Intergovernmental Agreement on National Competition Policy

An agreement to maintain and promote consistent and complementary competition policies and laws for a more seamless and competitive Australian economy, to improve living standards and opportunities for Australians.

Parties

An Agreement between:

- the Commonwealth of Australia and the States and Territories, being:
    - The State of New South Wales
    - The State of Victoria
    - The State of Queensland
    - The State of South Australia
    - The State of Western Australia
    - The State of Tasmania
    - The Australian Capital Territory
    - The Northern Territory of Australia.

Part 1 – Objective

1. The Council on Federal Financial Relations reaffirmed governments' commitment to National Competition Policy on 29 November 2024 by agreeing to revitalised National Competition Principles, national institutional arrangements, and a program of pro-competitive reforms.

2. This Agreement delivers on governments' commitment to revitalise National Competition Policy by building on the achievements of the landmark 1995 National Competition Policy agreements: the *Competition Principles Agreement* and the *Conduct Code Agreement*. It is accompanied by the corresponding Federation Funding Agreement, which delivers national reforms and payments, like the *Agreement to Implement the National Competition Policy and Related Reforms* did between 1995 and 2005. These Agreements work together with the *Competition and Consumer Act 2010* (Cth) to implement the revitalised National Competition Policy.

3. This Agreement supports the implementation and ongoing development of policy, law and reforms to sustainably improve living standards and opportunities for Australians through continuous competition policy reforms to lift Australia's overall economic performance and achieve other benefits including improvements in consumer access and welfare, service quality, and contributions towards Australia's emission reductions. This Agreement seeks to facilitate effective competition across our economy to promote efficiency and productivity growth.

4. Parties acknowledge, by signing this Agreement, that sustained collaboration and coordination is required to drive action under these Agreements to enhance competition in the national economy. This will help our economy and community seize the opportunities and meet the challenges presented by big changes such as digitalisation, the net zero transformation, and the rapid growth of the human services sector.

5. Parties agree, by reinvigorating their commitment to National Competition Policy, to take action to make our economy more competitive and dynamic. This will benefit Australians by providing:

    a. more choice, higher quality, and lower prices for consumers;

    b. more and better choices of jobs with higher real wages for workers;

    c. more opportunities for new entrants and nascent firms; and

    d. increasingly dynamic, innovative and productive businesses and markets.

6. This Agreement achieves the Objective through:

    a. in Part 3, revitalised National Competition Principles that guide nationally consistent policy approaches to fostering competition;

    b. in Part 4, a revitalised framework for maintaining nationally harmonious competition laws; and

    c. in Part 5, institutional arrangements to support effective implementation and advancement of National Competition Policy.

Part 2 – Roles and Responsibilities

7. Part 2 of this Agreement sets out the overarching roles and responsibilities of the Parties to this Agreement. Clear responsibilities drive coordinated collaboration between Parties to achieve the commitments under this Agreement and the outcomes described in its Parts.

Shared responsibilities

8. The Parties to this Agreement have the following responsibilities:

    a. deliver commitments under this Agreement consistent with their respective responsibilities;

    b. share knowledge, experience and data gained from developing and implementing reforms;

    c. participate on the National Competition Policy Oversight Committee; and

    d. use best endeavours to allocate adequate resources to ongoing implementation and maintenance of commitments under this Agreement.

Commonwealth responsibilities

9. The Commonwealth has the following responsibilities under this Agreement:

    a. operation of this Agreement within the Australian Public Service and within the Commonwealth's responsibilities and legislative competence.

State and territory responsibilities

10. The States and Territories have the following responsibilities:

    a. the operation of this Agreement within their responsibilities and legislative competence; and

    b. to adhere, to the extent possible, relevant, and within legislative parameters, to the commitments of this Agreement in their engagement with local governments.

Oversight and implementation of this Agreement

11. CFFR oversees the implementation and performance of this Agreement which consists of:

    a. revitalised National Competition Principles (*Part 3 of this Agreement*) that guide nationally consistent policy approaches to fostering a competitive economy;

    b. a framework for maintaining nationally harmonious competition laws (*Part 4 of this Agreement*);

    c. the institutional arrangements to support effective implementation and advancement of National Competition Policy (*Part 5 of this Agreement*); and

    d. governance arrangements for this Agreement (*Part 6 of this Agreement*).

12. All Parties agree to participate in a cross-jurisdictional National Competition Policy Oversight Committee to provide strategic oversight and direction for the development and delivery of National Competition Policy, reporting periodically to Heads of Treasuries and CFFR.

Part 3 – National Competition Principles

13. Part 3 of this Agreement recognises that all levels of government influence the competitiveness of Australia's economy through their decisions, policies and regulation. The National Competition Principles provide the foundation for how governments can promote, remove impediments to, and avoid restricting competition. The National Competition Principles underpin good public governance and decision-making by all governments.

14. The National Competition Principles guide nationally consistent competition policy across all levels of government, while allowing flexibility to reflect the circumstances of each Party.

15. The revitalised National Competition Principles build upon the landmark National Competition Principles that all Parties agreed to implement under the 1995 *Competition Principles Agreement*. Parties recognise that a transition period of no longer than 31 December 2026 is required to implement appropriate processes and frameworks to give effect to the revitalised National Competition Principles. The transition period only applies to the components of the National Competition Principles that introduce new or additional obligations relative to the principles in the 1995 *Competition Principles Agreement.*

16. Each Party will publish a timetable by end 2025 that will identify how the revitalised National Competition Principles will be put into effect.

National Competition Principles

17. The Parties agree to the National Competition Principles and supporting actions:

- Principle 1 – Governments should harness the benefits of competition

  Action – Parties will assess the competition impacts of their major policy decisions to ensure they do not unnecessarily restrict competition, and consider reforms to actively promote competition (Schedule 1).

- Principle 2 – Governments should support consumers to benefit from competition

  Action – Parties will promote effective consumer participation in markets and manage the effects of limited participation, including by addressing barriers that consumers may face in making informed decisions and switching providers (Schedule 2).

- Principle 3 – Reform of public monopolies, including privatisation, should not harm consumers

  Action – Parties will establish appropriate regulatory frameworks and policies before a public monopoly is leased, privatised or structurally reformed through the introduction of competition, to protect against adverse outcomes (Schedule 3).

- Principle 4 – Government and private businesses should compete on a level playing field

  Action – Parties will ensure government business activities that compete (or could compete) with private or other providers apply competitive neutrality measures to remove any net competitive advantages arising from their public sector ownership (Schedule 4).

- Principle 5 – Governments should promote a single national market

  Action – Parties will not create or entrench barriers to buying and selling goods and services, operating businesses, and working across state and territory and international borders, where appropriate (Schedule 5).

- Principle 6 – Government pricing practices should be efficient and transparent

  Action – Parties will promote efficient and transparent pricing practices for goods and services provided by government monopolies or near monopolies, including regulatory services, and goods and services provided by government business enterprises (Schedule 6).

- Principle 7 – Access to significant infrastructure facilities should be on reasonable terms and prices

  Action – Parties will maintain, where relevant, frameworks to facilitate access to services provided by significant infrastructure (including non-physical infrastructure) facilities with natural monopoly characteristics, on reasonable terms and prices (Schedule 7).

18. The National Competition Principles are underpinned by a commitment to transparency from all Parties. The Schedules to this Agreement outline requirements for transparency, where relevant.

19. Parties recognise that competition is a means to achieve better outcomes for consumers, businesses, and the economy. This Agreement allows for decisions that may restrict competition, provided the Party making the decision can demonstrate this is in the public interest. The Schedules to this Agreement outline this process, where relevant.

20. Parties to this Agreement will, in consultation with local governments, establish a framework to operationalise the National Competition Principles in the context of local governments within their jurisdiction, to the extent possible, including National Competition Principles 1, 3, 4 and 6. This may include, where appropriate, a materiality threshold and/or provisions for proportionate application.

21. Parties will be able to seek advice from the Council in relation to the application of the National Competition Principles.

Part 4 – Competition Laws

22. The purpose of Part 4 of this Agreement is to maintain consistent national Competition Laws for all types of businesses in Australia. This is achieved by the Competition Code which applies the Competition Laws to persons and businesses within the legislative competence of the states and territories as the law of those Parties.

23. Part 4 of this Agreement requires Parties to apply the Competition Laws in their state or territory to ensure they prohibit anticompetitive behaviour by entities over which they have legislative competence. It sets out the process for consulting and voting on modifications to the Competition Laws, and for Parties to except conduct from the Competition Laws' prohibition of anticompetitive behaviour in accordance with section 51 of the Competition and Consumer Act.

The Competition Code

24. The Parties will use legislation to apply the Competition Code text to all persons within the legislative competence of each Party.

25. If the Commonwealth Minister is satisfied that a Party has used its laws to make significant modifications to the Competition Code text in its application to their jurisdiction, the Commonwealth Minister may publish a notice by registering it as a notifiable instrument in accordance with section 150K(1) of the Competition and Consumer Act.

26. The Commonwealth Minister may only publish a notice by a notifiable instrument pursuant to clause 25 if the notice is published before the expiry of 2 months from the date on which the Commonwealth received written notice pursuant to clause 36 advice from Parties on Modifications to Competition Laws.

27. If the Commonwealth Minister has published a notice pursuant to clause 25 stating a Party has significantly modified the Competition Code text, the Commonwealth Minister may revoke that notice by publishing another notice in accordance with section 150K(2) of the Competition and Consumer Act.

Exceptions from the Competition Laws

28. Some Commonwealth, state and territory laws allow conduct that would otherwise contravene Part IV of the Competition and Consumer Act but for the operation of section 51(1) of the Competition and Consumer Act. Section 51(1) of the Competition and Consumer Act permits this conduct if it is specifically authorised under the law.

29. Where a Party enacts legislation that relies on section 51 of the Competition and Consumer Act, that Party will advise the Commission in writing about the legislation within 30 days of the legislation being enacted.

30. After 4 months from when a Party sends written notice to the Commission pursuant to clause 29, the Commonwealth Minister will not table in the Commonwealth Parliament regulations made for the purposes of section 51(1C)(f) of the Competition and Consumer Act in respect of

the legislation referred to in the notice unless the Commonwealth Minister tables in the Parliament at the same time a report by the Council on:

a. whether the benefits to the community from the legislation referred to in the notice, including the benefits from transitional arrangements, outweigh the costs;

b. whether the objectives achieved by restricting competition by means of the legislation referred to in the notice can only be achieved by restricting competition; and

c. whether the Commonwealth should make regulations for the purposes of section 51(1C)(f) of the Competition and Consumer Act.

Modifications to Competition Laws

31. If Part IV of the Competition and Consumer Act or the Schedule version of Part IV of that Act is modified, similar modifications will be made to corresponding provisions of the other.

32. The Commonwealth will consult Parties that are fully-participating jurisdictions on proposed modifications to Part IV of the Competition and Consumer Act or the Competition Code text and call a vote on the proposed amendments to implement those proposed modifications in accordance with clauses 33 to 35.

33. Consultation on proposed modifications:

a. The Commonwealth will consult on proposed modifications by providing the proposed modifications in writing to Parties.

b. The Commonwealth will provide Parties 3 months to respond to the proposed modifications in writing.

c. A Party can request in writing that the Commonwealth convene a meeting during the consultation period to discuss the proposed modifications.

d. The Commonwealth may waive the requirements for consultation if a waiver is agreed in writing by a majority of Parties.

e. The consultation requirements will be reinstated if a majority of Parties notify the Commonwealth in writing that new information has become available, since the consultation period was waived, that would have a material effect on the consideration of the proposed modifications. The reinstated consultation period will be deemed to have commenced on the date the majority of Parties agreed to reinstate the consultation requirements.

f. The Commonwealth does not need to consult on the proposed modifications if they are minor or inconsequential but must give the Parties sufficient notice of its reasoning and intention to make the proposed modifications.

g. Where the Commonwealth has notified the Parties of minor or inconsequential proposed modifications in accordance with clause 33.f and four Parties advise the Commonwealth Minister in writing within 21 days of notification that they believe the proposed modifications are not minor or inconsequential, then the Commonwealth

must submit the proposed amendments to a vote of the Parties in accordance with the procedure set out in clause 34.

34. Voting on proposed amendments:

    a. At the end of the consultation period outlined in clauses 33.a to 33.e or following the notification outlined in clause 33.g, the Commonwealth will call a vote from Parties on the proposed amendments to implement the proposed modifications and provide any supporting documentation that is available.

    b. Voting rights:

        i. each Party will have one vote; and

        ii. the Commonwealth will have a casting vote in the event of a tie.

    c. The Commonwealth will provide 35 calendar days for Parties to provide their vote in writing after it sends the written request for a vote.

    d. In exceptional circumstances, Parties may determine an alternative voting date by unanimous agreement in writing (that is consistent with clause 33).

    e. If a Party does not provide its vote in writing within 35 calendar days, that Party will be taken to have abstained from the vote.

    f. The only circumstance in which a Party may abstain from the vote is if a Party is in caretaker mode at any time between the date of the notice and the voting date.

    g. If the majority of Parties abstain from a vote, a revote may be triggered by the Commonwealth.

35. The Commonwealth will not put forward for parliamentary consideration amendments to the Competition Code text unless the proposed amendments are supported by:

    a. the Commonwealth; and

    b. four other Parties.

36. If a Party makes an amendment to the Competition Laws, that Party will write to all other Parties setting out the amendment to the Competition Laws that has been made by the legislature of that Party.

Part 5 – National Competition Institutions

37. Part 5 of this Agreement sets out the institutional arrangements that support effective implementation and advancement of National Competition Policy and enforcement of the Competition Laws.

National Competition Policy Oversight Committee

38. The National Competition Policy Oversight Committee will provide strategic oversight and direction for the development and delivery of National Competition Policy.

39. The Committee will steward National Competition Policy by:

    a. coordinating reform efforts, addressing bottlenecks in reform implementation and clarifying reform objectives where necessary;

    b. overseeing work to short-list potential reforms, informed by the Productivity Commission inquiries under clause 60, and develop the reform detail, including objectives, outputs, milestones and competition reform guidelines, required to update Schedule 2 of the Federation Funding Agreement for the short-listed reforms; and

    c. negotiating updates to the Federation Funding Agreement for consideration by Treasurers.

40. The Committee will consist of Treasury officials of Parties. The Commonwealth will co-chair with one other Party and provide a secretariat for the Committee.

41. The Committee will report to Heads of Treasuries every 6 months and to CFFR annually from 1 January 2025.

42. A Senior Officials Group consisting of Treasury officials from each Party will collaborate on National Competition Policy and provide operational advice to the Committee.

National Competition Council

43. The Council is an independent competition research and advisory body established in 1995 by agreement between all Australian, state and territory governments. It operates in accordance with Part IIA of the Competition and Consumer Act and the Annual Work Plan determined in keeping with this Agreement.

44. The Council's main roles under National Competition Policy are as:

a. an assessor of progress under the relevant Federation Funding Agreement;

b. an expert and source of information and advice on the application of the National Competition Principles

    i. as part of this role, the Council is expected to undertake and publish periodic thematic reviews of the application of one or more of the National Competition Principles, and to engage with Parties when preparing and undertaking these reviews; and

c. a public educator on the value of competition and competition policy reform.

45. The Council will be invited to provide regular updates to the National Competition Policy Oversight Committee and will be invited to provide an annual update to Heads of Treasuries and CFFR on its work relating to National Competition Policy.

Annual Work Plan

46. The work of the Council (other than work relating to a function under Part IIIA of the Competition and Consumer Act) will be the subject of an 'Annual Work Plan'.

47. Parties to this Agreement may submit proposals to the Council (other than work relating to a function under Part IIIA of the Competition and Consumer Act) which may be included in the Annual Work Plan.

48. A Party will not put forward legislation conferring additional functions on the Council unless the Parties have determined that the Council should undertake those functions under its Annual Work Plan.

49. The Annual Work Plan will be determined by agreement of a majority of the Parties to this Agreement.

50. In the event that the Parties are evenly divided on a question of agreeing to the inclusion of a matter in the Annual Work Plan, the Commonwealth will determine the final outcome.

51. As per clause 49, the Commonwealth Minister will determine the prioritisation of matters contained within the Annual Work Plan where the Council is unable to progress all matters within its existing funding envelope.

52. The Commonwealth Minister will only refer matters to the Council pursuant to section 29B(1) of the Competition and Consumer Act in accordance with the Annual Work Plan.

53. The Annual Work Plan of the Council shall be taken to include a request by the Commonwealth for the Council to examine and report on the matters specified in clause 30.

Appointments

54. When the Commonwealth proposes that a vacancy in the office of Council President or Councillor of the Council be filled, it will send written notice of the vacancy to the Parties that are fully-participating jurisdictions, inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of 35 calendar days from the date on which the Commonwealth sent the notice to make suggestions before sending the notice in clause 55. The Commonwealth will also maintain a database for those interested in being considered for appointment within the Treasury portfolio.

55. The Commonwealth will send written notice to the States and Territories that are Parties of persons whom it desires to put forward to the Governor-General for appointment as Council President or Councillor of the Council.

56. Within 35 calendar days from the date on which the Commonwealth sends a notice of the type referred to in clause 55, the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

57. The Commonwealth will not put forward to the Governor-General a person for appointment as a Council President or Councillor of the Council unless a majority of the States and Territories that are Parties support, or pursuant to clauses 54 to 56 are taken to support, the appointment.

Funding

58. The Commonwealth will be responsible for funding the Council.

Productivity Commission

59. The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. It operates under the *Productivity Commission Act 1998* (Cth).

60. The Productivity Commission's main role under National Competition Policy is to undertake periodic studies or inquiries at the direction of the Commonwealth Minister to identify pro-competitive reform options that could be implemented under National Competition Policy, and to estimate the economic and revenue impacts of these reforms. The results will help to inform reform commitments under the Federation Funding Agreement.

Australian Competition and Consumer Commission

Appointments

61. When the Commonwealth proposes that a vacancy in the office of Chairperson, Deputy Chairperson, member or associate member of the Commission be filled, it will send written notice to fully-participating jurisdictions inviting suggestions as to suitable persons to fill the vacancy. The Commonwealth will allow those Parties a period of 35 calendar days from the date on which the Commonwealth sent the notice to make suggestions before sending the notice in clause 63. The Commonwealth will also maintain a database for those interested in being considered for appointment within the Treasury portfolio.

62. Clause 61 does not apply to cross-appointments from the Australian Communications and Media Authority and the Commission or the New Zealand Commerce Commission and the Commission.

63. The Commonwealth will send to the Parties that are fully-participating jurisdictions written notice of persons whom it desires to put forward for appointment as Chairperson, Deputy Chairperson, member or associate member of the Commission.

64. Within 35 calendar days from the date on which the Commonwealth sends a notice of the type referred to in clause 63, the Party to whom the Commonwealth sends a notice will notify the Commonwealth Minister in writing as to whether the Party supports the proposed appointment. If the Party does not notify the Commonwealth Minister in writing within that period, the Party will be taken to support the proposed appointment.

65. The Commonwealth will not put forward a person for appointment as a Chairperson, Deputy Chairperson, member or associate member of the Commission unless a majority of the fully-participating jurisdictions support, or pursuant to clauses 61 to 64 are taken to support, the appointment.

Funding

66. The Commonwealth will be responsible for funding the Commission.

Part 6 – Governance

67. Part 6 of this Agreement sets out the governance arrangements for this Agreement.

Commencement

68. This Agreement will commence when executed by the Commonwealth, all the States of Australia, and the Australian Capital Territory and the Northern Territory of Australia.

69. This Agreement will continue to operate indefinitely unless unanimously determined by the fully--participating Parties in writing.

Writing

70. Where this Agreement requires a Party to write to another Party, a Party may do so by writing to the Minister responsible for the competition policy of that Party.

Review

71. CFFR will review this Agreement no later than every 10 years after the commencement of this Agreement. These reviews will assess the operation and effectiveness of this Agreement in delivering the Objectives to determine whether amendments are required. The review will include the National Competition Principles within Part 3 of this Agreement and the National Competition Institutions arrangements set out in Part 5 of this Agreement.

72. CFFR will deliver an initial progress report no later than 5 years after the commencement of this Agreement and subsequent progress reports no later than every 5 years after each review outlined in clause 71. These progress reports will assess the implementation of this Agreement and any subsequent amendments to it.

Amendment

73. This Agreement may be amended at any time by the unanimous decision of the Parties.

74. An amendment must be made and executed by Parties in writing and will include the date on which the amendment will come into force.

75. A Party may withdraw from this Agreement by notifying all the other Parties in writing. The withdrawal will become effective 6 months after the notice was sent.

76. If a Party withdraws from this Agreement, this Agreement will continue in force with respect to the remaining Parties.

77. A state or territory that is not a Party may become a Party by sending written notice to all the Parties.

Interpretation and dispute resolution

78. Any Party may give notice to other Parties of a question of interpretation or a dispute under this Agreement.

79. Officials of relevant Parties will take action to resolve any question of interpretation or a dispute in the first instance.

80. If a question of interpretation or a dispute cannot be resolved by officials, it may be referred to the relevant Ministers. Ministers may seek external expertise to inform their approach.

Unestablished entities and unenacted legislation

81. Where this Agreement refers to an entity which has not been established at the date of commencement of this Agreement, or a provision in legislation which has not been enacted or amended at the date of commencement of this Agreement, this Agreement will apply in respect of the provision or entity from the date when the provision or entity commences operation.

Part 7 – Definitions

82. In this Agreement, unless the context indicates otherwise:

a. 'Agreement' means this document and includes the Schedules and any Attachments.

b. 'Agreements' means the *Intergovernmental Agreement on National Competition Policy* (Agreement) and the Federation Funding Agreement.

c. 'CFFR' means the Council on Federal Financial Relations or whichever entity constitutes the equivalent national ministerial body at the time.

d. 'Commission' means the Australian Competition and Consumer Commission.

e. 'Committee' means the National Competition Policy Oversight Committee.

f. 'Commonwealth Minister' means the Commonwealth minister responsible for competition policy.

g. 'Competition Code' means the text in:

i. the Schedule version of Part IV of the Competition and Consumer Act;

ii. the remaining provisions of that Act (expect sections 2A, 5, 6 and 172), so far as they would relate to the Schedule version if the Schedule version were substituted for Part IV; and

iii. the regulations under that Act, so far as they relate to any provision covered by clause 82.g.i or 82.g.ii.

applying as a law of a participating jurisdiction.

h. 'Competition Laws' means:

i. Part IV of the Competition and Consumer Act and the remaining provisions of that Act, so far as they relate to that Part; and

ii. the Competition Code of the participating jurisdictions.

i. 'Competition and Consumer Act' means the *Competition and Consumer Act 2010* (Cth) as amended.

j. 'Council' means the National Competition Council.

k. 'enact' means all relevant verbs relating to the form of legislation, for example 'make' with reference to regulations.

l. 'Federation Funding Agreement' means the *Federation Funding Agreement (National Competition Policy) Schedule 2024*, as amended or replaced from time to time, and associated documentation.

m. 'fully-participating jurisdiction' means a State or Territory that is:

i. a participating jurisdiction; and

ii. is not named in a notice operating under section 150K(1) of the Competition and Consumer Act.

n. 'jurisdiction' means the Commonwealth of Australia, a state of Australia, the Australian Capital Territory or the Northern Territory of Australia.

o. 'legislation' includes Acts, enactments, Ordinances and regulations.

p. 'modifications' has the meaning given by section 150A of the Competition and Consumer Act.

q. 'participating jurisdiction' means a Party that applies the Competition Code as its law, either with or without modifications, to persons within the legislative competence of the Party.

r. 'Party' means a jurisdiction that is a signatory to, and has not withdrawn from, this Agreement.

Signatures

The Parties have confirmed their commitment to this Agreement as follows:

Signed *for and on behalf of the Commonwealth of Australia by*

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The Honourable Dr Jim Chalmers MP
Treasurer

November 2024

Signed *for and on behalf of the State of New South Wales by*

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The Honourable Daniel Moohkey MLC
Treasurer

November 2024

Signed *for and on behalf of the State of Victoria by*

_____

Tim Pallas MP
Treasurer

November 2024

Signed *for and on behalf of the State of Queensland by*

_____

The Honourable David Janetzki MP
Treasurer

November 2024

Signed *for and on behalf of the State of Western Australia by*

_____

The Honourable Rita Saffioti MLA
Treasurer and Deputy Premier

November 2024

Signed *for and on behalf of the State of South Australia by*

_____

The Honourable Stephen Mullighan MP
Treasurer

November 2024

Signed *for and on behalf of the State of Tasmania by*

_____

The Honourable Guy Barnett MP
Treasurer and Deputy Premier

November 2024

Signed *for and on behalf of the Australian Capital Territory by*

_____

Chris Steel MLA
Treasurer

November 2024

Signed *for and on behalf of the Northern Territory by*

_____

The Honourable Bill Yan MLA
Treasurer

November 2024

Schedules

Schedule 1: Governments should harness the benefits of competition

Policy intent

To maximise the benefits of competition and contestability, governments should have transparent processes to ensure that their decisions do not unnecessarily limit the number or range of market participants, their incentives to behave competitively or the choices and information available to consumers.

While avoiding undue restrictions on competition is vital, in some markets, governments may need to proactively create the conditions for effective competition. Where this is not feasible, governments may need to manage the effects of poor competition to ensure markets work in the interests of consumers.

Ongoing requirements

1a. Competition impact assessments

Parties will maintain processes to consider the competition impacts of major decisions that have potential for material impacts on competition, including in respect of:

- new or amended legislation;
- decisions to put in place or substantially update frameworks relating to procurement, industry assistance and planning (including regulatory, environmental or land use frameworks); and
- to the extent possible, cabinet decisions.

For these decision types, Parties will:

- conduct an assessment that, at a minimum, considers competition impacts by clarifying the policy objectives, considering options for achieving those objectives, estimating where possible the costs and benefits of each option (including impacts on competition), and demonstrating any measures that restrict competition pass the public interest test set out in section 1c.
  - this assessment should be proportional, with a proposal expected to have material negative impacts on competition subject to a more detailed assessment.
  - this assessment can be incorporated into Parties' usual impact assessment processes.
- use this assessment as an input in government decision-making.
- publish this assessment or the broader impact assessment containing it, to the extent permitted by cabinet processes.

To the extent possible, the framework to operationalise the Principles in the context of local governments will apply to this requirement, at minimum to major decisions relating to local government procurement, environmental or land use planning frameworks or policies, that could have a material impact on competition.

Parties recognise the importance of considering competition impacts in making government decisions beyond those subject to the processes outlined above.

1b. Review of existing barriers to competition

Parties commit to consider reforms to remove existing barriers to competition. Actions to remove existing barriers may be advanced through agreed reforms under the National Reform Agenda.

1c. Public interest exemption and review

Major government decisions must not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to competition to the community as a whole outweigh the costs; and
- the objectives of the policy, decision or action cannot be achieved by another approach that:
  - does not restrict competition or lessens the restriction on competition; and
  - has net community benefits that are at least as high.

To ensure any public interest exemptions under this Principle and its precursor, the Legislation Review Principle under the *Competition Principles Agreement*, remain appropriate:

- any decisions that restrict competition will be reviewed at the earliest of:
  - whenever decisions or policies are being reviewed, for example, as part of a sunsetting review of legislative instruments or as part of policy evaluations, or
  - every 10 years.
- the review must consider whether the public interest test exemption is still valid or whether the decision can be implemented in an alternative way that is more consistent with the Principle.

1d. Actively promoting competition

Parties commit to monitor emerging competition concerns within their jurisdiction, examine emerging issues and consider implementing changes to the design of markets to deliver long-term benefits for consumers by:

- helping to create the conditions for competition to work effectively, or
- where this is not feasible, managing the effects of poor competition to ensure that markets work in the interests of consumers.

Schedule 2: Governments should support consumers to benefit from competition

Policy intent

Informed and engaged consumers are a prerequisite for effective competition. However, consumers cannot confidently engage in markets if there are information asymmetries between businesses and consumers, prohibitive costs involved with accessing information or switching providers, or businesses are able engage in conduct that actively restricts switching to competitors. Information overload and a propensity to discount future costs, including 'add-ons', can also reduce consumer engagement. These issues may be particularly prevalent in concentrated or complex markets.

Governments can empower consumers by helping them identify which goods and services will best suit their quality and price preferences and by facilitating effective switching, even where consumers may not be actively engaged.

Ongoing requirements

2a. Proactively consider mechanisms to facilitate consumer empowerment

Parties should consider mechanisms to ensure that markets are working in the best interests of consumers when operating in markets and/or in imposing regulations on businesses. This could be informed by studies to evaluate the effectiveness of competition and the 'demand side' of concentrated or complex markets.

Categories of interventions could include:

- improving disclosures of information, such as labelling, standardised service quality assessment tools or accessible disclosure requirements, that assist consumers to make informed purchasing decisions.
- lowering barriers to switching in individual markets, such as reforming contractual provisions that make it challenging for consumers to switch or improving data portability.

Consistent with Principle 1, government decisions to support consumers should avoid unduly constraining consumer choice, including actions that increase the costs of changing suppliers.

2b. Public interest exemption and review

Recognising that interventions to give effect to this Principle may need to be tailored to specific markets, each Party will decide when and how to actively promote consumer engagement and empowerment to improve competition or to manage the outcomes of uncompetitive markets.

Schedule 3: Reform of public monopolies, including privatisation, should not harm consumers

Policy intent

Privatisation, leasing or structural reform of public monopolies should not lead to adverse outcomes for consumers. Clauses that allow a privatised monopoly to restrict competition or guarantee it a monopoly position can harm consumers by entrenching monopoly power. In contrast, price and service regulations can limit the ability of the privatised monopoly to abuse its market power.

Where structural reform takes place without privatisation, separation of regulatory responsibilities can ensure a government monopoly does not favour its own business when competition is introduced to a market in which it competes.

Independent and transparent reviews can assist in identifying likely issues and the most effective approach prior to reform.

Ongoing requirements

3a. Structural reform of a public monopoly

Before a Party leases, privatises or introduces competition to a market supplied by a public monopoly (or near-monopoly) including one that is wholly or partly government-owned, it will:

- remove from the monopoly any responsibilities for industry regulation. The Party will re-locate industry regulation functions to prevent the former or privatised monopoly enjoying a regulatory advantage over its (existing and potential) competitors.
- consider the merits of other reforms to the monopoly and industry to introduce greater competition or contestability.

The Party will commission a review to guide these decisions, including as relevant:

- whether the lease, privatisation or introduction of competition is likely to lead to net community benefits, including when considering public interest considerations beyond effects on competition;
- the merits of separating any natural monopoly elements from potentially competitive elements of the monopoly;
- the most effective means of separating regulatory functions from commercial functions of the monopoly;
- the price and service regulations to be applied to the industry, including any prices oversight or regulation;
- the merits of any community service obligations undertaken by a public monopoly and the best means of funding and delivering any mandated community service obligations (see also Schedule 4);

- (where the monopoly is not proposed to be privatised or leased) the most effective means of implementing competitive neutrality including the financial relationship between the monopoly and its owner (see also Schedule 4); and
- (where the monopoly is proposed to be privatised or leased) the costs of any provisions in the sale or lease agreements or contracts that would allow the privatised monopoly to restrict competition or effectively guarantee that it retains its monopoly status.

Reviews will include recommendations and findings for maximising competition and contestability for the wellbeing of the Australian community. Parties will publish the reviews, alongside their decision and reasons for their decision.

Reviews will be conducted independently. Parties that do not have an independent entity that is well placed to conduct the review may appoint an independent expert with a departmental secretariat or equivalent.

3c. Public interest exemption and review

Parties commit to, without exception, remove from a public monopoly any responsibilities for industry regulation before it is sold, leased or structurally reformed, as informed by an independent review.

Schedule 4: Government and private businesses should compete on a level playing field

Policy intent

Government business activities can enjoy special advantages by virtue of their government ownership, such as beneficial tax treatment, lower financing costs and shared resources. These advantages can allow them to charge lower prices that private businesses may struggle to compete with and, in extreme cases, can lead to private businesses exiting the market.

Competitive neutrality aims to remove any net competitive advantage arising from public sector ownership, levelling the playing field between publicly owned and other businesses, to promote the efficient allocation of resources. This improves the prices, quality and variety of goods and services that consumers are able to access.

Ongoing requirements

4a. Application to significant government business activities

Competitive neutrality applies to all significant government business activities that compete (or could compete) with private or other entities. This includes where there are no existing competitors to the Party's business activity but the activity is contestable.

Competitive neutrality only applies to the business activities of publicly owned entities, not to the activities of these entities that are both non-business and non-profit.

4b. Maintain a competitive neutrality policy

Parties are responsible for setting their own competitive neutrality policies and regularly updating them as market circumstances change.

The policy will provide:

- an objective of promoting efficient allocation of resources, by eliminating distortions arising from the public ownership of entities engaged in significant business activity;
- a clear definition of 'significant government business activity';
- guidance for government entities to determine which of their activities fit this definition;
- guidance on when to apply competitive neutrality to government start-ups;
- guidance on debt neutrality, which encompasses new and more complex forms of debt; and
- clear processes for when multiple jurisdictions are involved.

For significant government business enterprises classified as Public Non-Financial Corporations and Public Financial Corporations Parties will, where appropriate, adopt a corporatisation model and impose:

- full Commonwealth, state and territory, and local government taxes or tax equivalent systems;
- debt neutrality fees directed towards offsetting the competitive advantages provided by government guarantees (explicit or implicit) and other forms of beneficial financing; and
- regulations to which private sector businesses are normally subject, for example, regulations relating to the protection of the environment and planning and approval processes.

For a government entity not classified as Public Non-Financial Corporation or Public Financial Corporation that undertakes significant business activity as part of a broader range of functions, a Party may instead ensure that prices charged reflect full cost attribution for these activities, considering the items listed above where appropriate.

Parties will also encourage government entities to correct for other less explicit advantages, such as sharing government resources, including operating rent-free in government-owned buildings and accessing whole-of-government procurement contracts.

4c. Community service obligations

Community service obligations should be funded by the Party imposing the community service obligation. Parties should:

- limit compensation for community service obligations to the amount required to meet the policy objective of the community service obligation at least cost; and
- have oversight and monitoring that is independent of the government business enterprise to ensure remuneration for community service obligations is calculated based on clear targets and objectives and efficiently incurred costs, including capital costs.

Government business enterprises carrying out community service obligations will:

- transparently and specifically identify the issues being targeted and the services provided under the community service obligation relevant to the government business enterprise; and
- impose high standards of transparency and account separation around their cost and revenue structures to ensure that funding for the community service obligation is not used to cross-subsidise the offering of goods or services not covered by the community service obligation.

4d. Provide a complaints mechanism

Parties will maintain complaints avenues for breaches of competitive neutrality and will make efforts to simplify, streamline and continuously improve their complaints processes.

At a minimum, the complaints mechanism should include:

- independent receipt and consideration of complaints;
- allowing complaints from any source;
- undertaking investigations (where warranted) at low or no cost to the complainant where appropriate;

- processes for dealing with vexatious or out-of-scope complaints; and
- publishing investigation reports, to provide transparency over competitive neutrality breaches.

Parties are encouraged to publish responses to competitive neutrality investigation reports.

4e. Public interest exemption and review

Government decisions must not allow significant government business activities to receive a net competitive advantage from their government ownership unless it can be demonstrated that:

- the benefits of the restriction to competition to the community as a whole outweigh the costs; and
- the objectives of the policy, decision or action cannot be achieved by another approach that:
  - does not restrict competition or lessens the restriction on competition; and
  - has net community benefits that are at least as high.

To ensure any public interest test exemptions under this Principle remain appropriate:

- any decisions that restrict competition will be reviewed at the earliest of:
  - whenever decisions or policies are being reviewed, for example, as part of a sunsetting review of legislative instruments, renewal of contracts or as part of policy evaluations, or
  - every 10 years.
- the review must consider whether the public interest test exemption is still valid or whether the decision can be implemented in an alternative way that is more consistent with the Principle.

Schedule 5: Governments should promote a single national market

Policy intent

Unnecessary regulatory barriers to the movement of goods, services and workers across Australia restrict competition. This raises costs, reduces choice and constrains labour mobility.

A single national market will improve the flow of goods, services and workers across state and territory borders, improving outcomes for Australians and helping Australia to compete internationally. Removing barriers to interstate trade in:

- goods, such as those arising through differing regulatory standards, will support a greater variety of products and lower prices, and
- services, such as those arising through differing recognition of professional licences and registrations for workers, will improve labour mobility, prevent costly duplication and help to address skills shortages.

Ongoing requirements

5a. Application to decisions that could create or entrench barriers to interstate trade

Parties will consider this Principle when making decisions that could create or entrench barriers to interstate trade.

Parties will not create or entrench material barriers to the supply of goods, services and workers from other Australian jurisdictions, unless they can demonstrate particular local conditions that mean that deviations from this Principle would meet the public interest test. This includes policies that create barriers for competitors in other jurisdictions, or that favour local competitors.

Parties will ensure that regulators in their jurisdictions, in developing new or updated policies, consider the impact of their decisions on national competition, not just the impact within their regulated spaces and jurisdictions.

5b. Review of existing barriers to trade

Parties commit to consider reforms to existing barriers to the supply of goods, services and workers from other jurisdictions, including internationally, where appropriate. Actions to remove existing barriers may be advanced through agreed reforms under the National Reform Agenda.

5c. Public interest exemption and review

Government decisions must not create or entrench material barriers that limit the movement of goods, services and workers from other Australian jurisdictions unless it can be demonstrated that:

- the benefits of the restriction to competition to the community as a whole outweigh the costs; and

- the objectives of the policy, decision or action cannot be achieved by another approach that:
  - does not restrict competition or lessens the restriction on competition; and
  - has net community benefits that are at least as high.

To ensure any public interest test exemptions under this Principle remain appropriate:

- any decisions that restrict competition will be reviewed at the earliest of:
  - whenever decisions or policies are being reviewed, for example, as part of a sunsetting review of legislative instruments, renewal of contracts or as part of policy evaluations, or
  - every 10 years.
- the review must consider whether the public interest test exemption is still valid or whether the decision can be implemented in an alternative way that is more consistent with the Principle.

Schedule 6: Government pricing practices should be efficient and transparent

Policy intent

Government-set prices that are too low or too high can distort consumption and investment decisions.

Promoting efficient and transparent pricing practices for significant government business enterprises and for regulatory monopolies[1] can reduce these harmful distortions and drive better long-term outcomes for Australian consumers.

Ongoing requirements

6a. Efficient pricing for government-owned significant business enterprises

To promote efficient and transparent pricing practices, Parties will apply prices oversight by an independent body for government-owned significant business enterprises operating monopoly or near-monopoly businesses. Prices oversight will:

- be independent from the entity whose prices are being assessed;
- have the primary objective of efficient resource allocation;
- provide for consultation with interested persons; and
- publish any pricing recommendations, and the reasons for them.

Parties commit to cooperatively resolving cross-jurisdictional difficulties for the application of prices oversight for government-owned significant business enterprises.

6b. Efficient pricing for other government-provided goods and services

Parties will develop where necessary, maintain and periodically update an efficient charging guide for government-provided goods and services that takes into account factors including:

- the actual direct cost of providing the good or service;
- whether it would be feasible for efficiency improvements to reduce the cost of providing the good or service; and
- the social costs or benefits from providing the good or service (externalities).

6c. Public interest exemption and review

Parties commit to maintain independent prices oversight mechanisms for government-owned significant business enterprises operating monopoly or near-monopoly businesses and to maintain efficient charging guides without exception.

[1] Regulatory monopolies include administrative, licensing and inspection activities undertaken by governments (whether directly or under contract) to ensure compliance with relevant laws and regulations.

Schedule 7: Access to significant infrastructure facilities should be on reasonable terms and prices

Policy intent

Owners of significant infrastructure facilities with natural monopoly characteristics (including non-physical infrastructure) can exercise market power and hinder competition in markets that depend on their services by restricting access, charging inefficient monopoly prices, or lowering the quality of services provided.

- A facility owner competing in a market that is dependent on that facility (vertically integrated), may affect competition by restricting access for actual or potential competitors in the dependent market.
- A facility owner that is not a competitor in dependent markets (non-vertically-integrated), may have limited incentive to restrict access to users, but may use its market power to extract monopoly profits. This monopoly pricing causes inefficient supply chains, and impacts competition in dependent markets by deterring investment.

Frameworks to facilitate access to services provided by such facilities can promote effective competition and efficient investment. Such access should be provided on reasonable terms and prices and facilitate interoperability with the equipment and infrastructure of access seekers.

Ongoing requirements

7a. Access regimes for significant infrastructure facilities with natural monopoly characteristics

The Commonwealth will maintain a general access regime and institutional arrangements to provide for access to services provided by significant infrastructure facilities (including non-physical infrastructure) on reasonable terms and prices where:

- access would promote a material increase in competition in at least one other market; and
- the proposed facility providing the service can meet total foreseeable market demand over the proposed declaration period and at the least cost compared to any 2 or more facilities; and
- the facility is of national significance having regard to the size of the facility, its importance to trade or commerce or its importance to the national economy; and
- applying the regime to this facility would promote the public interest.

Parties will consider establishing and maintaining access regimes, including the development of targeted industry-specific regimes where it is in the public interest.

Access regimes should be based on the following tenets:

- Wherever possible, access should be on terms and prices agreed between the facility owner and the access seeker.

- Where agreement cannot be reached, the access regime should allow for determination of the terms (including quality, price and non-price terms of access) by regulation, such as arbitration, as appropriate.

7b. Relationship between Commonwealth and state/territory regimes

State and territory Parties may seek for their regimes to be certified as effective against the detailed access regime principles set out in Attachment A, following the processes in the Commonwealth's access regime. There may be a range of approaches available to a Party to incorporate the criteria.

The Commonwealth's access regime is not intended to apply to a facility covered by an effective regime unless substantial difficulties arise from the facility being situated in more than one jurisdiction.

7c. Public interest exemption and review

Parties commit to apply this Principle without public interest test exemptions, noting the development and application of an access regime to an industry or to an individual infrastructure facility is expected to include consideration of the public interest.

Parties are encouraged to review their access regimes on a periodic basis to ensure they continue to promote the public interest, including consideration of national consistency to avoid opportunities for regime-shopping.

Attachments

Attachment A: State and territory access regimes

Detailed access regime principles

For a state or territory access regime to conform to Principle 7 of the Agreement, it should take a reasonable approach to incorporate the detailed access regime principles below.

Scope

A state or territory access regime that complies with Principle 7 of the Agreement should:

- promote the economically efficient use and operation of, and investment in, the infrastructure by which services are provided;
- apply to services provided by significant infrastructure facilities that are reasonably likely to satisfy the following criteria:
  - access would promote a material increase in competition in at least one other market; and
  - the proposed facility providing the service can meet total foreseeable market demand over the proposed declaration period and at the least cost compared to any 2 or more facilities;
  - the facility is significant, having regard to the size of the facility or its importance to the economy of the state or territory;
- ensure that access (or increased access) to the service on reasonable terms and prices following a declaration of the services, would promote the public interest, having regard to:
  - the effect that declaring the service would have on investment in infrastructure services and markets that depend on the service; and
  - the administrative and compliance costs that would be incurred by the provider of the service if the service is declared.

Pricing principles

A state or territory access regime that complies with Principle 7 of the Agreement should ensure that regulated access prices:

- are set so as to generate expected revenue for a regulated service or services that is at least sufficient to meet the efficient costs of providing access to the regulated service or services;
- include a return on investment commensurate with the regulatory and commercial risks involved;

- include a date after which the regime in respect of a particular service would cease to apply unless reviewed and subsequently extended; noting, however, that existing contractual rights and obligations should not be automatically revoked; and
- provide incentives to reduce costs or otherwise improve productivity.

The access price structures should:

- allow multi-part pricing and price discrimination when it aids efficiency; and
- not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher.

Negotiation framework

A state or territory access regime that complies with Principle 7 of the Agreement should include a negotiation framework that ensures:

- The owner of a facility that is used to provide a service uses all reasonable endeavours to accommodate the requirements of access seekers.
- Wherever possible, third-party access to a service provided by a facility is on terms and prices agreed between the facility owner and the access seeker.
- Where agreement cannot be reached, the State or Territory establishes a right for access seekers to negotiate access to a service provided by means of a facility.
- Any right to negotiate access provides for an enforcement process.
- Access to a service for access seekers need not be on exactly the same terms and conditions.
- The provider or user of a service shall not engage in conduct for the purpose of hindering access to that service by any other person.

Dispute resolution:

A state or territory access regime that complies with Principle 7 of the Agreement should include effective dispute resolution arrangements. Where the owner and an access seeker cannot agree on terms and conditions for access to the service, they should be required to appoint and fund an independent body to resolve the dispute, if they have not already done so.

The decisions of the dispute resolution body should bind the parties; however, rights of appeal under existing legislative provisions should be preserved.

The dispute resolution body, in deciding on the terms and conditions for access, should take into account:

- the policy intent of Principle 7 of the Agreement;
- the provider's legitimate business interests and investment in the service;
- the public interest;
- the interests of all persons who have rights to use the service;
- the direct costs of providing access to the service;

- the value to the provider of extensions including expansion of capacity and expansion of geographical reach whose cost is borne by someone else;
- the value to the provider of interconnections to the facility whose costs is borne by someone else;
- the operational and technical requirements necessary for the safe and reliable operation of the facility;
- the economically efficient operation of the facility;
- the pricing principles;
- other matters the body determines are relevant.

The owner may be required to extend, or to permit extension of, the facility that is used to provide a service, if necessary, but this would be subject to:

- such extension being technically and economically feasible and consistent with the safe and reliable operation of the facility;
- the owner's legitimate business interests in the facility being protected; and
- the terms of access for the third party, taking into account the costs borne by the parties for the extension and the economic benefits to the parties resulting from the extension.

The dispute resolution body should only impede the existing right of a person to use a facility where the dispute resolution body has considered whether there is a case for compensation of that person and, if appropriate, determined such compensation.

The owner or user of a service shall not engage in conduct for the purpose of hindering access to that service by another person.

If there has been a material change in circumstances, the parties should be able to apply for a revocation or modification of the access arrangement which was made at the conclusion of the dispute resolution process.

The dispute resolution body, or relevant authority, where provided for under specific legislation, should have access to financial statements and other accounting information pertaining to a service.

Treatment of interstate issues

State or territory access regimes should have regard to the influence of the facility beyond the jurisdictional boundary of the state or territory.

Where more than one state or territory access regime applies to a service, those regimes should be consistent and, by means of vested jurisdiction or other cooperative legislative scheme, provide for a single process for access seekers to the service, a single body to resolve disputes about any aspect of access and a single forum for enforcement of access arrangements.

Accounting arrangements

A state or territory access regime that complies with Principle 7 of the Agreement should require separate accounting arrangements for the elements of a business that are covered by the access regime.

Merits review

Where merits review of decisions is provided, the review will be limited to the information submitted to the original decision-maker except that the review body:

- may request new information where it considers that it would be assisted by the introduction of such information;
- may allow new information where it considers that it could not have reasonably been made available to the original decision-maker; and
- should have regard to the policies and guidelines of the original decision-maker (if any) that are relevant to the decision under review.

Note: *The AustralAsia Railway Access Regime will be deemed to comply with Principle 7 of the Agreement until the end of the period for which it is presently certified as an effective access regime, being 31 December 2030.*