

## PART 6 — IMPLEMENTATION

### 29 IMPLEMENTING THE REVIEW

The Panel's recommended agenda of competition reform is ambitious, encompassing Australia's competition policy, laws and institutions. As noted in [Part 1](#), a need for a new round of microeconomic reform persists, much like the extended reform horizon associated with the earlier National Competition Policy (NCP) reforms. It is vital for not only our standard of living but also our quality of life.

However, to succeed, as the Business Council of Australia (BCA) notes, a clear plan for implementing the reform agenda is required:

The panel has put forward a very large reform program. Implementation of each reform will be complex and take time so prioritisation will be important. A clear plan on how to implement the agenda will be required for the community to accept it. (DR sub, page 5)

During consultation, many people pointed to the successful implementation of the NCP reforms as an example to emulate. This chapter begins by considering important features of the NCP, especially the time interval between completion of the Hilmer Review and governments agreeing to the NCP reform agenda.

A distinguishing feature of the current environment is that the roles and responsibilities of the Australian Government and state and territory governments are currently being reconsidered through the White Paper on the Reform of the Federation and the White Paper on Reform of Australia's Tax System (the White Papers).

Although a number of the Panel's recommendations can be implemented by jurisdictions acting independently, in many cases reform outcomes will be enhanced through co-operation or collaboration across jurisdictions. Which level of government leads implementation of reforms across jurisdictions will reflect outcomes of the White Papers.

Against this background, this Report sketches a 'road map' for implementation that identifies pathways forward, without pre-empting decisions that sit appropriately with governments and that will be subject to further consideration through the White Papers.

#### 29.1 IMPLEMENTING NATIONAL COMPETITION POLICY FOLLOWING THE HILMER REVIEW

In considering how a review with recommendations ranging from high-level statements of principle to more specific policy and legislative change evolves into a program of reform, many stakeholders pointed to the Hilmer Review and the subsequent NCP reform agenda. The Hilmer Review's recommendations were generally couched as statements of principle, from which emerged a successful and long-standing program of reform. Like this Review, the Hilmer Review made recommendations on competition policy, laws, and institutions and, also like this Review, recommendations on the laws and institutions were spelt out in greater detail than many of the policy recommendations, which were often expressions of principle.

Again like this Review, the recommendations on competition policy in the Hilmer Review drew on and extended reforms that were already being developed, often independently, by the Commonwealth, States and Territories. For instance, electricity reform commenced in Victoria and New South Wales essentially without the Commonwealth's involvement.<sup>781</sup>

The Hilmer Review also noted the importance of nationally consistent approaches to competition reform. Hilmer pointed to a 'series of significant cooperative ventures by Australian Governments',<sup>782</sup> including the National Rail Corporation, road transport regulation, regulation of non-bank financial institutions and the Corporations Law.

Hilmer supported policy developments in individual jurisdictions but made recommendations for co-ordinated action to be taken by governments collectively. Nevertheless, NCP allowed jurisdictions to tailor reforms to reflect local conditions.

This Review is similar to the Hilmer Review, but it has two important differences. First, the policy context for the Hilmer Review was very different from that applying today. Second, unlike this Review, which is addressed to a single Australian Government Minister, the Hilmer Review was addressed to the heads of all Australian governments.

As set out in Box 29.1, the mechanics of implementing NCP were agreed by governments over an 18-month period subsequent to the Hilmer Review. During that time, the Council of Australian Governments (COAG) added further detail that guided subsequent implementation of NCP by individual jurisdictions.

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781 The Hilmer Review noted a number of other examples of competition reform in various jurisdictions, including reform of statutory agricultural marketing arrangements in New South Wales and Queensland; and reform of professional services and occupations in several jurisdictions, including relaxation of advertising restrictions in the legal profession and the removal of the monopoly over conveyancing services (Commonwealth of Australia 1993, *National Competition Policy*, Canberra, pages 12-13).

782 Commonwealth of Australia 1993, *National Competition Policy*, Canberra, page 14.

**Box 29.1: Implementation timetable for NCP**

The Hilmer Review was presented to governments in August 1993.

On 25 February 1994, COAG agreed on the need for a more extensive microeconomic reform agenda and established a standing committee of officials (the COAG Working Group on Microeconomic Reform) to manage this process and develop detailed proposals for reform.<sup>783</sup>

COAG agreed to the principles of competition policy as set out in the Hilmer Review and to (among other things) governments reporting to the next COAG meeting on the practicalities of applying the Hilmer recommendations and the Australian Government providing assistance to the States and Territories.

In August 1994, COAG agreed ‘in general’ to a package of reform, which was then released for public comment. COAG also requested the former Industry Commission to assess the benefits to economic growth and revenue from implementing Hilmer and related reforms. This assessment was completed in March 1995.

The Competition Policy Reform Bill was introduced into the Australian Parliament on 29 March 1995.

In April 1995 COAG agreed to a national competition policy legislative package with the Prime Minister, Premiers and Chief Ministers signing three Intergovernmental Agreements to implement the package. (More information on these agreements is in Box 8.1).

## 29.2 IMPLEMENTING NATIONAL COMPETITION POLICY TODAY

NCP established a forward agenda for competition policy reform that guided governments for around a decade. In this chapter, the Panel proposes an updated competition policy agenda that can, if supported by all Australian governments, guide reform of Australia’s competition policy, laws and institutions into the future.

### Drawing on reform underway across the Australian Federation

This Report identifies examples of competition policy reforms that are already in progress within individual jurisdictions.

- **Human services** — Chapter 12 summarises the range of developments in contracting out, contestability and commissioning of human services across the Federation.
- **Planning and zoning** — Section 10.1 notes that a number of jurisdictions are reviewing planning and zoning rules.
- **Heavy vehicles** — Section 11.3 cites the considerable work undertaken by the Heavy Vehicle and Investment Reform project in progressing both user-charging and institutional reform options.

These developments in competition policy have informed the Panel’s recommendations in this Report. Importantly, they also demonstrate the potential for jurisdictions to share reform ideas as well as information about the outcomes of reform.

783 Council of Australian Governments 1994, *Communique 25 February 1994*, Council of Australian Governments (COAG) — Archive, viewed on 5 February 2015, [http://archive.coag.gov.au/coag\\_meeting\\_outcomes/1994-02-25/](http://archive.coag.gov.au/coag_meeting_outcomes/1994-02-25/).

### The Panel's view

In the wake of this Review, governments should decide whether the next step includes an agreement on the reform agenda by all governments or whether jurisdictions independently consider and act on the Review's recommendations. The NCP set a forward agenda for competition policy reform that guided governments for around a decade. The Panel endorses co-operation and collaboration across jurisdictions as generally more likely to produce better outcomes for Australians.

## A future national competition reform agenda

The Panel recognises that the architecture of Australia's Federation is being reviewed in the White Paper on the Reform of the Federation. Among other important issues, the Federation White Paper is considering appropriate principles to determine when national action — that is, action involving all governments, rather than just the Australian Government — is justified, and how best to achieve it when it is justified.<sup>784</sup>

The Panel agrees with the view expressed in the Federation White Paper (Issues Paper 1) that:

Sometimes a national approach is more appropriate than pursuing different approaches across the States and Territories. For example, economic considerations might require national regulation to make it easier for businesses to operate in more than one State or Territory. However, uniformity and consistency may come at the expense of diversity and competition between the States and Territories.<sup>785</sup>

A number of recommendations in this Report can be implemented by jurisdictions acting independently of each other and may even benefit from a diversity of approaches. But the Panel considers that competition reforms are a prime candidate for a national approach. The Productivity Commission (PC) notes:

A broadly-based reform program can make it easier for governments to progress a set of individual reforms that might be difficult to implement on a stand-alone basis. A broadly-based and integrated reform agenda — as was the case for NCP — improves the prospect that those who might lose from one specific reform can benefit from others and gain overall. As such, a broadly-based program can moderate adverse distributional effects. (sub, page 24)

The Panel's reform priorities have economy-wide impacts, and taken together are of national significance. This is discussed further in [Chapter 30](#).

Recommendations in this Report fall into three categories:

- those that can be fully or largely implemented by the Australian Government or individual States and Territories acting alone;
- those that benefit from being implemented jointly by the Australian Government and the States and Territories; and
- those that create mechanisms to support reform at any jurisdictional level.

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784 Australian Government 2014, *Reform of the Federation White Paper: Issues Paper 1: A Federation for Our Future*, Canberra, page 22.

785 Ibid., page 22.

Recommendations for implementing the Panel's Recommendations are set out in a road map in [Section 29.3](#).

## Australian Government law and policy

The Panel recommends both simplification of, and specific changes to, the competition provisions of the *Competition and Consumer Act 2010* (CCA) (see Recommendations 22–42). The CCA is Commonwealth legislation and can be amended by the Australian Parliament. However, under the Conduct Code Agreement 1995,<sup>786</sup> the Australian Government must consult with, and seek agreement from, the States and Territories before amending Part IV of the CCA.

The Panel has prepared an updated 'model law' (see [Appendix A](#)) incorporating its recommended changes to Part IV of the CCA. This should assist in clarifying the changes the Panel is recommending. It should also assist the Australian Government to move directly to consultation with the States and Territories and other stakeholders on proposed changes to the law.

Repeal of Part X of the CCA (see Recommendation 4) can also be initiated by the Australian Government, as can repeal of coastal shipping cabotage restrictions (part of Recommendation 5), which reside in Commonwealth legislation (that is, the *Coastal Trading (Revitalising Australian Shipping) Act 2012*).

As outlined in [Section 10.7](#), pharmacy location rules arise from the Australian Community Pharmacy Agreement between the Australian Government and the Pharmacy Guild of Australia. Accordingly, negotiations towards the next Australian Community Pharmacy Agreement, due to commence in July 2015, provide the opportunity to introduce transitional arrangements for removing pharmacy location rules (see Recommendation 14). Such transitional arrangements could include incorporation of a community service obligation covering retail pharmacy services.

The Panel's recommendation that the PC undertake a review of intellectual property (see Recommendation 6) can be implemented by the Australian Government without delay.

## Australian Government and state and territory policy and regulations

A number of recommendations can be implemented at both Commonwealth and state and territory levels, either by jurisdictions acting independently or in co-operation or collaboration with other jurisdictions.

For example, introducing choice and diversity in the provision of human services (see Recommendation 2) and incorporating competition considerations in planning and zoning rules (see Recommendation 9) can be implemented by jurisdictions individually and do not require national co-ordination. Similarly, the Australian Government and all States and Territories can undertake their own reviews of regulatory restrictions on competition (see Recommendation 8); competitive neutrality policy (see Recommendation 15); and government policies governing commercial arrangements (see Recommendation 18).

Nevertheless, the Panel recommends collaboration and co-ordination across jurisdictions as more likely to deliver lasting benefits to Australians (see [Box 29.2](#)).

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<sup>786</sup> Council of Australian Governments, *Conduct Code Agreement*, National Competition Policy.

**Box 29.2: Collaboration and co-ordination: the example of the National Disability Insurance Scheme (NDIS)**

Notwithstanding that disability services were the province of state and territory governments, in 2011 ‘all governments recognised that addressing the challenges in disability services will require shared and co-ordinated effort’.<sup>787</sup> The NDIS was created to provide insurance cover for all Australians in the event of significant disability.

Implementing the NDIS will be informed by a number of trial sites around Australia. The NDIS trial in Western Australia is unique because two different disability service models will be tried in separate locations. The Australian Government NDIS trial site (in the Perth Hills region) will run in parallel with two Western Australian Government trial sites (the Lower South West region and the Cockburn/Kwinana region).

The trial arrangements will:

... allow for the assessment and comparison of the merits of the different approaches to disability services and help determine and inform the national roll-out of disability reform.<sup>788</sup>

The Western Australian and Australian governments have established a jointly-chaired steering committee to share information and provide advice on the comparative evaluation of the two trial models.

In recognition of the work already undertaken by Western Australia, the bilateral agreement establishes that an aim of parallel trials is to ‘preserve and enhance the investments that WA has made in its disability sector’.<sup>789</sup> This example illustrates how progress towards a national agenda need not entail individual jurisdictions compromising their existing policies and can incorporate different approaches.

Cost-reflective road user-charges (see Recommendation 3) can be introduced by jurisdictions unilaterally. However, the Panel’s recommended approach of revenue-neutrality would require co-ordination to secure the Australian Government’s agreement to reduce fuel excise.

The recommended review of potentially anti-competitive regulation against a public interest test (see Recommendation 8) is a key area for collaboration and co-operation among jurisdictions. Priority areas for review will differ across jurisdictions and their identification should remain the responsibility of each government. COAG is currently engaged in a process of regulatory review and jurisdictions should benefit from continued collaboration.

The Australian Council for Competition Policy (ACCP) (see Recommendation 43) will provide a forum for all governments to share and learn from their respective experiences.

The Panel recommends that the Australian Government discuss the Panel’s Final Report with the States and Territories as soon as practicable to enable all governments to make considered

787 Council of Australian Governments Meeting 2011, *Communique 19 August 2011*, Canberra, page 4.

788 Council of Australian Governments 2014, *National Partnership Agreement on Trial of My Way Sites*, Canberra, page 2.

789 Council of Australian Governments 2014, *Bilateral Agreement for NDIS Trial between the Commonwealth and Western Australia*, Canberra, page 3.

responses. This would also allow governments to consider aspects of the reform agenda where they might see value in collaboration.

It will also be important for progress on implementing reforms to be monitored and further analysis to be available to jurisdictions as they initiate plans, develop pilots and assess the results of trials. The ACCP should provide a formal mechanism for encouraging and assisting collaboration.

### Recommendation 55 — Implementation

The Australian Government should discuss this Report with the States and Territories as soon as practicable following its receipt.

## Mechanism for progressing reform

Progress in priority areas of reform across the Commonwealth and the States and Territories will benefit from a number of ancillary processes:

- advocacy for, and education, in competition policy;
- independent monitoring and public reporting of progress in implementing agreed reforms;
- independent analysis and advice on potential areas of competition reform across all levels of government;
- continual review of regulations and regulatory compliance arrangements to ensure they meet the public interest test (as set out in [Chapter 10](#)), particularly with regard to barriers to entry for new competitors;
- orchestrating co-ordination and co-operation on projects;
- making recommendations to governments on specific market design and regulatory issues; and
- undertaking research into competition policy developments in Australia and overseas.

The Panel recommends that these responsibilities be assigned to its proposed ACCP (see Recommendation 44), which would be accountable to the Australian Government and state and territory governments. In the Panel's view, early establishment of the ACCP would catalyse the reform agenda.

Once each jurisdiction has developed its implementation plan, the PC should be tasked with modelling the benefits of proposed reforms to determine whether the benefits enjoyed by each jurisdiction are commensurate with its reform effort. The ACCP might then be invited to recommend the mechanism for competition payments with a view to matching reform effort with the benefits of reform across jurisdictions (see Recommendation 48).

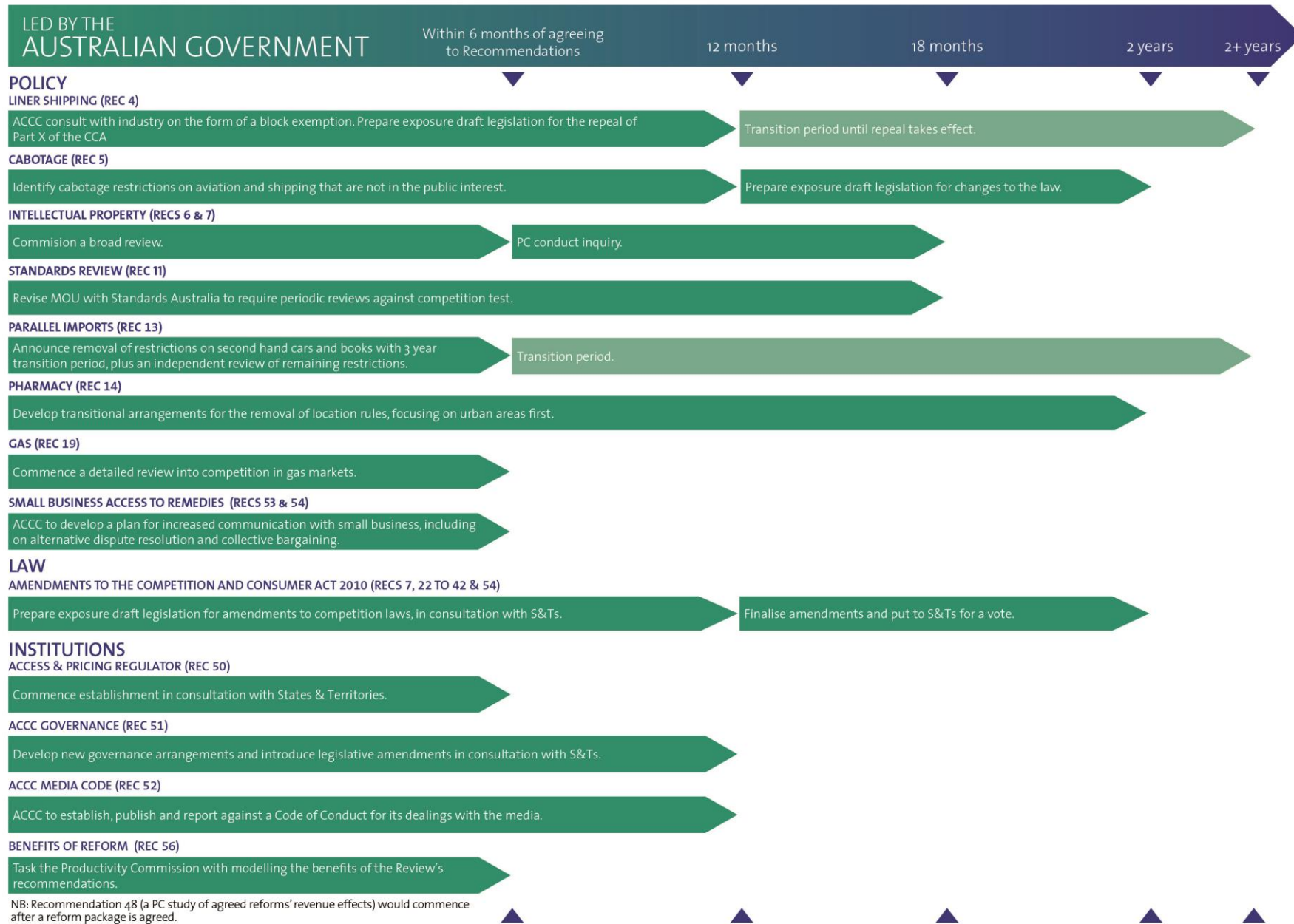
The 'road map' in [Section 29.3](#) illustrates recommendations that fall into one of three categories: recommendations that can be led by the Australian Government; recommendations that can be led by state and territory governments individually; or recommendations that would most benefit from the Australian Government and state and territory governments working in collaboration.

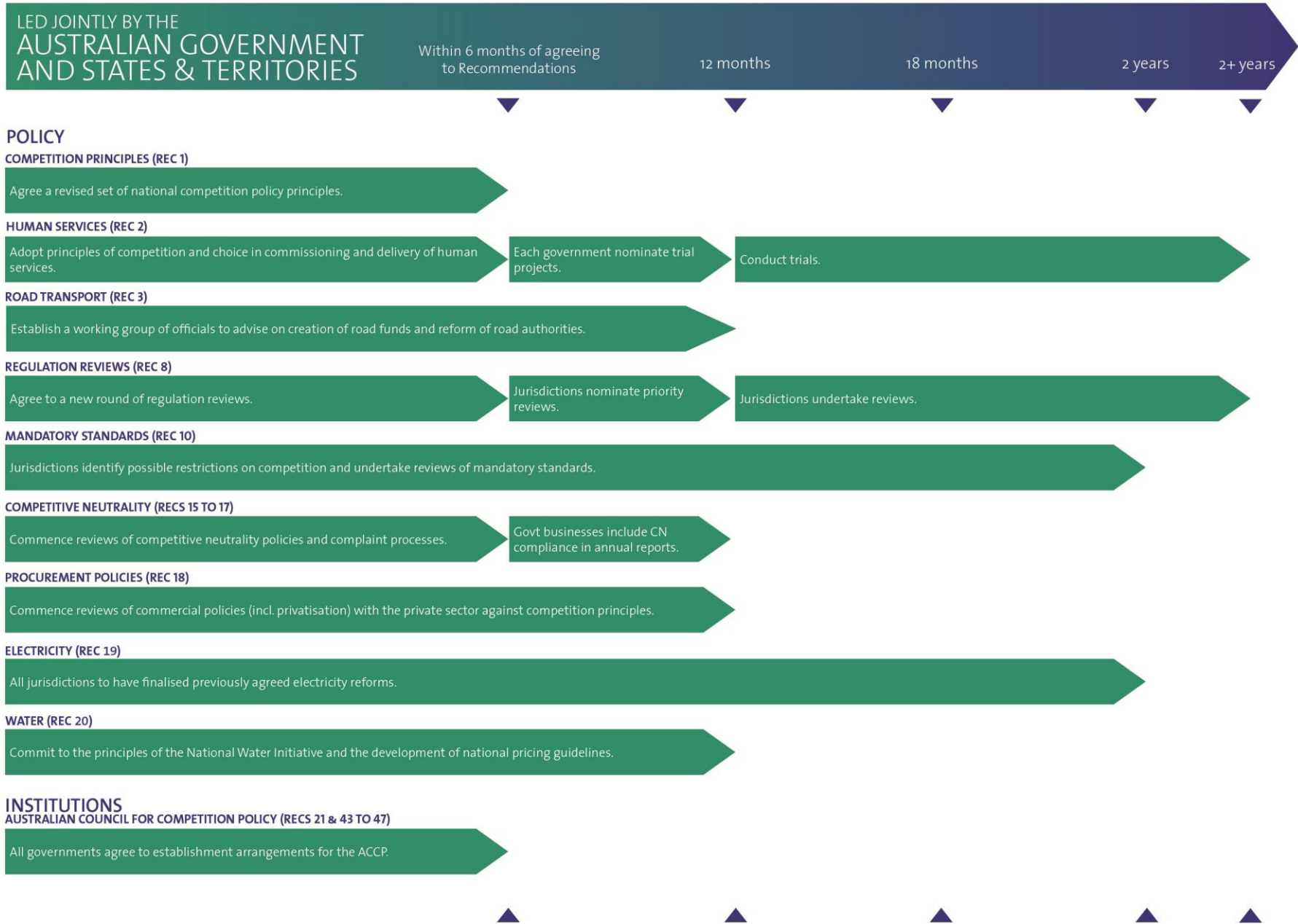
### **The Panel's view**

Although a number of the Panel's recommendations can be implemented in large part by individual jurisdictions, in many cases their benefits will be enhanced by co-operation or collaboration across jurisdictions. The proposed Australian Council for Competition Policy (ACCP) should provide a formal mechanism for encouraging and assisting co-operative and collaborative reform effort. Early establishment of the ACCP would catalyse the reform agenda.



## 29.3 A ROAD MAP







**POLICY**

**PLANNING & ZONING (REC 9)**

Assess planning & zoning rules against the public interest test.

**TAXIS & RIDE-SHARING (REC 10)**

Initiate reviews of taxi regulation.

**RETAIL TRADING HOURS (REC 12)**

Deregulate remaining trading hours restrictions.

**PHARMACY (REC 14)**

Introduce transitional arrangements for the removal of ownership rules.



## 30 BENEFITS OF REFORM

As noted in [Section 25.5](#), the Panel recommends that the Productivity Commission (PC) be tasked with modelling the revenue effects, in each jurisdiction, of reforms agreed by the Australian Government and state and territory governments in the wake of this Review (see Recommendation 48). This modelling would help inform the need for, and magnitude of, any competition payments, including taking account of assessments of reform effort made by the Australian Council for Competition Policy (ACCP) based on actually implementing reform measures, not on undertaking reviews.

Prior to that modelling exercise, the Australian Government should task (within six months) the PC with modelling the proposed recommendations from this Review as a package (in consultation with jurisdictions) to support discussions on policy proposals to pursue (see Recommendation 56).

Economic modelling of the impact of competition reform can serve various purposes. Attempts to quantify the impact of reform can provide guidance to the general community about the relative significance of particular reforms, giving a sense of magnitude and priority to particular reforms. Modelling can also address concerns about reforms, such as whether they are likely to have positive or negative regional or distributional effects.

The Panel recognises that modelling the Review's proposals will, in some instances, require adopting a range of alternative assumptions about implementation. For example, the Panel's recommendation on delivery of human services envisages further work by governments, including developing implementation plans that reflect the unique characteristics of providing human services in each jurisdiction.

Economic modelling is only one tool that can be used to illustrate the relative significance and priority attaching to particular reforms. By its nature, modelling requires making assumptions and judgments, which may not capture the finer detail and specifics of certain sectors or markets. In addition, economic modelling is often focused on measuring improvements in productivity and gross domestic product (GDP), which fail to capture the full range of benefits from reform.

GDP is a measure of the total monetary value of the goods and services that a country produces. Productivity measures how effectively a country uses resources (labour and capital) to produce goods and services. Productivity will improve if we are able to produce more goods and services using the same (or fewer) resources. The benefits of productivity improvements flow into higher living standards for Australians.

GDP and productivity are both important aspects of a country's capability and progress, and they are generally chosen for modelling tasks because they are well-defined and measurable. But these concepts fail to capture some important benefits flowing from increased choice and competition, such as increases in convenience, satisfaction and personal wellbeing. They also fail to capture reduced inequality and/or improved access to goods and services that may flow from reforms. These potential improvements in people's lives are crucial in building public acceptance of the case for reform.

In addition, productivity is often poorly measured in the services sector, particularly in human services where there is significant government provision and most of the outputs produced are not sold at market prices. This may make it especially difficult to quantify the benefits of reforms to human services, such as those proposed in Recommendation 2, pertaining to improved quality and responsiveness of service provision. However, the improvement in people's lives that can be

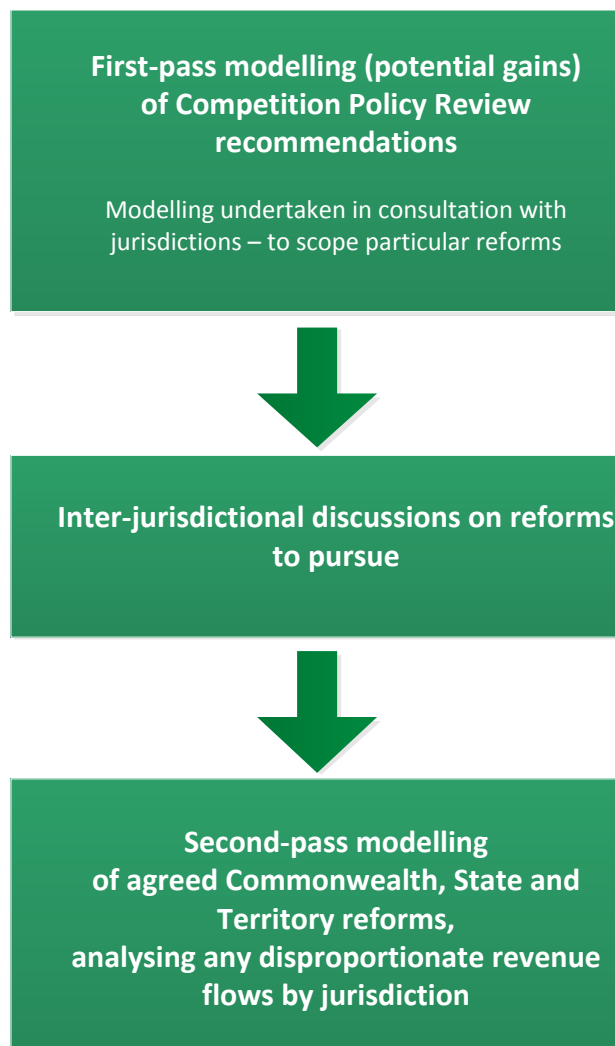
generated by better services, including better healthcare, education and disability care, is a major reason for pursuing reform, even if it is not possible to measure these benefits precisely.

### **The Panel's view**

The Panel considers that modelling the impact of the Review's recommendations can provide guidance as to the relative significance of particular reforms, giving a sense of magnitude and priority for policy decision making. The Panel recognises that modelling the Review's proposals will, in some instances, require a range of assumptions about implementation and, for this reason, modelling options should be specified in consultation with jurisdictions.

### **Implementation**

The Australian Government should task (within six months) the PC with modelling the Review's package of recommendations (in consultation with jurisdictions) to support discussions on policy proposals to pursue. The timing of this first-pass modelling exercise, and its links with modelling associated with Recommendation 48 on competition payments, is outlined below.



#### **Recommendation 56 — Economic modelling**

The Productivity Commission should be tasked with modelling the recommendations of this Review as a package (in consultation with jurisdictions) to support discussions on policy proposals to pursue.

### **Economic impacts of NCP reforms**

The impacts of the economic reforms flowing from the last major review of competition policy, the 1993 Hilmer Review, were modelled at the request of governments on three occasions.

First, in 1994 COAG requested that the then Industry Commission (the predecessor to the PC) assess the benefits to economic growth and revenue from implementing the Hilmer and related reforms. This was partly to assist in determining the magnitude and direction of competition payments.

The Industry Commission reported in 1995, suggesting that, in the long run, the Hilmer reforms would lead to a gain in real GDP of 5.5 per cent.<sup>790</sup> This was an ‘outer envelope’ or ‘maximum effects’ estimate, which assumed that the proposed reforms were fully implemented and the economy had fully adjusted to the reforms.

Importantly, the PC’s 1995 report noted that modelling is one way to provide support for reforms, but it is not the only way, and modelling cannot provide a complete measure of the worth of reforms:

... it is clear that no single number can be produced to capture accurately the full benefits and costs of these reforms — no matter how much time might have been made available. Some of the reforms being considered are broad strategies rather than specific policy changes; or may even have the important but intangible effect of locking in gains from changes that have already been introduced. Moreover, some of the big gains from reform are likely to be of the dynamic kind that are difficult to predict, let alone measure...

The best they [technical modelling exercises] can do is provide general indications of the direction and magnitude of the benefits that flow from these reforms of different sectors of Australian society.<sup>791</sup>

Second, in 1999, the PC modelled a smaller sub-set of NCP reforms to determine their likely regional impacts. This report found that, at the regional level, implementing NCP reform was estimated to raise output higher than otherwise in all of the 57 regions tested, except one (Gippsland in Victoria). The report also found that, although the estimated impact of NCP differed across regions, there was no apparent bias against rural and regional areas, at least in output terms.<sup>792</sup>

Third, in 2005, 12 years after the Hilmer Review, the PC completed another modelling exercise, which calculated that some selected reforms delivered under NCP were estimated to have raised GDP by around 2.5 per cent.<sup>793</sup> The reforms modelled covered major parts of the infrastructure sector (including utilities, telecommunications and parts of transport) but did not pick up dynamic efficiency gains. The PC noted that the implication of this was that ‘the total boost to GDP from the reforms will ultimately be considerably larger than the [2.5 per cent] figure emerging from this particular modelling exercise’.<sup>794</sup>

The PC’s 2005 report also included a distributional analysis, which showed that the benefits from the reforms flowed broadly among Australians, with real incomes rising across all income brackets. It also noted some of the specific changes brought about by NCP, such as:

- directly reducing the prices of goods and services, such as electricity and milk; and
- stimulating business innovation, customer responsiveness and choice.<sup>795</sup>

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790 Industry Commission 1995, *The Growth and Revenue Implications of Hilmer and Related Reforms*, Final Report, Canberra, page 53.

791 Ibid.

792 Productivity Commission 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia: Modelling the Regional Impacts of National Competition Policy Reforms*, Canberra, pages 9-10.

793 Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report no. 33, Canberra, page XVII.

794 Ibid., page XVIII.

795 Ibid., page XII.



A study of the impacts of the Panel's recommendations in this Final Report as proposed, could allow specific policy proposals to be quantified using appropriate assessment tools. This could be helpful in determining the gains available from implementing proposals and the prioritisation of reforms.

### Overall benefits of competition policy reform

As noted by the Organisation for Economic Co-operation and Development (OECD), it can be challenging to measure and find evidence of the link between competition policy and macroeconomic outcomes, such as productivity, innovation and growth as well as other determinants of wellbeing, such as inequality and employment.<sup>796</sup>

In addition, productivity alone is insufficient to guide attention to areas where prospective gains to the economy are large and growing. For example, while it is difficult to measure productivity in industries such as health and education, given their size and share of the economy, and their likely growth over time, even relatively modest gains to productivity in these sectors could yield large gains to the economy. Also, if we allow productivity in these sectors to stagnate, their growing share of the economy will mean that Australian living standards decline over time.

Another aspect of a sector's contribution to the economy is its capacity to affect the performance of other industries. Some industries supply important inputs to other businesses, which are necessary for them to operate. While these sectors often supply directly to end-point consumers or for export, since they provide inputs to other businesses, they can also cascade good or poor performance through many other sectors of the economy.

Many infrastructure and utilities industries are instrumental to the performance of other sectors that draw upon their inputs in the production process. Increasingly, service industries such as professional services (accounting/legal) or human services (health care and life-long education) also have a significant role to play in the productivity of other sectors of the Australian economy.

Participants in consultations also suggested that there are many sectors, particularly in the services industries, where exposure to competition has been limited. This is in contrast to many goods industries, which have been increasingly opened to competition over the past decade or two and will be further exposed as globalisation continues.

Technology and increasing use of global supply chains in the provision of services (e.g., incorporating offshore inputs such as outsourced call-centre functions or early-stage engineering services) is beginning to expose more services industries to competition. However, many services that require domestic contact with customers, including where regulatory restrictions limit domestic or international competition through various standards or professional certifications, may dampen Australia's productivity and living standards over time if they are not exposed to greater competitive forces.

There is also a range of sectors where unfinished business remains from earlier reforms proposed under the NCP framework. These include key markets with extensive interface with end-point consumers, such as taxis, pharmacies and book importers. These remain areas of keen interest to a wide range of consumers, with considerable potential for improvements in convenience, pricing and accessibility.

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796 OECD 2014, *Factsheet on how competition policy affects macro-economic outcomes*, OECD, Paris.



## Existing estimates of the benefits of specific competition reforms

While the Panel suggests that the PC undertakes modelling of this Report's recommendations, this section notes some previous work to quantify the benefits of various proposed competition reforms.

These estimates are included for illustrative purposes only. The Panel does not endorse, nor has it verified, the results or findings from these studies. The studies do not represent a quantification of the likely impact of implementing any of the recommendations. Rather, they are included to give some sense of the gains which can flow from various competition reforms.

Overall, the OECD has noted that the quality of competition policy is positively linked to productivity, and a substantial easing in anti-competitive regulation can raise a country's productivity growth rate by over 1 per cent per annum.<sup>797</sup> Raising productivity growth and hence Australian living standards is an important area of focus for this Review.

In the area of **human services** (see Recommendation 2), it can be very difficult to measure productivity and to estimate the impact of policy changes on the economy. However, the benefits of reform are likely to be large and to extend beyond the individual — having a healthy, well-educated population benefits us all. At the individual level, having more choice and access to human services is likely to increase personal wellbeing, dignity and freedom, which is hard to measure but very important nonetheless. These services also make up a large and growing area of the economy. As an indication, the PC has noted that an efficiency improvement of 10 per cent in service delivery in the health care sector would deliver cost savings equivalent to around 1 per cent of GDP at the present time, and as much as 2 per cent by 2050.<sup>798</sup>

With regard to **road transport** (see Recommendation 3), modelling the costs of road congestion has been attempted by various organisations, including the Bureau of Infrastructure, Transport and Regional Economics (BITRE). BITRE estimates that the avoidable costs of road congestion were around \$9.4 billion in 2005 (comprising \$3.5 billion in private time costs, \$3.6 billion in business time costs, \$1.2 billion in extra vehicle operating costs and \$1.1 billion in extra air pollution costs).<sup>799</sup>

With respect to the regulation of **coastal shipping**, a report commissioned by the Cement Industry Foundation modelled the impacts of the Shipping Reform Package introduced in 2012, which increased the regulatory burden on foreign ships in particular, including by imposing minimum voyage requirements and restricting the duration of certain licences. The report found that this regulation would reduce GDP by \$242-466 million over the period from 2012 to 2025 and lead to an increase in freight rates of up to 16 per cent.<sup>800</sup> In contrast, the Panel's recommendation (see Recommendation 5) seeks to reduce regulation around coastal shipping and boost competition in the sector.

In the area of **taxis** (see Recommendation 10), the Western Australian Economic Regulation Authority has estimated there would be a net benefit to the Perth community of up to \$39 million per annum from reform of the Western Australian taxi industry (being a \$70 million benefit to

797 OECD 2014, *Factsheet on how competition policy affects macro-economic outcomes*, OECD, Paris, page 22.

798 Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report no. 33, Canberra, page XLIII.

799 Bureau of Infrastructure, Transport and Regional Economics 2007, *Estimating urban traffic and congestion cost trends for Australian cities*, Working paper 71, Canberra, page XV.

800 Report for the Cement Industry Foundation by Deloitte Access Economics 2012, *Economic Impacts of the Proposed Shipping Reform Package*, page iii, Cement Industry Federation.

consumers partly offset by a loss to taxi plate owners).<sup>801</sup> IPART has found that between 15 per cent and 20 per cent of Sydney taxi fares is received by taxi plate owners as economic rent (sub, page 7).

In respect of **parallel imports** (see Recommendation 13), the PC found that, in 2007-08, a selection of around 350 books sold in Australia were on average 35 per cent more expensive than like editions sold in the US. In many cases, the price difference was greater than 50 per cent.<sup>802</sup>

In regard to **planning and zoning** (see Recommendation 9), in New South Wales, a recent study commissioned by the state government into the potential benefits of comprehensively reforming planning and zoning in that state showed net benefits ranging between \$569 million and \$1,482 million per annum, depending on the reform option considered.<sup>803</sup>

In respect of **retail trading hours** (see Recommendation 12), the Queensland Competition Authority recommended full deregulation of retail trading hours in 2013. It found the net potential benefit to Queensland of removing the current restrictions was as much as \$200 million per annum, noting that the 'potential benefits of the reform include an increase in retail productivity, more shopping convenience for the broader community and lower prices'.<sup>804</sup>

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801 Western Australian Economic Regulation Authority 2014, *Inquiry into Microeconomic Reform in Western Australia: Final report*, Perth, page 294.

802 Productivity Commission 2009, *Restrictions on the Parallel Importation of Books*, Research Report, Canberra, page XVIII.

803 Centre for International Economics 2013, *Reform of the NSW planning system*, Better Regulation Statement, prepared for NSW Planning and Infrastructure, Sydney, pages 6-7.

804 Queensland Competition Authority Office of Best Practice Regulation 2013, *Measuring and Reducing the Burden of Regulation*, Final Report, Brisbane, pages 33 and 39.

## APPENDIX A — *COMPETITION AND CONSUMER ACT 2010* — MODEL LEGISLATIVE PROVISIONS

### Part I—Preliminary

#### 2A Application of Act to Commonwealth and Commonwealth authorities

|                   |
|-------------------|
| Recommendation 24 |
|-------------------|

- (1) Subject to this section and sections 44AC, 44E and 95D, this Act binds the Crown in right of the Commonwealth in so far as the Crown in right of the Commonwealth engages in trade or commerce, either directly or by an authority of the Commonwealth.
- (2) Subject to the succeeding provisions of this section, this Act applies as if:
  - (a) the Commonwealth, in so far as it engages in trade or commerce, otherwise than by an authority of the Commonwealth; and
  - (b) each authority of the Commonwealth (whether or not acting as an agent of the Crown in right of the Commonwealth) in so far as it engages in trade or commerce;
 

were a corporation.
- (3) Nothing in this Act makes the Crown in right of the Commonwealth liable to a pecuniary penalty or to be prosecuted for an offence.
- (3A) The protection in subsection (3) does not apply to an authority of the Commonwealth.
- (4) Part IV does not apply in relation to the Commonwealth developing, and disposing of interests in, land in the Australian Capital Territory.

#### 2B Application of Act to States and Territories

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| Recommendation 24 |
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- (1) The following provisions of this Act bind the Crown in right of each of the States, of the Northern Territory and of the Australian Capital Territory, so far as the Crown engages in trade or commerce, either directly or by an authority of the State or Territory:
  - (a) Part IV;
  - (b) Part XIB;
  - (c) the other provisions of this Act so far as they relate to the above provisions.
- (2) Nothing in this Act renders the Crown in right of a State or Territory liable to a pecuniary penalty or to be prosecuted for an offence.

- (3) The protection in subsection (2) does not apply to an authority of a State or Territory.

### 2BA Application of Part IV to local government bodies

Recommendation 24

- (1) Part IV applies in relation to a local government body only to the extent that it engages in trade or commerce, either directly or by an incorporated company in which it has a controlling interest.

- (2) In this section:

*local government body* means a body established by or under a law of a State or Territory for the purposes of local government, other than a body established solely or primarily for the purposes of providing a particular service, such as the supply of electricity or water.

### 2C Activities that are not in trade or commerce

Recommendation 24

- (1) For the purposes of sections 2A, 2B and 2BA, the following do not amount to engaging in trade or commerce:

- (a) imposing or collecting:
  - (i) taxes; or
  - (ii) levies; or
  - (iii) fees for licences;
- (b) granting, refusing to grant, revoking, suspending or varying licences (whether or not they are subject to conditions);
- (c) a transaction involving:
  - (i) only persons who are all acting for the Crown in the same right (and none of whom is an authority of the Commonwealth or an authority of a State or Territory); or
  - (ii) only persons who are all acting for the same authority of the Commonwealth; or
  - (iii) only persons who are all acting for the same authority of a State or Territory; or
  - (iv) only the Crown in right of the Commonwealth and one or more non-commercial authorities of the Commonwealth; or
  - (v) only the Crown in right of a State or Territory and one or more non-commercial authorities of that State or Territory; or
  - (vi) only non-commercial authorities of the Commonwealth; or
  - (vii) only non-commercial authorities of the same State or Territory; or
  - (viii) only persons who are all acting for the same local government body (within the meaning of section 2BA) or for the same incorporated company in which such a body has a controlling interest;

- (d) the acquisition of primary products by a government body under legislation, unless the acquisition occurs because:
  - (i) the body chooses to acquire the products; or
  - (ii) the body has not exercised a discretion that it has under the legislation that would allow it not to acquire the products.
- (2) Subsection (1) does not limit the things that do not amount to engaging in trade or commerce for the purposes of sections 2A, 2B and 2BA.
- (3) In this section:

***acquisition of primary products by a government body under legislation*** includes vesting of ownership of primary products in a government body by legislation.

***enactment*** means an Act or an instrument (including rules, regulations or by-laws) made under an Act.

***government body*** means the Commonwealth, a State, a Territory, an authority of the Commonwealth or an authority of a State or Territory.

***licence*** means a licence, permission, authority or right granted under an enactment that allows the licensee to supply goods or services.

***primary products*** means:

- (a) agricultural or horticultural produce; or
  - (b) crops, whether on or attached to the land or not; or
  - (c) animals (whether dead or alive); or
  - (d) the bodily produce (including natural increase) of animals.
- (4) For the purposes of this section, an authority of the Commonwealth or an authority of a State or Territory is ***non-commercial*** if:
    - (a) it is constituted by only one person; and
    - (b) it is neither a trading corporation nor a financial corporation.

## 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

***competition*** includes competition from goods imported or capable of being imported into Australia, or from services rendered or capable of being rendered in Australia, by persons not resident or not carrying on business in Australia.

Recommendation 25

***contract*** includes a covenant and a lease or licence of land or buildings.

Recommendation 23

## 5 Extended application of this Act to conduct outside Australia

Recommendation 26

Each of the following provisions:

- (a) Part IV;
- (b) Part XI;
- (c) the Australian Consumer Law (other than Part 5-3);
- (d) the remaining provisions of this Act (to the extent to which they relate to any of the provisions covered by paragraph (a), (b) or (c));

extends to the engaging in conduct outside Australia by any person in so far as the conduct relates to trade or commerce.

Note: Section 4 defines **trade or commerce** to mean trade or commerce within Australia or between Australia and places outside Australia.

## Part IV—Anti-competitive conduct

### Division 1—Cartel conduct

#### Subdivision A—Introduction

#### 45 Simplified outline [currently section 44ZZRA]

The following is a simplified outline of this Division:

- This Division sets out parallel offences and civil penalty provisions relating to cartel conduct.
- A corporation must not make, or give effect to, a contract, arrangement or understanding that contains a cartel provision.
- A cartel provision is a provision relating to:
  - (a) price-fixing; or
  - (b) restricting outputs in the production and supply chain; or
  - (c) allocating customers, suppliers or territories; or
  - (d) bid-rigging;

by parties that are, or would otherwise be, in competition with each other.

**Recommendation 27**

Note: This Division includes proposed re-numbering, to replace the current complex numbering.

#### 45A Definitions [currently section 44ZZRB]

In this Division:

**annual turnover**, of a body corporate during a 12-month period, means the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during the 12-month period, other than:

- (a) supplies made from any of those bodies corporate to any other of those bodies corporate; or
- (b) supplies that are input taxed; or
- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*); or
- (d) supplies that are not made in connection with an enterprise that the body corporate carries on; or
- (e) supplies that are not connected with Australia.

Expressions used in this definition that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

**benefit** includes any advantage and is not limited to property.

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**production** includes research, development, manufacture, processing, treatment, assembly, disassembly, renovation, restoration, growing, raising, mining, extraction, harvesting, fishing, capturing and gathering.

#### **45B Cartel provisions** [currently section 44ZZRD]

- (1) For the purposes of this Act, a provision of a contract, arrangement or understanding is a **cartel provision** if:
  - (a) (**price fixing**) the provision has the purpose, or has or is likely to have the effect, of fixing, controlling or maintaining the price for, or a discount, allowance, rebate or credit in relation to, goods or services that are supplied or acquired by any party to the contract, arrangement or understanding in competition with any other party;
  - (b) (**restricting output**) the provision has the purpose of preventing, restricting or limiting:
    - (i) the production or the supply by any party to the contract, arrangement or understanding of goods or services that are supplied by that party in competition with any other party;
    - (ii) the acquisition by any party to the contract, arrangement or understanding of goods or services that are acquired by that party in competition with any other party;
  - (c) (**market allocation**) the provision has the purpose of allocating to or from any party to the contract, arrangement or understanding:
    - (i) the persons or classes of persons to whom that party may supply, or from whom that person may acquire, goods or services in competition with any other party; or
    - (ii) the geographical areas in which that party may supply or acquire goods or services in competition with any other party;
  - (d) (**bid rigging**) the provision has the purpose of restricting whether, or the terms on which, or the extent to which, any party to the contract, arrangement or understanding may bid in competition with any other party in response to a request for bids for the supply or acquisition of goods or services.



*Competition*

- (2) For the purposes of subsection (1), a party to a contract, arrangement or understanding supplies goods or services in competition with another party if and only if:
- (a) those parties or any of their respective related bodies corporate are, or are likely to be, in competition with each other; or
  - (b) but for the provision of any contract, arrangement or understanding, those parties or any of their respective related bodies corporate would be, or would be likely to be, in competition with each other,

in relation to the supply of the goods or services in trade or commerce.

Note: Section 4 defines **trade or commerce** to mean trade or commerce within Australia or between Australia and places outside Australia.

- (3) For the purposes of subsection (1), a party to a contract, arrangement or understanding acquires goods or services in competition with another party if and only if:
- (a) those parties or any of their respective related bodies corporate are, or are likely to be, in competition with each other; or
  - (b) but for the provision of any contract, arrangement or understanding, those parties or any of their respective related bodies corporate would be, or would be likely to be, in competition with each other,

in relation to the acquisition of the goods or services in trade or commerce.

Note: Section 4 defines **trade or commerce** to mean trade or commerce within Australia or between Australia and places outside Australia.

- (4) For the purposes of subsection (1), a party to a contract, arrangement or understanding does not supply or acquire goods or services in competition with another party if those parties are related bodies corporate.

*Immaterial whether particular circumstances or particular conditions*

- (5) It is immaterial whether the cartel provision only applies in particular circumstances or on particular conditions.

*Considering related provisions*

- (6) For the purposes of this Division, a provision of a contract, arrangement or understanding is taken to have the purpose, effect or likely effect mentioned in subsection (1) if the provision, when considered together with:

- (a) the other provisions of the contract, arrangement or understanding; or
- (b) the provisions of another contract, arrangement or understanding to which at least one of the parties to the first-mentioned parties is a party,

has that purpose, effect or likely effect.

### **Subdivision B—Offences etc.**

#### **45C Making a contract etc. containing a cartel provision** [currently section 44ZZRF]

##### *Offence*

- (1) A corporation commits an offence if:
  - (a) the corporation makes a contract or arrangement, or arrives at an understanding; and
  - (b) the contract, arrangement or understanding contains a cartel provision.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) The fault element for paragraph (1)(b) is knowledge or belief.

##### *Penalty*

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of the following:
  - (a) \$10,000,000;
  - (b) if the court can determine the total value of the benefits that:
    - (i) have been obtained by one or more persons; and
    - (ii) are reasonably attributable to the commission of the offence;3 times that total value;
  - (c) if the court cannot determine the total value of those benefits—10% of the corporation's annual turnover during the 12-month period ending at the end of the month in which the corporation committed, or began committing, the offence.

##### *Indictable offence*

- (4) An offence against subsection (1) is an indictable offence.

#### **45D Giving effect to a cartel provision** [currently section 44ZZRG]

##### *Offence*

- (1) A corporation commits an offence if:
  - (a) a contract, arrangement or understanding contains a cartel provision; and

- (b) the corporation gives effect to the cartel provision.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) The fault element for paragraph (1)(a) is knowledge or belief.

*Penalty*

- (3) An offence against subsection (1) is punishable on conviction by a fine not exceeding the greater of the following:
  - (a) \$10,000,000;
  - (b) if the court can determine the total value of the benefits that:
    - (i) have been obtained by one or more persons; and
    - (ii) are reasonably attributable to the commission of the offence;
 3 times that total value;
  - (c) if the court cannot determine the total value of those benefits—10% of the corporation’s annual turnover during the 12-month period ending at the end of the month in which the corporation committed, or began committing, the offence.

*Pre-commencement contracts etc.*

- (4) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

*Indictable offence*

- (5) An offence against subsection (1) is an indictable offence.

**45E Determining guilt** [currently section 44ZZRH]

- (1) A corporation may be found guilty of an offence against section 45C or 45D even if:
  - (a) each other party to the contract, arrangement or understanding is a person who is not criminally responsible; or
  - (b) subject to subsection (2), all other parties to the contract, arrangement or understanding have been acquitted of the offence.
- (2) A corporation cannot be found guilty of an offence against section 45C or 45D if:
  - (a) all other parties to the contract, arrangement or understanding have been acquitted of such an offence; and
  - (b) a finding of guilt would be inconsistent with their acquittal.

**45F Court may make related civil orders** [currently section 44ZZRI]

If a prosecution against a person for an offence against section 45C or 45D is being, or has been, heard by a court, the court may:

- (a) grant an injunction under section 80 against the person in relation to:
  - (i) the conduct that constitutes, or is alleged to constitute, the offence; or
  - (ii) other conduct of that kind; or
- (b) make an order under section 86C, 86D, 86E or 87 in relation to the offence.

**Subdivision C—Civil penalty provisions**

**45G Making a contract etc. containing a cartel provision** [currently section 44ZZRJ]

A corporation contravenes this section if:

- (a) the corporation makes a contract or arrangement, or arrives at an understanding; and
- (b) the contract, arrangement or understanding contains a cartel provision.

Note: For enforcement, see Part VI.

**45H Giving effect to a cartel provision** [currently section 44ZZRK]

- (1) A corporation contravenes this section if:
  - (a) a contract, arrangement or understanding contains a cartel provision; and
  - (b) the corporation gives effect to the cartel provision.

Note: For enforcement, see Part VI.

- (2) Paragraph (1)(a) applies to contracts or arrangements made, or understandings arrived at, before, at or after the commencement of this section.

**Subdivision D—Exceptions**

**45I Joint ventures** [currently section 44ZZRO]

- (1) Sections 45C, 45D, 45G, and 45H do not apply in relation to a contract, arrangement or understanding containing a cartel provision if:
  - (a) the parties to the contract, arrangement or understanding are in a joint venture for the production, supply, acquisition or marketing of goods or services; and
  - (b) the cartel provision:

- (i) relates to goods or services that are acquired, produced, supplied or marketed by or for the purposes of the joint venture;
- (ii) is reasonably necessary for undertaking the joint venture; or
- (iii) is for the purpose of the joint venture.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code*) and subsection (2) of this section.

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45G or 45H bears an evidential burden in relation to that matter.

**45J Restrictions in supply and acquisition agreements** [currently section 44ZZRS]

- (1) Sections 45C, 45D, 45G and 45H do not apply in relation to a contract, arrangement or understanding containing a cartel provision in so far as the cartel provision:
  - (a) is imposed by a person (the *supplier*) in connection with the supply of goods or services to another person (the *acquirer*) and relates to:
    - (i) the supply of the goods or services by the acquirer to the acquirer;
    - (ii) the acquisition by the acquirer of goods or services that are substitutable for or otherwise competitive with the goods or services from others; or
    - (iii) the supply by the acquirer of the goods or services or goods or services that are substitutable for or otherwise competitive with the goods or services;
  - (b) is imposed by a person (the *acquirer*) in connection with the acquisition of goods or services from another person (the *supplier*) and relates to:
    - (i) the acquisition of the goods or services from the supplier; or
    - (ii) the supply by the supplier of the goods or services, or goods or services that are substitutable for or otherwise competitive with the goods or services, to others.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code*) and subsection (2) of this section.

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45G or 45H bears an evidential burden in relation to that matter.

**45K Collective supply or acquisition of goods or services by the parties to a contract, arrangement or understanding** [currently section 44ZZRV]

- (1) Sections 45C, 45D, 45G and 45H do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as:
  - (a) the cartel provision has the purpose, or has or is likely to have the effect, mentioned in paragraph 45B(1)(a); and
  - (b) either:
    - (i) the cartel provision relates to the price for goods or services to be collectively acquired, whether directly or indirectly, by the parties to the contract, arrangement or understanding; or
    - (ii) the cartel provision is for the joint advertising of the price for the re-supply of goods or services so acquired.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45G or 45H bears an evidential burden in relation to that matter.

**45L Acquisition of shares or assets** [currently section 44ZZRU]

- (1) Sections 45C, 45D, 45G and 45H do not apply in relation to a contract, arrangement or understanding containing a cartel provision, in so far as the cartel provision provides directly or indirectly for the acquisition of:
  - (a) any shares in the capital of a body corporate; or
  - (b) any assets of a person.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3) of the *Criminal Code* and subsection (2) of this section).

- (2) A person who wishes to rely on subsection (1) in relation to a contravention of section 45G or 45H bears an evidential burden in relation to that matter.

## Division 2—Other provisions

### 45M Prohibited conduct [currently section 45]

- (1) A corporation shall not:
  - (a) make a contract or arrangement, or arrive at an understanding, if a provision of the proposed contract, arrangement or understanding has the purpose, or would have or be likely to have the effect, of substantially lessening competition;
  - (b) give effect to a provision of a contract, arrangement or understanding if that provision has the purpose, or has or is likely to have the effect, of substantially lessening competition; or
  - (c) engage in a concerted practice with one or more other persons if the concerted practice has the purpose, or has or is likely to have the effect, of substantially lessening competition.
- (2) For the purposes of paragraphs (1)(a) and (b), **competition** means competition in any market in which a corporation that is a party to the contract, arrangement or understanding or would be a party to the proposed contract, arrangement or understanding, or any body corporate related to such a corporation, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the provision of the contract, arrangement or understanding or the proposed contract, arrangement or understanding, supply or acquire, or be likely to supply or acquire, goods or services.
- (3) For the purposes of the application of paragraphs (1)(a) and (b) in relation to a particular corporation, a provision of a contract, arrangement or understanding or of a proposed contract, arrangement or understanding shall be deemed to have or to be likely to have the effect of substantially lessening competition if that provision and any one or more of the following provisions, namely:
  - (a) the other provisions of that contract, arrangement or understanding or proposed contract, arrangement or understanding; and
  - (b) the provisions of any other contract, arrangement or understanding or proposed contract, arrangement or understanding to which the corporation or a related body corporate is or would be a party;

together have or are likely to have that effect.
- (4) For the purposes of paragraph (1)(c), **competition** means competition in any market in which a corporation that is a party to the concerted practice, or any body corporate related to the corporation, supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the practice, supply or acquire, or be likely to supply or acquire, goods or services.

Recommendations  
28, 29

Note: Section 45 has been renumbered 45M, as a consequence of renumbering Division 1.

- (5) This section does not apply to or in relation to a contract, arrangement or understanding in so far as the contract, arrangement or understanding provides, or to or in relation to a proposed contract, arrangement or understanding in so far as the proposed contract, arrangement or understanding would provide, directly or indirectly for the acquisition of any shares in the capital of a body corporate or any assets of a person.
- (6) This section does not apply to or in relation to a contract, arrangement or understanding, or a proposed contract, arrangement or understanding, or a concerted practice, the only parties to which are or would be bodies corporate that are related to each other.

**45X Prohibition of contracts, arrangements or understandings affecting the supply or acquisition of goods or services**  
[currently section 45E]

*Prohibition in a supply situation*

- (1) A person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
  - (a) preventing or hindering the person from supplying goods or services to a second person; or
  - (b) preventing or hindering the person from supplying goods or services to a second person, except subject to a condition:
    - (i) that is not a condition to which the supply of such goods or services by the person to the second person has previously been subject because of a provision in a contract between those persons; and
    - (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

*Prohibition in an acquisition situation*

- (2) A person must not make a contract or arrangement, or arrive at an understanding, with an organisation of employees, an officer of such an organisation or a person acting for and on behalf of such an officer or organisation, if the proposed contract, arrangement or understanding contains a provision included for the purpose, or for purposes including the purpose, of:
  - (a) preventing or hindering the person from acquiring goods or services from a second person; or
  - (b) preventing or hindering the person from acquiring goods or services from a second person, except subject to a condition:
    - (i) that is not a condition to which the acquisition of such goods or services by the person from the

Recommendation 37  
Note: Section 45E has been renumbered 45X, as a consequence of renumbering Division 1



second person has previously been subject because of a provision in a contract between those persons; and

- (ii) that is about the persons to whom, the manner in which or the terms on which the second person may supply any goods or services.

*Situations to which section applies*

- (3) This section does not apply unless the first or second person is a corporation or both of them are corporations.

*No contravention if the other person gives written consent to written contract etc.*

- (4) Subsections (1) and (2) do not apply to a contract, arrangement or understanding if it is in writing and was made or arrived at with the written consent of the second person.

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

**45Y Provisions contravening section 45X not to be given effect**  
[currently section 45EA]

A person must not give effect to a provision of a contract, arrangement or understanding if, because of the provision, the making of the contract or arrangement, or the arriving at the understanding, by the person:

- (a) contravened subsection 45X(1) or (2); or
- (b) would have contravened subsection 45X(1) or (2) if:
  - (i) section 45X had been in force when the contract or arrangement was made, or the understanding was arrived at; and
  - (ii) the words “is in writing and” and “written” were not included in subsection 45X(4).

Note: Conduct that would otherwise contravene this section can be authorised under subsection 88(7A).

Recommendation 37  
Note: Section 45EA has been renumbered 45Y, as a consequence of renumbering Division 1.

**46 Misuse of market power**

- (1) A corporation that has a substantial degree of power in a market shall not engage in conduct if the conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.
- (2) Without limiting the matters that may be taken into account for the purposes of subsection (1), in determining whether conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in a market, the court must have regard to:
  - (a) the extent to which the conduct has the purpose, or would have or be likely to have the effect, of increasing competition in the market including by enhancing

Recommendation 30

efficiency, innovation, product quality or price competitiveness in the market; and

- (b) the extent to which the conduct has the purpose, or would have or be likely to have the effect, of lessening competition in the market including by preventing, restricting or deterring the potential for competitive conduct in the market or new entry into the market.

(3) If:

- (a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of power in a market; or
- (b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in a market;

the corporation shall be taken for the purposes of this section to have a substantial degree of power in that market.

- (4) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the court shall have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of:
  - (a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or
  - (b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market.
- (5) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the court may have regard to the power the body corporate or bodies corporate has or have in that market that results from any contracts, arrangements or understandings, or proposed contracts, arrangements or understandings, that the body corporate or bodies corporate has or have, or may have, with another party or other parties.
- (6) Subsections (4) and (5) do not limit the matters to which regard may be had in determining, for the purposes of this section, the degree of power that a body corporate or bodies corporate has or have in a market.
- (7) For the purposes of this section, a body corporate may have a substantial degree of power in a market even though:
  - (a) the body corporate does not substantially control the market;

- (b) the body corporate does not have absolute freedom from constraint by the conduct of:
    - (i) competitors, or potential competitors, of the body corporate in that market; or
    - (ii) persons to whom or from whom the body corporate supplies or acquires goods or services in that market;
  - (c) one or more other bodies corporate have a substantial degree of power in that market.
- (8) In this section:
- (a) a reference to power is a reference to market power;
  - (b) a reference to a market is a reference to a market for goods or services; and
  - (c) a reference to power, or to conduct, in a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.

#### 47 Exclusive dealing

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| Recommendation 32 |
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- (1) Subject to this section, a corporation shall not, in trade or commerce, engage in exclusive dealing conduct.
- (2) A corporation (**supplier**) engages in exclusive dealing conduct if the corporation supplies, or offers to supply, goods or services to another person (**acquirer**), or does so at a particular price or with a particular discount, allowance, rebate or credit, subject to a condition (**supplier condition**):
  - (a) relating to the supply of those or other goods or services by the supplier to the acquirer; or
  - (b) preventing, restricting or limiting:
    - (i) the acquisition by the acquirer of goods or services from others; or
    - (ii) the supply by the acquirer of goods or services to others.
- (3) A corporation (**supplier**) also engages in exclusive dealing conduct if the corporation refuses to supply goods or services to another person (**acquirer**), or refuses to do so at a particular price or with a particular discount, allowance, rebate or credit, for the reason that:
  - (a) the acquirer has not agreed to a supplier condition referred to in subsection (2); or
  - (b) the acquirer has previously acted inconsistently with a supplier condition referred to in subsection (2).
- (4) A corporation (**acquirer**) engages in exclusive dealing conduct if the corporation acquires, or offers to acquire, goods or services from another person, or does so at a particular price or

with a particular discount, allowance, rebate or credit, subject to a condition (**acquirer condition**):

- (a) relating to the acquisition of those or other goods or services by the acquirer from the supplier; or
  - (b) preventing, restricting or limiting the supply by the supplier of goods or services to others.
- (5) A corporation (**acquirer**) also engages in exclusive dealing conduct if the corporation refuses to acquire goods or services from another person (**supplier**), or refuses to do so at a particular price or with a particular discount, allowance, rebate or credit, for the reason that:
- (a) the supplier has not agreed to an acquirer condition referred to in subsection (4); or
  - (b) the supplier has previously acted inconsistently with a acquirer condition referred to in subsection (4).
- (6) Subsection (1) does not apply to exclusive dealing conduct unless:
- (a) the engaging by the corporation in that conduct has the purpose, or has or is likely to have the effect, of substantially lessening competition in a market; or
  - (b) the engaging by the corporation in that conduct, and the engaging by the corporation, or by a body corporate related to the corporation, in other conduct of the same or a similar kind, together have or are likely to have the effect of substantially lessening competition in a market.
- (7) Subsection (1) does not apply to exclusive dealing conduct if the only parties to the conduct are related bodies corporate.
- (8) In this section:
- (a) a reference to a condition shall be read as a reference to any condition, whether direct or indirect and whether having legal or equitable force or not, and includes a reference to a condition the existence or nature of which is ascertainable only by inference from the conduct of persons or from other relevant circumstances;
  - (b) a reference to competition shall be read as a reference to competition in any market in which:
    - (i) the corporation engaging in the conduct or any body corporate related to that corporation; or
    - (ii) any person whose business dealings are restricted, limited or otherwise circumscribed by the conduct or, if that person is a body corporate, any body corporate related to that body corporate;supplies or acquires, or is likely to supply or acquire, goods or services or would, but for the conduct, supply or acquire, or be likely to supply or acquire, goods or services.

## Part VI—Enforcement and remedies

### 83 Finding or admission of fact in proceedings to be evidence

Recommendation 41

In a proceeding against a person under section 82 or in an application under subsection 51ADB(1) or 87(1A) for an order against a person, a finding of any fact by a court or an admission of any fact by that person made in proceedings under section 77, 80, 81, 86C, 86D or 86E, or for an offence against section 45C or 45D, in which that person has been found to have contravened, or to have been involved in a contravention of, a provision of Part IV or IVB, or of section 60C or 60K, is *prima facie* evidence of that fact and the finding or admission may be proved by production of:

- (a) a document under the seal of the court from which the finding or admission appears; or
- (b) a document in which the admission was made.

## Part VII—Authorisations, notifications and block exemptions

### Division 1—Authorisations

|                           |
|---------------------------|
| Recommendations 35 and 38 |
|---------------------------|

#### 87ZP Definitions

In this Division:

*merger authorisation* means an authorisation under subsection 88(1) to a person to:

- (a) acquire shares in the capital of a body corporate or to acquire assets of a person to which section 50 would or might apply; or
- (b) acquire a controlling interest in a body corporate within the meaning of section 50A,

but does not include an authorisation where the conduct specified in the application includes conduct to which one or more provisions other than section 50 or 50A would apply.

#### 88 Power of Commission to grant authorisations

- (1) Subject to this Part, the Commission may, upon application by or on behalf of a person, grant an authorisation to the person to engage in conduct specified in the application to which one or more provisions of Part IV would or might apply.

*Effect of authorisation*

- (2) While an authorisation under subsection (1) remains in force the provisions of Part IV do not apply to the applicant and any person referred to in subsections (8) and (9) engaging in the conduct specified in and in accordance with the authorisation.

Note: The references to conduct and engaging in conduct in subsection 89(1) include the actions set out in subsection 4(2).

*Authorisation test*

- (3) Subject to subsections (4) and (5), the Commission must not make a determination granting an authorisation under subsection (1) to engage in conduct specified in the application unless the Commission is satisfied in all the circumstances:
  - (a) that the conduct would not have the effect, or be likely to have the effect, of substantially lessening competition; or
  - (b) that the conduct would result, or be likely to result, in a benefit to the public and that the benefit would outweigh the detriment to the public that would result, or be likely to result, from engaging in the conduct.
- (4) Paragraph 3(a) does not apply to an application for authorisation for conduct to which [*the cartel provisions*], [*the secondary boycott provisions*] and the [*resale price maintenance provisions*] would apply.

- (5) In respect of a merger authorisation, in determining what amounts to a benefit to the public for the purposes of paragraph (3)(b):
- (a) the Commission must regard the following as benefits to the public (in addition to any other benefits to the public that may exist apart from this paragraph):
    - (i) a significant increase in the real value of exports;
    - (ii) a significant substitution of domestic products for imported goods; and
  - (b) without limiting the matters that may be taken into account, the Commission must take into account all other relevant matters that relate to the international competitiveness of any Australian industry.

*Single application may deal with more than one type of conduct*

- (6) The Commission may grant a single authorisation in respect of all conduct specified in an application for authorisation or may grant separate authorisations in respect of any of the conduct.

*Conditions*

- (7) The Commission may grant an authorisation subject to such conditions as are specified in the authorisation.

*Other and future parties*

- (8) An authorisation granted by the Commission to a person to engage in conduct has effect as an authorisation in the same terms to every other person named or referred to in the application for authorisation as a party or proposed party to the conduct.
- (9) An authorisation may be expressed so as to apply to particular persons or classes of persons who become a party to the conduct as specified in the authorisation.

*Past conduct*

- (10) The Commission does not have power to:
- (a) grant an authorisation to a person in respect of any conduct undertaken before the Commission makes a determination in respect of the application; and
  - (b) in respect of a merger authorisation, grant authorisation in respect of an acquisition that has occurred.

*Withdrawal of application*

- (11) An applicant for authorisation may at any time, by writing to the Commission, withdraw the application.

## Division 2—Notifications

### 93 Notification of exclusive dealing or resale price maintenance

|                   |
|-------------------|
| Recommendation 34 |
|-------------------|

- (1) Subject to subsection (2), a corporation that engages, or proposes to engage, in conduct of a kind referred to in sections 47 or 48 or both may give to the Commission a notice setting out particulars of the conduct or proposed conduct.
- (2) Where a corporation has given notice under subsection (1), section 47 or section 48 (as the case may be) does not prevent the corporation from engaging in the conduct referred to in the notice, unless:
  - (a) the Commission has given notice under subsection (3) and the conduct takes place more than 30 days (or such longer period as the Commission by writing permits) after the day on which the Commission gave the notice; or
  - (b) the notice has been withdrawn and the conduct takes place after the notice was withdrawn.
- (3) If the Commission is satisfied in all the circumstances that a corporation engaging in conduct of a kind described in section 47 and referred to in a notice given by the corporation under subsection (1):
  - (a) has, or would have or be likely to have, the effect of substantially lessening competition; and
  - (b) would not result, or is not likely to result, in a benefit to the public that would outweigh the detriment to the public constituted by any lessening of competition that has resulted, or is likely to result, from engaging in the conduct,

the Commission may at any time give notice in writing to the corporation stating that the Commission is so satisfied including a statement setting out its reasons for being so satisfied.

- (4) If the Commission is satisfied in all the circumstances that a corporation engaging in conduct of a kind:
  - (a) described in section 48; or
  - (b) described in both section 47 and 48,

and referred to in a notice given by the corporation under subsection (1) would not result, or is not likely to result, in a benefit to the public that would outweigh the detriment to the public from engaging in the conduct, the Commission may at any time give notice in writing to the corporation stating that the Commission is so satisfied including a statement setting out its reasons for being so satisfied.



## Division 3—Block exemptions

Recommendation 39

### @XX Block exemptions

- (1) The Commission may exempt particular conduct or categories of conduct from the provisions of Part IV (a **block exemption**) if the Commission is satisfied that:
  - (a) the conduct would not have the effect, or be likely to have the effect, of substantially lessening competition; or
  - (b) the conduct would result, or be likely to result, in a benefit to the public and that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, from engaging in the conduct.
- (2) A block exemption may apply generally or be limited such that it applies:
  - (a) to specified persons or classes of persons;
  - (b) in specified circumstances; or
  - (c) on specified conditions.
- (3) A block exemption must provide that the exemption is to cease to have effect at the end of a specified period.
- (4) While the block exemption is in force, the provisions of Part IV do not apply to a person to whom the block exemption applies engaging in conduct to which the block exemption applies in accordance with the terms of the block exemption.
- (5) The Commission must maintain a public register that includes all block exemptions that have been granted, including those that are no longer in operation.
- (6) In this Division “specified” means specified in a block exemption.

## APPENDIX B — INTERNATIONAL COMPARISONS OF COMPETITION LAW

|  | Australia   | USA   | Canada  | UK  | EU   | New Zealand   |
|--|---|---|---|---|--|---|
| <p><b>Extraterritoriality: Ministerial consent</b></p> <p>Is a private party required to obtain Ministerial consent before commencing an action based on extraterritorial conduct?</p> | Yes.  | No.   | No.   | No.   | No.  | No.   |
| <p><b>Extraterritoriality: 'Market' and cartel provisions</b></p> <p>Is there a territorial limit on the extent of the laws regulating cartel conduct?</p>                             | <p>The cartel laws do not have an express territorial restriction.</p> <p>However, a connection between the entity engaging in the extraterritorial cartel conduct and Australia is required.</p> | <p>Section 1 of the Sherman Act (which covers cartel conduct) does not have an express territorial restriction.</p> <p>The conduct of foreign entities acting wholly within foreign jurisdictions may be caught if the conduct affects trade or commerce in the US.</p> | <p>The key cartel provision (section 45) and bid rigging provision (section 47) do not have an express territorial restriction. However, there needs to be a real and substantial link between the cartel conduct and Canada.</p> <p>A separate cartel offence targeted specifically at international cartel activity affecting Canada is set out in section 46. Relevantly, this offence requires the implementation of a foreign directive in whole or in part in Canada.</p> | <p>The cartel laws may apply to conduct by non-UK companies or agreements concluded outside the UK, subject to the following territorial limits:</p> <p>Under the civil prohibition, cartel agreements are those that may affect trade in the UK and are, or are intended to be, implemented in the UK.</p> <p>Under the criminal provision, the relevant cartel conduct must relate to the supply of a product or service in the UK.</p> | <p>The cartel laws apply to agreements which may affect trade between Member States.</p> <p>This is the case irrespective of where the agreement is concluded or where the participants are located.</p> | <p>The cartel laws have an express territorial restriction.</p> <p>Extraterritorial cartel conduct must affect a market in New Zealand.</p> <p>Furthermore, the Commerce Act only applies extraterritorially to entities resident or carrying on business in New Zealand.</p> <p>The new proposed cartel laws (if enacted) will contain a further territorial restriction, requiring that cartel conduct be in relation to the supply or acquisition of goods or services in New Zealand.</p> |

|   | Australia   | USA   | Canada   | UK  | EU  | New Zealand  |
|---|---|---|--|---|---|--|
| <p><b>Price signalling provisions</b></p> <p>How is price signalling conduct dealt with?</p> <p>Is it treated under the general competition provisions or is regulation applied to specific industries?</p> | <p>Specific provisions relating to private and public disclosures, which at present apply only to the banking sector.</p> | <p>There are no specific price signalling provisions.</p> <p>The general provisions in section 1 of the Sherman Act and section 5 of the Federal Trade Commission Act have been used to bring actions involving price signalling conduct (for example, the <i>Ethyl case</i> and the <i>Petroleum Products case</i>).</p> | <p>There are no specific price signalling provisions.</p> <p>The general provisions in subsection 45(1) of the Competition Act dealing with cartel conduct and section 90.1 dealing with agreements that prevent or lessen competition substantially in the market are relevant.</p> <p>The Competition Bureau has noted that an agreement may be inferred in circumstances where there is unilateral information exchange together with parallel conduct.</p> | <p>There are no specific price signalling provisions.</p> <p>The general Chapter I prohibition, which includes the concept of ‘concerted practice’, can be relied on to capture price signalling conduct.</p> | <p>There are no specific price signalling provisions.</p> <p>The general Article 101 prohibition, which includes the concept of ‘concerted practice’, can be relied on to capture price signalling conduct.</p> | <p>There are no specific price signalling provisions.</p> <p>The general provisions in the Commerce Act applying to contracts, arrangements or understandings containing price fixing provisions (section 30) and which have the purpose, effect of likely effect of substantially lessening competition (section 27) apply.</p> <p>In New Zealand, a contract, arrangement or understanding requires a meeting of the minds. Therefore, it is unlikely that one-way information sharing (including in relation to prices) will be caught by section 27 or section 30.</p> |

|  | Australia  | USA  | Canada  | UK  | EU   | New Zealand   |
|--|--|--|---|---|--|---|
| <p><b>Misuse of market power</b></p> <p>What tests are applied when assessing unilateral anti-competitive conduct?</p>   | <p>Purpose-focused test.</p> <p>A corporation with a substantial degree of power in a market will only be held to have taken advantage of that power in that or any other market if it does so for one of three proscribed purposes.</p> | <p>Conduct-focused test.</p> <p>Section 2 of the Sherman Act prohibits monopolisation, where such power is obtained by means other than market forces.</p> <p>Attempted monopolisation is also prohibited, even if monopoly is not ultimately achieved. The party alleged to have breached this prohibition must also have engaged in anti-competitive or predatory conduct.</p> | <p>Effects-based test.</p> <p>An abuse of dominance will be established if there is a dominant firm, which engages in anti-competitive conduct and this conduct has the effect, or likely effect, of substantially lessening competition.</p> | <p>The UK adopts an approach that is in practice identical to the EU.</p> | <p>The European Commission has released guidance that is viewed as advocating an effects based test.</p> <p>However, the courts and Commission are not bound by these guidelines and may apply different tests depending on the type of conduct.</p> | <p>Purpose-focused test, which is in essence identical to the Australian prohibition.</p>   |
| <p><b>Vertical arrangements: Third-line forcing</b></p> <p>Is third-line forcing conduct prohibited without consideration of the anti-competitive effects?</p> | <p>Yes.</p>  | <p>No.</p> <p>There are no specific provisions addressing exclusive dealing or third line forcing in the US.</p> <p>Conduct would be assessed using a rule of reason analysis, weighing the anti-competitive and pro-competitive effects.</p>  | <p>No.</p> <p>Third-line forcing conduct is covered by the prohibition on tied selling under the Competition Act.</p> <p>Tied selling will only be prohibited where competition is or is likely to be lessened substantially.</p>             | <p>No.</p>  | <p>No.</p> <p>There are no specific provisions addressing exclusive dealing or third line forcing in the EU.</p> <p>Tying arrangements are assessed either under Article 101 or 102 of the Treaty on the Functioning of the European Union.</p>      | <p>No.</p> <p>There are no specific provisions addressing exclusive dealing or third line forcing in New Zealand.</p> <p>Tying arrangements (such as third line forcing) are generally analysed under the general anti-competitive and market power provisions of the Commerce Act.</p> |

|   | Australia  | USA  | Canada  | UK                                  | EU  | New Zealand   |
|---|--|--|---|-------------------------------------|---|---|
| <p><b>Vertical arrangements: Resale price maintenance (RPM)</b></p> <p>Is RPM conduct prohibited without consideration of the anti-competitive effects?</p> | Yes.   | <p>Varies depending on jurisdiction.</p> <p>At a federal level, RPM is not per se prohibited and is likely to be subject to a form of rule of reason analysis.</p> <p>Some US States (for example, California) treat minimum RPM as a per se contravention under their antitrust laws.</p>                 | <p>No.</p> <p>RPM conduct is competition tested.</p> <p>RPM conduct must have or be likely to have an adverse effect on competition in a market.</p>  | Yes.                                | Yes.  | Yes.  |
| <p><b>Exceptions: Licensing and assignment of IP rights</b></p> <p>How is the licensing and assignment of IP rights treated under the competition law?</p>  | Specific exemptions to the restrictive trade practices provisions (other than misuse of market power and RPM) exist under the CCA. | <p>The licensing and assignment of IP rights are considered under the general antitrust provisions.</p> <p>US regulators have established antitrust safety zones. If certain conditions are met, regulators will not challenge a licensing arrangement despite its potential anti-competitive effects.</p> | <p>No specific exemptions apply.</p> <p>The licensing and assignment of IP are considered under the general competition provisions, as well as a specific provision relating to the exercise of an IP right only.</p> | The same as the position in the EU. | <p>The licensing and assignment of IP are considered under the general competition provisions.</p> <p>Parties may rely on the EU technology transfer block exemption regulation which provides a safe-harbour for IP licensing arrangements where certain conditions are met.</p> | Specific exemptions to the restrictive trade practices provisions (other than misuse of market power and RPM) exist under the Commerce Act. |

## APPENDIX C — TERMS OF REFERENCE

### OVERVIEW

An effective competition framework is a vital element of a strong economy that drives continued growth in productivity and living standards. It promotes a strong and innovative business sector and better outcomes for consumers.

The Government has commissioned an independent ‘root and branch’ review of Australia’s competition laws and policy in recognition of the fact that the Australian economy has changed markedly since the last major review of competition policy in 1993.

The key areas of focus for the review are to:

- identify regulations and other impediments across the economy that restrict competition and reduce productivity, which are not in the broader public interest;
- examine the competition provisions of the *Competition and Consumer Act 2010* (CCA) to ensure that they are driving efficient, competitive and durable outcomes, particularly in light of changes to the Australian economy in recent decades and its increased integration into global markets;
- examine the competition provisions and the special protections for small business in the CCA to ensure that efficient businesses, both big and small, can compete effectively and have incentives to invest and innovate for the future;
- consider whether the structure and powers of the competition institutions remain appropriate, in light of ongoing changes in the economy and the desire to reduce the regulatory impost on business; and
- review government involvement in markets through government business enterprises, direct ownership of assets and the competitive neutrality policy, with a view to reducing government involvement where there is no longer a clear public interest need.

### SCOPE OF THE REVIEW

1. The Review Panel is to inquire into and make recommendations on appropriate reforms to improve the Australian economy and the welfare of Australians, not limited to the legislation governing Australia’s competition policy, in regard to achieving competitive and productive markets throughout the economy, by identifying and removing impediments to competition that are not in the long-term interest of consumers or the public interest, having regard to the following principles and the policy priorities:
  - 1.1. no participant in the market should be able to engage in anti-competitive conduct against the public interest within that market and its broader value chain;
  - 1.2. productivity boosting microeconomic reform should be identified, centred on the realisation of fair, transparent and open competition that drives productivity, stronger real wage growth and higher standards of living;
  - 1.3. government should not be a substitute for the private sector where markets are, or can, function effectively or where contestability can be realised; and

- 1.4. the need to be mindful of removing wherever possible, the regulatory burden on business when assessing the costs and benefits of competition regulation.
2. The Review Panel should also consider and make recommendations where appropriate, aimed at ensuring Australia’s competition regulation, policy, and regulatory agencies are effective in protecting and facilitating competition, provide incentives for innovation and creativity in business, and meet world’s best practice.
3. The Review Panel should also consider whether the CCA and regulatory agencies are operating effectively, having regard to the regulatory balance between the Commonwealth and the States and Territories, increasing globalisation and developments in international markets, changing market and social structures, technological change, and the need to minimise business compliance costs, including:
  - 3.1. considering whether Australia’s highly codified competition law is responsive, effective and certain in its support of its economic policy objectives;
  - 3.2. examining whether the operations and processes of regulatory agencies are transparent, efficient, subject to appropriate external scrutiny and provide reasonable regulatory certainty;
  - 3.3. ensuring that the CCA appropriately protects the competitive process and facilitates competition, including by (but not limited to):
    - 3.3.1. examining whether current legislative provisions are functioning as intended in light of actual experience and precedent;
    - 3.3.2. considering whether the misuse of market power provisions effectively prohibit anti-competitive conduct and are sufficient to: address the breadth of matters expected of them; capture all behaviours of concern; and support the growth of efficient businesses regardless of their size;
    - 3.3.3. considering whether areas that are currently uncertain or rarely used in Australian law could be framed and administered more effectively;
    - 3.3.4. considering whether the framework for industry codes of conduct (with reference to State and Territory codes where relevant) and protections against unfair and unconscionable conduct, provide an adequate mechanism to encourage reasonable business dealings across the economy—particularly in relation to small business;
    - 3.3.5. whether existing exemptions from competition law and/or historic sector-specific arrangements (e.g. conditional offers between related businesses and immunities for providers of liner shipping services) are still warranted; and
    - 3.3.6. considering whether the National Access Regime contained in Part IIIA of the CCA (taking into account the Productivity Commission’s recent inquiry) is adequate; and,
  - 3.4. whether competition regulations, enforcement arrangements and appeal mechanisms are in line with international best practice, and:
    - 3.4.1. foster a productive and cost-minimising interface between the Australian Competition and Consumer Commission (ACCC) and industry (for instance, through applications for immunity or merger clearances) that is simple, effective and well designed;
    - 3.4.2. provide appropriate mechanisms for enforcement and seeking redress including:

- whether administration and enforcement of competition laws is being carried out in an effective, transparent and consistent way;
  - whether enforcement and redress mechanisms can be effectively used by people to enforce their rights—by small businesses in particular; and
  - the extent to which new enforcement powers, remedies or enhanced penalties might be necessary and appropriate to prohibit anti-competitive conduct, and
- 3.4.3. can adequately address competition issues in emerging markets and across new technologies, particularly e-commerce environments, to promote entrepreneurship and innovation.
4. The Review Panel should inquire into and advise on appropriate changes to legislation, institutional arrangements and other measures in relation to the matters below, having regard to the impact on long-term consumer benefits in relation to value, innovation, choice and access to goods and services, and the capacity of Australian business to compete both domestically and internationally. In particular, the Review Panel should:
- 4.1. examine the structure and behaviour of markets with natural monopoly characteristics with a view to determining whether the existing regulatory frameworks are leading to efficient outcomes and whether there are opportunities to increase competition;
  - 4.2. examine whether key markets — including, but not limited to, groceries, utilities and automotive fuel — are competitive and whether changes to the scope of the CCA and related laws are necessary to enhance consumer, producer, supplier and retailer opportunities in those markets and their broader value chains;
  - 4.3. consider alternative means for addressing anti-competitive market structure, composition and behaviour currently outside the scope of the CCA;
  - 4.4. consider the impact of concentration and vertical integration in key Australian markets on the welfare of Australians ensuring that any changes to the coverage and nature of competition policy is consistent with national economic policy objectives;
  - 4.5. identify opportunities for removing unnecessary and inefficient barriers to entry and competition, reducing complexity and eliminating administrative duplication; and
  - 4.6. consider ways to ensure Australians can access goods and services at internationally competitive prices, including examining any remaining parallel import restrictions and international price discrimination.
5. The Review Panel should also examine whether government business activities and services providers serve the public interest and promote competition and productivity, including consideration of separating government funding of services from service provision, privatisation, corporatisation, price regulation that improves price signals in non-competitive segments, and competitive neutrality policy.
6. The Review Panel should consider and make recommendations on the most appropriate ways to enhance competition, by removing regulation and by working with stakeholders to put in place economic devices that ensure a fair balance between regulatory expectations of the community and self-regulation, free markets and the promotion of competition.

The Review Panel should consider overseas experience insofar as it may be useful for the review.



The Review Panel may, where appropriate, draw on (but should not duplicate or re-visit) the work of other recent or current comprehensive reviews, such as the Commission of Audit and the Cost-Benefit Analysis and Regulatory Review for the National Broadband Network.

The Review Panel should only consider the Australian Consumer Law (Schedule 2 of the CCA) and corresponding provisions in Part 2, Division 2 of the *Australian Securities and Investments Commission Act 2001*, to the extent they relate to protections (such as from unfair and unconscionable conduct) for small businesses.

## PROCESS

The Review Panel is to ensure thorough engagement with all interested stakeholders. At a minimum, the Review Panel should publish an issues paper, hold public hearings and receive written submissions from all interested parties.

The Review Panel should subsequently publish a draft report and hold further public consultations, before providing a final report to the Government within 12 months.

## APPENDIX D — LIST OF NON-CONFIDENTIAL SUBMISSIONS

All non-confidential submissions can be accessed at: <http://competitionpolicyreview.gov.au>.

### DRAFT REPORT SUBMISSIONS

|  |   |  |
|--|---|--|
| ABB Australia  | Abdulla, I  | Accessible Publishing Systems Pty Ltd                        |
| ACM Parts  | ACT Health  | ACT Policing   |
| Action for Public Transport NSW                        | Advisory Council on Intellectual Property   | AGL Energy   |
| Aguiar, A  | AIPPI Australia   | Aldi Stores  |
| Alexander, D   | Alinta Energy   | Allen, R   |
| ALM Group  | Altman, G   | American Bar Association                                     |
| Anglican Church Diocese of Sydney                      | Anglicare Sydney  | Anonymous  |
| Anonymous Retailer                                     | APA Group   | Applied Medical  |
| Arblaster, M   | Argyropoulos, S   | Arnold Bloch Leibler   |
| Asciano  | ASTRA   | Ashurst  |
| Australasian Association of Convenience Stores Limited | Australasian Performing Right Association Limited & Australasian Mechanical Copyright Owners' Society | Australasian Professional Society on Alcohol and other Drugs |
| Australian & International Pilots Association          | Australian Automobile Association   | Australian Automotive Aftermarket Association                |
| Australian Automotive Dealer Association               | Australian Booksellers Association Inc  | Australian Chamber of Commerce and Industry                  |
| Australian Charities and Not-for-Profits Commission    | Australian Chicken Growers Council  | Australian Communications Consumer Action Network            |
| Australian Competition and Consumer Commission         | Australian Copyright Council  | Australian Corporate Lawyers Association                     |
| Australian Council of Trade Unions                     | Australian Dairy Farmers  | Australian Dental Association                                |
| Australian Diagnostic Imaging Association              | Australian Digital Alliance & Australian Libraries Copyright Committee                                | Australian Drug Foundations                                  |
| Australian Education Union                             | Australian Energy Market Commission   | Australian Energy Market Operator                            |
| Australian Energy Regulator                            | Australian Food and Grocery Council   | Australian Forest Products Association                       |
| Australian Health Promotion Association                | Australian Imported Motor Vehicle Industry Association  | Australian Industry Group                                    |
| Australian Information Industry Association            | Australian Institute of Company Directors   | Australian Liquor Stores Association                         |
| Australian Local Government Association                | Australian Logistics Council  | Australian Motor Industry Federation                         |
| Australian National Retailers Association              | Australian Newsagents Federation  | Australian Peak Shippers Association                         |

|   |  |   |
|---|--|---|
| Australian Petroleum Production & Exploration Association | Australian Pipeline Industry Association               | Australian Pork Limited                       |
| Australian Private Hospitals Association                  | Australian Property Institute (NSW Division)           | Australian Publishers Association             |
| Australian Rail Track Corporation                         | Australian Recording Industry Association              | Australian Retailers Association              |
| Australian Screen Association                             | Australian Society of Authors                          | Australian Sugar Milling Council              |
| Australian Taxi Industry Association                      | Australian Union of Students                           | Australian United Retailers                   |
| Australian Unity  | Australian Wagering Council                            | Australian Water Association                  |
| Auto Services Group                                       | Bain, D  | Baker & McKenzie                              |
| Baking Association of Australia                           | Ball, G  | Beaton-Wells, C and Fisse, B                  |
| Benedetti, J  | Bhagwati Australia                                     | Bhela, A                                      |
| BHP Billiton  | Bi-Rite Roma   | Board of Airline Representatives of Australia |
| Bond University   | Boral  | Brandrick, C                                  |
| Bridge, H   | Brimbank City Council                                  | Brisbane City Council                         |
| Brooks, L   | Brown, D   | Brown, D C                                    |
| Brown, J  | Brown, P   | Brown, T                                      |
| Brownlie, P   | Business Council of Australia                          | Business Council of Co-operatives and Mutuals |
| Business SA   | Byrne, de Roos and Beaton-Wells                        | Caldwell, D                                   |
| Cameron, S  | Campervan and Motorhome Club of Australia              | Cammarata, M                                  |
| Camp, R   | Cancer Council NSW                                     | Canegrowers                                   |
| Carr, E   | Carter, R  | Casper, Z                                     |
| Catholic Social Services                                  | Cement Industry Federation                             | Central Markets of Australia Association      |
| Centre for International Finance and Regulation           | Chamber of Commerce and Industry Queensland            | Chemist Warehouse                             |
| Childers IGA  | CHOICE   | City of Melbourne                             |
| City of Port Phillip                                      | City of Sydney Council                                 | Clarke, J                                     |
| Clarke, Professor P                                       | Colac Otway Shire Council                              | Coles Group Limited                           |
| Colhoun, D  | Comino, A  | Commonwealth Director of Public Prosecutions  |
| Communications Law Centre, UTS                            | Community and Public Sector Union                      | Community Employers WA                        |
| Consult Australia   | Consumer Action Law Centre                             | Consumer Utilities Advocacy Centre            |
| Consumers Federation of Australia                         | Consumers Health Forum                                 | Copyright Agency                              |
| Corones, S  | Costa, P   | Council of Private Higher Education           |
| Council of Small Business Australia                       | Council of Textile and Fashion Industries of Australia | Cowley, J                                     |
| Cox, A  | CPA Australia  | Crawford, C                                   |

Appendix D — List of Non-Confidential Submissions

|   |  |  |
|---|--|--|
| CropLife Australia                            | CSIRO  | CSR Limited  |
| CSR Limited (submission 2)                    | Cunningham, M  | Customer Owned Banking Association   |
| Daly, W                                       | Davis, T   | Denehy, M  |
| Department of Communications                  | Department of Infrastructure and Regional Development                                      | Djokov, A  |
| Dodgshun, B                                   | DomGas Alliance  | Duke, A  |
| Dunbar, A                                     | eBay   | Economic Regulation Authority  |
| Edge, P                                       | Electronic Frontiers Australia   | EnergyAustralia  |
| Energy Networks Association                   | Energy Supply Associations of Australia  | Entwistle, B   |
| Ergas, Professor H and Fels AO, Professor A   | Ergas, Professor H & Pincus, Professor J   | Family Business Australia  |
| Federal Chamber of Automotive Industries      | Financial Services Council   | Ford Australia   |
| Foundation for Alcohol Research and Education | Foxtel   | Francis, A   |
| Frontier Economics                            | G4S Australia  | G&T Security   |
| Garland, A                                    | Glencore Coal Australia  | Global Shippers' Forum   |
| Goldsworthy, J                                | Google   | Grain Producers SA   |
| Greenpeace                                    | Greeve, K  | Growcom  |
| Guppy, D                                      | Hachette Australia   | Hackett, M   |
| Hamelink, F                                   | Harper Collins Publishers Australia  | Health Insurance Restricted and Regional Membership Association of Australia |
| Heaton, L                                     | Heerey AM QC, P  | Heiller, J   |
| Helmore, B                                    | Hoad, R  | Hobson Bay Council   |
| Hogg, N                                       | Holden, A  | Holiday and Short Term Rental Industry Association                           |
| Housing Industry Association of Australia     | HoustonKemp  | Ice Box Liquor   |
| Iddon, K                                      | IGA Cashmere   | IGA Tugun Beach  |
| IGA Walloon                                   | IGA X-Press Alexandra Hills  | IGA X-Press Kangaroo Point   |
| iiNet   | Independent Contractors Australia  | Independent Schools Council of Australia                                     |
| Independent Schools Victoria                  | Industry Super Australia   | InfraShare Partners  |
| Ingham Family Medical Practice                | Institute of Patent and Trade Mark Attorneys of Australia                                  | Institute of Public Accountants  |
| Insurance Australia Group                     | Insurance Council of Australia   | International Chamber of Shipping  |
| IPART   | Jacobs, A  | Jemena   |
| Jepson, P                                     | Jepson, P (submission 2)   | Jesuit Social Services   |
| JMP Parties                                   | Johnson, R   | Joint Councils of Social Service   |
| Jones Day                                     | Jones, P   | Just Vacuums   |
| Just Vacuums (submission 2)                   | Justice & International Mission, Synod of Victoria & Tasmania, Uniting Church in Australia | Kay, D   |

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| Kemp, K   | Kennedy, J   | Keppock Residents Action Group                                    |
| Kiernan, T  | King, T  | Klerks, G   |
| Kosta, P  | Kouris, P  | KPMG  |
| Kypri, K  | Lacey, J   | Lanzon, R   |
| Large Format Retail Association                               | Lateral Economics  | Law Council of Australia —<br>Competition & Consumer<br>Committee |
| Law Council of Australia —<br>IP Committee                    | Law Council of Australia —<br>SME Committee                | Lawrence, J   |
| Lawrence, J (submission 2)                                    | Leschen, R   | Leslie, P   |
| Local Government Association of<br>Queensland                 | Local Government Association of<br>Tasmania                | Long, M   |
| Long, P   | Lynch Group QLD  | Lynch, T  |
| Mair, P   | Maleli, V  | Manly Council   |
| Manson, A   | Maribyrnong City Council                                   | Marks Supa IGA  |
| Marsden Jacob Associates                                      | Master Builders Australia                                  | Master Electricians Australia                                     |
| Master Grocers Australia and<br>Liquor Retailers Australia    | MasterCard   | Mattingley, R   |
| McCusker Centre for Action on<br>Alcohol and Youth            | McDougall, G   | McInnes, R  |
| Mclean, G   | McLeod, M  | McManus, J  |
| Medical Technology Association<br>of Australia                | Melbourne Airport  | Menzies, G  |
| Minter Ellison  | Mitchelton IGA Express                                     | Moir, H   |
| Monash Business Policy Forum                                  | Morgan, W  | Morrison, C   |
| Motor Trades Association of<br>Queensland                     | Municipal Association of Victoria                          | Myer Holdings   |
| National Alliance for Action on<br>Alcohol                    | National Centre for Education and<br>Training on Addiction | National Competition Council                                      |
| National Disability Services                                  | National Drug and Alcohol<br>Research Centre               | National Employment Services<br>Association                       |
| National Farmers' Federation                                  | National Insurance Brokers<br>Association of Australia     | National Irrigators' Council                                      |
| National Organisation for Fetal<br>Alcohol Spectrum Disorders | National Retail Association                                | National Roads and Motorists'<br>Association                      |
| National Seniors Australia                                    | Neal, J  | New Generation Earthmoving<br>Fabrications                        |
| New Zealand Commerce<br>Commission                            | Nick's Supa IGA  | Nolan, R  |
| Noonans IGA Express/BP<br>Ashgrove                            | Northern Territory Government                              | NSW Business Chamber  |
| NSW Government  | NSW Irrigators' Council                                    | NSW Small Business<br>Commissioner                                |
| NSW Taxi Council  | O'Donnell, C   | Office of the Australian Small<br>Business Commissioner           |
| Office of the Gene Technology<br>Regulator                    | Om Mahalaxmii Pty Ltd                                      | Optus   |

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| Origin Energy  | Orr, K                                     | Our Children, Our School                            |
| Packer, B  | Palmer, M                                  | Parrella, R   |
| Partnering for Transformation                            | Pattenden, B                               | Pedersen, M   |
| Penguin Random House                                     | Pharmaceutical Society of Australia        | Pharmacy Guild of Australia                         |
| Phibbs, P  | Piercy, D                                  | Planning Institute of Australia                     |
| Plastics and Chemicals Industries Association            | Poulier, M                                 | Pratap, R   |
| Priestley, C   | Prince Supermarkets                        | Printing Industries Association of Australia        |
| Public Health Association of Australia                   | QBE  | Queensland Competition Authority                    |
| Queensland Consumers Association                         | Queensland Government                      | Queensland Hotels Association                       |
| Queensland IGA State Retail Board                        | Queensland Law Society                     | Queensland Nurses' Union                            |
| Queensland Writers Centre                                | Quinn, N                                   | Raitt, G  |
| Ramsay Health Care                                       | RAWS Association                           | RBB Economics                                       |
| Real Estate Institute of Australia                       | Regional Victorian not-for-profit agencies | Retail Guild of Australia                           |
| Rio Tinto  | Ritchies Stores                            | Robin Room  |
| Rodger, I  | Rose, G                                    | Roseworne, D  |
| Roy Hill Infrastructure                                  | Royal Australasian College of Physicians   | Rushbuey, G   |
| Russell Family Fetal Alcohol Disorders Association       | Ryans Supa IGA                             | Rykris Pty Ltd                                      |
| SA Network of Drug and Alcohol Services                  | Sandeva, V                                 | Sandeva, V (submission 2)                           |
| Sandham, J   | Santos Retail                              | Seafood Industry Victoria                           |
| Seddon, N  | Shipping Australia Limited                 | Shop Distributive and Allied Employees' Association |
| Shopping Centre Council of Australia                     | Sidney, J                                  | Sigma Pharmaceuticals                               |
| Slaughter, T   | Small Business Development Corporation     | Smith, D  |
| South Australian Freight Council Inc                     | South Australian Government                | South Australian Independent Retailers              |
| Spier Consulting Legal                                   | Spinifex Press                             | Standards Australia Ltd                             |
| Stanley, M   | Steensby, W                                | Steinwall, R  |
| Stevenson, H   | Stevenson, H (submission 2)                | Stewart, I  |
| Suncorp Group  | Supa IGA Maryborough                       | Supa IGA Pialba                                     |
| Surf Beach IGA   | Sydney Alliance for Community Building     | Tack, S   |
| Tasmanian Government                                     | Tasmanian Small Business Council           | Taxi Council Queensland                             |
| Ted Noffs Foundation ACT                                 | Telstra                                    | Text Publishing Company                             |
| The Australian Chamber of Fruit and Vegetable Industries | Toys and Things                            | Thomas, R   |

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| Thompson, G  | Thurley, D   | Trad, K                                     |
| Transport Reform Network                           | Tree Contractors Association<br>Australia                        | Turner, I                                   |
| Tyro Payments Limited                              | Uber   | Unions NSW                                  |
| Uniting Care Australia                             | UnitingCare Queensland   | Urban Development Institute of<br>Australia |
| Van de Zandt, A                                    | Vector Limited   | Vellenoweth, L                              |
| Ventura Health                                     | Veryzer, J   | VicHealth                                   |
| Victorian Alcohol and other Drug<br>Association    | Victorian Caravan Parks<br>Association                           | Victorian Local Governance<br>Association   |
| Victorian Small Business<br>Commissioner           | Virgin Australia   | Vodafone Hutchison Australia                |
| WA Independent Grocers<br>Association              | Walton, F  | Water Services Association of<br>Australia  |
| Watson, T  | Wesfarmers   | Westbury's Mundingburra IGA                 |
| Western Australian Local<br>Government Association | Western Australian Network of<br>Alcohol and other Drug Agencies | White's Grocers                             |
| Whitehead, R                                       | Whittaker, J   | Whitten, M                                  |
| Williams, S  | Wilson, J  | Woodward, L & Rubinstein, M                 |
| Woolley, K   | Woolworths Limited   | Wright, D                                   |
| Wright, J  | Wright, J (submission 2)   | Wylie, I                                    |
| Zodins, K  |  |   |

## ISSUES PAPER SUBMISSIONS

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| ABB Australia  | Accountants and More  | ADJ Consultancy Services                                      |
| Agforce QLD  | AIMIA Digital Policy Group  | ALDI Stores   |
| American Bar Association   | AMMA Workplace Consultancy  | Anglo American Metallurgical Coal                             |
| Anonomous, P   | Anonymous childcare   | Anonymous retailer  |
| Appco Group Australia  | Applied Medical   | Arblaster, M  |
| Arnold Bloch Leibler   | Asciano   | ASX   |
| Aurizon Holdings Limited   | AURL (FoodWorks)  | AusBiotech  |
| Australasian Association of Convenience Stores                           | Australasian Performing Right Association Limited and Australasian Mechanical Copyright Owners' Society | Australia Marketing Pty Ltd                                   |
| Australian Airports Association  | Australian Automobile Association   | Australian Automobile Association (updated submission)        |
| Australian Automotive Dealer Association                                 | Australian Chamber of Commerce and Industry   | Australian Chicken Growers' Council Limited                   |
| Australian Clinical Psychologists  | Australian College of Theology  | Australian Communications Consumer Action Network             |
| Australian Competition and Consumer Commission                           | Australian Competition and Consumer Commission (submission 2)   | Australian Competition and Consumer Commission (submission 3) |
| Australian Competition and Consumer Commission (submission 4)            | Australian Conservation Foundation  | Australian Copyright Council                                  |
| Australian Corporate Lawyers Association                                 | Australian Council of Trade Unions  | Australian Dairy Farmers Limited                              |
| Australian Dental Association Inc.                                       | Australian Dental Industry Association  | Australian Diagnostic Imaging Association                     |
| Australian Digital Alliance and Australian Libraries Copyright Committee | Australian Education Union  | Australian Energy Market Commission                           |
| Australian Energy Regulator  | Australian Food and Grocery Council   | Australian Forest Products Association                        |
| Australian Friendly Societies Pharmacies Association                     | Australian Healthcare and Hospitals Association   | Australian Hotels Association                                 |
| Australian Industry Group  | Australian Information Industry Association   | Australian Institute of Petroleum                             |
| Australian International Movers Association                              | Australian Lawyers for Human Rights   | Australian Liquor Stores Association                          |
| Australian Motor Industry Federation                                     | Australian National Retailers Association   | Australian Network of Environmental Defender's Offices        |
| Australian Newsagents' Federation  | Australian Organisation for Quality   | Australian Payments Clearing Association                      |
| Australian Peak Shippers Association Inc.                                | Australian Petroleum Production and Exploration Association   | Australian Physiotherapy Association                          |
| Australian Pipeline Industry Association                                 | Australian Prawn Farmers Association  | Australian Private Hospitals Association                      |



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| Australian Recording Industry Association                | Australian Retailers Association                               | Australian Society of Authors                            |
| Australian Subscription Television and Radio Association | Australian Taxi Industry Association                           | Baker and McKenzie                                       |
| Baxt, B AO   | Beadman, B   | Beaton-Wells, C  |
| Beaton-Wells, C and Fisse, B                             | Beck, K R  | Bendigo and Adelaide Bank, BOQ, ME Bank and Suncorp Bank |
| BHP Billiton (updated submission)                        | Birve, A   | Board of Airline Representatives of Australia            |
| Bond University  | Border, A  | Brewers Association of Australia and New Zealand Inc.    |
| Bright, S  | Bus Industry Confederation                                     | Business Council of Australia                            |
| Business Council of Australia (submission 2)             | Business Council of Cooperatives and Mutuals                   | Business SA  |
| Cabfare  | Callaghan, J   | Caltex Australia Limited                                 |
| Canegrowers  | CBH Group  | Cement Concrete and Aggregates Australia                 |
| Cement Industry Federation                               | Chamber of Commerce and Industry Queensland                    | Chamber of Commerce and Industry (WA)                    |
| Chemist Warehouse  | Chi-X Australia  | CHOICE   |
| Cider Australia  | City of Whittlesea   | Clarke, G  |
| Clean Energy Council                                     | Coles Group Limited  | Collins, C   |
| Combined Small Business Alliance of WA                   | Community and Public Sector Union                              | Community Employers WA                                   |
| Complementary Healthcare Council of Australia            | Construction Material Processors Association                   | Consult Australia  |
| Consumer Action Law Centre                               | Consumers Health Forum of Australia                            | Consumers Health Forum of Australia (supplementary)      |
| Consumers SA   | Consumers SA (updated submission)                              | Consumers' Federation of Australia                       |
| Copyright Agency   | Council of Private Higher Education Inc.                       | Council of Small Business Organisations of Australia     |
| CPA Australia  | Credit Ombudsman Service Limited                               | CSR Limited  |
| Customer Owned Banking Association                       | Direct Selling Association of Australia                        | Discover Murray River                                    |
| Drakes Supermarkets                                      | Duke, A  | eBay   |
| Edge, P  | EnergyAustralia  | Energy Networks Association                              |
| Energy Retailers Association of Australia                | Energy Supply Association of Australia                         | Eqalex Underwriting Pty Ltd                              |
| Federal Chamber of Automotive Industries                 | Federation of National Associations of Ship Brokers and Agents | Fels AO, Professor A                                     |
| Fels AO, Professor A, Taylor, N J and Smith, P J         | Fletcher, M  | Forest Industries Federation (WA)                        |
| Fortescue Metals Group Limited                           | Foundation for Alcohol Research and Education                  | Foxtel   |
| Fraser, B  | Friends of Hawker Village                                      | Gale, N  |

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| Glencore Coal Australia<br>Government of South Australia  | Global Shippers' Forum<br>GrainGrowers  | Google Australia<br>Greenpeace Australia, Wilderness Society, OXFAM Australia, GetUp!, Voiceless, Friends of the Earth, AidWatch |
| Griffith and District Citrus Growers' Association<br>Henderson MP, S<br>Hutchison Ports Australia | Griggs, L & Nielsen, J<br>Herbert Smith Freehills<br>in tempore Advisory              | Hawkins, M<br>Housing Industry Association<br>Independent Supermarket Retailers Guild of SA                                      |
| Industry Super Australia  | Institute of Chartered Accountants Australia  | Institute of Public Accountants  |
| Institute of Public Accountants (submission 2)  | Insurance Australia Group   | Insurance Council of Australia (updated submission)  |
| International Bar Association (Antitrust Committee)   | International Chamber of Shipping   | International Container Lines Committee (NZ)   |
| IPART   | ITS Global  | Jedlickova, B  |
| Jewellers Association of Australia<br>Kagome Australia  | Jones Day<br>Kelly, V   | Jones Day (submission 2)<br>Kemp, K  |
| Keppnock Residents Action Group<br>Laskowska, M   | Kudis, R<br>Law Council of Australia — Competition & Consumer Committee               | Large Format Retail Association<br>Law Council of Australia — IP Committee   |
| Law Council of Australia — SME Committee<br>LCH.Clearnet  | Law Council of Australia — SME Committee (submission 2)<br>Lloyd, J                   | Lawson, C<br>Lottery Agents Association of Tasmania  |
| Mair, P<br>Master Builders Australia (submission 2)   | Margetts, D<br>Master Builders Australia (submission 3)                               | Master Builders Australia<br>Master Grocers Australia  |
| McCusker Centre for Action on Alcohol and Youth   | Medibank Private  | Merger Streamlining Group  |
| Metcash Limited<br>Minter Ellison<br>MTA Queensland   | Miller, I<br>Momentum Energy<br>Municipal Association of Victoria                     | Minerals Council of Australia<br>Monash Business Policy Forum<br>Narulla, H  |
| National Alliance for Action on Alcohol<br>National Disability Services                           | National Australia Bank<br>National Electrical and Communications Association         | National Competition Council<br>National Farmers' Federation   |
| National Insurance Brokers Association of Australia<br>NBN Co<br>News Corp                        | National Roads and Motorists Association<br>Nehme, M and Laman, J<br>NPS MedicineWise | National Seniors Australia<br>Nelson, D<br>NSW Business Chamber  |
| New South Wales Government<br>Office of the Small Business Commissioner<br>Palermo, V A           | NSW Taxi Council<br>Optometry Australia<br>Papworth, A                                | O'Donnell, C<br>Origin Energy Limited<br>Pharmacy Guild of Australia   |

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| Paramedical Services Pty Ltd                          | Pharmaceutical Society of Australia           | Phonographic Performance Company of Australia      |
| Planning Institute of Australia                       | Plastics and Chemicals Industries Association | Priestley, C                                       |
| Priestley, C (submission 2)                           | Printing Industries Association of Australia  | Productivity Commission                            |
| Proud, K  | QBE   | Queensland Competition Authority                   |
| Queensland Dairyfarmers Organisation                  | Queensland Farmers' Federation                | Queensland Law Society                             |
| Raitt, G  | RBB Economics                                 | Recruitment and Consulting Services Association    |
| Restaurant & Catering Australia                       | Retail Guild of Australia                     | Rhydderch, A                                       |
| Rio Tinto   | Ron Finemore Transport                        | Rosenwald, A                                       |
| Routledge, J  | RSPCA Australia                               | Runacres, S  |
| Seddon, N   | Shipping Australia Ltd                        | Shop Distributive and Allied Employees Association |
| Shopping Centre Council of Australia                  | Sigma Pharmaceuticals Limited                 | SingTel Optus Pty Ltd                              |
| Slavery Links Australia                               | Small Business Development Corporation, WA    | SP AusNet  |
| Spalding, N   | SPAR Australia Limited                        | Spier Consulting                                   |
| Spier Consulting (second submission)                  | Standards Australia                           | Stanley, M B                                       |
| Stern, S  | Stewart, I                                    | Summerfield, M                                     |
| Suncorp Group   | Sydney Airport Corporation Limited            | Symbion Pharmacy Services                          |
| Tasmanian Farmers and Graziers Association            | Tasmanian Government                          | Tasmanian Small Business Council                   |
| Telstra Corporation Limited                           | Terceiro Legal Consulting                     | The Australia Institute                            |
| The Co-Op   | The Industry Group                            | The Infrastructure Group                           |
| Truman Hoyle  | United Energy and Multinet Gas                | United States Federal Trade Commission             |
| Uniting Church in Australia                           | Urban Development Institute of Australia      | Urban Taskforce Australia                          |
| Victorian Branch of the Australian Dental Association | Vodafone Hutchison Australia                  | Voiceless  |
| WA Independent Grocers Association                    | Walker, M                                     | Water Services Association of Australia            |
| Wesfarmers Limited                                    | Wildlife Tourism Australia                    | White's Grocers                                    |
| Wills-Johnson, N                                      | Wishart, D                                    | Woodward L & Rubinstein M                          |
| Woolworths Ltd  | Zoo and Aquarium Association                  |  |

