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**Competition**  
Review

# Revitalising National Competition Policy: Challenges and Opportunities

Conference Paper: Competition Policy for the  
Modern Economy

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## May 2025 addendum

At the Council on Federal Financial Relations meeting on 29 November 2024, all Treasurers formally agreed to revitalise National Competition Policy.<sup>1</sup> This historic agreement marks a renewed national commitment to pro-competitive reform, aiming to lift productivity, GDP and real wages, for a more dynamic and innovative economy.

A new Intergovernmental Agreement on National Competition Policy<sup>2</sup> recommits governments to refreshed National Competition Principles and revived institutional and governance arrangements. The associated Federation Funding Agreement Schedule<sup>3</sup> provides a framework for progressing a long-term agenda of pro-competitive national reform, starting with 5 priority cost-of-living reforms, and with new reforms scheduled to be added in late 2025, 2027 and 2030.

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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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- 1 The Hon Dr Jim Chalmers MP, Australian Treasurer, [Treasurers advance national economic reforms](#), 29 November 2024.
  - 2 Australian Government, [Intergovernmental Agreement on National Competition Policy](#).
  - 3 Australian Government, [National Competition Policy Federation Funding Agreement Schedule](#).

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## Executive summary

Effective competition is critical for lifting dynamism, productivity and real wages growth. It puts downward pressure on prices and delivers more choice, greater innovation and higher quality products for consumers.

Governments have a role to play in supporting competition. One dimension is ensuring we have strong competition laws and enforcement powers to guard against anti-competitive practices. Another is effective regulation in markets where competition is unlikely to be effective, for example, for natural monopolies. And a third is ensuring that governments' laws, regulations and policies do not stand in the way of businesses entering and competing in markets.

In Australia, we have three levels of government that can influence the competitiveness of our businesses and markets. Where governments' laws and policies unnecessarily increase barriers to entry and expansion, this reduces competition and leads to poorer outcomes for consumers. Competition policy is a lever to remove these barriers to competition, to drive productivity and better outcomes for consumers.

Almost 30 years ago, Australia embarked on a 10-year period of pro-competitive reform in agreeing to National Competition Policy, following the landmark Hilmer Review. This was credited with lifting household incomes by around \$5000 per year. We have a new set of challenges and opportunities today. We're now a digital economy, we're looking for ways to make the transition to net zero at least cost, and we have a growing care and services sector. Productivity growth has declined, and indicators of business dynamism, labour mobility and market concentration point to worsening conditions. The time is ripe to recommit to competition reform and productivity growth.

This paper looks at the successes under the original National Competition Policy of the 1990s and the elements that were critical for that success. Incentivising difficult state and territory reform by establishing a framework to share some of the Commonwealth benefits from those reforms was key. Independent assessment of implementation against commitments was also critical in delivering meaningful reform. Reform commitment waned once payments stopped, and governments did not fully recommit to competition policy following the Harper Review in 2015.

A revitalised National Competition Policy could replicate and build on much of the successes of the original agreements. A streamlined and updated agreement with modernised principles would bring renewed rigour to government decision making and processes to ensure that impacts on competition are appropriately considered. It would ensure that government businesses operate on a level playing field and that appropriate regulatory structures are in place to facilitate competition. A new set of reforms and processes for developing and implementing an ambitious forward agenda of reforms suited to today's challenges and opportunities would lift Gross Domestic Product (GDP) and government revenues. Allowing states and territories to share in the gains where they undertake the reform effort would revive commitment to these reforms.

Tasking and uplifting the capability of the National Competition Council (NCC) to assess reform implementation would ensure trust, independence and accountability around any sharing of benefits. And the Productivity Commission could support governments by identifying areas for reform and modelling their impacts. If governments agree an effective framework for a revitalised National Competition Policy, this could drive a new wave of reforms and benefits for all Australians over the coming decades.

## Introduction

It's almost 30 years since states, territories and the Commonwealth agreed to put competition policy front and centre in agreeing to National Competition Policy (NCP) in 1995. This was a time when Australia was opening up to international trade, so Australian businesses needed to be as competitive as possible to compete internationally. Australia was also recovering from a severe recession,<sup>4</sup> and the economy needed a boost to improve outcomes for workers and citizens.

National Competition Policy was heralded for underpinning over a decade of superior productivity performance.<sup>5</sup> It focussed on reform of regulations that unjustifiably restricted competition, reform of public monopolies, and promoting competitive neutrality to ensure public and private businesses operated on a level playing field. However, commitment to NCP wavered in the 2000s.

Much has changed in the Australian economy in the last 3 decades since NCP was agreed. Australia's productivity growth has slowed, 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. This reduction in productivity growth is reflected in lower rates of GDP growth per person,<sup>6</sup> leading to a slower growth in living standards.

There has also been significant structural change, with the services sector now a major contributor to our economy. We also have new challenges and opportunities including in working to meet the government's commitment to net zero, the rise of the digital and data economy, and growth in the care and support economy. In all these things, ensuring that our policy settings are appropriately harnessing the benefits of competition, by recommitting governments to a revitalised NCP, will ensure we rise to meet these challenges and opportunities in the most efficient way.

This paper explores what could be achieved under a recommitment to NCP by looking at current economic conditions, the history of competition policy in Australia, the challenges and opportunities today, and lessons from overseas.

## Why competition policy?

While there is a plethora of literature expounding the benefits of competition, for many everyday Australians, the link between competition and consumer outcomes is conceptual and theoretical. This section aims to unpack some of the literature to show how effective competition policy can contribute to productivity growth and better outcomes for consumers. It also draws on recent competition policy developments in the U.S. and Europe, which have been levers for increasing productivity growth and market dynamism in those jurisdictions.

## Declining productivity growth and dynamism

In many developed economies, including Australia, labour productivity growth has slowed since the mid-2000s.<sup>7</sup> This has substantial consequences for living standards, since labour productivity is a key

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4 Gruen, D. and Stevens, G., *Australian Macroeconomic Performance and Policies in the 1990s*, RBA Annual Conference – 2000.

5 Bogaards, R., *Australia's productivity slowdown*, Parliament of Australia, 2022.

6 Bolt and van Zanden, Maddison Project Database 2023, Our World in Data.

7 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 23. Labour productivity is the amount of output produced per hour worked.

driver of real wages and national income growth.<sup>8</sup> Policies that support productivity growth are hence important to ensure that all Australians continue to achieve higher living standards over time.

Effective competition is a key mechanism for boosting productivity and improving outcomes for consumers.<sup>9</sup> As noted by the OECD:

*Competition is a fundamental driver of productivity, both at the top of the productivity distribution, through shaping incentives to innovate, and among lagging firms via boosting the incentives to increase the adoption of latest technologies and business practices.*<sup>10</sup>

A lessening of competition has been linked with Australia's poorer performance in labour productivity growth over the last 2 decades.<sup>11</sup> Several indicators of competition, including industry concentration, incumbency, and firm mark-ups, point towards falling levels of competition in Australia over this time.<sup>12</sup> A number of papers suggest that rising market power is one contributing factor.<sup>13</sup> There's also evidence of less productive businesses remaining in the economy longer, suggesting that competitive forces are not working to remove these firms from the economy.<sup>14</sup>

Effective competition is fundamental to promoting more productive businesses. There is evidence that Australian firms are catching up to the productivity frontier more slowly now than in the early 2000s.<sup>15</sup> This is especially the case in less competitive industries, characterised by lower entry, exit and turnover rates and higher mark-ups.<sup>16</sup> Regulatory settings also have a role to play. There is evidence that the gap between the most and least productive firms tends to be larger in industries where the regulatory settings are less pro-competitive.<sup>17</sup>

8 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 80.

9 OECD, *Competition and market dynamism*, accessed 15 September 2024; André, C. and Gal, P, *Reviving productivity growth: A review of policies*, OECD Economics Department Working Papers No. 1822, 2024.

10 André, C. and Gal, P, *Reviving productivity growth: A review of policies*, OECD Economics Department Working Papers No. 1822, 2024.

11 Day, I., Duterro, Z., Hartigan, P. and Hambur, J., *Competition in Australia and its impact on productivity growth*, Treasury Round Up, October 2022, accessed 15 September 2024; Hambur, J., *Product market power and its implications for the Australian economy*, Australian Treasury Working Paper, 2021-03.

12 Day, I., Duterro, Z., Hartigan, P. and Hambur, J., *Competition in Australia and its impact on productivity growth*, Treasury Round Up, October 2022, accessed 15 September 2024.

13 Day, I., Duterro, Z., Hartigan, P. and Hambur, J., *Competition in Australia and its impact on productivity growth*, Treasury Round Up, October 2022, accessed 15 September 2024; Hambur, J., *Product market power and its implications for the Australian economy*, Treasury Working Paper, 2021-03; Andrews, D., Dwyer, E., and Triggs, A., *The state of competition in Australia*, e61 Research Note No.9, 2023; IMF, 'Australia: Selected Issues', Country Reports, December 6, 2021.

14 Ryan Banerjee, R., and Hofmann. B., *The rise of zombie firms: causes and consequences*, BIS Quarterly Review, 23 September 2018.

15 Andrews, D., Hambur, J., Hansell, D. and Wheeler, A., *Reaching for the Stars: Australian Firms and the Global Productivity Frontier*, Treasury working paper, January 2022.

16 Andrews, D., Hambur, J., Hansell, D. and Wheeler, A., *Reaching for the Stars: Australian Firms and the Global Productivity Frontier*, Treasury working paper, January 2022.

17 Andrews D, Criscuolo, C. and Gal., P. N., (2019), 'The Best versus the Rest: Divergence across Firms during the Global Productivity Slowdown', CEP Discussion Paper No. 1645, August 2019.

Analysis by the Treasury with the Reserve Bank of Australia (RBA) indicates that if Australia returned to levels of competition equivalent to those prevailing during the early-to-mid 2000s, this would boost GDP by 1-3%, which is around \$2,000-6,000 per household per annum.<sup>18</sup>

These trends are not unique to Australia. There is evidence that competition has weakened over the last two decades for many OECD countries.<sup>19</sup> While many advanced economies have experienced these trends,<sup>20</sup> levels of concentration in Australia are relatively high, and are much higher than in the U.S., for example.<sup>21</sup> Competition policy has been proposed as one means of boosting productivity growth, and hence, living standards, in Australia.<sup>22</sup> This has been echoed by economic policy leaders globally, with OECD Secretary-General Mathias Cormann (2024) recently arguing:

*To raise medium-term growth prospects, we need to reinvigorate the pace of structural reforms, including through pro-competition policies, for example by reducing regulatory barriers in services and network sectors.*<sup>23</sup>

OECD Chief Economist Álvaro Santos Pereira (2024) similarly noted:

*Amid sluggish productivity growth and tight fiscal space, product market reforms that promote open markets with healthy competitive dynamics remain a key lever to reinvigorate growth.*<sup>24</sup>

## Lessons from abroad

Other countries have also turned to competition policy to improve productivity and business dynamism in recent years, including in the U.S. and Europe.

### United States

In 2021, President Biden released an Executive Order on promoting competition in the American economy.<sup>25</sup> Many of the issues highlighted by President Biden as priority areas for reform will sound familiar to policymakers in Australia:

- overly restrictive occupational licensing requirements that impede workers' ability to find jobs and to move between U.S. states

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18 S Kennedy, *Address to the Australian Business Economists*, Australian Government Treasury, 30 May 2024, accessed 27 October 2024, p 15.; J Hambur and O Freestone, 'How Costly are Markups in Australia?', Forthcoming.

19 OECD, *Competition and market dynamism*, accessed 15 September 2024; André, C. and Gal, P, *Reviving productivity growth: A review of policies*, OECD Economics Department Working Papers No. 1822, 2024.

20 Georgieva, K., Díez, F. J., Duval, R., and Schwarz, D., *Rising Market Power—A Threat to the Recovery?*, IMF Blog, 15 March 2021.

21 Andrews, D., Dwyer, E., and Triggs, A., *The state of competition in Australia*, e61 Research Note No.9, 2023.

22 Bogaards, R., *Australia's productivity slowdown*, Parliament of Australia, 2022; IMF, 'Australia: Selected Issues', Country Reports, December 6, 2021, p 2.

23 OECD, *OECD: Global economy is turning the corner as inflation declines and trade growth strengthens*, Press release, 25 September 2024.

24 OECD, *OECD: Global economy is turning the corner as inflation declines and trade growth strengthens*, Press release, 25 September 2024.

25 The White House, *Executive Order on Promoting Competition in the American Economy*, 9 July 2021.

- issues in the agricultural sector, as farmers are squeezed by market concentration in input markets and the markets they sell into
- consolidation of digital platforms, which many small businesses rely upon
- rising costs of prescription drugs and healthcare services
- the impact of intellectual property rights on competition
- competition issues in the beer, wine and spirits markets, especially for smaller players
- a lack of effective competition in the telecommunications, financial services and container shipping markets
- a need for effective consumer protections, especially in the aviation sector.

The Executive Order highlighted the role of competition law and enforcement in addressing these issues, as well as areas for ‘aggressive legislative reform’ to support more competitive markets, with some 72 initiatives across over a dozen government departments.<sup>26</sup> It mandated a whole-of-government approach, including:

- adopting pro-competitive regulations and approaches to procurement and spending, and
- reforming regulations that create unnecessary barriers to competition.

It also set in place a new White House Competition Council, comprising senior representatives from across government, to oversee implementation. The Executive Order spurred a range of pro-competitive reforms across multiple sectors, and the development of new processes for embedding the assessment of competition impacts into policymaking.<sup>27</sup>

## Europe

In September 2024, the European Commission released a report on ‘The Future of EU Competitiveness’ by economist and former Italian Prime Minister, Mario Draghi (the Draghi Report).<sup>28</sup> The report recognised Europe’s slowed growth since the start of the century, and the contribution of declining productivity and population growth rates to this slowdown. It cites the challenges and opportunities from digitisation and decarbonisation, and the investment required to meet these challenges, estimated at 5 % of GDP.<sup>29</sup>

The Draghi report set out a plan to:

- close the innovation gap between Europe and the U.S. and China, especially in advanced technologies, citing regulatory barriers to European firms reaching the frontier
- decarbonise the economy without impeding competitiveness and economic growth, including through greater government coordination
- increase security and reduce dependencies.

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26 The White House, *Fact sheet: Executive Order on Promoting Competition in the American Economy*, 9 July 2021.

27 See *White House Competition Council* for details of reform efforts to date.

28 European Commission, *EU Competitiveness: Looking Ahead*, accessed 6 October 2024.

29 European Commission, *The future of European competitiveness, Part A: A competitiveness strategy for Europe*, September 2024.

The Draghi report cited increased enforcement of competition laws and regulatory reform to improve competition in Europe. Ideas for regulatory reform included:

- removing barriers to achieving a Single Market for the services sector, including greater regulatory alignment and mutual recognition of occupational qualifications
- developing price comparison tools to increase transparency and retail market competition in the energy sector
- using competitive bidding and government coordination in the design of energy markets to promote a lower-cost net zero transition
- use of international standards to ensure interoperability of new technologies and equipment in the digital and net zero transformations
- promoting technological neutrality in the design of regulation, including, for example, in the automotive sector.<sup>30</sup>

It also recommended new and enhanced policies and processes within government to ensure new regulations do not act as a barrier to competition. It recommended benchmarking of regulatory burdens on business and a revamped competitiveness test which would consider the impacts of new regulation on competition, including for small and medium enterprises (SMEs).<sup>31</sup>

The Draghi report followed an April 2024 report by Enrico Letta, another former Italian Prime Minister, on the European Single Market. The Letta Report recommended ‘streamlining regulations’ and ensuring that they ‘facilitate, not hinder economic activity and innovation within the Single Market’.<sup>32</sup>

The lessons from the U.S. and Europe are directly relevant to Australia given the common objectives and challenges. The underlying objective of a renewed focus on competition policy in all jurisdictions essentially comes down to a desire to lift productivity growth. And the challenges and opportunities, including responding to digitalisation, the net zero transition, and growth in the services sector, are largely global trends.

## What can we learn from history?

While the world we live in today is in many ways different from the one in which Hilmer made his recommendations for competition policy reform, there is much we can learn from history. The pillars for success in the 1990s have lessons for today. Similarly, lessons from the failure to implement many of the Harper reforms of the 2010s in full, can guide us in avoiding those pitfalls today.

## What did the Hilmer reforms achieve?

The 1993 Hilmer review, which was the genesis of National Competition Policy, aimed to move Australia towards a truly national and more efficient economy to ensure it could compete as it

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30 European Commission, *The future of European competitiveness, Part B: In-depth analysis and recommendations*, September 2024.

31 European Commission, *The future of European competitiveness, Part B: In-depth analysis and recommendations*, September 2024, p 325.

32 European Commission, *Enrico Letta - Much more than a market*, April 2024.

opened up to international trade.<sup>33</sup> Much of the reform effort focused on making the non-traded sector, including essential services, more competitive so that these inefficiencies didn't undermine the success of our export market.

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'.<sup>34</sup> On 25 February 1994, all Australian governments agreed, via the Council of Australian Governments (COAG), to the principles of competition policy in the Hilmer Report.<sup>35</sup> This was given effect through three NCP agreements that were signed on 11 April 1995:

- The Conduct Code Agreement, which committed governments to apply competition law uniformly across all jurisdictions and removed Crown immunity from these laws.
- The Competition Principles Agreement, which committed governments to undertake structural reform to ensure government owned businesses do not receive any special treatment that would insulate them from competition, and to review both old and new legislation to ensure it does not unnecessarily restrict competition.
- The Agreement to Implement the National Competition Policy and Related Reforms, which established a regime for payments to be made to states, territories and local governments for implementation of NCP, as assessed by the National Competition Council (NCC).

See Appendix A for more details of the original NCP agreements and institutional arrangements.

The Hilmer Report came at a time when Australia was opening up to the global economy through trade reforms, meaning we had to improve our competitiveness internationally. There was growing recognition that Australia needed to be a more domestically integrated economy. Regulatory barriers were removed to move towards a more seamless and efficient single national market.<sup>36</sup>

Key reforms achieved under the original NCP include:<sup>37</sup>

- Legislative review: a wide-ranging review (and reform, where required) of existing legislation for competition impacts, as well as new processes to ensure competitive impacts are considered in developing new legislation. Areas reviewed included legislation covering the professions and occupations, statutory marketing of agricultural products, fishing and forestry, retail trading, transport, childcare, gambling and planning and development services, among others.
- Implementation of a National Access Regime, setting out a framework through which businesses can request access to another businesses' natural monopoly infrastructure.
- Establishing the National Electricity Market in southern and eastern Australia, and regulation of gas pipelines, to promote consumer choice of supplier, and to facilitate structural separation,

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33 The Hon Dr Andrew Leigh MP, 'Opinion piece: Competition reform will ensure flourishing future', The Australian, 12 September 2024.

34 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.

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

36 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.

37 Ray Steinwall, 'National Competition Policy's 25th anniversary: A reflection and observations on learnings for policymakers' (2020) 27 CCLJ 94.

third party access and non-discrimination. Regulation of energy networks is now overseen by the Australian Energy Regulator in all jurisdictions except Western Australia.

- Reforms in the water industry to implement a national approach to pricing, trading of water entitlements, resource management and institutional reform, which is now progressed through the National Water Initiative.
- Road transport reform to implement national heavy vehicle registration and nationally consistent regulation and charging, which is now led by the National Transport Commission.

The original National Competition Policy was a key driver of a decade of pro-competitive government reform action, and it has shaped government policy ever since. Institutions, including the Australian Competition and Consumer Commission (ACCC) and the National Competition Council (NCC), have their genesis in the NCP agreements.

## Factors for success

The Productivity Commission's 2005 Review of National Competition Policy Reforms<sup>38</sup> estimated that efficiency improvements in key infrastructure industries boosted Australia's GDP by 2.5 per cent. This equates to around \$5000 per household per year today. It attributed the reforms as contributing to price decreases in electricity and milk, increased business innovation, greater consumer choice and responsiveness, and better environmental outcomes, such as more efficient water use.<sup>39</sup>

The Productivity Commission singled out several features as critical to the success of NCP:

- recognition by all governments of the need for reform
- broad agreement on the priority areas for reform
- a solid conceptual framework and information base, and
- effective procedural and institutional mechanisms to implement reform.<sup>40</sup>

While the PC's assessment was that much progress had been made by governments under the original NCP, it also considered that there was still more to do. The PC's subsequent Productivity Inquiry reports in 2017 and 2023 certainly identify many areas in which governments could do more.<sup>41</sup>

In the years since commitment waned, the original NCP has continued to be seen as an unprecedented success and source of inspiration for future reform. In 2000, 25 years after its implementation, Ray Steinwall noted that NCP was '*an unparalleled example of cooperative federalism*'.<sup>42</sup>

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38 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005.

39 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005.

40 Productivity Commission, *Review of National Competition Policy Reforms*, Productivity Commission, 14 April 2005.

41 Productivity Commission, *Shifting the Dial: 5-year Productivity Inquiry report*, 2017; Productivity Commission, *Advancing Prosperity: 5-year Productivity Inquiry report*, 2023.

42 Ray Steinwall, 'National Competition Policy's 25th anniversary: A reflection and observations on learnings for policymakers' (2020) 27 CCLJ 94.

## Why did commitment wane?

Despite the benefits of NCP, commitment to the Principles and further reform waned after the original 10 year period of payments expired. Feedback from consultation held as part of revitalising NCP points to the cessation of payments as the main driver of commitment waning. In his 2024 submission, Professor Graeme Samuel AC, the first Chair of the NCC, notes:

*The primary reason for the cessation of the reform process was the decision ... to cease the competition payments.*<sup>43</sup>

Since the completion of the original NCP reforms in the early 2000s, there has been a noticeable decline in Australia's productivity growth, as discussed above. This, coupled with the need to rise to the challenges and opportunities of today's economy, mean now is the time to re-commit to a strong and impactful national competition policy.

## Unfinished business from the Harper Review

In December 2013, the then Prime Minister and Minister for Small Business jointly announced an independent 'root and branch' review of Australia's competition laws and policy.<sup>44</sup> The review panel, chaired by Professor Ian Harper, comprised Peter Anderson, Su McCluskey and Michael O'Bryan QC. The final report, released on 31 March 2015, made 56 recommendations spanning competition policy, laws and institutions.<sup>45</sup>

In relation to competition policy, it recommended pro-competitive reforms in:

- Human services, to promote user choice, ensure separation of policy, regulation and service delivery by government, and promote innovation while ensuring minimum standards for access and quality.
- Infrastructure, including implementing cost-reflective road pricing in a revenue-neutral way that accounts for road construction, maintenance and safety, as well as finalising reforms in the water, electricity and gas sectors.
- Retail markets, including removing regulations that restrict retail trading hours, and pharmacy location and ownership rules. It also recommended all jurisdictions review regulations around planning and zoning, taxis and ridesharing, and product standards, to ensure these did not unnecessarily impede business entry and competition.
- Distribution channels, including removing regulations that restrict parallel imports, and sea and air cabotage, and repealing Part X of the *Competition and Consumer Act 2010* (CCA), which exempts liner shipping from the competition laws.
- Intellectual property rights, including a review of their impact on competition and repeal of the exception to competition law for conditions of intellectual property licences.
- Government operations, including commitment to a revised set of Competition Principles, including incorporating changes to:

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43 Professor Graeme Samuel AC, *Submission to consultation on Revitalising National Competition Policy*, September 2024.

44 The Hon Tony Abbott MP, Prime Minister and the Hon Bruce Billson MP, Minister for Small Business & Assistant Treasurer, *Review of competition policy*, Joint media release, 4 December 2013;

45 Australian Treasury, *The Australian Government Competition Policy Review: Final Report*, March 2015.

- Competitive neutrality, including reviewing and updating governments' competitive neutrality policies against best practice, including improved complaint-handling processes and monitoring.
- Government procurement, to ensure that promoting competition is a central feature of government procurement and privatisation frameworks and processes.

It also reviewed the competition laws, and recommended changes to:

- Misuse of market power provisions (section 46, CCA), to ensure that the test focusses on whether the conduct has the 'purpose, effect or likely effect of substantially lessening competition' rather than focussing solely on purpose.
- Cartel provisions (section 45, CCA), to remove the price signalling provisions and instead extend the section to cover concerted practices that have the purpose, effect or likely effect of substantially lessening competition.
- Repeal the exclusive dealing provisions (section 47, CCA).
- Streamline the merger and authorisation processes.

To ensure effective implementation of these reforms, it recommended new institutional arrangements including replacing the NCC with a new national competition body: the Australian Council for Competition Policy (ACCP). The ACCP would be an independent and national body. Redistributive payments from the Australian government to states and territories would be administered by the ACCP based on implementation of reforms. The ACCP would also have an advocacy and educative role and could undertake market studies at the request of any government. It also recommended changes to the ACCC, including to split out the regulatory functions from the competition and consumer enforcement functions.

The Commonwealth government response supported many of the recommendations, though a number were subject to the findings of ongoing or upcoming reviews including on shipping and air cabotage, pharmacy, road transport and intellectual property. Several policy reforms, as well as all the institutional recommendations, also required agreement from states and territories to progress.

Despite in-principle support for many of the reforms from the Commonwealth and other stakeholders,<sup>46</sup> none of the policy or institutional recommendations were ultimately implemented. The only reforms that did progress were reforms to the competition laws, including to the misuse of market power provisions.<sup>47</sup>

In September 2015, in what now seems a prescient speech, Peter Harris, then Chair of the Productivity Commission, advocated for implementation of Harper's policy reforms and lamented that there did not seem a way forward for those that required action from the states and territories.<sup>48</sup> He commented that:

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46 See, for example, Rod Sims, *CEDA State of the Nation Conference Address*, 23 June 2014; Peter Harris, *Reviving Harper*, Productivity Commission Chairman's speech, Australian Competition Policy Summit 2015, Sydney, 22 September 2015.

47 The Hon Scott Morrison, Treasurer, *Strengthened competition law - Harper reforms passed*, Media release, 18 October 2017.

48 Peter Harris, *Reviving Harper*, Productivity Commission Chairman's speech, Australian Competition Policy Summit 2015, Sydney, 22 September 2015.

*COAG has met since the report was finalised. Harper was noted. It is rare to recover bureaucratically from the fate of being noted by COAG.*<sup>49</sup>

He noted examples of practical reforms that states and territories could implement consistent with the Harper Review and the potential for ‘material gains to national income, to State and Commonwealth budgets, to quality of life and to economic growth’. Harris highlighted the importance of incentives for the states and territories and the need for the Prime Minister and Premiers to lead the public messaging on selling these important reforms to the public, informed by work of bodies such as the Productivity Commission. He concluded that:

*Without such a process, the important concepts in Harper otherwise are sure to languish. And all we will have to show for the successor to Hilmer will be an amendment to section 46.*<sup>50</sup>

Unfortunately, Harris’ fears came true. Five states and territories — New South Wales, Western Australia, Tasmania, the Australian Capital Territory and the Northern Territory — did agree a new agreement on ‘Competition and Productivity-Enhancing Reforms’ in 2016.<sup>51</sup> However, it is not clear that this delivered any significant reform.<sup>52</sup> The absence of a mechanism by which to progress inter-jurisdictional reforms and independent monitoring of progress ultimately meant that little of Harper’s vision for another round of pro-competitive reform was realised.<sup>53</sup>

## What are our challenges and opportunities today?

Growth in real GDP has slowed. It is now forecast to increase at 1.1 % each year, compared to 1.8 % over the past 40 years.<sup>54</sup> The main driver of real GDP growth is labour productivity growth, and Australia’s labour productivity growth has slowed since the mid-2000s.<sup>55</sup> This slowdown has occurred across industries and advanced economies, and competition has been identified as one of the contributing factors, as discussed above.<sup>56</sup> Unless we find ways to lift labour productivity, it’ll become

49 Peter Harris, [Reviving Harper](#), Productivity Commission Chairman’s speech, Australian Competition Policy Summit 2015, Sydney, 22 September 2015.

50 Peter Harris, [Reviving Harper](#), Productivity Commission Chairman’s speech, Australian Competition Policy Summit 2015, Sydney, 22 September 2015.

51 [Intergovernmental Agreement on Competition and Productivity-Enhancing Reforms](#), 2016.

52 In the 2017-19 budget, the Commonwealth set aside \$300 million over two years to establish a National Partnership on Regulatory Reform with states to remove regulatory restrictions on small business and competition, as part of its response to the Harper Review. However, it subsequently reallocated this to a new reform agenda to reward states that reduced regulatory burdens on small businesses, including reallocating \$3.7 from the NCC to the Treasury to develop and administer agreements. All states except the Australian Capital Territory subsequently signed on to this agreement, which included funding of \$300 million between 2018 and 2021. For more background, see: Parliament of Australia, [Briefing Book: Key issues for the 46<sup>th</sup> Parliament](#), 2019, accessed 28 October 2024 and Federal Financial Relations, [Small Business Regulatory Reform \(SBRR\)](#), accessed 28 October 2024.

53 National Competition Council, [Submission to the House of Representatives Standing Committee on Economics inquiry into promoting economic dynamism, competition and business formation](#), 14 April 2023.

54 Australian Treasury, [Intergenerational Report 2023: Australia’s future to 2063](#), 2023, p 24.

55 Australian Treasury, [Intergenerational Report 2023: Australia’s future to 2063](#), 2023, p 23.

56 Australian Treasury, [Intergenerational Report 2023: Australia’s future to 2063](#), 2023, p 23.

increasingly difficult to maintain our current standard of living. The time is ripe for ensuring that our regulatory settings act to increase competition, rather than acting as sand in the wheels.

As noted by the OECD:

*A pro-competition regulatory environment is essential for boosting productivity, creating jobs, and improving living standards. However, the pace of regulatory reform has declined in recent years, forgoing an important opportunity to revive sluggish productivity growth. Areas for reform include, among others, reducing barriers to entry and competition in the services sector ...<sup>57</sup>*

We are now half-way through the 2020s and this decade has raised complex and unprecedented issues. While many of the direct economic impacts of COVID are now largely behind us, the macroeconomic and inflationary challenges caused by supply-chain disruptions persist. War in Europe and the Middle East, and other geopolitical and trade tensions risk pushing up inflation further and weighing on global activity.<sup>58</sup> The resulting cost-of-living pressures for households around the world are playing into domestic politics and ultimately regulation as governments seek to address political and other emerging concerns.

Our world today is very different to the one that Hilmer examined back in the early 1990s. We have a range of challenges and opportunities ahead of us, including tackling the net zero transition, moving to an ever increasingly digital economy with a reliance on data, and reflecting our aging population, an ever-growing care and support sector. These changes will require a significant reallocation of resources in our economy – both capital and labour. Revitalising NCP would help make this reallocation more efficient and less costly for consumers and workers alike.

We can do this by reforming our regulatory settings so that they support dynamic businesses and workers, who collectively will rise to address these challenges. In addition, many of the reforms recommended by Harper (and even Hilmer), including in respect of road transport, are still to be fully implemented.

## The net zero transition

We have a huge transition ahead of us if we are to meet our commitments on climate change. This is felt acutely in the energy sector, with electricity generation being Australia's largest source of greenhouse emissions.<sup>59</sup> Australia needs to transition a higher share of renewables – the Government has set a target to transition to an 82 % renewables grid by 2030,<sup>60</sup> from a base of around 40 % today.<sup>61</sup> While there has been progress, the Australian electricity sector still has a significant transformation ahead. Substantial investment is needed in generation and transmission infrastructure to increase supply and build back-up to deal with intermittency issues associated with some forms of renewables.

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57 OECD, *OECD Economic Outlook, Interim Report September 2024: Turning the Corner*, September 2024.

58 OECD, *OECD: Global economy is turning the corner as inflation declines and trade growth strengthens*, Press release, 25 September 2024.

59 Department of Climate Change, Energy, the Environment and Water (DCCEEW), *National Greenhouse Gas Inventory Quarterly Update: March 2024*, 2024.

60 Australian Office of Financial Management, *Australian Government Climate Change commitments, policies and programs*, November 2022.

61 Clean Energy Council, *Clean Energy Australia Report*, 134 March 2024.

Decarbonisation requires economy-wide action. Emissions from the direct combustion of fuels, mainly in the manufacturing, mining, residential and commercial sub-sectors, are the second highest contributors to Australia's emissions. These include emissions from burning gas, including for residential heating. These emissions have so far increased since 2024, so there is much to be done.<sup>62</sup>

The transport sector, including emissions from road, rail, domestic aviation and domestic shipping, as well as combustion of fuels for the transportation of gas by pipeline, is the third highest contributor to emissions.<sup>63</sup> Emissions in the transport sector are not trending in the right direction, with diesel consumption increasing since 2005.

Given the scale of transformation needed to reach the Government's goal of being net zero by 2050,<sup>64</sup> we need to ensure that our regulatory settings are enabling new entrants to provide innovative and lower cost solutions to the challenge ahead. We need to protect against regulatory fragmentation across the nation, that might move us away from these lower cost solutions. Competitive markets drive the innovation and adoption of technologies needed to dramatically reduce emissions.<sup>65</sup> 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.

We need to ensure our regulatory settings are not forcing up the costs for businesses adopting low-carbon technologies. We must take advantage of global developments in these technologies by adopting market leading international standards, while using risk-based regulation that does not needlessly constrain competition to supply in the net zero economy. And we need to ensure that where governments participate in markets, this is done in a way that fosters competition as much as possible. As entirely new markets and industries emerge, it is important to ensure that our regulatory settings do not advantage first movers and cement anti-competitive market structures.

This demonstrates the clear role for a revitalised NCP to underpin a lower-cost and faster transition. We must ensure that our regulatory settings encourage innovation and competition, to lead us to net zero at the lowest cost possible. Nationally coherent policy settings that foster competition and create enduring market-based incentives will improve the chance of successfully achieving the goals the Government has set to achieving net zero.<sup>66</sup>

Addressing and adapting to climate change in the least-cost way is also important to minimising the negative productivity shocks associated with climate change. Climate disasters, such as floods and cyclones, have strong negative effects on labour productivity, with severe disasters reducing labour productivity by around 7% after 3 years.<sup>67</sup> Rising temperatures will also impact labour productivity. Temperature increases of 3°C to 4°C are estimated to reduce labour productivity by between 0.2% to 0.8% by 2063, equal to \$135 billion to \$423 billion in 2023 dollars.<sup>68</sup> Using competition policy to aid a fast and low-cost transition to net zero is important to minimising these effects.

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62 DCCEEW, *National Greenhouse Gas Inventory Quarterly Update: March 2024*, 2024.

63 DCCEEW, *National Greenhouse Gas Inventory Quarterly Update: March 2024*, 2024.

64 DCCEEW, *Powering Australia*, accessed 15 September 2024.

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

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

67 Dieppe, A., et al., *Global productivity: Trends, drivers, and policies*, World Bank Group, Washington, 2021, p 144.

68 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 99.

## The rise of the digital and data economy

Technological advances can underpin economic growth and improved living standards.<sup>69</sup> To take advantage of digital innovations, Australia needs to have the right infrastructure and regulatory settings in place.

Businesses and consumers need to be able to access digital services quickly, cheaply and safely, meaning we need access to high-speed internet across the nation, and investments to protect against cyber security and other threats. A revitalised NCP is essential to ensuring that government investments and policies act as an enabler of, rather than a barrier to, competition, both for businesses that are providing digital services, as well as for digital and data-intensive businesses. Government policies that facilitate widespread adoption of emerging digital technologies can also play a role in improving productivity performance.<sup>70</sup> The IMF has found that a decline in investment in research and development and ICT likely contributing to the productivity slowdown in Australia.<sup>71</sup>

We need a dynamic and adaptable workforce with the skills to use and develop new technologies. In the last 30 years since the Hilmer Review, the share of knowledge-based or cognitive jobs has continued to increase and demand for workers with highly developed critical thinking and interpersonal skills has increased with it.<sup>72</sup> Competition policy has a role to play to ensure we have a dynamic workforce that can meet the demands of the future as they arise (see the section on dynamic labour markets below).

In addition, we need the right settings to ensure that access to data does not act as a barrier to entry. Much can be done in this space to promote data portability and interoperability of systems to facilitate new entry.<sup>73</sup> This is the modern equivalent of phone number portability, which was such an important precursor to effective competition implemented as part of Telstra's structural separation under the original NCP. The OECD has recommended data portability and data interoperability to ensure contestability in digital markets.<sup>74</sup> However, attempts to promote competition using data portability through the 'Consumer Data Right' have not achieved the outcomes that Government hoped they would deliver. We need to learn from this as we consider new ways to promote competition using data portability and interoperability.

## Opportunities in the care and support economy

The care and support sector has grown strongly in last 40 years, both as a share of the economy and the labour force, reflecting Australia's aging population and increased demand through the National Disability Insurance Scheme (NDIS).<sup>75</sup> With the number of people aged 85 years and over tripling in the next 40 years, this sector is expected to continue to grow.<sup>76</sup> It's a sector where governments are highly involved, with the Australian Government spending over 6% of GDP on care and support

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69 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p viii.

70 Andrews, D., Hambur, J., Hansell, D. and Wheeler, A., *Reaching for the Stars: Australian Firms and the Global Productivity Frontier*, Treasury working paper, January 2022.

71 IMF, 'Australia: Selected Issues', Country Reports, December 6, 2021, p 2.

72 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 14.

73 Georgieva, K., Díez, F. J., Duval, R., and Schwarz, D., *Rising Market Power—A Threat to the Recovery?*, IMF Blog, 15 March 2021.

74 André, C. and Gal, P., *Reviving productivity growth: A review of policies*, OECD Economics Department Working Papers No. 1822, 2024.

75 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 14.

76 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p viii.

services in 2023, with this expected to rise over time.<sup>77</sup> Demand for workers in the sector are also expected to rise significantly, potentially doubling by 2050.<sup>78</sup>

The regulatory environment for the care and support sector is fragmented across aged care, NDIS and veteran care services.<sup>79</sup> Requirements for workers and providers can vary by service and between jurisdictions. This regulatory complexity and misalignment can create barriers to workforce and provider mobility across programs.<sup>80</sup>

The quasi-market nature of human services provides significant complexity. Contracts for human services, where quality is important but difficult to measure, can be difficult to complete. Hart's work showed how government contracts with the private market can lead to poor quality outcomes in these circumstances, a finding that many in the sector would echo.<sup>81</sup> Public policy practitioners have observed relevant contracts and regulations becoming increasingly prescriptive, minimising possible efficiency gains.

Human services markets currently feature significant barriers to effective competition, including very high transaction costs.<sup>82</sup> Search and navigation costs are high, with quality and cost information often not clearly available to consumers.<sup>83</sup> Consumers may also lack the skills and knowledge required to be able to assess what is available and best suited to their needs. Usual price signals are also removed or weakened, since many services are subsidised by the government. Empirical evidence shows very few consumers switch providers, or even consider switching.<sup>84</sup>

There is significant potential for NCP to improve outcomes in the sector to ensure that markets can allocate resources effectively, and that Australia has the workforce needed to deliver the care outcomes required over the coming decades (see also section below). Effective competition policy, including through effective market design and market stewardship, will be key to which improving productivity and labour mobility, minimising costs and delivering quality care as demand for services increases.

## Dynamic labour markets

In the decades since the Hilmer reforms, the Australian economy has undergone a structural change with activity shifting towards the services sector.<sup>85</sup> As Australia continues to shift resources to the

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77 Australian Treasury, *Intergenerational Report 2023: Australia's future to 2063*, 2023, p 15.

78 National Skills Commission, *Care Workforce Labour Market Study*, 2021.

79 National Skills Commission, *Care Workforce Labour Market Study*, 2021, p 21.

80 National Skills Commission, *Care Workforce Labour Market Study*, 2021, p 21.

81 Hart, O., *The Proper Scope for Government: Theory and an Application to Prisons*, The Quarterly Economic Journal, 1997; and see for example, Smith, R. L., Merrett A., *Competition policy and human services: Where theory meets practice*, Australian Council of Social Services and CHOICE, 2018, pp 4-6.

82 Meagher, G., *Designing Social Service Markets*, ANU Press, 2022, p 11.

83 For example, see Productivity Commission, 'Volume 2: Supporting Papers', *A path to universal early childhood education and care*, 2024, p 501; and Hobbs, B., 'Choosing care: the difficulties in navigating the Home Care Package market', Consumer Policy Research Centre, 2020, pp 22-34.

84 For example, see Productivity Commission, 'Volume 2: Supporting Papers', *A path to universal early childhood education and care*, 2024, p 31; and Hobbs, B., 'Choosing care: the difficulties in navigating the Home Care Package market', Consumer Policy Research Centre, 2020, pp 36-38.

85 Australian Bureau of Statistics, *Structural change in Australian industries – insights from the KLEMS Multifactor Productivity 2019-20 dataset*, 7 September 2022; National Skills Commission, 'Australia's shift to a higher skilled, services-based economy', *The state of Australia's skills 2021: now and into the future*, 2022.

services sector, including labour, it is important that we have a dynamic labour market. Removing barriers to labour movement can boost both productivity and equality.<sup>86</sup>

The IMF notes the importance of competition in input markets including labour markets and cites ‘no poaching’ agreements and non-compete clauses as areas in which competition policy could improve labour market dynamism.<sup>87</sup> It is an area that has recently attracted attention internationally, with some countries already regulating the use of non-compete clauses (e.g. Austria, Finland and Germany), and others, including the U.S. and United Kingdom, considering reforms to restrict or ban their use. This is an area that the Competition Taskforce has already undertaken work on, having released an issues paper on worker non-compete clauses and other restraints in April 2024.<sup>88</sup>

We need an economy where labour can move easily across national (and potentially international) borders, to meet Australia’s needs. OECD studies suggest that migration can contribute to labour productivity growth in Australia.<sup>89</sup>

The IMF has identified recognition of occupational licences across jurisdictions as an area where progress has been made, but more can be done, including to extend coverage to all states and territories and a wider range of occupations.<sup>90</sup> The OECD similarly noted that occupational licensing and non-compete clauses may also hamper competition and slow the diffusion of innovations.<sup>91</sup>

Recent analysis by the RBA suggests that in most occupations in Australia, occupational entry regulations are more stringent compared to the least stringent OECD country.<sup>92</sup> Bowman, Hambur and Markovski find that more stringent requirements are associated with lower business entry and exit rates, and a slower flow of workers from less to more productive firms, with negative implications for productivity.

## A new era of competition policy

In December 2023, the Australian, state and territory treasurers, through the Council on Federal Financial Relations (CFFR), agreed to revitalise National Competition Policy and committed to developing an agenda for long-term pro-competitive reforms.<sup>93</sup> In March, they agreed to work together to identify possible cost-of-living competition reforms that could be progressed through a

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86 OECD, *Economic Outlook, Volume 16, Issue 1*, 2016.

87 Georgieva, K., Díez, F. J., Duval, R., and Schwarz, D., *Rising Market Power—A Threat to the Recovery?*, IMF Blog, 15 March 2021.

88 Treasury, *Non-competes and other restraints: understanding the impacts on jobs, business and productivity: Issues Paper*, April 2024.

89 Australian Government Centre for Population, *OECD: Findings on the effects of migration on Australia’s economy*, 2021.

90 IMF, ‘Australia: Selected Issues’, Country Reports, December 6, 2021, p 2.

91 Australian Government Centre for Population, *OECD: Findings on the effects of migration on Australia’s economy*, 2021.

92 Bowman, J., Hambur, J. and Markovski, N., ‘Examining the Macroeconomic Costs of Occupational Entry Regulations’, Research Discussion Paper – RDP 2024-06, September 2024.

93 The Hon Dr Jim Chalmers MP, Treasurer, *Treasurers meet in Queensland*, Media Release, 1 December 2023.

revamped NCP.<sup>94</sup> At the same time, the Treasurer directed the PC to undertake modelling to estimate the likely economy-wide and fiscal impacts of potential reforms under a revitalised NCP.<sup>95</sup>

A Consultation Paper on Revitalising NCP was released on 26 August 2024.<sup>96</sup> The Consultation Paper invited views on revitalised National Competition Principles, reforms and institutional arrangements. The majority of the 52 non-confidential submissions received in response, and participants to the 5 stakeholder roundtables, supported governments in recommitting to a revitalised NCP.<sup>97</sup>

Drawing on the lessons of the past, commitment from all levels of government is essential to the success of any future NCP. That these discussions have been ongoing within CFFR for almost a year signals promise. Of course, whether all parties can agree will depend on many things, including whether there is a shared view of the priorities, how much flexibility jurisdictions have to implement reforms, what payments are on offer, and whether the appropriate governance and institutional architecture is in place to support success. These issues are discussed below.

## Commitment from all levels of government

Involvement and commitment from all levels of government will be essential to any future success under a revitalised NCP. Many of the policy levers for competition policy rest with the states and territories. Without their commitment, there is a natural limit to what can be achieved.

However, competition reform is difficult. It requires institutional and policy nous, perseverance and determination, and commitment across departments and agencies. Competition policy spans the whole economy, and often requires co-ordination across policy areas as well as central agencies. It can involve upsetting incumbents who benefit from current arrangements, and the beneficiaries are often less vocal or aware of the issues. A key issue is stakeholder engagement and managing any necessary transitions, as well as clearly communicating the benefits. Some have mentioned that this is an area in which governments could have done better in respect of both the Hilmer and Harper reforms.

For states and territories, oftentimes the benefits of their competition reform efforts largely flow to the Commonwealth through higher tax revenue, since these are reforms that grow the economy, and with it, Commonwealth tax revenue. Addressing this, as was done under the original NCP, will be important to incentivising reforms that benefit everyone. Indeed, state treasuries have already signalled that *‘the contributions their jurisdictions make to implement new national reforms must be accompanied by new Commonwealth funding’*.<sup>98</sup>

Redistributive payments were also highlighted in submissions to the Consultation Paper, with the Governance Institute of Australia, the Australian Chamber of Commerce and Industry (ACCI) and the

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94 The Hon Dr Jim Chalmers MP, Treasurer, *Treasurers work together to boost competition*, Media Release, 15 March 2024.

95 Productivity Commission, *National Competition Policy analysis*, accessed 7 October 2024.

96 Australian Treasury, *Revitalising National Competition Policy: Consultation Paper*, August 2024.

97 Including submissions from the ACCC, the Business Council of Australia (BCA), NCC, Graeme Samuel, the Grattan Institute, the Law Council of Australia, COSBOA, and a joint submission from CHOICE, Consumers’ Federation of Australia and ACCAN, among others.

98 Board of Treasurers, *Communiqué*, Brisbane, 1 December 2023.

Business Council of Australia (BCA) all noting the importance of incentive payments for NCP reforms to be successful.<sup>99</sup>

Modelling the impacts of the reforms, as has been undertaken by the PC this year, is essential to understanding and communicating the benefits of the reforms, as well as to understanding the likely benefits accruing to the various levels of government.

A new commitment to NCP will need to reflect these realities, as well as updating the principles and committing jurisdictions to an ambitious pro-competitive reform agenda.

## Revitalised principles

The National Competition Principles were instrumental in changing how governments engaged in markets. They helped to introduce greater competition, including through structural separation and competitive neutrality. They also introduced prices oversight to government business enterprises. This brought significant benefits, including in the provision of essential infrastructure services.

The Principles also required governments to consider how their policies, regulations and decisions affected competition, and to ensure that any barriers to effective competition were minimised. Again, this opened up markets to new entrants and greater competition, with benefits to consumers from lower prices, greater choice and higher levels of innovation.

However, the economy has evolved since the 1990s and elements of the original Principles are outdated, referencing outdated laws and market realities. The Principles, now 30 years old, while largely still relevant, need a refresh to reflect today's opportunities and challenges.

The Harper Review recommended changes to the Principles that were not implemented, and which might still be relevant. The Consultation Paper<sup>100</sup> also considered and invited stakeholder views on other changes to the Principles, including:

- Broadening the scope of the **legislative review principle** to include review of government policies and processes that have the potential to significantly impact competition (not just legislation), and to promote competition (rather than removing impediments to competition).
- Requiring governments to update their **competitive neutrality** policies for new types of government businesses, cross-jurisdictional government businesses, and to ensure best-practice complaints processes, and to improve monitoring and transparency.
- Extending the **structural reform principle** to other types of government businesses and ensuring that privatisations are undertaken in a way that benefits consumers.
- Addressing perceived shortcomings in **third party access regimes** including regarding the test that is used, the lengthy process, and possibly to extend its application to non-physical infrastructure.
- Consideration of whether the **prices oversight principle** should be extended to reflect the current role of governments in monitoring prices across the economy.

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99 Governance Institute of Australia (GIA), *Submission to consultation on Revitalising National Competition Policy*, September 2024; Australian Chamber of Commerce and Industry (ACCI), *Submission to consultation on Revitalising National Competition Policy*, September 2024; Business Council of Australia, *Submission to consultation on Revitalising National Competition Policy*, September 2024.

100 Australian Treasury, *Revitalising National Competition Policy: Consultation Paper*, August 2024.

- Clarifying and simplifying the application of the **public interest test** to exemptions from the Principles.

In general, submissions to the Consultation Paper have been supportive of these updates to improve the Principles, while noting that much in the Principles still remains relevant today.

The Consultation Paper also invited views on the benefit of including a purpose in the principles, as well as new principles on:

- **Promoting competition**, which would apply as a general obligation for governments.
- **Consumer empowerment**, to ensure that the demand side of the market is also considered in government policymaking.
- **Market design and stewardship**, to guide governments' approach to market design and stewardship to facilitate competitive or contestable outcomes that are in the interests of the community.
- Facilitating competition through the safe sharing of **government data**, and potentially, private data.<sup>101</sup>

Support for these new Principles varied in submissions to the Consultation Paper.

Regarding consumer empowerment and market design and stewardship, there was some support for a Principle that recognises the need for governments to ensure that markets are working for end users, and to intervene where they are not. Submissions recognised that effective competition is enlivened by empowered and confident consumers who can engage and exercise choice.

However, stakeholders stressed the importance of considering the specific market circumstances in formulating interventions. For example, competition and consumer empowerment is more difficult in thin markets. Issues in human services markets also raise unique issues for consumers, meaning interventions in these markets need to be adapted to the specific market circumstances.

Regarding data, there was a general view that governments should streamline and modernise arrangements to facilitate access to, and sharing of, government data where in the public interest. There was support for establishing a presumption in favour of government providing access to non-sensitive data, and for government information to be available in accessible forms. Views on whether there should be greater sharing of privately held data, however, was more divided.

## Reforms

The original NCP was effective in driving reform through high-level principles and associated reforms to guide government action.

The Reform Agenda will complement a revitalised set of Principles by identifying reforms that remove unnecessary barriers to competition, increase choice for consumers and put downward pressure on prices.

As an immediate priority, treasurers have already highlighted a willingness to develop cost-of-living reforms that could form a first tranche of reforms under a revitalised NCP.<sup>102</sup>

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101 Australian Treasury, *Revitalising National Competition Policy: Consultation Paper*, August 2024.

102 The Hon Dr Jim Chalmers MP, Treasurer, *Treasurers work together to boost competition*, Media Release, 15 March 2024.

The Consultation Paper<sup>103</sup> set out criteria for reforms under a revitalised NCP. Including that reforms should:

- Be nationally significant, that is, relating to a broad policy issue that affects competition and markets across Australia in which all governments have an interest in undertaking productivity -enhancing reform.
- Have enduring importance and relevance, concerning 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 a lack of competition and evidence that reform can address those issues.

To help support the development of the NCP Reform Agenda, five provisional reform themes were identified for consultation and further analysis:

1. Promoting a more **dynamic business environment** by reducing regulatory barriers to business entry, expansion, and exit, reducing compliance costs, and promoting national coherence of regulatory frameworks and/or mutual recognition of regulatory approval and accreditation processes.
  - Several Harper reforms including reviewing and harmonising product standards and reforms to distribution channels could fit in this category.
  - Planning and zoning reforms, which were recommended by Harper, and which have recently been supported by the Prime Minister,<sup>104</sup> could also fit in this category.
2. Harnessing the benefits of competition in the **net zero transformation** including by lowering barriers that hinder the diffusion of low and zero-emissions technology, reducing compliance costs and ensuring long term competitiveness in markets when delivering net-zero initiatives.
  - Adopting trusted international standards in energy-intensive sectors could help facilitate a lower cost transition.
3. Lowering barriers to **labour mobility** by streamlining regulations that have unintended impacts on labour mobility, better recognising the skills, experience and qualifications of workers, and increasing geographic and occupational mobility.
  - Occupational licencing reforms were recommended in the Harper Review and by the PC in its 2023 Productivity Review.<sup>105</sup>
  - 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, and the Competition Taskforce has commenced this work.<sup>106</sup>

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103 Australian Treasury, *Revitalising National Competition Policy: Consultation Paper*, August 2024.

104 The Hon Anthony Albanese MP, Prime Minister of Australia and The Hon Dr Jim Chalmers MP Treasurer, *Helping Australians get fairer supermarket prices through stronger protections and greater competition*, Joint media release, 1 October 2024.

105 Productivity Commission, *Advancing Prosperity: 5-year Productivity Inquiry report*, Australian Government Productivity Commission 2023.

106 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; Treasury, *Non-competes and other restraints: understanding the impacts on jobs, business and productivity: Issues Paper*, April 2024.

4. Better harnessing choice, competition, and contestability in **human services** by helping consumers choose the most suitable service provider, streamlining regulations that have unintended impacts on labour mobility in human services, and reducing costs and improving access to necessary health services and products.
  - The Harper Review included a number of recommendations for reform in this area, though the debate since reflects a more nuanced view of how and where competition can be effectively deployed within the human services sector.
  - The Kruk Review made several recommendations to address regulatory barriers to labour mobility and entry in the health care professions.<sup>107</sup>
5. Leveraging the economic opportunities of **data and digital technology** to promote business innovation, consumer choice and responsive regulatory models.

Submissions to date have largely supported these themes as areas in which competition policy can effectively address current and future expected productivity issues, though there are different opinions on priorities for reforms.

## Institutional arrangements for success

As noted above, sharing the benefits of reform with the states and territories would likely be a necessary part of any revitalised NCP, as it was under the original NCP. This recognises that a large share of the benefits from state-based pro-competitive reforms accrue to the Australian Government through higher taxation revenue. This means that states and territories have less incentive to implement these reforms in the absence of payments, even though they will provide significant benefits at a national level.

Independent modelling of the benefits and fiscal impacts of reforms, and verification of whether a state or territory has met its reform commitments, was important to the success of the original NCP. The PC has already been tasked with modelling the impact of potential reforms under NCP, fulfilling one of these essential roles.

The NCC played a key role in independently assessing whether states and territories met their commitments before recommending payments from the Commonwealth under the original NCP. Submissions to the Consultation Paper have largely supported the NCC playing this role again, provided it receives additional resources.

Professor Graeme Samuel AC, the first Chair of the NCC, recommended that a revitalised NCC be independent and adequately resourced.<sup>108</sup> The Minerals Council of Australia and the Business Council of Australia also stated the importance of having a strong independent body to oversee NCP reforms.<sup>109</sup>

Treasurers, and staff within treasuries, will also have to drive reform, working across departments to ensure successful implementation, and development of a forward work program. The ACCI, BCA and

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107 Robyn Kruk, *Independent review of health practitioner regulatory settings*, Department of Health and Aged Care, 2023.

108 Professor Graeme Samuel AC, *Submission to consultation on Revitalising National Competition Policy*, September 2024.

109 Minerals Council of Australia, *Submission to consultation on Revitalising National Competition Policy*, September 2024; Business Council of Australia, *Submission to consultation on Revitalising National Competition Policy*, September 2024.

NCC all noted there was insufficient oversight by the Commonwealth and a lack of effective national coordination under the original NCP.<sup>110</sup>

Another key task will be to effectively communicate the benefits of a revitalised NCP to the public. A lack of readily publicly available information on NCP as well as lack of communication have been cited as flaws with the original NCP.<sup>111</sup> Stakeholder feedback from Ray Steinwall, the ACCC and GIA to the Consultation Paper suggested that relevant institutions should broaden their focus to promote awareness of the NCP reforms.

## Where to next?

Hopefully CFFR will soon consider agreeing to a revitalised NCP. The Australian Government's Competition Taskforce, with NSW Treasury as co-sponsor, has worked with states and territories at an officials' level to progress all elements of a revitalised NCP throughout this year. Even with these foundations and in-principle support from all jurisdictions, there is no guarantee of success and agreement could be delayed by elections. Even if we have agreement, there will still need to be considerable support and commitment from the revitalised NCC, PC, treasuries and treasurers over the next 10 years at a minimum. If all governments can pull it off, however, we will hopefully see another period where pro-competitive reform at a national level can boost productivity and improve living standards for all Australians over the medium term.

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110 ACI, *Submission to consultation on Revitalising National Competition Policy*, September 2024; BCA, *Submission to consultation on Revitalising National Competition Policy*, September 2024; NCC, *Submission to consultation on Revitalising National Competition Policy*, September 2024.

111 Productivity Commission, *Impact of competition policy reforms on rural and regional Australia*, 1999; Parliament of Australia, *Socio-Economic Consequences of the National Competition Policy Select Committee*, 2000.

## Abbreviations

|        |                                                       |
|--------|-------------------------------------------------------|
| ACCC   | Australian Competition and Consumer Commission        |
| ACCAN  | Australian Communications Consumer Action Network     |
| ACCI   | Australian Chamber of Commerce and Industry           |
| ACCP   | Australian Council for Competition Policy             |
| BCA    | Business Council of Australia                         |
| CCAg   | Conduct Code Agreement                                |
| CCA    | Competition and Consumer Act 2010 (Cth)               |
| CFFR   | Council on Federal Financial Relations                |
| COAG   | Council of Australian Governments                     |
| COSBOA | Council of Small Business Organisations Australia     |
| CPA    | The Competition Principles Agreement 1995             |
| Cth    | Commonwealth                                          |
| GDP    | Gross Domestic Product                                |
| GIA    | Governance Institute of Australia                     |
| ICT    | Information and Communications Technology             |
| IGA    | Intergovernmental Agreement                           |
| NCC    | National Competition Council                          |
| NCP    | National Competition Policy                           |
| NDIS   | National Disability Insurance Scheme                  |
| OECD   | Organisation for Economic Cooperation and Development |
| PC     | Productivity Commission                               |
| RBA    | Reserve Bank of Australia                             |
| TPA    | Trade Practices Act 1974 (Cth)                        |
| U.S.   | United States of America                              |

## Appendix A: Elements of the original NCP

This appendix reproduces Appendix A of Treasury's Consultation Paper on a revitalised NCP.<sup>112</sup>

### 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).

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<sup>112</sup> Australian Treasury, *Revitalising National Competition Policy: Consultation Paper*, August 2024.

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.