

15 September 2025

Dear Productivity Commission

## **Response to Interim Report: Creating a more dynamic and resilient economy**

Effective regulation is a . It not only protects people from significant and life-altering harm, but also moderates distortive information and power imbalances and is essential for the development and maintenance of trust and confidence in any market.

We want regulation that works and welcome a conversation about removing duplication and unnecessary complexity. Just as a lack of regulation can result in significant harm, regulatory confusion, gaps and overlaps can also be the source of misconduct and poor practices and act as a barrier, rather than an aid, for anyone trying to prevent or correct harmful outcomes.

However, looking at similar discussions about regulation internationally, particularly in the United Kingdom, we have seen these conversations unhelpfully skew to the interests of business at the expense of consumer protection. The measure of success for any regulation should be whether it delivers on its intended outcome. A narrow focus on business costs of regulation excludes consumers and other intended beneficiaries of regulation.

In response to the Productivity Commission's Interim Report, we recommend as a priority:

- No reduction in meaningful protections or obligations. Instead, reduce regulatory stock and confusion by focussing on simplification of systems, development of outcomes-focused regulation, and reducing harmful and unnecessary regulatory gaps and overlaps.
- Assessments of regulatory success must be grounded in whether the regulation is delivering on its intended outcomes, not just whether a change has reduced costs or administrative burden for business.
- Avoid setting quantified targets for regulatory burden reduction based on the volume of obligations or cost to industry. Instead, work with regulators to identify meaningful measurements of holistic regulatory outcomes.
- Any Government statements or performance indicators used to guide and assess regulatory reform must explicitly recognise that additional risk should be borne by those with the resources and information to understand and manage it—namely, businesses and government—not individual consumers.

Please see below our full submission in response to the Interim Report: Creating a more dynamic and resilient economy (note, this submission responds only to section 2 of the interim report: Regulating to promote business dynamism).

A summary of all recommendations is available at **Appendix A**.

Please contact Jean Skeat, Director of Policy and Campaigns at Consumer Action Law Centre on [REDACTED]  
or at [REDACTED] if you have any questions about this submission.

Yours Sincerely,

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# Effective regulation is the foundation of a fair and functional economy

## Submission in response to the Productivity Commission Interim Report: Creating a more dynamic and resilient economy

### Value of effective regulation

We agree that well-designed regulation makes markets work better and protects people from harm, while poorly designed regulation creates unnecessary costs and risks. We go further: effective regulation is not just useful, it is the essential foundation of any functioning market.<sup>1</sup>

The Productivity Commission's interim report addresses the burden of regulation on business, but overlooks its value to consumers, including small business consumers, and regulations' objectives. Framing regulation primarily through the lens of compliance costs is narrow and short-sighted. The true test of regulation is whether it delivers on its intended outcomes.  potentially misleading assessment of how to foster a dynamic

Quantifying the benefits of  but the evidence of its value is clear. Where regulation has been absent, weak or poorly enforced in Australia, the results have been severe and often disproportionately borne by people experiencing vulnerability. The Banking Royal Commission revealed predatory lending, exploitative fees and products sold without regard to suitability—costs ultimately borne by individuals, families and the economy as a whole. The Aged Care Royal Commission and the Disability Royal Commission tell similar stories: regulatory systems that failed to keep pace with risks, allowing systemic harm to proliferate.

Conversely, there are clear examples where consumer protections, though costly to implement, delivered enormous public benefit.

For instance, following the global financial crisis of 2007-08, in June 2009, the then Rudd Labor government introduced the National Consumer Credit Protection Bill 2009 imposing uniform national responsible lending obligations on Australian credit license holders.<sup>2</sup> In the wake of these reforms, the Loan-to-Value Ratio (LVR) of new bank lending to owner-occupiers dropped substantially, indicating a reduction in risk of borrower over-indebtedness.<sup>3</sup> Despite recent attempts to water these rules down citing 'regulatory burden',<sup>4</sup> there is broad consensus—from consumer advocates to institutions like the Reserve Bank of Australia—that adequate lending standards are critical to maintaining financial stability.<sup>5</sup> This example illustrates the necessity of evaluating regulation not only in terms of cost, but also in terms of its value, objectives, and impact.

### There are clear and ongoing harms that require additional protections

A focus on regulatory cost to business should never prevent or impede governments and regulators from implementing fair, effective, and efficient protections to address ongoing and systemic harm. While compliance costs are often cited as a reason to limit regulation, this narrow perspective risks leaving significant harms unaddressed.

A clear example is small business lending, which remains largely unregulated in Australia.<sup>6</sup> The absence of consistent protections for small business borrowers has allowed harmful practices—such as predatory loans,

<sup>1</sup> Freiberg A, Pfeffer M, van der Heijden J 2021, 'Regulation and the war on red tape: A review of the international academic literature', Monash University Faculty of Law Legal Studies Research Paper Series, <https://ssrn.com/abstract=4001972>

<sup>2</sup> Senate Economics Legislation Committee 2021, [National Consumer Credit Protection Amendment \(Supporting Economic Recovery\) Bill 2020 \[Provisions\] Report](#), section 1.17

<sup>3</sup> Morgan R and Ryan E 2024, [RBA bulletin: Recent Drivers of Housing Loan Arrears](#), graph 10

<sup>4</sup> Senate Economics Legislation Committee 2021, [National Consumer Credit Protection Amendment \(Supporting Economic Recovery\) Bill 2020 \[Provisions\] Report](#), section 1.21

<sup>5</sup> Ellis, Lucy 2012, *Prudent Mortgage Lending Standards Help Ensure Financial Stability*, [speech](#)

<sup>6</sup> <https://www.abc.net.au/news/2024-05-23/predatory-lenders-circle-small-businesses-owing-ato-debt/103875522>

opaque fees, and exploitative contract terms—to proliferate, with devastating consequences for small businesses, their employees, and the wider economy. Financial counsellors routinely witness productive small and micro-businesses, as well as sole traders, failing unnecessarily because of inappropriate lending, insufficient financial hardship support, or a lack of access to binding dispute resolution. Without appropriate regulatory safeguards, these risks continue. Small business lenders may have reduced compliance costs, but it is the public that ultimately bears this risk.

This example underscores that the potential burden on business must be weighed against the real and measurable harm caused by regulatory inaction. Effective regulation is not merely a cost to be avoided—it is an investment in fairness, stability, and long-term economic resilience.

### **Lack of regulation does not result in a more dynamic market**

We agree that competition and a dynamic economy can deliver positive outcomes for individuals. However, it is a misconception that less regulation automatically leads to greater competition, lower prices, or improved access to goods and services. In fact, deregulation without adequate safeguards can expose consumers—particularly vulnerable ones—to significant harm.

One example is the inability of regulators to keep pace with rapid changes in technology and digital markets. This lag has created gaps in legal protections, leaving consumers exposed in environments where oversight is weak or absent. The result is a rise in waste, fraud, and declining consumer trust—undermining the integrity of markets that are increasingly central to everyday life.

A particularly acute manifestation of this problem is the sharp rise in scams. Exploiting regulatory gaps and digital vulnerabilities, scams have caused substantial financial losses for individuals and businesses alike. Their scale and sophistication have severely undermined public confidence in online platforms.

This erosion of trust poses a serious threat to future productivity, which will depend heavily on digital engagement. Without strong, adaptive regulation that protects consumers and ensures accountability, the benefits of a dynamic digital economy risk being lost to unchecked harm.

Another example of a regulatory gap impeding dynamism is the use of deceptive and manipulative design, such as dark patterns. With no protections against many dark patterns, Australians continue to lose time, money and control over their privacy. Research from the Consumer Policy Research Centre has found that three in four (75%) Australians have had difficulties cancelling subscriptions with one in 10 simply giving up and continuing to pay for subscriptions they no longer need or want.<sup>7</sup> A conservative estimate by the Consumer Policy Research Centre reveals that based on losing only a nominal amount of just \$5 in unwanted subscriptions, Australians are losing approximately \$46 million because of this deceptive and manipulative practice.<sup>8</sup> These practices, unregulated, pay dividends for businesses but leave Australians worse-off each time.<sup>9</sup> This imbalanced view of productivity, where only industry benefits, is not the definition of a dynamic market.

### **Effective regulation requires engaged and resourced regulators and enforcement of existing rules**

We agree that the addition of overlapping, and sometimes conflicting, regulations does not lead to better outcomes for the consumers interacting with the regulated goods, companies and services. Instead, it can create confusion, inefficiency and regulatory arbitrage or avoidance. To make regulation truly effective, it must be backed by meaningful consequences and penalties and a regulator that is resourced and empowered to pursue regulatory action. Enforcement of regulations is essential to deter poor practices and reduce the perceived need to introduce further layers of complexity. For example, Consumer Action Law Centre has long supported clients with motor car

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<sup>7</sup> CPRC, 2024, Let Me Out, <https://cprc.org.au/report/let-me-out>

<sup>8</sup> CPRC et. al., 2024, Joint submission from consumer organisations on unfair trading, <https://cprc.org.au/wp-content/uploads/2025/01/UTP-Consumer-Sector-Submission FINAL DEC2024.pdf>

<sup>9</sup> Gupta, C., 2025, Made to Manipulate, <https://cprc.org.au/report/made-to-manipulate-report>

disputes. The absence of penalties for breaches of Consumer Guarantees in the Australian Consumer Law leaves consumers seeking to enforce their rights through VCAT, a process that takes over 60 steps<sup>10</sup> and between 12-24 months for a hearing. Even where a motor car trader has egregiously breached their statutory consumer guarantee obligations, absent penalties for the breach, at best a consumer will receive a refund, replacement or repair to their car (this can be discounted because of the use of or age of the car). Until penalties can be imposed for consumer guarantee breaches, there is little to deter this conduct from continuing.

Increased transparency of behaviour and misconduct also contributes to the effectiveness of our existing regulatory framework. The public, advocates and regulators should be equipped with the information they need to hold businesses to account for breaches of existing laws and understand the impact of current regulation.

In addition, regulators must be properly resourced and empowered to take on the difficult task of streamlining existing rules to ensure clarity and coherence.

**RECOMMENDATION 1.** Ensure regulators are properly resourced and empowered to enforce current regulatory system.

**Good regulation does not mean less regulation**

We are not opposed to the productivity commission's definition of "good" versus "inappropriate" regulation." However, it is essential that any definition of "good" versus "inappropriate" regulation is carefully considered. A simplistic or overly narrow definition risks undermining the broader public value that regulation is designed to deliver.

The Productivity Commission's current framing of regulatory success—such as shorter approval times for businesses and reduced duplication (p. 34)—is too limited. While efficiency is important, this lens excludes the broader purpose of regulation: to protect consumers, ensure fairness, and support public interest outcomes. A narrow focus on business costs risks marginalising the needs and experiences of consumers and other intended beneficiaries of regulation, such as to health, wellbeing or safety.

**RECOMMENDATION 2.** The assessment of regulatory success must be grounded in whether the regulation is delivering on its intended outcomes, not just whether it reduces costs or administrative burden for business.

To ensure a more balanced and inclusive approach to regulatory reform, it is critical that consumer concerns are actively included in all discussions about better regulation. This means ensuring that consumer representatives have a seat at the table wherever business interests are being consulted or represented.

**RECOMMENDATION 3.** Actively include consumer voices in regulatory reform processes to ensure that the design and evaluation of regulation continue to serve the key beneficiaries of the regulation.

#### Regulatory gaps and overlaps can also harm consumers

We support efforts to reduce duplication across regulatory systems. Regulatory complexity does not promote good outcomes. It makes it harder for industry to understand and comply with rules, while also creating barriers for consumers looking to enforce their rights. Gaps and overlaps lead to fragmented oversight by regulators, increased capacity for regulatory avoidance and a system that is difficult for consumers to navigate, often resulting in slow or no outcomes and significant additional stress and harm.

For example, in rapidly evolving industries, new technologies can emerge that are not covered wholly under existing regulatory jurisdictions. In the consumer energy resources (CER) sector, companies frequently partner with financiers to offer Buy Now Pay Later (BNPL) products alongside solar panel installations. This means what feels like a single transaction for a consumer can be covered by multiple regulators and regulatory regimes. When issues arise—whether with the solar panels or the associated credit product—consumers are often forced to

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<sup>10</sup> CPRC 2023, [Detours and Roadblocks, consumer experiences of faulty cars in Victoria](#) p4



engage with multiple parties to seek a resolution. The division of regulatory responsibilities between sectors creates confusion, and the lack of a clear, coordinated pathway for redress can leave consumers without effective support. In many cases, the only option available to consumers is to pursue legal action through the courts. This process is often prohibitively expensive, complex, and time-consuming, placing an unfair burden on individuals who are simply trying to resolve a legitimate issue.

#### Regulatory simplification or harmonisation is more productive and sustainable than wholesale removal of protections

We welcome sensible conversations about simplification or harmonisation of rules. Streamlining regulation and addressing gaps and overlaps can significantly improve the ability of regulators to operate efficiently and effectively across the whole economy.

For example, harmonising the electrical safety framework for household electrical consumer products between Australian jurisdictions is a common-sense improvement that will address regulatory gaps, reduce regulatory burden and maintain safety for Australians. The ACCC is also currently implementing changes to increase flexibility for businesses to use over [REDACTED] compromise safety. Done well, this should also reduce regulatory [REDACTED]

We believe there may be similar opportunities to review, simplify, and in doing so, strengthen, other parts of our product safety framework. For instance, Australia's process to recall faulty goods is split across multiple bodies, including the Department of Infrastructure, the ACCC, TGA, FSANZ and electricity safety regulators. Some product categories – like pet food – have no body responsible for overseeing recalls. This system is complex for businesses to navigate and for consumers to understand and report issues when things go wrong.

Importantly, in each of these examples, we are not proposing the wholesale removal of protections. Instead, each involves a detailed and systematic process of looking at current protections, understanding gaps and inconsistencies and streamlining them in a considered way. Throughout, the regulatory objective, in this case safety, is front and centre and guides all decisions through the simplification or harmonisation process.

#### Complexity also introduced at request of industry

As representatives of consumers, it is our core role to advocate for system and regulatory reforms that will make our system fairer and protect vulnerable Australians from harm. However, as outlined above, unnecessary complexity and duplication do not serve that end. It is important to acknowledge that systems can and have been complicated at the request and in the interest of industry participants in reform processes. This can be done to create bespoke regimes to suit specific interests or business models and where industry opts to support a less substantive, but more complex, set of obligations.

One example of this result is the introduction of the new Low Cost Credit Contract regime in response to the significant harm of unregulated Buy Now Pay Later (BNPL) products. Appropriate regulation of BNPL products is welcomed and essential as they pose significant risk to consumers by enabling unregulated debt accumulation, disproportionately affecting low-income consumers. This harm would have been addressed by the recognition of BNPL products as credit and their introduction into the Responsible Lending Obligation (RLO) regime. Instead, the introduction of 'modified RLOs' through the new Low Cost Credit Contract regime has resulted in both less effective consumer protection (when compared to general RLOs) and additional complexity and confusion within our credit laws.

#### Value of outcomes focused, principles-based regulation

There are opportunities to make greater use of outcomes focused, principles-based regulation, particularly in complex markets. Instead of prescribing every step, this kind of regulation focuses on the goal—what consumers should see or experience—leaving it to businesses to decide precisely how they meet the standard.

One example of this kind of regulation is section 912A(1)(a) of the Corporations Act which requires financial services licensees to do all things necessary to ensure that the financial services covered by the licence are provided efficiently, honestly and fairly. This provides a flexible, overarching norm that enables regulators to hold businesses accountable for a range of practices, without specifying what they must or must not do.

Importantly, section 912A(1) has been most effective when it has been backed by penalties. For decades, the rule could only be enforced by ASIC through licensing action, reducing the opportunities for the regulator to test the meaning of the law, or incentives for businesses to ensure they complied with it. However, following the Financial Services Royal Commission, significant penalties have been introduced and ASIC has brought a range of court actions under this provision.

Looking forward, we support the development and introduction of principle- or duty-based obligations. For example, the Government's commitment to introduce a general prohibition against unfair trading practices prohibition,<sup>11</sup> or the ongoing consideration of an overarching consumer duty for energy retailers.<sup>12</sup>

**RECOMMENDATION 4.** Rather than any reduction in meaningful regulation or obligations, reduce regulatory stock and complexity, and support the development of outcomes-focused regulation, to reduce costs and overlaps.

### **Assessment of full regulatory impact should inform government decisions**

Efforts to quantify regulatory burden often risk disproportionately prioritising the interests of profit-driven entities. While it is relatively straightforward to measure the costs of compliance for businesses, it is far more challenging to quantify the benefits of regulation or the costs of regulatory failure. In Regulatory Impact Assessment (RIA) processes, large businesses are typically well-resourced to commission evidence that highlights the costs they face. In contrast, consumer and public interest groups often lack the capacity to produce equivalent evidence, resulting in a one-sided assessment that overlooks the harm caused by markets that consumers cannot trust or safely participate in.

While cost to individuals is rarely measured or taken into account when considering deregulation, international examples confirm that costs of regulatory compliance are rarely as high as the cost of an unregulated market to consumers. In 2024, the European Union's Digital Fairness Fitness Check found that unfair practices (such as the dark patterns referenced above) are costing Europeans EUR 7.9 billion every year while the cost of regulatory compliance for businesses is not more than EUR 737 million.<sup>13</sup> There is a grave mismatch between the narrative of regulatory compliance that is often voiced by industry and the reality of the cost that individual Australians continue to pay in markets that have not been designed with them in mind.

We have also been closely monitoring the UK's approach to aligning regulation with economic growth, and we are concerned by its disproportionate focus on reducing complexity and burden for businesses. This approach lacks a balancing consideration of how consumers and other intended beneficiaries engage with and benefit from regulation. Moreover, the UK's use of blunt success metrics—such as a 25% reduction in business administration costs and business-only feedback loops—fails to capture the broader public interest and is, overall, detrimental to the regulatory environment. Instead of encouraging better, proportionate and more efficient regulation, blunt quantitative targets are more likely to result in less regulator action, worse outcomes for market participants, and decreased trust and confidence.

### Judge performance by outcomes

We agree with the principle that key performance indicators (KPIs) for regulation should be based on outcomes, not outputs. These outcomes must be holistic and reflect the lived experiences of all stakeholders, not just industry.

<sup>11</sup> ACCC 2024, [Australian Competition & Consumer Commission - Submission in response to: Unfair trading practices – supplementary consultation paper](#)

<sup>12</sup> Jeannie Marie Paterson and Evgenia Bourova, Melbourne Law School 2024, [report-doc-duty-care-essential-energy-services-preliminary\\_o.pdf](#)

<sup>13</sup> Gupta, C., 2025, Made to Manipulate, <https://cprc.org.au/report/made-to-manipulate-report>



Any assessment of regulatory burden must be contextualised by its relationship to consumer harm. A reduction in cost that coincides with an increase in harm is not evidence of improved regulatory effectiveness. We suggest working with regulators to identify meaningful measurements of holistic regulatory outcomes.

**RECOMMENDATION 5.** Avoid setting quantified targets for regulatory burden reduction based on the volume of obligations or cost to industry. Instead, work with regulators to identify meaningful measurements of holistic regulatory outcomes.

#### Identify genuine impact

We also support efforts to improve the quality of impact analyses so that decision-makers are better informed. However, this requires strengthening the capacity of the Office of Impact Analysis (OIA) to assess and communicate not only the costs but also the benefits of regulation. The OIA must be empowered to measure the risk of harm and to ensure that impact assessments adequately consider the positive outcomes of regulation. This includes requiring that all analyses meet a standard of adequacy in evaluating both costs and benefits.

Regulatory impact assessments are distributed across different groups. For example, a regulatory protection to a small, vulnerable population—such as mainable, even if the macroeconomic benefit appears limited.

**RECOMMENDATION 6.** Regulatory impact assessments must consider benefits of regulation and include distributional analysis that recognises the additional value of regulation in protecting the rights and interests of people experiencing disadvantage and vulnerability.

#### **Risk is likely borne by the most vulnerable**

Recommendation 2.3 in the Productivity Commission's interim report recommends that policymakers tolerate more risk as a necessary trade-off for business dynamism. In practice, however, this additional risk will not be fairly or evenly distributed without proactive care and ongoing vigilance. Financial counsellors regularly witness vulnerable consumers—those with limited resources, information, or bargaining power—bearing the burden of un- or under-regulated markets. The result on increased regulator risk is often harmful practices and egregious profit-seeking by industry, whether through predatory lending, poor product design, or unfair business practices.

An example of this dynamic is the current under-regulation of the telecommunications industry which has resulted in glaring examples of mis-selling and harm due to poor sales practices and credit assessment requirements. Industry develops its Telecommunications Consumer Protections Code which is then registered and 'enforced' by the telecommunications regulator. In stark contrast, the impact on vulnerable consumers of a lack of clear and direct regulation has been made clear by recent litigation by the ACCC under the *Competition and Consumer Act 2010*. For example, Optus Mobile has admitted to engaging in unconscionable conduct by selling telecommunications products and services to vulnerable consumers—including First Nations Australians, people with cognitive disabilities, and those with limited financial literacy—who did not need, could not afford, or could not use them.<sup>14</sup>

Any regulatory or policy framework must ensure that additional risk is assumed by those equipped to manage it—businesses and government—not by consumers who are least able to understand the risk or absorb loss. Embedding this principle in regulatory performance indicators would help prevent systemic harm, support economic resilience, and protect the most vulnerable.

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<sup>14</sup> ACCC 2025, [Optus agrees to \\$100m penalty, subject to court approval, for unconscionable conduct | ACCC](#)

**RECOMMENDATION 7.** Any performance indicators used to assess regulatory reform must explicitly recognise that additional risk should be borne by those with the resources and information to understand and manage it—namely, businesses and government—not individual consumers.

### **Essential services must be held to a higher standard**

Demand for our services continues to grow year on year, reaching a six-year high,<sup>15</sup> as more Australians face unmanageable hardship. Most people who contact us report difficulties accessing and affording essential services<sup>16</sup>—such as banking, insurance, telecommunications, energy, and groceries. These are the markets where we regularly see significant levels of consumer harm<sup>17</sup> and need, and any productivity reform that proposes scaling back regulation in these sectors is neither warranted nor justified. It is important that any proposed whole-of-government statement recognises consumers’ inability to disconnect from essential services and industries and that these industries must be held to a higher standard.

**RECOMMENDATION 8.** Any whole-of-government statement on regulation must recognise the particular importance of safe and fair access to essential services and ensure productivity reform measures will not weaken



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<sup>15</sup> FCA 2025, [Demand for support via the National Debt Helpline hits a six-year high](#)

<sup>16</sup> Consumer Action Law Centre 2024, [At the front line of the cost-of-living crisis: Insights from a Telephone Financial Counselling Helpline](#)

<sup>17</sup> For example, insurers’ responses to the October 2022 Floods, as described in - House of Representatives Standing Committee on Economics 2024, [Flood failure to future fairness: Report on the inquiry into insurers’ responses to 2022 major floods claims](#)

## APPENDIX A - SUMMARY OF RECOMMENDATION

**RECOMMENDATION 1.** Ensure regulators are properly resourced and empowered to enforce current regulatory system.

**RECOMMENDATION 2.** The assessment of regulatory success must be grounded in whether the regulation is delivering on its intended outcomes, not just whether it reduces costs or administrative burden for business.

**RECOMMENDATION 3.** Actively include consumer voices in regulatory reform processes to ensure that the design and evaluation of regulation continue to serve the key beneficiaries of the regulation.

**RECOMMENDATION 4.** Rather than any reduction in meaningful protections or obligations, reduce regulatory stock and confusion by focussing on simplification of systems, development of outcomes-focused regulation, and reducing harmful and unnecessary regulatory gaps and overlaps.

**RECOMMENDATION 5.** Avoid setting quantified targets for regulatory burden reduction based on the volume of obligations or cost to industry. Instead, work with regulators to identify meaningful measurements of holistic regulatory outcomes.

**RECOMMENDATION 6.** Regulatory impact assessments must consider benefits of regulation and include distributional analysis that recognises the additional value of regulation in protecting the rights and interests of people experiencing disadvantage and vulnerability.

**RECOMMENDATION 7.** Any performance indicators used to assess regulatory reform must explicitly recognise that additional risk should be borne by those with the resources and information to understand and manage it—namely, businesses and government—not individual consumers.

**RECOMMENDATION 8.** Any whole-of-government statement on regulation must recognise the particular importance of safe and fair access to essential services and ensure productivity reform measures will not weaken consumer protections for these services.