



Australian Government

**Australian  
Small Business  
Commissioner**

25 May 2015

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

Dear Mr Boneham

### **Competition Policy Review Final Report**

I am writing to provide my observations on the Competition Policy Review's recommendations from its review of Australia's competition policy, laws and institutions. My observations are in addition to my earlier submission on the review (June 2014), as well as my letter that provided feedback on the Draft Report (11 November 2014). My views are focused on implementation issues and are based on my experiences with small business stakeholders.

I wish to congratulate Professor Ian Harper and the Panel on their contribution to help strengthen our economy. From a small business perspective, I am encouraged by the recommendations aimed at improving competition, removing roadblocks to innovation, and stimulating the formation and growth of new enterprises. I believe that the recommendations offer strong support for small business and the wider business environment, and I specifically note:

1. **Competition principles** (Recommendation 1) that underpin a number of the recommendations and promote competition including in government procurement;
2. **Intellectual property review** (Recommendation 6) to recognise technological and market developments and facilitate the way that Australian businesses compete on the world stage;
3. **Regulation review** (Recommendation 8) to remove unnecessary regulatory restrictions, although the impact of regulation should also be considered alongside regulator behaviour;
4. **Retail trading hours** (Recommendation 12) with restrictions being recommended to be removed; and
5. **Competitive neutrality policy** (Recommendation 15 and related Recommendations 16 and 17) that would facilitate a more level playing field for business alongside government.

The implementation of these recommendations would have a significant and positive impact on the business environment, although I would like to address three recommendations in greater detail:

#### **Government procurement and other commercial arrangements (Recommendation 18)**

I agree that governments should review their policies governing commercial arrangements with business, particularly procurement policies. My Office has been active in this area and I have undertaken a study that has identified the key characteristics of a model business. The aim of the study is to improve the business environment by identifying model business behaviours and influence change in government behaviour by expecting government agencies to behave as a model business and be an exemplar to the business community.

The concept of model behaviour is not unfamiliar to Government agencies as there is an expectation across jurisdictions that when engaged in litigation a Government agency is expected to behave as a model litigant. Therefore, in business behaviour, it is not unreasonable to expect government agencies to act as a model business.

The first phase of my project captured Australian business leaders' views of the behaviours that define a model business. This culminated in the publication by my Office of the study, *Australian Business Leaders: A study of model business behaviours*. The key characteristics of a model business were identified under the themes of strategy, stakeholders, staff and success. The study can be found at <http://www.asbc.gov.au/>.

The project is currently in its second phase and I am exploring the findings from the study with leaders from Commonwealth Government organisations to determine how the findings might be adapted and adopted across the Commonwealth.

### **ACCC governance (Recommendation 51)**

Focusing on small business, this recommendation provides that:

- half of the ACCC Commissioners be appointed on a part-time basis;
- knowledge of small business is to be considered in making Commission appointments; and
- there should not be a specific Commissioner appointed to represent small business interests.

Although I am supportive of all Commissioners having an understanding of small business, I believe that making Commissioners part-time and, in particular, losing the specific small business Commissioner would be a real and significant loss for Australian small business.

### **Small business and access to remedies (Recommendation 53)**

I agree with the recommendation that the ACCC should take an active approach in connecting small business to alternative dispute resolution (ADR) where complaints have merit but are not a priority for public enforcement. This can be supported by further publicising the advice and dispute resolution services of small business commissioners, small business offices and ombudsmen (and I note that the ACCC is already doing this). This can be buttressed by working with business stakeholder groups, and in a variety of other ways (including bringing ADR under relevant industry codes under the Australian Small Business and Family Enterprise Ombudsman as appropriate).

My Office has worked with states and territories to develop an online information and referral tool, *Dispute Support*. The tool makes it easy and quick for small businesses to find the most appropriate low cost dispute resolution service for their needs. It also provides information to better understand, manage and avoid disputes (see <http://www.asbc.gov.au/disputesupport>). The tool can be utilised by the ACCC (and other organisations) to help connect small businesses to the most appropriate dispute resolution mechanism.

Finally, I note that communicating any of these changes with small business is critical to their successful implementation. Small business should be assisted in understanding the importance and operation of any legislative and other changes.

Yours sincerely



**Mark Brennan**  
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[www.asbc.gov.au](http://www.asbc.gov.au)