



Australian Government

Australian Government Response *to the Competition Policy Review*





Australian Government

Australian Government response
to the
COMPETITION POLICY REVIEW

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Manager
Communications
The Treasury
Langton Crescent
Parkes ACT 2600
Email: medialiaison@treasury.gov.au

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Foreword



I am pleased to release the Australian Government's response to the Competition Policy Review (the Harper Review).

The Coalition made an election promise early in 2013 that we would deliver the first root and branch review of Australia's competition laws in more than 20 years. This promise was delivered with the final report of the Review, led by Professor Ian Harper, and publicly released on 31 March this year.

The Review provided a far-reaching analysis of competition policy across the Australian economy and showed that reforming competition policy will be critical if Australia is to lift its long-term productivity growth. Effective competition encourages businesses to pursue efficiencies, rewarding the most innovative and dynamic that provide the best services at the lowest cost. It also benefits households by giving them more and better products and services to choose from at lower prices.

As the response shows, the Government will implement the majority of the Review's recommendations. Many of the recommendations are in areas of state and territory responsibility, and the Government is committed to working closely with the states and territories to advance reform. Indeed, I have already met with state and territory treasurers in October and commenced discussions on the reform opportunities that it presents.

I am confident that this package of reforms will deliver stronger economic performance for Australia in the long term by promoting more dynamic, competitive and well-functioning markets for the benefit of all Australians.

A handwritten signature in black ink, which appears to read 'Scott Morrison'. The signature is fluid and cursive, written on a white background.

The Hon Scott Morrison MP
Treasurer

Overview

Competition is one of the surest ways to lift long-term productivity growth. Competition energises enterprise and encourages business to pursue efficiencies, rewarding the innovative and dynamic businesses that provide the best services at the lowest cost, and benefiting households by giving them more choice and better value products and services.

The 2015 Intergenerational Report showed that productivity growth is the most important driver of Australian incomes and living standards. That is why the Australian Government (the Government) is laying the groundwork for a more competitive and flexible economy by reforming Australia's competition framework. These reforms will make markets work better for the benefit of all Australians, reduce barriers to entry for new businesses and encourage businesses to innovate and provide greater choice to consumers.

Previous National Competition Policy (NCP) reforms delivered in response to the Hilmer Review resulted in substantial economic benefits for Australia. Efficiency improvements in the key infrastructure industries targeted by the reforms boosted Australia's gross domestic product (GDP) by 2.5 per cent. The reforms delivered by the NCP are a strong example of how all governments can work together and utilise competition to increase economic growth.

The Competition Policy Review (the Harper Review) was commissioned by the Government as a key election commitment and is an important limb of the Government's forward economic policy agenda, which also includes the Tax White Paper, the Federation White Paper and the response to the Financial System Inquiry.

The Harper Review provides a comprehensive, independent assessment of Australia's competition framework. It makes 56 recommendations to revitalise competition policy at both the state and Commonwealth level, reshape competition institutions, and modernise and simplify Australia's competition laws with a view to strengthening competition and incentives to innovate, empowering consumers, and promoting better use of and investment in infrastructure.

The Government will implement the majority of the Review's recommendations. Many of the recommendations of the Harper Review are in areas of state and territory responsibility and the Government is engaging with the states and territories to advance an ambitious reform agenda. All governments recognise the benefits that were delivered by the NCP and are already working together to develop a new national framework between the Commonwealth, states and territories that will identify and facilitate innovative ways to deliver services and promote economic growth.

The Government supports 39 of the Harper Review's recommendations in full or in principle and a further 5 recommendations in part. The Government also notes or remains open to 12 recommendations in areas where implementation will be considered following further review and consultation, including with the states and territories.

The Government has already announced reform in a number of areas consistent with recommendations of the Harper Review's final report, including that it will simplify the regulation of coastal trading and review remuneration and location rules in the pharmacy sector. The Government supports removing restrictions on the parallel importation of books following the Productivity Commission's inquiry into Australia's intellectual property arrangements and consultations with the sector on transitional arrangements, to make local booksellers more

competitive with international suppliers, promote lower prices for consumers and ensure the timely availability of titles. In addition, the Government will review competitive neutrality policies and guidelines, and expand its Regulatory Reform Agenda to incorporate a competition regulation review that will strengthen Australia's competitiveness by systematically reducing barriers to competition.

The Government endorses the revised competition principles and, through the Council of Australian Governments (COAG), it will propose that all governments commit to a new set of competition principles and reform agenda. These new principles should include choice and diversity of providers in human services. Inefficiencies in human service sectors can result in significant costs to the economy and individuals, and reduce productivity. Promoting innovative funding and delivery of human services is key to improving the effectiveness and efficiency of the sector, and reducing waste will help ensure that high quality service provision remains affordable for all Australians as our population ages and demand and cost pressures increase. The Government will commission a Productivity Commission review to explore how the principles can be applied in practice to the human services sector, following consultation with the states and territories on the terms of reference. Of course, progress over time to improve the efficiency and responsiveness of human services should also take account of important issues such as social equity, particularly in regional and remote areas.

The Government is also exploring early actions in areas where scope for reform in human services delivery has been identified and where action can be implemented independently of the states and territories. For instance, in the health sector the Australian Government Hearing Services Program has introduced the Hearing Services Online website and portal. The portal allows members of the public to search a directory of some 260 contracted providers using a map, and enables Voucher Program clients to lodge applications electronically. The portal also enables clients to move easily between providers should a client be dissatisfied with the service provided or need to transfer providers for other reasons.

One of the priorities for the Government is to work with states and territories to develop ways to promote sound investment decisions in and efficient use of roads in line with other infrastructure sectors, focusing on ensuring road infrastructure services best and most efficiently meet the needs of users. Road transport is a major input cost for businesses and the competing demand for funding of high quality road infrastructure is placing increasing pressure on government budgets. These are long-term challenges for governments and the community, but the economic benefits are potentially significant and it is possible to build on existing work underway.

In the near term, in consultation with the states and territories, the Government will reform and update the competition provisions of the *Competition and Consumer Act 2010* (CCA). This includes introducing a prohibition on concerted practices, refining exclusionary conduct provisions, simplifying cartel laws, streamlining merger clearances, introducing a class authorisation process and establishing more flexible collective bargaining provisions. The Government will also investigate options to apply a class exemption to the liner shipping industry in consultation with the Australian Competition and Consumer Commission (ACCC) following the introduction of a new general class exemption power.

The Government acknowledges concerns raised in submissions to the Harper Review about the operation of the misuse of market power provision (section 46 of the CCA) and the Harper Review's recommendation for reform. In light of the importance of this issue for business and consumers, the Government will consult further on options to reform the provision and release a discussion paper on this topic.

This package of reforms will strengthen Australia's long-term economic performance by promoting more dynamic, competitive and well-functioning markets for the benefit of all Australians.

Australian Government response

The Government's response to the Competition Policy Review (the Harper Review) is set out in more detail below.

Harper Review recommendation 1: Competition principles

The Australian Government, state and territory and local governments should commit to the following principles:

Competition policies, laws and institutions should promote the long term interests of consumers.

- Legislative frameworks and government policies and regulations binding the public or private sectors should not restrict competition.
- Governments should promote consumer choice when funding, procuring or providing goods and services and enable informed choices by consumers.
- The model for government provision or procurement of goods and services should separate the interests of policy (including funding), regulation and service provision, and should encourage a diversity of providers.
- Governments should separate remaining public monopolies from competitive service elements, and also separate contestable elements into smaller independent business activities.
- Government business activities that compete with private provision, whether for profit or not for profit, should comply with competitive neutrality principles to ensure they do not enjoy a net competitive advantage simply as a result of government ownership.
- A right to third party access to significant bottleneck infrastructure should be granted where it would promote a material increase in competition in dependent markets and would promote the public interest.
- Independent authorities should set, administer or oversee prices for natural monopoly infrastructure providers.

Applying these principles should be subject to a public interest test, such that legislation or government policy should not restrict competition unless:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation or government policy can only be achieved by restricting competition.

The Government supports this recommendation.

The Government will work with the states and territories to secure their agreement to a reform agenda including a new set of overarching principles to guide competition policy implementation at all levels of government.

The Government will seek to negotiate a new competition principles and reform agreement for COAG's consideration within 12 months, building on the earlier agreements that underpinned the NCP reforms developed in response to the Hilmer Review. The new arrangements will reflect the challenges that Australia faces now and into the future and will be flexible enough to allow each jurisdiction to tailor reforms to its own conditions.

Harper Review recommendation 2: Human services

Each Australian government should adopt choice and competition principles in the domain of human services.

Guiding principles should include:

- User choice should be placed at the heart of service delivery.
- Governments should retain a stewardship function, separating the interests of policy (including funding), regulation and service delivery.
- Governments commissioning human services should do so carefully, with a clear focus on outcomes.
- A diversity of providers should be encouraged, while taking care not to crowd out community and volunteer services.
- Innovation in service provision should be stimulated, while ensuring minimum standards of quality and access in human services.

The Government supports this recommendation.

The Government has discussed with the states and territories its interest in identifying and facilitating innovative ways to deliver human services and promote economic growth. This will build on reforms already happening across the different sectors in human services, including the National Disability Insurance Scheme, the Vocational Education and Training system, jobactive (Commonwealth Employment Service) and proposed reforms to aged care announced in the 2015-16 Budget. These examples are models of consumer choice which can lead to better outcomes for individuals and the community.

In addition, the Government will commission a Productivity Commission review into human services, which will include research on past or ongoing reforms in different jurisdictions that incorporate principles of choice, competition and contestability. The review will also identify human services sectors or sub-sectors for more detailed analysis. The review is an important step in laying the groundwork for future reforms and innovation in service delivery in this dynamic and diverse sector, building on lessons learnt from initiatives such as the National Disability Insurance Scheme and reform of the Vocational Education and Training system.

See also the response to Recommendation 17 regarding human services and competitive neutrality.

Harper Review recommendation 3: Road transport

Governments should introduce cost-reflective road pricing with the aid of new technologies, with pricing subject to independent oversight and revenues used for road construction, maintenance and safety.

To avoid imposing higher overall charges on road users, governments should take a cross jurisdictional approach to road pricing. Indirect charges and taxes on road users should be reduced as direct pricing is introduced. Revenue implications for different levels of government should be managed by adjusting Australian Government grants to the states and territories.

The Government **supports** this recommendation as a long term reform option, further to its response to the Productivity Commission's Public Infrastructure inquiry report. The Government will seek to accelerate work with states and territories on heavy vehicle road reform and investigate the benefits, costs and potential next steps of options to introduce cost reflective road pricing for all vehicles.

The Government notes that in 2012-13 public and private sector spending on road infrastructure totalled \$24.9 billion. As there are no dedicated sources of revenue for the full amount of spending, this requires substantial outlays from Consolidated Revenue each year.

In May 2015, the Transport and Infrastructure Council noted progress implementing the heavy vehicle road reform initial measures agreed by Council Ministers in May 2014. The initial measures lay the groundwork for longer term reform of heavy vehicle investment and charging arrangements and were agreed by the Council in November 2015. This includes a national four year forward road expenditure plan and heavy vehicle road asset service standards publication covering Key Freight Routes. This is expected to assist with improving the heavy vehicle industry's engagement in the road planning and investment decision making process.

The Government will continue consultations with the states and territories on ways to promote efficient investment in and usage of roads in line with other infrastructure sectors, focusing on ensuring road infrastructure services best and most efficiently meet the needs of users. This work will continue to be progressed through the Transport and Infrastructure Council and supporting working groups, reporting to COAG including on steps to transition to independent heavy vehicle price regulation by 2017-18.

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth, including for significant regulatory reviews that are followed by reforms. See Recommendation 48 for the Government's response regarding Competition Payments.

Harper Review recommendation 4: Liner shipping

Part X of the CCA should be repealed.

A block exemption granted by the ACCC should be available for liner shipping agreements that meet a minimum standard of pro-competitive features (see Recommendation 39). The minimum standard of pro-competitive features to qualify for the block exemption should be determined by the ACCC in consultation with shippers, their representative bodies and the liner shipping industry.

Other agreements that risk contravening the competition provisions of the CCA should be subject to individual authorisation, as needed, by the ACCC.

Repeal of Part X will mean that existing agreements are no longer exempt from the competition provisions of the CCA. Transitional arrangements are therefore warranted.

A transitional period of two years should allow for the necessary authorisations to be sought and to identify agreements that qualify for the proposed block exemption.

The Government remains open to this recommendation.

The Government supports measures to ensure that liner shipping arrangements are competitive and efficient.

A general class exemption power will be introduced into the CCA, which will allow the ACCC to authorise broad classes of conduct.

The Government will work with the ACCC and relevant stakeholders, including shipping lines and importers and exporters, to investigate options regarding how a class exemption could be applied to the liner shipping industry to ensure that shipping routes to and from Australia continue to be reliably and competitively serviced and that the costs to obtain a class exemption are not burdensome.

Any options considered would need to be consistent with Australia's international law obligations.

Harper Review recommendation 5: Cabotage — Coastal shipping and aviation

Noting the current Australian Government Review of Coastal Trading, cabotage restrictions on coastal shipping should be removed, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the government policy can only be achieved by restricting competition.

The current air cabotage restrictions should be removed for all air cargo as well as passenger services to specific geographic areas, such as island territories and on poorly served routes, unless it can be demonstrated that the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the restrictions can only be achieved by restricting competition.

Introducing an air cabotage permit system would be one way of regulating air cabotage services more effectively where necessary.

The Government **notes** this recommendation.

The Government is working to build a more competitive and efficient shipping industry and is committed to reforming the coastal shipping sector. The Deputy Prime Minister and Minister for Infrastructure and Regional Development, the Hon Warren Truss MP, has announced the Government's plan for coastal shipping to be implemented as soon as practicable following the passage of legislation in 2015-16.

The Government is committed to ensuring that aviation is safe, reliable, efficient and competitive. The Government does not have immediate plans to ease aviation cabotage arrangements. We will continue to examine ways to reduce costs for consumers and producers and remove impediments to increased services.

As part of the *White Paper on Developing Northern Australia*, the Deputy Prime Minister is establishing a business stakeholder group to assist him in preparing a plan for improving aviation and surface transport connections to northern Australia.

Harper Review recommendation 6: Intellectual property review

The Australian Government should task the Productivity Commission to undertake an overarching review of intellectual property. The Review should be a 12 month inquiry.

The review should focus on: competition policy issues in intellectual property arising from new developments in technology and markets; and the principles underpinning the inclusion of intellectual property provisions in international trade agreements.

A separate independent review should assess the Australian Government processes for establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.

Trade negotiations should be informed by an independent and transparent analysis of the costs and benefits to Australia of any proposed intellectual property provisions. Such an analysis should be undertaken and published before negotiations are concluded.

The Government supports in part this recommendation.

The Government supports the recommendation for the Productivity Commission to undertake an overarching review of intellectual property. An inquiry into Australia's intellectual property arrangements was commissioned by the Treasurer on 18 August 2015, which is to have regard to Australia's international arrangements, including obligations accepted under bilateral, multilateral and regional trade agreements to which Australia is a party. The global economy and technology are changing and there have been increases in the scope and duration of intellectual property protection. Excessive intellectual property protection can result in higher costs for Australian businesses and consumers and inhibit innovation. However, weak intellectual property protection can lead to under-investment in research and development (R&D) which also stifles innovation. A comprehensive evaluation of Australia's intellectual property framework is needed to ensure that the appropriate balance exists between incentives for innovation and investment and the interests of both individuals and businesses, including small businesses, in accessing ideas and products.

The Government does not support a separate independent review of the Australian Government processes for establishing negotiating mandates to incorporate intellectual property (IP) provisions in international trade agreements. The Government already has robust arrangements in place to ensure appropriate levels of transparency of our negotiating mandate while protecting Australia's negotiating position. These include public and stakeholder consultation; feasibility studies and cost benefit analyses; and whole of government agreement to negotiating positions. Once a free trade agreement (FTA) is signed, regulation impact statements and national interest analyses are published and the agreement is scrutinised by the Parliament through the Joint Standing Committee on Treaties, prior to ratification.

The Government does not support an independent cost benefit analysis being undertaken and published before negotiations are concluded. Such an analysis would reflect incomplete or inaccurate outcomes, signal Australia's position to our negotiating partners and potentially compromise our capacity to achieve Australia's national interest. It would also duplicate the processes outlined above.

Harper Review recommendation 7: Intellectual property exception

Subsection 51(3) of the CCA should be repealed.

The Government **notes** this recommendation and will have regard to the findings of the Productivity Commission's inquiry into Australia's intellectual property arrangements (see Recommendation 6 above).

The Productivity Commission released an issues paper for its inquiry on 7 October 2015. The terms of reference for the inquiry provide that the Productivity Commission is to have regard to the findings and recommendations of the Harper Review in the context of the Government's response.

The inquiry report is expected to be provided to the Government in August 2016. The Government will reconsider its response to this recommendation again in the context of the Productivity Commission's report.

Harper Review recommendation 8: Regulation review

All Australian governments should review regulations, including local government regulations, in their jurisdictions to ensure that unnecessary restrictions on competition are removed.

Legislation (including Acts, ordinances and regulations) should be subject to a public interest test and should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

Factors to consider in assessing the public interest should be determined on a case by case basis and not narrowed to a specific set of indicators.

Jurisdictional exemptions for conduct that would normally contravene the competition law (by virtue of subsection 51(1) of the CCA) should also be examined as part of this review, to ensure they remain necessary and appropriate in their scope. Any further exemptions should be drafted as narrowly as possible to give effect to their policy intent.

The review process should be transparent, with highest priority areas for review identified in each jurisdiction, and results published along with timetables for reform.

The review process should be overseen by the proposed Australian Council for Competition Policy (see Recommendation 43) with a focus on the outcomes achieved rather than processes undertaken. The Australian Council for Competition Policy should publish an annual report for public scrutiny on the progress of reviews of regulatory restrictions.

The Government **supports** this recommendation.

The Government will expand its Regulatory Reform Agenda to incorporate a competition regulation review to remove unnecessary regulatory barriers to competition. It will also encourage the states and territories to undertake similar reviews by seeking agreement to a reform agenda, including a new set of competition principles as outlined in the response to Recommendation 1.

While initial review priorities will be guided by the Harper Review's recommendations, including Recommendation 9 on planning and zoning, states will have responsibility for pursuing reforms where they have sovereignty. The initial priorities for review will also have regard to the need to promote international competitiveness and investment.

The Government is willing to consider payments to states and territories for regulatory reviews where subsequent reforms improve productivity and lead to economic growth, consistent with its response to Recommendation 48. See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 9: Planning and zoning

Further to Recommendation 8, state and territory governments should subject restrictions on competition in planning and zoning rules to the public interest test, such that the rules should not restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the rules can only be achieved by restricting competition.

The following competition policy considerations should be taken into account:

- Arrangements that explicitly or implicitly favour particular operators are anti-competitive.
- Competition between individual businesses is not in itself a relevant planning consideration.
- Restrictions on the number of a particular type of retail store contained in any local area is not a relevant planning consideration.
- The impact on the viability of existing businesses is not a relevant planning consideration.
- Proximity restrictions on particular types of retail stores are not a relevant planning consideration.
- Business zones should be as broad as possible.
- Development permit processes should be simplified.
- Planning systems should be consistent and transparent to avoid creating incentives for gaming appeals.

An independent body, such as the Australian Council for Competition Policy (see Recommendation 43) should be tasked with reporting on the progress of state and territory governments in assessing planning and zoning rules against the public interest test.

The Government supports this recommendation, noting this is an area of state responsibility.

The Final Report's findings focus on the impact of planning and zoning regulations on competition between commercial entities by creating unnecessary barriers to entry. There have been other reviews that have focused on the effect planning and zoning regulations can have by restricting the supply of residential land, which can place upward pressure on house prices. For example, recommendation 69 of the Australia's Future Tax System Review was that COAG review institutional arrangements to ensure planning and zoning arrangements do not unnecessarily inhibit housing supply and affordability. Two Productivity Commission reports, the *Economic Structure and Performance of the Australian Retail Industry* report (released 9 December 2011) and the *Performance Benchmarking of Australian Business Regulation: Planning, Zoning and Development Assessments* report (released 16 May 2011) have also highlighted the importance of effective planning.

The Government recognises the productivity benefits of removing unnecessary red tape and implementing effective land-use planning, including through the transparent application of a community net-benefits test, as proposed by Recommendation 9, supported by robust institutional arrangements to apply such a test.

Further to Recommendation 8 (Regulation Review) above, the Government encourages the states and territories to review planning and zoning regulations and include competition principles in the objectives of planning and zoning rules so that they are given due weight in decision making. The Government will continue discussions with states and territories on ways to promote these reforms.

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth, including for significant regulatory reviews that are followed by reforms, consistent with its response to Recommendation 48. See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 10: Priorities for regulation review

Further to Recommendation 8, and in addition to reviewing planning and zoning rules (Recommendation 9), the following should be priority areas for review:

- Taxis and ride-sharing: in particular, regulations that restrict numbers of taxi licences and competition in the taxi industry, including from ride-sharing and other passenger transport services that compete with taxis.
- Mandatory product standards: that is, standards that are directly or indirectly mandated by law, including where international standards can be adopted in Australia.

The Government supports this recommendation. The Government will assess priority areas for review as outlined in response to Recommendation 8 (Regulation Review) above. The Government notes that regulation of taxis and ride-sharing is an area of state responsibility.

The Government recognises that states and territories are at different stages of reform. In line with their individual circumstances and progress on regulatory review made to date, states and territories will have different priority areas for review.

The Government encourages states and territories to identify their own priorities with reference to those identified here, focussing on areas where review and subsequent reforms have the potential to result in stronger productivity and economic growth.

The Government is willing to consider payments to states and territories for regulatory reviews where they result in reforms that improve productivity and lead to economic growth consistent with its response to Recommendation 48.

Harper Review recommendation 11: Standards review

Given the unique position of Australian Standards under paragraph 51(2)(c) of the CCA, Australian Standards that are not mandated by government should be subject to periodic review against the public interest test (see Recommendation 8) by Standards Australia.

The Government **supports** this recommendation.

The Government recognises that Standards Australia has an existing process to review, revise, reconfirm, or withdraw all standards over 10 years old (called the Aged Standards Review (ASR)); however, for those standards being assessed for reconfirmation (as opposed to revision) a net benefit test is not applied.

Standards Australia is working to be in a position where, over time, all Australian standards are reviewed at five-yearly intervals.

The Government will encourage Standards Australia to introduce the net benefit test when assessing whether to reconfirm standards during the ASR process.

The Government will also seek to formalise this arrangement by including a requirement for the periodic review of standards in the Memorandum of Understanding (MOU) between the Government of Australia (as represented by the Department of Industry, Innovation and Science) and Standards Australia, and for that review to be subject to a net benefit test, when the MOU is next renewed.

Harper Review recommendation 12: Retail trading hours

Remaining restrictions on retail trading hours should be removed. To the extent that jurisdictions choose to retain restrictions, these should be strictly limited to Christmas Day, Good Friday and the morning of ANZAC Day, and should be applied broadly to avoid discriminating among different types of retailers. Deregulating trading hours should not prevent jurisdictions from imposing specific restrictions on trading times for alcohol retailing or gambling services in order to achieve the policy objective of harm minimisation.

The Government **supports** this recommendation, noting this is an area of state responsibility.

Further to Recommendation 8 (Regulation Review) above, the Government encourages state and territory governments with remaining restrictions on retail trading hours to consider whether these restrictions are impeding competition and the ability of retailers to meet customer demand for flexibility and choice, and whether they can be removed without imposing undue pressure on retailers to remain open when it is uneconomical to do so.

A Centre for International Economics report prepared for the Queensland Office of Best Practice Regulation found that an increase in trading hours could amount to benefits in the order of \$200 million per year for Queensland.

The Government recognises that states and territories are at different stages of reform, and that some states have fewer restrictions than others, nonetheless there is scope for further deregulation in all states (the Northern Territory and Australian Capital Territory no longer regulate retail trading hours).

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth consistent with its response to Recommendation 48.

Harper Review recommendation 13: Parallel imports

Restrictions on parallel imports should be removed unless it can be shown that:

- the benefits of the restrictions to the community as a whole outweigh the costs; and
- the objectives of the restrictions can only be achieved by restricting competition.

Consistent with the recommendations of recent Productivity Commission reviews, parallel import restrictions on books and second-hand cars should be removed, subject to transitional arrangements as recommended by the Productivity Commission.

Remaining provisions of the *Copyright Act 1968* that restrict parallel imports, and the parallel importation defence under the *Trade Marks Act 1995*, should be reviewed by an independent body, such as the Productivity Commission.

The Government supports in part this recommendation.

The Government supports the removal of parallel import restrictions on books. The Government will progress this recommendation following the Productivity Commission's inquiry into Australia's intellectual property arrangements (see Recommendations 6 above) and consultations with the sector on transitional arrangements.

The terms of reference for the inquiry provide that the Productivity Commission is to have regard to the findings and recommendations of the Harper Review in the context of the Government's response, including recommendations related to parallel import restrictions in the *Copyright Act 1968* and the parallel importation defence under the *Trade Marks Act 1995*.

Following consultation as part of the review of the *Motor Vehicles Standards Act 1989* and having regard to consumer protection and community safety concerns, the Government has decided not to proceed with reducing parallel import restrictions on second-hand cars at this time.

Harper Review recommendation 14: Pharmacy

The Panel considers that current restrictions on ownership and location of pharmacies are not needed to ensure the quality of advice and care provided to patients. Such restrictions limit the ability of consumers to choose where to obtain pharmacy products and services, and the ability of providers to meet consumers' preferences.

The Panel considers that the pharmacy ownership and location rules should be removed in the long term interests of consumers. They should be replaced with regulations to ensure access to medicines and quality of advice regarding their use that do not unduly restrict competition.

Negotiations on the next Community Pharmacy Agreement offer an opportunity for the Australian Government to implement a further targeted relaxation of the location rules, as part of a transition towards their eventual removal. If changes during the initial years of the new agreement prove too precipitate, there should be provision for a mid-term review to incorporate easing of the location rules later in the life of the next Community Pharmacy Agreement.

A range of alternative mechanisms exist to secure access to medicines for all Australians that are less restrictive of competition among pharmacy services providers. In particular, tendering for the provision of pharmacy services in underserved locations and/or funding through a community service obligation should be considered. The rules targeted at pharmacies in urban areas should continue to be eased at the same time that alternative mechanisms are established to address specific issues concerning access to pharmacies in rural locations.

The Government notes this recommendation.

In light of the Final Report, as well as the National Commission of Audit and the Productivity Commission Research Paper: *Efficiency in Health*, the Government recognises the need for competition in the pharmacy sector, including that the location rules should be examined closely. The Government recognises the original intention of the location rules was to create a suitable geographic spread of pharmacies to ensure dependable and timely access to Pharmaceutical Benefits Scheme (PBS) medicines, including in rural and remote regions.

While the location rules have been extended for another five years under the Sixth Community Pharmacy Agreement, the Government and the Pharmacy Guild have agreed that an independent public review of pharmacy remuneration and regulation will also be conducted. The review will examine whether the location rules should remain in their current form or be updated in the future, with a final report by 1 March 2017.

The Government also encourages states and territories to consider the appropriateness of existing restrictions on pharmacy ownership in pursuing public policy objectives.

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth consistent with its response to Recommendation 48.

Harper Review recommendation 15: Competitive neutrality policy

All Australian governments should review their competitive neutrality policies. Specific matters to be considered should include: guidelines on the application of competitive neutrality policy during the start-up stages of government businesses; the period of time over which start up government businesses should earn a commercial rate of return; and threshold tests for identifying significant business activities.

The review of competitive neutrality policies should be overseen by an independent body, such as the proposed Australian Council for Competition Policy (see Recommendation 43).

The Government supports this recommendation.

The Government supports updating its competitive neutrality policies and guidance and will encourage the states and territories to undertake similar reviews, including by seeking to update the competition principles, as outlined in the response to Recommendation 1.

The Government will update its competitive neutrality policy and guidance and will include a requirement for portfolio ministers to publicly respond to findings of future complaint investigations undertaken by the Australian Government Competitive Neutrality Complaints Office.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 16: Competitive neutrality complaints

All Australian governments should increase the transparency and effectiveness of their competitive neutrality complaint processes. This should include at a minimum:

- assigning responsibility for investigation of complaints to a body independent of government;
- a requirement for government to respond publicly to the findings of complaint investigations; and
- annual reporting by the independent complaints bodies to the proposed Australian Council for Competition Policy (see Recommendation 43) on the number of complaints received and investigations undertaken.

The Government supports this recommendation.

Competitive neutrality complaints are considered by the Australian Government Competitive Neutrality Complaints Office, which operates within the independent Productivity Commission.

The Government encourages those jurisdictions without independent complaint bodies to consider establishing such a body. It supports the Government responding publicly to the findings of complaint investigations, and encourages other governments to do the same.

The Productivity Commission currently includes updates on Government competitive neutrality investigations as part of its annual reporting.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 17: Competitive neutrality reporting

To strengthen accountability and transparency, all Australian governments should require government businesses to include a statement on compliance with competitive neutrality principles in their annual reports.

The proposed Australian Council for Competition Policy (see Recommendation 43) should report on the experiences and lessons learned from the different jurisdictions when applying competitive neutrality policy to human services markets.

The Government endorses the principles of accountability and transparency of its competitive neutrality policy. It remains open to this recommendation and will be consulting on its competitive neutrality policy in 2016.

Competitive neutrality principles are monitored by Heads of Treasuries who provide a high-level report via COAG processes, noting any issues that may require discussion.

Further to the response to Recommendation 2, the Government will ask the Productivity Commission, as part of developing policy options in human services sectors, to consider how competitive neutrality can be improved in these markets.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 18: Government procurement and other commercial arrangements

All Australian governments should review their policies governing commercial arrangements with the private sector and non-government organisations, including procurement policies, commissioning, public private partnerships and privatisation guidelines and processes.

Procurement and privatisation policies and practices should not restrict competition unless:

- the benefits of the restrictions to the community as a whole outweigh the costs; and
- the objectives of the policy can only be achieved by restricting competition.

An independent body, such as the Australian Council for Competition Policy (see Recommendation 43), should be tasked with reporting on progress in reviewing government commercial policies and ensuring privatisation and other commercial processes incorporate competition principles.

The Government supports in principle this recommendation.

The *Public Governance, Performance and Accountability Act 2013* requires Government entities, when imposing requirements on others for the use or management of public resources to take into account associated risks and the effects of imposing those requirements.

The Government will ensure, via the *Efficiency through Contestability Programme*, that government functions are systematically assessed, including for improved efficiency through competitive arrangements, where appropriate.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 19: Electricity and gas

State and territory governments should finalise the energy reform agenda, including through:

- application of the National Energy Retail Law with minimal derogation by all National Electricity Market jurisdictions;
- deregulation of both electricity and gas retail prices; and
- the transfer of responsibility for reliability standards to a national framework administered by the proposed Access and Pricing Regulator (see Recommendation 50) and the Australian Energy Market Commission (AEMC).

The Panel supports moves to include Western Australia and the Northern Territory in the National Electricity Market, noting that this does not require physical connection.

The Australian Government should undertake a detailed review of competition in the gas sector.

The Government supports this recommendation.

A range of structural, governance, regulatory, and pricing reforms were implemented in gas and electricity markets as part of the NCP. These reforms introduced greater competition into electricity generation, gas supply arrangements and encouraged more retail competition. The Productivity Commission's 2005 *Review of National Competition Policy Reforms* found that the reforms led to improved labour and capital productivity and that the benefits from improvements in productivity were passed on to consumers through lower prices.

Consistent with the Energy White Paper's framework to deliver competitively priced and reliable energy supply through increasing competition, productivity and investment across energy markets, the Government will continue to work with COAG to finalise the Energy Market Reform Agenda.

The Government is committed to promoting the application of national energy legislation and rules across all Australian jurisdictions.

The Government has tasked the ACCC with reviewing the competitiveness of the Eastern Australian gas market. The ACCC is due to report to the Government by April 2016.

The Government through the COAG Energy Council has tasked the AEMC to review facilitated markets and pipeline frameworks to improve market efficiency, transparency and operation.

See also Recommendations 48 and 50 for the Government's responses regarding Competition Payments and the Access and Pricing Regulator, respectively.

Harper Review recommendation 20: Water

All governments should progress implementation of the principles of the National Water Initiative, with a view to national consistency. Governments should focus on strengthening economic regulation in urban water and creating incentives for increased private participation in the sector through improved pricing practices.

State and territory regulators should collectively develop best practice pricing guidelines for urban water, with the capacity to reflect necessary jurisdictional differences. To ensure consistency, the Australian Council for Competition Policy (see Recommendation 43) should oversee this work.

State and territory governments should develop clear timelines for fully implementing the National Water Initiative, once pricing guidelines are developed. The Australian Council for Competition Policy should assist states and territories to do so.

Where water regulation is made national, the responsible body should be the proposed national Access and Pricing Regulator (see Recommendation 50) or a suitably accredited state body.

The Government **supports** this recommendation and will work with the states and territories to advance water reform.

Significant water reforms were implemented as part of the NCP. Institutional, pricing and investment measures were put in place to increase the efficiency and sustainability of the water sector and arrangements were made to allow for water allocations to be permanently traded. In the urban water sector, labour productivity increased by more than 60 per cent during the 1990s, at least in part due to competition reforms, while the introduction of cost-reflective pricing encouraged more efficient use of water.

Full implementation of the National Water Initiative would deliver effective water planning, secure water entitlements, and ensure the risks associated with changes in future water availability are shared between governments and water users. It would result in economically efficient water use and improved environmental water outcomes.

The Government is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth consistent with its response to Recommendation 48. See also Recommendations 43 and 50 for the Government's response regarding the Australian Council for Competition Policy and the Access and Pricing Regulator, respectively.

Harper Review recommendation 21: Informed choice

Governments should work with industry, consumer groups and privacy experts to allow consumers to access information in an efficient format to improve informed consumer choice.

The proposed Australian Council for Competition Policy (see Recommendation 43) should establish a working group to develop a partnership agreement that both allows people to access and use their own data for their own purposes and enables new markets for personal information services. This partnership should draw on the lessons learned from similar initiatives in the US and UK.

Further, governments, both in their own dealings with consumers and in any regulation of the information that businesses must provide to consumers, should draw on lessons from behavioural economics to present information and choices in ways that allow consumers to access, assess and act on them.

The Government supports allowing consumers to access information in an efficient format, especially as new technologies increase the generation of data that can improve consumer decisions but also raise consumer protection issues.

As recommended by the Financial System Inquiry (and further to the recommendations on access to data in the Commission of Audit and informed choice in the Harper Review), the Government will task the Productivity Commission with reviewing options to improve accessibility to data.

As noted in the response to Recommendation 2, the Government will commission a Productivity Commission review into human services of which the applicability of informed user choice in the provision of human services will be examined.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 22: Competition law concepts

The central concepts, prohibitions and structure enshrined in the current competition law should be retained, since they are appropriate to serve the current and projected needs of the Australian economy.

The Government supports this recommendation.

Proposed changes to competition laws will retain the central concepts, prohibitions and structure of the current CCA.

Harper Review recommendation 23: Competition law simplification

The competition law provisions of the CCA should be simplified, including by removing overly specified provisions and redundant provisions.

The process of simplifying the CCA should involve public consultation.

Provisions that should be removed include:

- subsection 45(1) concerning contracts made before 1977; and
- sections 45B and 45C concerning covenants.

The Government **supports** this recommendation.

The Review Panel considered that the competition law provisions of the CCA, including the provisions regulating the granting of exemptions, are unnecessarily complex and impose undue costs on the economy.

The Government will develop a proposal to further simplify the remaining provisions of the CCA, following stakeholder consultation by the Treasury including with the ACCC, business groups and legal advisers.

Harper Review recommendation 24: Application of the law to government activities

Sections 2A, 2B and 2BA of the CCA should be amended so that the competition law provisions apply to the Crown in right of the Commonwealth and the states and territories (including local government) insofar as they undertake activity in trade or commerce.

This recommendation is reflected in the model legislative provisions in Appendix A.¹

The Government **supports in principle** this recommendation.

The Government will consult further with the states and territories on the implications of extending the CCA to apply to government activities in trade or commerce.

¹ References to Appendix A in the Recommendations relate to the relevant appendix in the Harper Review Final Report and not to an appendix in this document.

Harper Review recommendation 25: Definition of market and competition

The current definition of 'market' in section 4E of the CCA should be retained but the current definition of 'competition' in section 4 should be amended to ensure that competition in Australian markets includes competition from goods imported or capable of being imported, or from services rendered or capable of being rendered, by persons not resident or not carrying on business in Australia.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government supports this recommendation and will develop exposure draft legislation for consultation with the public and states and territories to ensure that competition in Australian markets includes competition from goods and services imported or capable of being imported into Australia.

The Review Panel considered it is necessary and appropriate for the term 'market' to be defined as a market in Australia because the CCA is concerned with the economic welfare of Australians, not citizens of other countries.

Although the objective of the CCA is to protect and promote competition in Australian markets, frequently the sources of competition in Australian markets originate globally. The CCA has been framed to take account of all sources of competition that affect markets in Australia. However, the current definition of 'competition' in the CCA could be strengthened so there can be no doubt that it includes competition from potential imports of goods and services and not just actual imports.

This change is not intended to expand market definitions in competition law to include every product and service that could conceivably be imported into Australia, only to clarify that the credible threat of import competition is a relevant component of a competition analysis.

Harper Review recommendation 26: Extra-territorial reach of the law

Section 5 of the CCA, which applies the competition law to certain conduct engaged in outside Australia, should be amended to remove the requirement that the contravening firm has a connection with Australia in the nature of residence, incorporation or business presence and to remove the requirement for private parties to seek ministerial consent before relying on extra-territorial conduct in private competition law actions. Instead, the competition law should apply to overseas conduct insofar as the conduct relates to trade or commerce within Australia or between Australia and places outside Australia.

The in-principle view of the Panel is that the foregoing changes should also be made in respect of actions brought under the Australian Consumer Law.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **supports in part** this recommendation, noting that the Competition and Consumer Amendment (Deregulatory and Other Measures) Bill 2015 gives effect to the recommendation that the Government remove the requirement for private parties to seek ministerial consent before relying on extraterritorial conduct in private competition law actions.

The Government agrees that the requirement for private parties to seek ministerial consent in connection with proceedings involving conduct that occurs outside Australia is an unnecessary roadblock to possible redress for harm suffered as a result of a breach of Australian competition law.

While the Government does not support at this time the recommendation to amend section 5 of the CCA to remove the requirement that the contravening firm has a connection with Australia in the nature of residence, incorporation or business presence, it will consider how best to effectively capture conduct that harms competition in an Australian market, taking account of international law and policy considerations.

Harper Review recommendation 27: Cartel conduct prohibition

The prohibitions against cartel conduct in Part IV, Division 1 of the CCA should be simplified and the following specific changes made:

- The provisions should apply to cartel conduct involving persons who compete to supply goods or services to, or acquire goods or services from, persons resident in or carrying on business within Australia.
- The provisions should be confined to conduct involving firms that are actual or likely competitors, where 'likely' means on the balance of probabilities.
- A broad exemption should be included for joint ventures, whether for the production, supply, acquisition or marketing of goods or services, recognising that such conduct will be prohibited by section 45 of the CCA if it has the purpose, effect or likely effect of substantially lessening competition.
- An exemption should be included for trading restrictions that are imposed by one firm on another in connection with the supply or acquisition of goods or services (including intellectual property licensing), recognising that such conduct will be prohibited by section 45 of the CCA (or section 47 if retained) if it has the purpose, effect or likely effect of substantially lessening competition.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government supports simplification of the prohibitions on cartel conduct, and will amend the current exception for joint ventures to provide appropriate exemptions for demonstrable and deliberative joint venture activity.

The Government accepts that the prohibitions on cartel conduct are complex and will develop exposure draft legislation for consultation with the public and states and territories to simplify definitions to improve clarity and certainty, while retaining specificity and meaning.

Exposure draft legislation to broaden the joint venture exemption so that it does not limit legitimate commercial transactions (such as through vertical supply arrangements) will also be developed for consultation.

Harper Review recommendation 28: Exclusionary provisions

The CCA should be amended to remove the prohibition of exclusionary provisions in subparagraphs 45(2)(a)(i) and 45(2)(b)(i), with an amendment to the definition of cartel conduct to address any resulting gap in the law.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **supports** simplifying the prohibitions on exclusionary conduct and will develop exposure draft legislation for consultation with the public and states and territories.

The prohibition of exclusionary provisions is unnecessary and increases the complexity of the law. The definition of exclusionary provisions overlaps substantially with the definition of market sharing, which is a form of cartel conduct. Simplification can be achieved by amending the cartel provisions and removing the prohibitions on exclusionary provisions.

Harper Review recommendation 29: Price signalling

The 'price signalling' provisions of Part IV, Division 1A of the CCA are not fit for purpose in their current form and should be repealed.

Section 45 should be extended to prohibit a person engaging in a concerted practice with one or more other person that has the purpose, effect or likely effect of substantially lessening competition.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

The Government agrees that the price signalling provisions are complex and create an additional and unnecessary compliance burden for business. Other provisions of the law are capable of addressing anti-competitive price signalling, and with the extension of provisions relating to contracts, arrangements or understandings that restrict dealings or affect competition to include concerted practices, the price signalling provisions are not required.

The Government will develop exposure draft legislation to repeal the price signalling provisions of the CCA and extend section 45 of the CCA to capture concerted practices that substantially lessen competition.

Harper Review recommendation 30: Misuse of market power

The primary prohibition in section 46 of the CCA should be reframed to prohibit a corporation that has a substantial degree of power in a market from engaging in conduct if the proposed conduct has the purpose, or would have or be likely to have the effect, of substantially lessening competition in that or any other market.

To mitigate concerns about inadvertently capturing pro-competitive conduct, the legislation should direct the court, when determining whether conduct has the purpose, effect or likely effect, of substantially lessening competition in a market, to have regard to:

- the extent to which the conduct has the purpose, effect or likely effect of increasing competition in the market, including by enhancing efficiency, innovation, product quality or price competitiveness; and
- the extent to which the conduct has the purpose, effect or likely 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.

Such a re-framing would allow the provision to be simplified. Amendments introduced since 2007 would be unnecessary and could be repealed. These include specific provisions prohibiting predatory pricing, and amendments clarifying the meaning of 'take advantage' and how the causal link between the substantial degree of market power and anti-competitive purpose may be determined.

Authorisation should be available in relation to section 46, and the ACCC should issue guidelines regarding its approach to the provision.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **notes** this recommendation and will consult further on options to strengthen the misuse of market power provision.

The Government acknowledges concerns raised in submissions to the Harper Review about the operation of the misuse of market power provision. In light of the importance of this issue for business and consumers, the Government will consult further on options to reform the provision and release a discussion paper on this topic.

Harper Review recommendation 31: Price discrimination

A specific prohibition on price discrimination should not be reintroduced into the CCA. Where price discrimination has an anti-competitive impact on markets, it can be dealt with by the existing provisions of the law (including through the Panel's recommended revisions to section 46 (see Recommendation 30)).

Attempts to prohibit international price discrimination should not be introduced into the CCA on account of significant implementation and enforcement complexities and the risk of negative unintended consequences. Instead, the Panel supports moves to address international price discrimination through market solutions that empower consumers. These include removing restrictions on parallel imports (see Recommendation 13) and ensuring that consumers are able to take lawful steps to circumvent attempts to prevent their access to cheaper legitimate goods.

The Government **supports** this recommendation and agrees that a specific prohibition on price discrimination should not be reintroduced.

The Government will remove parallel import restrictions on books in line with its response to Recommendation 13 and will consult further on options to strengthen section 46 (see response to Recommendation 30).

Harper Review recommendation 32: Third-line forcing test

Third-line forcing (subsections 47(6) and (7) of the CCA) should only be prohibited where it has the purpose, effect or likely effect of substantially lessening competition.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

Third-line forcing involves the supply of goods or services on condition that the purchaser acquires goods or services from another person, or a refusal to supply because the purchaser will not agree to that condition.

Third-line forcing is similar to second line forcing which occurs where a corporation supplies a product on condition that the purchaser acquires another product from that corporation (or a related company); that is, the corporation bundles products together as a package.

Under the CCA, third-line forcing is prohibited per se; whereas, second line forcing is only prohibited if it has the purpose, or has or is likely to have the effect, of substantially lessening competition. Prohibiting third line forcing only where it has the purpose, or has or is likely to have the effect, of substantially lessening competition will bring the provision into line with comparable international jurisdictions and with other provisions of the CCA.

Harper Review recommendation 33: Exclusive dealing coverage

Section 47 of the CCA should be repealed and vertical restrictions (including third-line forcing) and associated refusals to supply addressed by sections 45 and 46 (as amended in accordance with Recommendation 30).

The Government **notes** this recommendation.

Vertical restrictions are agreements with or conditions imposed on acquirers of goods in a supply chain, and their impact on competition can vary depending on the circumstances. Simplification of section 47 will be considered as part of the proposal to further simplify the competition law in response to Recommendation 23 and in light of the outcome of further consultation on Recommendation 30.

Harper Review recommendation 34: Resale price maintenance

The prohibition on resale price maintenance (RPM) in section 48 of the CCA should be retained in its current form as a per se prohibition, but notification should be available for RPM conduct.

This recommendation is reflected in the model legislative provisions in Appendix A.

The prohibition should also be amended to include an exemption for RPM conduct between related bodies corporate, as is the case under sections 45 and 47.

The Government **supports** this recommendation.

Resale price maintenance (RPM) is a form of vertical restraint whereby a supplier requires that a person reselling a product provided by the supplier not advertise that product for sale or sell the product below the price specified by the supplier.

RPM may be beneficial to competition and consumers by creating an incentive for retailers to invest in staff and training that could not be offered if products were sold at a discount. However, concerns remain about the likely anticompetitive effects of RPM. The primary rationale for a per se prohibition on RPM (as opposed to a competition based test) is that RPM may facilitate manufacturer or retailer collusion. RPM is also emerging as an issue for new models of digital based retailing. The Government considers that maintaining a per se prohibition on RPM but allowing notification is an appropriate next step.

The Government will develop exposure draft legislation for consultation with the public and states and territories to permit notification of RPM conduct to the ACCC, subject to longer timeframes (60 days) and the ability for the ACCC to impose conditions, and include an exemption for such conduct between related bodies corporate.

Harper Review recommendation 35: Mergers

There should be further consultation between the ACCC and business representatives with the objective of delivering more timely decisions in the informal merger review process.

The formal merger exemption processes (i.e., the formal merger clearance process and the merger authorisation process) should be combined and reformed to remove unnecessary restrictions and requirements that may have deterred their use. The specific features of the review process should be settled in consultation with business, competition law practitioners and the ACCC.

However, the general framework should contain the following elements:

- The ACCC should be the decision-maker at first instance.
- The ACCC should be empowered to authorise a merger if it is satisfied that the merger does not substantially lessen competition or that the merger would result, or would be likely to result, in a benefit to the public that would outweigh any detriment.
- The formal process should not be subject to any prescriptive information requirements, but the ACCC should be empowered to require the production of business and market information.
- The formal process should be subject to strict timelines that cannot be extended except with the consent of the merger parties.
- Decisions of the ACCC should be subject to review by the Australian Competition Tribunal under a process that is also governed by strict timelines.
- The review by the Australian Competition Tribunal should be based upon the material that was before the ACCC, but the Tribunal should have the discretion to allow a party to adduce further evidence, or to call and question a witness, if the Tribunal is satisfied that there is sufficient reason.

Merger review processes and analysis would also be improved by implementing a program of post-merger evaluations, looking back on a number of past merger decisions to determine whether the ACCC's processes were effective and its assessments borne out by events. This function could be performed by the Australian Council for Competition Policy (see Recommendation 44).

The Government supports this recommendation.

The Government considers that overall the merger provisions of the CCA are working effectively.

The informal merger approval process works quickly and efficiently for a majority of mergers. Issues of transparency and timeliness arise with the informal process when dealing with more complex and contentious matters but addressing those issues by changing the informal process could undermine the benefits of that process. Nevertheless, there should be further consultation between the ACCC and business representatives with the objective of delivering more timely decisions in the informal review process.

The recommended changes will streamline and simplify the formal merger review processes, reducing burdens on businesses while maintaining the integrity of the system.

The Government will develop exposure draft legislation for public consultation on changes to the formal merger review process, in consultation with business, competition law practitioners, the ACCC and states and territories.

With regard to the ACCC's informal merger review process, the Government notes its expectation that the ACCC will take into account this recommendation in performing its role and meeting its responsibilities, particularly in relation to delivering more timely and transparent decisions. The ACCC has recently committed to the Government to improve stakeholder engagement and understanding of ACCC merger decisions, including through changes in relation to detailed engagement strategy planning, engagement with a broader range of stakeholders in the course of a merger review, trial of a third party consultation conference, and better communication of decisions through public documents that explain the ACCC's merger process and analysis to the broader community, including small business and consumer stakeholders. This is further to the Government's Statement of Expectations of the ACCC.

See also Recommendation 43 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 36: Secondary boycotts

The prohibitions on secondary boycotts in sections 45D-45DE of the CCA should be maintained and effectively enforced.

The ACCC should pursue secondary boycott cases with increased vigour, comparable to that which it applies in pursuing other contraventions of the competition law. It should also publish in its annual report the number of complaints made to it in respect of different parts of the CCA, including secondary boycott conduct and the number of such matters investigated and resolved each year.

The maximum penalty level for secondary boycotts should be the same as that applying to other breaches of the competition law.

The Government **supports** this recommendation, and will develop exposure draft legislation for consultation with the public and states and territories.

Secondary boycotts are harmful to trading freedom and therefore harmful to competition. Where accompanied by effective enforcement, secondary boycott prohibitions have been shown to have a significant deterrent effect on behaviour that would otherwise compromise consumers' ability to access goods and services in a competitive market.

The Review Panel noted that a corporation that contravenes the secondary boycott provisions is liable to a civil penalty not exceeding \$750,000, which can be compared with much higher penalties for contravention of other competition law provisions (\$10 million).

The Government agrees that there is no good reason for the penalties to vary so widely and will draft legislation to increase the maximum penalty for secondary boycotts to the same level as that applying to other breaches of the competition law.

Harper Review recommendation 37: Trading restrictions in industrial agreements

Sections 45E and 45EA of the CCA should be amended so that they apply to awards and industrial agreements, except to the extent they relate to the remuneration, conditions of employment, hours of work or working conditions of employees.

Further, the present limitation in sections 45E and 45EA, such that the prohibitions only apply to restrictions affecting persons with whom an employer 'has been accustomed, or is under an obligation,' to deal, should be removed.

These recommendations are reflected in the model provisions in Appendix A.

The ACCC should be given the right to intervene in proceedings before the Fair Work Commission and make submissions concerning compliance with sections 45E and 45EA. A protocol should be established between the ACCC and the Fair Work Commission.

The maximum penalty for breaches of sections 45E and 45EA should be the same as that applying to other breaches of the competition law.

The Government **notes** this recommendation.

This issue is being considered further as part of the Productivity Commission Review of the Workplace Relations Framework, which is scheduled to provide its final report to the Government in November 2015.

Harper Review recommendation 38: Authorisation and notification

The authorisation and notification provisions in Part VII of the CCA should be simplified to:

- ensure that only a single authorisation application is required for a single business transaction or arrangement; and
- empower the ACCC to grant an exemption from sections 45, 46 (as proposed to be amended), 47 (if retained) and 50 if it is satisfied that the conduct would not be likely to substantially lessen competition or that the conduct would result, or would be likely to result, in a benefit to the public that would outweigh any detriment.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

The Government will simplify the authorisation and notification provisions of Part VII of the CCA to ensure that only a single application is required for a single business transaction or agreement and allow the ACCC to consider both competition and public benefit considerations.

See also the responses to Recommendations 30 and 33 regarding misuse of market power and exclusive dealing, respectively.

Harper Review recommendation 39: Block exemption power

A block exemption power, exercisable by the ACCC, should be introduced and operate alongside the authorisation and notification frameworks in Part VII of the CCA.

This power would enable the ACCC to create safe harbours, where conduct or categories of conduct are unlikely to raise competition concerns, on the same basis as the test proposed by the Panel for authorisations and notifications (see Recommendation 38).

The ACCC should also maintain a public register of all block exemptions, including those no longer in force. The decision to issue a block exemption would be reviewable by the Australian Competition Tribunal.

The Panel's recommended form of block exemption power is reflected in the model legislative provisions in Appendix A.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

A block exemption removes the need to make individual applications for exemption. The exemption is granted if the competition regulator considers that certain conditions are satisfied: either that the category of conduct is unlikely to damage competition; or that the conduct is likely to generate a net public benefit.

A block exemption power that supplements the existing authorisation and notification frameworks will be helpful in establishing 'safe harbours' for business. Block exemptions will reduce compliance costs and provide further certainty about the application of the CCA. They are an efficient way to deal with certain types of business conduct that are unlikely to raise competition concerns, either because of the parties engaged in the conduct or the nature of the conduct itself.

The Government will provide the ACCC with a power to provide a 'class exemption' for classes of conduct that could otherwise be authorised individually on competition or public benefit grounds. This will provide certainty for businesses in respect of conduct that is unlikely to raise significant competition problems and help to educate and inform business about the types of conduct that do not raise competition concerns and those that do.

Harper Review recommendation 40: Section 155 notices

The section 155 power should be extended to cover the investigation of alleged contraventions of court enforceable undertakings.

The ACCC should review its guidelines on section 155 notices having regard to the increasing burden imposed by notices in the digital age. Section 155 should be amended so that it is a defence to a 'refusal or failure to comply with a notice' under paragraph 155(5)(a) of the CCA that a recipient of a notice under paragraph 155(1)(b) can demonstrate that a reasonable search was undertaken in order to comply with the notice.

The fine for non-compliance with section 155 of the CCA should be increased in line with similar notice based evidence gathering powers in the *Australian Securities and Investments Commission Act 2001*.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

Further to the Government's Statement of Expectations of the ACCC, the Government expects the ACCC will take into account this recommendation and review its guidelines on section 155 notices having regard to the increasing burden imposed by notices in the digital age.

Harper Review recommendation 41: Private actions

Section 83 of the CCA should be amended so that it extends to admissions of fact made by the person against whom the proceedings are brought in addition to findings of fact made by the court.

This recommendation is reflected in the model legislative provisions in Appendix A.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories to allow private parties to rely on admissions of fact made in another proceeding.

Harper Review recommendation 42: National Access Regime

The declaration criteria in Part IIIA of the CCA should be targeted to ensure that third-party access only be mandated where it is in the public interest. To that end:

- Criterion (a) should require that access on reasonable terms and conditions through declaration promote a substantial increase in competition in a dependent market that is nationally significant.
- Criterion (b) should require that it be uneconomical for anyone (other than the service provider) to develop another facility to provide the service.
- Criterion (f) should require that access on reasonable terms and conditions through declaration promote the public interest.

The Competition Principles Agreement should be updated to reflect the revised declaration criteria.

The Australian Competition Tribunal should be empowered to undertake a merits review of access decisions, while maintaining suitable statutory time limits for the review process.

The Government **supports in part** this recommendation. The Government agreed to respond to the 2013 Productivity Commission inquiry into the National Access Regime as part of its response to the Harper Review.

The Productivity Commission report on the National Access Regime was released on 11 February 2014.

The Productivity Commission recommended that criteria b) include a 'natural monopoly' test rather than a 'private profitability' test. The natural monopoly test would be satisfied if total foreseeable market demand (including demand for substitute services) could be met at least cost by the facility.

Other key recommendations included that:

- criterion a) be a comparison of competition with and without access on reasonable terms and conditions through declaration;
- government-imposed mandatory access undertakings be reviewed by the National Competition Council (the Council) against the declaration criteria;
- criterion e) include a threshold clause that a service cannot be declared if it is subject to a certified access regime;
- criterion f) be amended such that it is a positive test that declaration be in the public interest;
- the power of the ACCC to order both capacity extensions and geographical expansion be clarified; and
- a Council recommendation to declare an infrastructure service be deemed accepted by the Minister after 60 days, if the Minister does not publish a decision on the Council's recommendation.

The Government will adopt all the recommendations of the Productivity Commission, including on criteria (a) and (b) which differ from the recommendations of the Harper Review. These changes will return the focus of the Regime to allowing effective competition in downstream markets by restoring the test applied prior to the High Court decision in 2012. This will ensure that the Regime remains accessible and effective.

The Productivity Commission and Harper Review both recommended that criterion (f) be reshaped as a positive test that declaration would be in the public interest. The Government will adopt these recommendations to ensure that the Regime features sufficient safeguards against inappropriate declarations.

The Government considers that the Australian Competition Tribunal's existing merits review role should remain in place.

The Government will develop exposure draft legislation for consultation to give effect to this response.

See also the response to Recommendation 1 (Competition Principles) supporting granting third party access to significant bottleneck infrastructure where it would promote a material increase in competition in dependent markets and promote the public interest.

Harper Review recommendation 43: Australian Council for Competition Policy — establishment

The National Competition Council should be dissolved and the Australian Council for Competition Policy (ACCP) established. Its mandate should be to provide leadership and drive implementation of the evolving competition policy agenda.

The ACCP should be established under legislation by one state and then by application in all other States and Territories and at the Government level. It should be funded jointly by the Australian Government and the states and territories.

The ACCP should have a five member board, consisting of two members nominated by state and territory treasurers and two members selected by the Australian Government Treasurer, plus a Chair. Nomination of the Chair should rotate between the Australian Government and the states and territories combined. The Chair should be appointed on a full time basis and other members on a part-time basis.

Funding should be shared by all jurisdictions, with half of the funding provided by the Australian Government and half by the states and territories in proportion to their population size.

The Government supports the need for a body to oversee progress on competition reform and will discuss its design, role and mandate with the states and territories.

See also the response to other Recommendations that refer to the Australian Council for Competition Policy.

Harper Review recommendation 44: Australian Council for Competition Policy — role

The Australian Council for Competition Policy should have a broad role encompassing:

- advocacy, education and promotion of collaboration in competition policy;
- independently monitoring progress in implementing agreed reforms and publicly reporting on progress annually;
- identifying potential areas of competition reform across all levels of government;
- making recommendations to governments on specific market design issues, regulatory reforms, procurement policies and proposed privatisations;
- undertaking research into competition policy developments in Australia and overseas; and
- ex-post evaluation of some merger decisions.

The Government **supports** the need for a body to oversee progress on competition reform and, further to its response to Recommendation 43, will discuss its design, role and mandate with the states and territories.

Harper Review recommendation 45: Market studies power

The Australian Council for Competition Policy (ACCP) should have the power to undertake competition studies of markets in Australia and make recommendations to relevant governments on changes to regulation, or to the ACCC for investigation of potential breaches of the CCA.

The ACCP should have mandatory information gathering powers to assist in its market studies function; however, these powers should be used sparingly.

The Government **supports** the need for a body to oversee progress on competition reform and, further to its response to Recommendation 43, will discuss its design, role and mandate with the states and territories.

The ACCC currently has scope to conduct market studies, including under Ministerial direction under Part VIIA of the CCA. The Government agrees that the ACCC should continue to have this role as it can better inform its broader enforcement and regulatory work.

Harper Review recommendation 46: Market studies requests

All governments, jointly or individually, should have the capacity to issue a reference to the Australian Council for Competition Policy (ACCP) to undertake a competition study of a particular market or competition issue.

All market participants, including small business and regulators (such as the ACCC), should have the capacity to request market studies be undertaken by the ACCP.

The work program of the ACCP should be overseen by the Ministerial Council on Federal Financial Relations to ensure that resourcing addresses priority issues.

The Government **remains open to** this recommendation and, further to its response to Recommendation 43, will continue discussions with states and territories on the most appropriate institutional architecture to support reform.

The Government recognises that state and territory governments may wish to instigate studies of a particular market or competition issue from time to time. Independent institutions, including the Productivity Commission and ACCC, perform a market studies function for competition matters. The Government will consider ways in which any state and territory requests for market studies could be managed and resourcing implications addressed.

Harper Review recommendation 47: Annual competition analysis

The Australian Council for Competition Policy should be required to undertake an annual analysis of developments in the competition policy environment, both in Australia and internationally, and identify specific issues or markets that should receive greater attention.

The Government **remains open to** this recommendation and, further to its response to Recommendation 43, will continue discussions with states and territories on the most appropriate institutional architecture to support reform.

The ACCC currently undertakes work analysing developments in the competition policy environment, both in Australia and internationally, including through its membership and participation in the International Competition Network and the OECD Competition Committee.

Harper Review recommendation 48: Competition payments

The Productivity Commission should be tasked to undertake a study of reforms agreed to by the Australian Government and state and territory governments to estimate their effect on revenue in each jurisdiction.

If disproportionate effects across jurisdictions are estimated, competition policy payments should ensure that revenue gains flowing from reform accrue to the jurisdictions undertaking the reform.

Reform effort should be assessed by the Australian Council for Competition Policy based on actual implementation of reform measures, not on undertaking reviews.

The Government **supports** this recommendation and will continue discussions with states and territories on ways to promote worthwhile reform, including whether Productivity Commission analysis is required.

The Australian Government made incentive payments to state and territory governments under the NCP. The Productivity Commission reviewed the NCP in 2005, noting that monetary incentives were a significant part of the success of the reforms, and recommending future use of financial incentives and penalty provisions, where appropriate.

The Government recognises that it is important for all jurisdictions to work together to identify and implement reforms of national significance and is willing to consider payments to states and territories for reforms that improve productivity and lead to economic growth, including for significant regulatory reviews that are followed by reforms.

The Government agrees that any payments should be made on the basis of actual implementation of reforms.

See also Recommendations 43 and 44 for the Government's response regarding the Australian Council for Competition Policy.

Harper Review recommendation 49: ACCC functions

Competition and consumer functions should be retained within the single agency of the ACCC.

The Government **supports** this recommendation.

Harper Review recommendation 50: Access and Pricing Regulator

The following regulatory functions should be transferred from the ACCC and the NCC and be undertaken within a single national Access and Pricing Regulator:

- the telecommunications access and pricing functions of the ACCC;
- price regulation and related advisory roles of the ACCC under the *Water Act 2007* (Cth);
- the powers given to the ACCC under the National Access Regime;
- the functions undertaken by the Australian Energy Regulator under the National Electricity Law, the National Gas Law and the National Energy Retail Law;
- the powers given to the NCC under the National Access Regime; and
- the powers given to the NCC under the National Gas Law.

Other consumer protection and competition functions should remain with the ACCC. Price monitoring and surveillance functions should also be retained by the ACCC.

The Access and Pricing Regulator should be constituted as a five-member board. The board should comprise two Australian Government-appointed members, two state and territory-nominated members and an Australian Government-appointed Chair. Two members (one Australian Government appointee and one state and territory appointee) should be appointed on a part-time basis.

Decisions of the Access and Pricing Regulator should be subject to review by the Australian Competition Tribunal.

The Access and Pricing Regulator should be established with a view to it gaining further functions if other sectors are transferred to national regimes.

The Government remains open to this recommendation.

The Government will continue discussions with states and territories on how a new national framework could be developed between the Commonwealth, states and territories to promote economic growth including the most appropriate institutional architecture to support reform.

Harper Review recommendation 51: ACCC governance

Half of the ACCC Commissioners should be appointed on a part-time basis. This could occur as the terms of the current Commissioners expire, with every second vacancy filled with a part-time appointee. The Chair could be appointed on either a full-time or a part-time basis, and the positions of Deputy Chair should be abolished.

The Panel believes that current requirements in the CCA (paragraphs 7(3)(a) and 7(3)(b)) for experience and knowledge of small business and consumer protection, among other matters, to be considered by the Minister in making appointments to the Commission are sufficient to represent sectoral interests in ACCC decision making.

Therefore, the Panel recommends that the further requirements in the CCA that the Minister, in making all appointments, be satisfied that the Commission has one Commissioner with knowledge or experience of small business matters (subsection 10(1B)) and one Commissioner with knowledge or experience of consumer protection matters (subsection 7(4)) be abolished.

The ACCC should report regularly to a broad based committee of the Parliament, such as the House of Representatives Standing Committee on Economics.

The Government supports in part this recommendation.

The Government supports the ACCC reporting regularly to a broad based committee of the Parliament, such as the House of Representatives Standing Committee on Economics.

The Government considers that full-time Commissioners are best placed to consider and take action on the varied and frequent decisions of the ACCC.

A specific small business commissioner is an important aspect of the Government's commitment to ensuring key regulatory bodies are enhanced by appointments with small business insights and experience.

Similarly, as announced in the Agricultural Competitiveness White Paper, the Government is committed to the ACCC being equipped with a specialist agriculture commissioner, who will have competency across the ACCC's core functions as well as the relevant skills, experience and established credibility to engage more deeply with particular issues facing the agriculture sector.

Harper Review recommendation 52: Media Code of Conduct

The ACCC should establish, publish and report against a Code of Conduct for its dealings with the media with the aim of strengthening the perception of its impartiality in enforcing the law. The Code of Conduct should be developed with reference to the principles outlined in the 2003 *Review of the Competition Provisions of the Trade Practices Act*.

The Government supports this recommendation.

Further to the Government's Statement of Expectations of the ACCC, the Government expects the ACCC to take into account this recommendation and establish, publish and report against a Code of Conduct for its dealings with the media with the aim of strengthening the perception of its impartiality in enforcing the law.

Harper Review recommendation 53: Small business access to remedies

The ACCC should take a more active approach in connecting small business to alternative dispute resolution schemes where it considers complaints have merit but are not a priority for public enforcement.

Where the ACCC determines it is unable to pursue a particular complaint on behalf of a small business, the ACCC should communicate clearly and promptly its reasons for not acting and direct the business to alternative dispute resolution processes. Where the ACCC pursues a complaint raised by a small business, the ACCC should provide that business with regular updates on the progress of its investigation.

Resourcing of the ACCC should allow it to test the law on a regular basis to ensure that the law is acting as a deterrent to unlawful behaviour.

Small business commissioners, small business offices and ombudsmen should work with business stakeholder groups to raise awareness of their advice and dispute resolution services.

The Panel endorses the following recommendations from the Productivity Commission's *Access to Justice Arrangements* report:

- Recommendations 8.2 and 8.4 to ensure that small businesses in each Australian jurisdiction have access to effective and low cost small business advice and dispute resolution services;
- Recommendation 8.3 to ensure that small business commissioners, small business offices or ombudsmen provide a minimum set of services, which are delivered in an efficient and effective manner;
- Recommendation 9.3 to ensure that future reviews of industry codes consider whether dispute resolution services provided pursuant to an industry code, often by industry associations or third parties, are provided instead by the Australian Small Business Commissioner under the framework of that industry code;
- Recommendation 11.1 to broaden the use of the Federal Court's fast track model to facilitate lower cost and more timely access to justice; and
- Recommendation 13.3 to assist in managing the costs of litigation, including through the use of costs budgets for parties engaged in litigation.²

The Government supports in principle this recommendation.

The Government supports the ACCC taking steps to improve its communications with small businesses (and complainants more generally). The Government has asked the ACCC to consider introducing changes to improve transparency and clarity for small businesses on why it is unable to pursue certain complaints. The Government will continue to liaise with the ACCC with a view to enhancing public disclosure of operational procedures and decision making processes where it is appropriate and feasible to do so.

The ACCC will also be asked to consider how it can more actively connect small businesses to alternative dispute resolution (ADR) schemes where appropriate.

² Productivity Commission 2014, *Access to Justice Arrangements*, Inquiry Report No. 72, Canberra.

The Government is already taking action to improve small business access and awareness of ADR services by establishing the Australian Small Business and Family Enterprise Ombudsman (ASBFEO). The ASBFEO will be a concierge for dispute resolution by referring small businesses to existing agencies that can help them address disputes. The ASBFEO will also offer its own outsourced ADR service. Legislation to establish the ASBFEO received Royal Assent on 10 September 2015. The Government is working to implement this legislation. During the transition, the Australian Small Business Commissioner will continue to operate and service the needs of small businesses across Australia.

The Government will explore options for facilitating greater collaboration and cooperation across tiers of government to have a national complaint handling and dispute resolution network that brings together small business commissioners, ombudsmen and relevant agencies. This aims to provide all small businesses with access to low cost and effective dispute resolution services. The Government intends this as a first step and will monitor its effectiveness in improving access to remedies for small business before considering whether more actions are required.

The Government notes that the Panel endorsed findings from the Productivity Commission's *Access to Justice Arrangements* report.

Harper Review recommendation 54: Collective bargaining

The CCA should be reformed to introduce greater flexibility into the notification process for collective bargaining by small business.

Reform should include allowing:

- the nomination of members of the bargaining group, such that a notification could be lodged to cover future (unnamed) members;
- the nomination of the counterparties with whom the group seeks to negotiate, such that a notification could be lodged to cover multiple counterparties; and
- different timeframes for different collective bargaining notifications, based on the circumstances of each application.

Additionally, the ACCC should be empowered to impose conditions on notifications involving collective boycott activity, the timeframe for ACCC assessment of notifications for conduct that includes collective boycott activity should be extended from 14 to 60 days to provide more time for the ACCC to consult and assess the proposed conduct, and the ACCC should have a limited 'stop power' to require collective boycott conduct to cease, for use in exceptional circumstances where a collective boycott is causing imminent serious detriment to the public.

The current maximum value thresholds for a party to notify a collective bargaining arrangement should be reviewed in consultation with representatives of small business to ensure that they are high enough to include typical small business transactions.

The ACCC should take steps to enhance awareness of the exemption process for collective bargaining and how it might be used to improve the bargaining position of small businesses in dealings with large businesses. The ACCC should also amend its collective bargaining notification guidelines. This should include providing information about the range of factors considered relevant to determining whether a collective boycott may be necessary to achieve the benefits of collective bargaining.

The Government **supports** this recommendation and will develop exposure draft legislation for consultation with the public and states and territories.

Further to the Government's Statement of Expectations of the ACCC, the Government expects the ACCC will take into account this recommendation in performing its role and meeting its responsibilities.

This includes the ACCC taking steps to enhance awareness of the exemption process for collective bargaining and how it might be used to improve the bargaining position of small businesses.

It also includes the ACCC amending its collective bargaining guidelines to provide information about the range of factors considered relevant to determining whether a collective boycott may be necessary.

Harper Review recommendation 55: Implementation

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

The Government **supports** this recommendation.

COAG noted the release of the Harper Review at its meeting on 17 April 2015 and agreed that jurisdictions would work together on the Review's recommendations and how best to progress competition reform.

At the Council on Federal Financial Relations meeting on 16 October 2015, treasurers agreed to work together to consider how to make the most of the opportunities for ambitious competition reform to drive Australia's economic performance and living standards.

The Council agreed that competition reform is needed to drive Australia's economic performance and living standards so Australia can continue to meet the growing demand for high quality services. Treasurers recognised that previous NCP reforms delivered substantial benefits.

Treasurers will undertake further work on how a new national framework could be developed between the Commonwealth, states and territories to identify and facilitate innovative ways to deliver services and promote economic growth.

Harper Review 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.

The Government **notes** this recommendation.

As noted above, discussions with the states and territories on potential competition reforms are continuing. Productivity Commission modelling of the recommendations of the Review will be considered further pending the outcome of these discussions.

