

1.0 Introduction

1. The Chamber of Commerce and Industry Queensland (CCIQ) welcomes the release of the Harper Competition Review Draft Report, and appreciates the opportunity to comment on the recommendations put forward as part of the National Competition Policy Review.
2. Australia's competitive environment has undergone dramatic changes since the Hilmer Report was commissioned 20 years ago. Advances in digital technology and increased technological connectedness, further integration of businesses into global markets and trade liberalisation policies has introduced new competition dynamics for small and medium enterprises.
3. The Harper Review is an exciting opportunity to provide a generational update to Australia's competition policies, laws, and institutions.
4. Ultimately, CCIQ believes the Review Panel's final report ought to focus attention on designing competition policy that places small business in an enhanced competitive position, particularly in light of monopolistic and duopolistic behaviour in certain markets.
5. CCIQ encourages the Review Panel to remain loyal to the overarching principle of ensuring competition policy is properly structured to encourage a level playing field for businesses.
6. With respect to the recommendations contained within the report, CCIQ supports the range of quality policy changes including the formation of the Australian Council for Competition Policy, strengthening obligations on government to compete fairly against the private sector, a review of regulations that restrict competition and changes to misuse of market power provisions.
7. The Chamber is especially encouraged by the Harper Review Panel re-emphasising the need for a timely review of the *Fair Work Act* and stresses the critical importance of both linking and extending principles of competitive flexibility to workplace relations reform.
8. In contrast, CCIQ expresses concerns regarding proposals to deregulate shop trading hours, sell pharmaceutical products in supermarkets and introduce competition principles in planning and zoning rules.
9. This submission will comment on the proposed recommendations, canvass in detail the reasons as to why small businesses support or oppose particular recommendations, and discuss their direct impact on small business competitiveness in the broader economy.
10. Small business is the lifeblood of Queensland's economy. They comprise around 96 per cent of all businesses and provide over half of employment opportunities to Queenslanders. The health of the small business sector is critical to the health of the economy, and in this light,

CCIQ urges the Review Panel to produce a final report that ensures competition policy settings for conditions are set for small and medium enterprises to perform their best.

2.0 Australian Council for Competition Policy

11. CCIQ supports draft recommendation 39 to establish an Australia Council for Competition Policy (ACCP) to replace the National Competition Council (NCC).
12. CCIQ believes it is fitting that a new era of competition policy reform drives the establishment of a renewed and re-energised institution to oversee necessary competition changes.
13. As it stands, the NCC lacks the resourcing and delegated responsibility to fully and confidently implement competition reform.
14. CCIQ supports recommendations that afford the ACCP a wider range of expertise in decision making, however cautions against the imposition of additional bureaucratic complexity.
15. To be properly structured, and effective, the ACCP should be a body that creates opportunities for small business with the right powers and procedures.
16. This will also necessary include a bolstering of the resources of the existing Australian Competition and Consumer Commission (ACCC) to ensure the competition watchdog has the capacity to rigorously pursue competition policy conformity. CCIQ often finds that the legislative framework is appropriate but regulators lack the resources to averse and action their legislated responsibility.
17. Overall, CCIQ supports the establishment of a renewed body that will lead and drive competition advocacy, with broader powers assigned for data collection and market analysis, and will strengthen a contemporary competition framework that meets the needs of an increasingly interconnected economy.

3.0 Strengthening obligations on government to compete fairly against the private sector

18. Government's that compete with private sector operators remain a serious concern for small businesses in Queensland.
19. Therefore, CCIQ supports draft recommendations 13, 14, and 15 that address competitive neutrality policy, complaints, and reporting nationally.
20. CCIQ welcomes the recommendation that the principles of competitive neutrality be reviewed and updated against best practice, particularly with respect to complaints handling mechanisms.

21. CCIQ is pleased to see the Harper Panel upholding a commitment to the principle that government must not derive a competitive advantage simply as a result of ownership at the expense of smaller private firms looking to enter markets and compete on price.
22. The Panel's terms of reference specifically provide for an examination of the proper boundaries for government economic activity, and CCIQ welcomes the recommendations proposed to ensure responsible government activity in markets.
23. Further, CCIQ agrees with the Productivity Commission's recommendations that governments be legislatively required to conduct timely annual reporting in relation to competitive neutrality, and wholeheartedly supports the Australian Chamber of Commerce and Industry's (ACCI) calls for 'access to justice' for small businesses who are directly impacted by anti-competitive conduct by government.
24. Access to justice for small businesses includes the ability to access proper, streamlined, and relevant information, and receive prompt and effective support and/or action when competing with government business. This can be achieved by the establishment of a small business ombudsman or an expansion of the proposed powers of the Australian Council for Competition Policy.
25. CCIQ is pleased the Harper Panel has recommended establishing clear guidelines to government on best practice ways to frame competition policy. This will inevitably ensure that publically-owned entities do not thwart entrepreneurial start-up, skew competition, or lead to the inefficient allocation of resources in the context of the new economy.

4.0 Misuse of Market Power

26. CCIQ strongly supports draft recommendation 25 which suggests the inclusion of an 'effects test' to current misuse of market power provisions as per section 46 of the *Competition and Consumer Act 2010*.
27. CCIQ believes the inclusion of an 'effects test' will allow for more scrutiny of businesses that purposefully damage their competitors, many of whom are often smaller firms.
28. An 'effects test' will also offer greater protection to smaller operators from the predatory pricing practices of larger companies, and will go a long way in protecting small business against the monopolistic actions of powerful market operators.
29. Business applauds the greater focus placed on protecting competition rather than protecting competitors and sees strong merit in the recommendation to establish an 'effects' test governing the misuse of market power.

30. Similarly, the Chamber supports courts being granted powers to order the divestiture of assets by a firm found to have misused market power, and believes this will act as an effective deterrent against anti-competitive behaviour of the market majors.
31. The duopoly of Woolworths and Coles undermines the notion of competition as a central component of a functional market economy. The effects of the duopoly are felt in very real and practical terms across rural, regional, and urban Queensland by small and medium enterprise in the food-retailing sector.
32. CCIQ commends the Review Panel for making the bold recommendations required to ensure Coles and Woolworths compete with smaller firms on an equal footing.

5.0 Deregulating shop trading hours

33. CCIQ strongly opposes the Harper Review Panel's recommendation to deregulate shop trading hours nationally.
34. CCIQ believes trading hours' legislation is the most effective mechanism for small business to address the market dominance of the major retailers. In this light, full deregulation of shop trading hours would make it impossible for small and medium businesses to compete against the major market players in Coles and Woolworths in Queensland.
35. Small businesses regularly provide feedback to CCIQ that they find it increasingly impossible to compete effectively against the market activities of the major retailers, who expend most of their damage in rural and regional areas of Queensland whose cities and towns rely on small business patronage.
36. Coles and Woolworth's duopoly of the grocery market, accompanied by the continuous pursuit of the vertical and horizontal integration of their operations, has had significant impacts for competition in Queensland's food retailing sector.
37. In reality, this has had the effect of the duopoly squeezing down prices across their supply chain to the extent that prices paid are below cost to supply to undermine competition.
38. Examples of predatory pricing including \$1 litres of milk and 85 cent loaves of bread have decimated competition. Further, Queensland's liquor licensing laws with Aldi, Spa, Foodworks and IGA prevented from selling alcohol, yet Coles and Woolworths own bottle shops next to their supermarket enabling them to offer one-stop shops for all dining and entertainment needs.
39. The Chamber believes that in the absence of any other reform, continued regulation of trading hours is necessary to ensure the competitiveness of small business in Queensland.

40. However, CCIQ agrees there is considerable scope to improve the current framework to remove unnecessary compliance costs for small businesses and ensure that regulation continues to efficiently and effectively meet intended objectives.
41. Accordingly, CCIQ has recommended the Queensland Government conduct a limited review of shop trading laws and invite the Harper Review Panel to examine in detail the contents of CCIQs report entitled Queensland Shop Trading Hours.¹
42. CCIQ urges the Harper Panel to note that small and medium businesses would be far more receptive to the suggestion to deregulate shop trading hours if the Federal Government committed to reforming the workplace relations framework, particularly limiting the imposition of penalty rates that restrict flexibility and the capacity of businesses to trade at certain times.

6.0 Sale of pharmaceutical products in supermarkets

43. CCIQ strongly opposes draft recommendation 54 pertaining to the sale of pharmaceutical products in super markets. The Chamber notes that the Review Panel regards the current framework determining the ownership and location of pharmacies as ‘unnecessary’.
44. CCIQ argues that if current ownership and location guidelines are loosened, smaller pharmacies would be significantly disadvantaged in the marketplace.
45. Such a recommendation would open the field to major market players such as Coles and Woolworths to operate outside their core business model and sell pharmaceutical products in supermarkets, to the ultimate detriment of the consumer.
46. Further, the operating expenses of pharmacies are higher and more difficult to offset than for other retail businesses, due to the need to meet various regulatory and professional requirements, while conforming to their core function of dispensing government subsidised medicines.
47. Unlike other retail businesses that can adjust their selling prices in response to market changes and cost pressures, pharmacy owners have a limited ability to pass on fixed underlying costs because prices are largely regulated.
48. Therefore, any removal of ownership and location rules and regulations as per draft recommendation 54 would create the conditions for Woolworths and Coles to dominate smaller pharmacies, whose capacity to absorb costs are comparably non-existent when contrasted with the majors.

¹ Chamber of Commerce and Industry Queensland “Queensland Shop Trading Hours” September 2014 located at <https://www.cciq.com.au/assets/Documents/Advocacy/Blueprints/Shop-trading-hours-print-final120914.pdf>

7.0 Electricity

49. CCIQ agrees in principle with draft recommendation 16, specifically with respect to the deregulation of electricity retail prices. At present, there is currently a lack a competition in regional Queensland's energy market and this is negatively impacting prices for consumers and small business.
50. As with other costs of doing business, CCIQ advocates for ensuring electricity pricing is as low as reasonably possible. In this light, CCIQ has tentatively welcomed the Queensland state government's announcements towards de-regulating the retail electricity market in South East Queensland, provided the government is able to satisfy community expectation of improved services and lower prices for electricity consumption.
51. Overall, greater competition is needed in Queensland's electricity markets, particularly in rural and regional parts of the state, to ensure prices are lowered for businesses. To this end, CCIQ supports moves to introduce greater competitive capacity into such markets as increased competition in the retail market for regional Queensland will necessarily benefit consumers.

8.0 Competition principles in planning and zoning rules

52. While CCIQ understands the desire to introduce competitive principles in planning and zoning rules and regulations, the Chamber expresses serious reservations as to what impact draft recommendation 10 would have on small and medium retailers if adopted by governments.
53. Already operating in a challenging and increasingly globalised market, smaller retailers require government to be mindful of the unique challenges of the industry when developing competition policy in this space.
54. To this end, planning policy must be carefully designed to strike the right balance between allowing innovative firms to enter new and local markets, while ensuring existing small and medium retailers are not removed or intimidated by larger firms with greater capacity to enter markets.
55. Policy-makers must also consider the excessive bargaining power of some landlords. Smaller businesses are regularly at risk of being priced out the market for retail space due to the operation of big businesses in close proximity.

56. Boutique or speciality retailers told CCIQ they directly observed a link between retailers with a larger balance sheet and the surge of lease agreements that unrealistically seek to place upward pressure on rent payable when discussing renewal. Often for individual retailers, once a site has been committed to, a business cannot easily withdraw from the lease without substantial loss and closing costs.
57. As larger businesses gain more and more market share their bargaining power in prime locations makes it impossible for small retailers to negotiate reasonable terms and conditions on lease agreements.
58. The abovementioned arguments must be taken into consideration by the Review Panel when formulating the final report to government.

9.0 Conclusion

59. CCIQ welcomes the most comprehensive review of competition policy in the last two decades. The Harper Panel has correctly identified some of the significant impediments faced by small business in the marketplace, and has provided a number of recommendations that support greater choice and better competition.
60. CCIQ believes the Harper Panel's review of competition policy has in many respects effectively considered what improvements can be made to manage the competition framework so that SMEs are not significantly disadvantaged. Recommendations to establish a reinvigorated independent body tasked with advocating for continuing competition policy reform, commitments to greater transparency and accountability regarding the principles of competitive neutrality, and the inclusion of an 'effects test' to accompany the misuse of market power provisions are measures welcomed by small businesses in Queensland.
61. However, proposals relating to the full deregulation of shop trading hours, the sale of pharmaceutical products in supermarkets, and an introduction of competition principles in planning and zoning rules are all likely to undermine the viability of the small business community that in turn diminishes competition. More broadly, these measures would have significant negative consequences for the health and productivity of Australia's economy as a whole.
62. Overall, the best way to take Australia forward is to establish an effective, pro-business competition policy framework that reflects an equal playing field for all market participants to guarantee productivity and growth targets are achieved, and *all* businesses are able to successfully compete.

63. Lastly, CCIQ references the Australian Chamber of Commerce and Industry's submission to the Harper Panel Draft Report and pledges its full support to the contents of that submission.