appropriately according to the competitive forces stemming from a free market, with the need to regulate the market through government interventions. For example, governments activating the 'demand side' of competition through activities such as educational campaigns or subsidies can be effective. However, interventions beyond these types of measures can risk functioning as a restrictive market force.

Reform Themes

The Insurance Council supports the five reform themes, particularly the reform themes with respect to promoting a more dynamic business environment and harnessing the benefits of competition in the net zero transformation.

As identified in the consultation paper, regulation plays an important role in promoting dynamism and achieving policy objectives. It is important to recognise that overly burdensome regulation within specific industries, or regulation that lacks important cohesion, or is duplicative across multiple regulatory or enforcement entities, places undue burdens on businesses. This exacerbates adverse competition outcomes.

The insurance industry is highly regulated with more than 100 pieces of regulation and a robust code of practice. Over recent years, the industry has been impacted by a range of regulatory reforms, including those stemming from the Financial Services Royal Commission. These regulatory reforms have progressed often without regulation impact assessments and often with limited or time-pressured consultation.

The regulatory framework adds significant pressures to operational complexity and costs for insurers, which can impact operations and create high barriers to entry for new competitors.

We suggest a program of post-implementation review be established to assess effectiveness of the reforms, balancing additional consumer protections against operational complexity and cost impacts affecting affordability and productivity as well as increasing barriers to entry for new competitors. Going forward, we suggest regulation be subject to robust impact assessments, as regulatory reforms have significant resourcing and cost implications and burden for industry.

⁹ Treasury. 2024. [Revitalising National Competition Policy](#). Page 29.

We welcome the announcement by the Australian Government earlier this year that it will introduce a financial sector regulatory initiatives grid. We believe this will provide a clear and transparent roadmap for upcoming regulatory changes and reduce the compliance and change frequency burden on industry. Policies such as the regulatory grid help produce better functioning markets and assist governments to better consider the impact of regulation on businesses and markets.

In addition to regulatory reform, the insurance industry is also subject to extensive regulatory oversight. This includes data and information requests from multiple organisations and systems or operational changes in response to evolving regulatory requirements. There has been an increase in regulatory requests in recent years from governments and regulators, and the impacts of these requests can be exacerbated by overlapping or duplicative collections. These place significant resourcing and cost pressures on insurers, particularly small-to-medium insurers. This creates not only high barriers to entry for new market entrants but may also impact on competition within existing markets.

With respect to Reform Theme 2, the Insurance Council supports initiatives that enable and accelerate Australia's transition to net zero. The impact of climate change poses a particular risk to the insurance industry and ensuring that this transition is not prohibited or impacted by anti-competitive activities or forces will be crucial.

However, the transition to net zero requires an approach that balances the need to ensure anti-competitive practices do not stifle innovation or impede progress toward achieving net zero targets; with the need to ensure that appropriate regulations are in place to ensure the safety of emerging net zero products such as electric scooters and electric bikes. Without rigorous safety standards, these innovations could pose risks to consumers, potentially undermining public trust and slowing the transition. Both competition and safety are vital for a successful, sustainable net zero future. In addition to achieving an appropriate balance between safety and innovation, the Insurance Council also encourages governments, wherever possible, to adopt a national approach in this area to create an environment where innovation can best flourish nationally, while at the same time, minimising costs and unnecessary regulatory burden on industry

We look forward to further engagement as Treasury progresses on revitalising Australia's national competition policy to align with today's market landscape.

If you have any questions or comments in relation to our submission, please contact Yasmin Monfared, Senior Advisory, Regulatory and Consumer Policy, [REDACTED]

Regards



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