Law Council
OF AUSTRALIA
Business Law Section

13 June 2025

Productivity Commission
4 National Circuit
BARTON ACT 2600

By email: ncp@pc.gov.au

Dear Sir/Madam,

National Competition Policy reform study

The Competition and Consumer Law Committee (**Committee**) of the Business Law Section of the Law Council of Australia (**LCA**) welcomes the opportunity to provide a submission in response to the call for submissions issued by the Productivity Commission (**Commission**) in May 2025 in relation to the scoping of a proposed study into aspects of the proposed reforms to Australia's National Competition Policy (**NCP**).

In line with the structure of topics outlined in the call for submissions by the Commission, this submission provides brief observations and suggestions for the Commission from the Committee in respect of the following:

- an occupational licensing scheme that provides for labour mobility nationally;
- adopting international and overseas standards in regulatory frameworks and harmonising regulated standards across Australia; and
- certain other reform options identified as a priority during the study, being:
    - limiting the unreasonable use of restraint of trade clauses; and
    - addressing regulatory barriers to the development and growth of emerging technologies.

1 Preliminary

As the Committee wrote in a previous submission to the Commission, the Committee supports revitalising the NCP in principle.

While the Government's commitment to a revitalised NCP is important, the Committee considers that the detail of any proposed reforms should be carefully considered to ensure they achieve the objective of boosting competition to increase productivity and economic growth.

2 Occupational Licensing

The Commission has been asked to analyse and provide advice to the Government on an occupational licensing scheme for electrical trades and other occupations that provide for labour mobility nationally.

Occupational licensing is a critical micro-economic reform. Around one in five Australian workers are subject to such licensing requirements, impacting a substantial portion of

workers and the economy.[1] While occupational licensing plays an important role in consumer protection, ensuring worker's health and safety, and addressing information asymmetries, international evidence has found that it may also raise barriers to entry and decrease competition in labour markets, leading to lower productivity and higher prices in the economy.[2]

Recent research by the Reserve Bank of Australia (**RBA**) found that, in a sample of Australian States, jurisdictions with stricter occupational licensing regimes had greater skills shortages, dampened productivity growth and reduced business dynamism.[3] The RBA further found that, in personal services occupations such as trades (to which a national licensing scheme would apply), Australia has more stringent occupational regulation compared to the average OECD country and that these additional requirements may be unduly hindering economic dynamism, especially if they do not improve consumer or worker outcomes.[4]

2.1 The Committee supports national licensing, in principle, for certain occupations

The Committee supports the creation of a national licensing system for certain key occupations in principle. A national, harmonised system would allow licensed workers to move and work more freely across different regions. This would be particularly beneficial in sectors facing skills shortages, as it would enable a more efficient allocation of labour and help address regional disparities in workforce availability. The Committee notes previous economic modelling conducted by the Commission found that real GDP could increase by around $10.33 billion (or 0.4%) through pursuing such reforms.[5]

The Committee reiterates that a key focus of the Commission should be to design a nationwide scheme that streamlines regulation without increasing its overall burden. As the LCA made clear in its previous submission on the NCP, the LCA *"is not supportive of any extension of NCP principles and reforms more broadly to the private sector which would simply add another layer of regulation"*.[6]

Harmonising the various State and Territory laws should ideally make regulatory compliance easier for business and workers while maintaining adequate protections. An example of such a scheme is Automatic Mutual Recognition (**AMR**), which enables workers registered in one State to work in a second State under their "home" licence without having to pay any additional fees or obtain any additional qualifications.[7]

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1 Commonwealth Productivity Commission, 'Mutual Recognition Schemes' (2015) Final research report.

2 Indre Bambalaite, Giuseppe Nicoletti and Christina von Rueden, 'Occupational entry regulations and their effects on productivity in services: Firm-level evidence' (2020) OECD Economics Department Working Papers No. 1605.

3 Joel Bowman, Jonathan Hambur and Nathan Markovski, 'Examining the Macroeconomic Costs of Occupational Entry Regulations' (2024) RBA Research Discussion Paper.

4 Ibid.

5 Commonwealth Productivity Commission, 'National Competition Policy: modelling proposed reforms' (2024) Study report.

6 Law Council of Australia, 'Submission to Treasury Revitalising National Competition Policy' (2024).

7 The operation of the AMR scheme is discussed further below in section 2.3.

2.2 Issues with a National Licensing Scheme

National licensing was previously attempted under the National Occupational Licensing Authority (**NOLA**). In 2009, the Council of Australian Governments entered into the *Intergovernmental Agreement for a National Licensing System for Specified Occupations* (**IGA on National Licensing**) which sought to establish a national co-operative licensing system for 7 categories of business and occupational licences, namely:

- air-conditioning and refrigeration mechanics;
- building and building related occupations;
- electrical;
- land transport (passenger vehicle drivers and dangerous goods only);
- maritime;
- plumbing and gasfitting; and
- property agents.[8]

On its face, a similar set of occupations may be good candidates for national licensing. Builders and related trades such as electricians and plumbers are particularly suited to a national scheme due to their high mobility, critical role in public safety and increasing demand for their services. These tradespeople often need to move between States and Territories for work, particularly in response to natural disasters, and will increasingly be required to build new energy infrastructure, data centres, and housing supply in the future. A national licensing scheme would allow these workers to move more seamlessly across borders than what is currently enabled under AMR, addressing skills shortages and allowing labour to flow to wherever it is needed most.

However, some of these occupational categories are an example of how overly burdensome standards may be imposed through a national regime. The NSW Productivity and Equality Commission (**NSW Commission**) recently found that in NSW, two occupations that were considered under NOLA, builders and air-conditioning and refrigeration mechanics, face considerably more stringent occupational regulation than those same occupations in other States. The NSW Commission ultimately concluded that there was *"little evidence that the benefits of the tighter regulations outweigh the costs"* for these two occupations.[9] If the NSW standard of regulation for builders and air-conditioning and refrigeration mechanics was adopted in a nationally uniform scheme, then there would likely be greater barriers to entry, reduced competition and a reduction in employment and productivity in these sectors.

This situation may apply to a range of occupations. The Commission has previously found that, out of almost 100 occupations it examined, more than 70 were not subject to uniform licensing across all jurisdictions.[10] Even in cases where States and Territories generally agree on the need for a licence, there may still be notable variations in minimum standards, regulatory systems, legislative instruments, terminology and the specific types or categories of work that are covered by regulation.[11] National licensing

[8] Clause 3.5.

[9] NSW Productivity and Equality Commission, 'Better occupational entry regulations: Policy implications of new research' (2024) 11.

[10] Commonwealth Productivity Commission, 'Review of Australia's Consumer Policy Framework' (2008) 2 Inquiry Report No. 45.

[11] Commonwealth Productivity Commission, '5-year Productivity Inquiry: A more productive labour market' (2023) 7 Inquiry Report No.100.

reforms may be cleaner, simpler, and less costly to administer, benefiting workers, businesses and consumers alike. If a national scheme adopts the most stringent regulatory requirements for the whole country, it has the potential to increase the overall burden of regulation.

2.3 AMR remains an important scheme which should be implemented effectively

While a national licensing scheme may reduce costs and improve productivity for some occupations, for others it may not be appropriate. Given any national licensing scheme is likely to cover only a small portion of the total number of occupational licences in the economy,[12] for those occupations that fall outside of a national licensing scheme, improving upon the AMR scheme is imperative to ensure the benefits of a seamless national economy.

The Committee understands that, under the 2020 *Intergovernmental Agreement on the Automatic Mutual Recognition of Occupational Registration* (**IGA on AMR**), the Commission is required to conduct a review of the AMR scheme later this year.[13] However, as the Commission's call for submissions asks what benefit a national licensing scheme would provide over an expansion of the existing AMR scheme, the Committee believes it is important to consider the role that AMR plays in improving the framework for the interstate recognition of occupational licences.

Automatic mutual recognition of occupational licensing is similar to Australia's driver licencing model, whereby a licence in one jurisdiction entitles the holder to drive anywhere in Australia for a limited period of time prior to obtaining a new licence if they permanently move to a new jurisdiction. In the same way, the AMR scheme permits a licensed worker to work across all participating jurisdictions without the need to apply for a licence in the 'second' jurisdiction or to pay additional fees if they hold a licence in their 'home' jurisdiction. This allows the States and Territories to retain their current licensing models as they exist but recognises that each other jurisdictions' standards are generally satisfactory and comparable to their own.

The Committee notes that AMR has not been fully implemented, with Queensland yet to join the scheme. In addition, the Committee understands that certain jurisdictions continue to rely upon exemptions for many occupations. Finally, there have also been issues with some state-based regulators failing to properly implement the legislative requirements of the *Mutual Recognition Act 1992* (**MRA**), with evidence of some regulators seeking to prevent out-of-state applicants from relying on the mutual recognition schemes.[14]

The Committee encourages the Commission to assess whether any improvements to governance arrangements can be instituted to ensure States and Territories are faithfully implementing the AMR scheme. If the practical difficulties of monitoring the diverse range of State regulators to ensure they are acting in accordance with the scheme is overly burdensome, this may be an argument in favour of national licensing.

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12 For example, NOLA included only 7 categories of licences.

13 Clause 12.

14 See, for example, *Victorian Building Authority v Cau* (2023) 298 FCR 319 and *Victorian Building Authority v Andriotis* (2019) 268 CLR 168.

3 Further reforms to improve licensing arrangements

The Committee acknowledges that the Commission does not anticipate going into depth regarding further competition reform areas in this study but nonetheless has sought views on reforms worth considering as part of the NCP reform process. Below are two further reforms relating to occupational licensing that the Commission may wish to consider.

3.1 Encouraging States to remove or reduce unnecessary licences

The Commission should consider how States and Territories may be incentivised to remove unnecessary licences, particularly those which are unique to their jurisdiction. While a national licensing scheme (or for that matter, mutual recognition) goes a long way to easing the barriers for licensed workers moving between States, it does not reduce the regulatory burden of occupational licences within each State.

The current IGA on AMR contemplated States taking steps to identify and reduce unnecessary regulatory burdens over time.[15] However, to date, States and Territories have not pursued this kind of reform. There are some clear candidates for reform. For example, both NSW and South Australia license hairdressers (while no other Australian jurisdiction does).[16] In NSW, hairdressers must complete a Certificate III in Hairdressing as a legal requirement. This qualification can take 12 to 34 months of full-time study and cost around $13,000.[17] The RBA found that business dynamism for hairdressing businesses in NSW is lower than in Queensland and Victoria, which do not license hairdressers and therefore do not have such barriers to entry.[18] Meanwhile, there is little evidence of any impact on public safety from a lack of licensure.

The Commission and Government should renew their focus not just on the frictions in the interstate movement of licensed workers, but also the overall level and burden of occupational licensing itself. By further identifying and reforming licences that are unduly burdensome within each State or Territory, unnecessary barriers to entry may be reduced, and competition and productivity improved.

3.2 Expanding the scheme to business registrations

The Commission should also further study whether either a national licensing or AMR scheme could be expanded to include other forms of registrations beyond those that apply to individuals. This could include business licences, as some registration requirements include the characteristics of both an individual and their associated business.[19] In a previous review of mutual recognition schemes, the Commission noted that *"study participants raised concerns about States and Territories imposing their own business registration requirements for architects, builders, electrical contractors and security providers. There is an in-principle case for extending mutual recognition to such requirements, given that it could reduce costs for interstate service providers and promote competition"*.[20]

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15 Clause 7.

16 *Hairdressers Act 2003* (NSW); *Hairdressers Act 1988* (SA).

17 NSW Productivity and Equality Commission (n 9) 10.

18 Bowman, Hambur and Markovski (n 3) 23.

19 Commonwealth Productivity Commission (2015) (n 1).

20 Ibid 18.

The 2009 IGA on National Licensing contemplated that the national scheme for certain trades, transport and property occupations would also apply to business licences as well as occupational licences.[21] Meanwhile, the IGA on AMR contemplated that signatories, over time, would *"consider other regulatory reforms, such as broadening the types of registration in scope for mutual recognition"*, which may include business licensing.[22] As such, there is scope to consider whether proposed reforms to licensing schemes should be expanded to include business registrations as well as occupational licences.

4 International standards

The Committee broadly supports the proposal to adopt an expedited or default approach to recognising trusted overseas standards and processes, in circumstances where those standards fulfill an equivalent regulatory purpose.

In terms of examples of Australian regulatory regimes where there is opportunity for greater recognition of appropriate international standards, the Committee considers that mandatory product safety standards that are enforced in Australia under the *Australian Consumer Law* (**ACL**) represent an area where greater international standard recognition would be a prudent regulatory development.

4.1 Overview of mandatory standard laws

By way of background, mandatory product standards specify compulsory safety or information features for certain products and product-related services. If a product has a mandatory standard, it must meet specific safety requirements before it can be sold in Australia. A person must not, in trade or commerce, supply consumer goods or product related services that do not comply with the mandatory standards.[23]

The requirements on products can relate to, for example, the performance, methods of manufacture, design, construction, packaging or labelling of consumer goods,[24] while the requirements on product related services may consist of, for example, the manner in which services are supplied or the testing of such services.[25]

In general, there are two types of mandatory standards:

- mandatory safety standards that specify minimum requirements that products must meet before they are supplied; and
- mandatory information standards that make sure that consumers have important information about a product to help them decide whether to buy.

For example, button batteries and products containing button batteries are subject to mandatory safety standards and mandatory information standards, which explain how products and their packaging should be designed and what warnings and safety

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21 Clause 3.5.

22 Clause 11.

23 *Competition and Consumer Act 2010* (Cth) sch 2 ('*Australian Consumer Law*'), ss 106(1) and 107(1).

24 *Australian Consumer Law* (n 23) s 104(2).

25 *Australian Consumer Law* (n 23) s 104(3).

information must be included on packaging.[26] Other products that are subject to mandatory standards include toppling furniture and toys containing magnets.[27]

4.2 Penalties and enforcement

Acknowledging the importance of the mandatory standards to ensure appropriate product quality and safety for Australian consumers, it is important to note that the legal consequences for any failure to comply with the mandatory standard regime in the ACL are extremely serious for businesses.

A supplier (including a manufacturer, importer, distributor and retailer) may be found guilty of a criminal offence if they supply a product or product related service that fails to comply with a mandatory safety or information standard. For individuals, the maximum fine is $2,500,000.[28] For a body corporate, the maximum fine is the greater of:

- $50,000,000;
- if the Court can determine the 'reasonably attributable' benefit obtained, 3 times that value; or
- if the Court cannot determine the benefit, 30% of the corporation's adjusted turnover during the breach turnover period for the offence.[29]

Moreover, where a safety standard specifies 2 or more sets of requirements for complying with the standard, the supplier must, if requested by a regulator, provide a notice specifying which set/s of requirements it intends to comply with.[30] If an individual fails to comply with the notification requirement, the maximum fine would be $4,400, while for a body corporate, the maximum fine is $22,000.[31] These are offences of strict liability.[32] This means that a court may find a supplier breached the requirement, regardless of whether that supplier intended to breach a mandatory safety or information standard or fail to comply with a notification request.

Alternatively, the ACCC may issue an infringement notice if it has reasonable grounds to believe the supplier has breached the ACL by failing to comply with the mandatory standards.[33]

In addition, the ACCC may request the supplier to provide a court-enforceable undertaking as to future conduct (e.g. that it will only supply the products in compliance with the mandatory standard or that it will implement a compliance program to minimise the risk of future breaches). The ACCC may also require the undertaking to include an admission of supplier's non-compliance with the mandatory standards or to acknowledge the ACCC's concerns about non-compliance.

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26 The ACCC, *Button and coin batteries mandatory standards* (Web Page) <https://www.productsafety.gov.au/business/search-mandatory-standards/button-and-coin-batteries-mandatory-standards>.

27 All the current mandatory standards can be found here: https://www.productsafety.gov.au/business/search-mandatory-standards (accessed 5 June 2025).

28 *Australian Consumer Law* (n 23) ss 194(9) and 195(5).

29 *Australian Consumer Law* (n 23) ss 194(8) and 195(4).

30 *Australian Consumer Law* (n 23) s 108.

31 *Australian Consumer Law* (n 23) s 196(1).

32 *Australian Consumer Law* (n 23) s 196(2).

33 *Competition and Consumer Act 2010* (Cth), s 134A(2)(g). The penalty amount varies depending on the alleged contravention, but paying an infringement notice does not amount to any admission of liability by the supplier.

For example, Hungry Jack's Pty Ltd was recently issued with 8 infringement notices for not complying with the mandatory button battery information standards.[34] In addition to paying the penalties, Hungry Jack's provided an undertaking that it admitted to have failed to comply with the button battery information standard and that it would establish and implement a compliance program designed to minimise its risk of future breaches.

4.3 ACCC review of overseas standards

The Committee notes with approval the Commission's previous review and reference[35] to the study undertaken by the ACCC in 2023 to identify a suite of international product standards that would be potentially suitable for adoption in Australia.[36]

To the extent that the Commission is looking for examples of international standards that are worth considering for modelling to adopt under the Australian regime as part of this policy objective, the Committee supports the inclusion of the standards recognised by the ACCC in 2023.

4.4 Recent ACL amendments support this objective

The Committee notes that implementation of this policy objective has been materially facilitated through the amendments to the ACL commenced by the *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024* (Cth) (**the Amendments)**.[37] The Act was initially published for consultation on 11 October 2024. [38]

The Amendments enable mandatory standards to be more readily updated by enabling the referencing of overseas standards that are in existence from time to time, which was an issue with the mandatory standard regime noted by the Commission in 2024.[39] The Amendments have the effect that Australian suppliers would find it easier to comply with more modernised Australian and overseas standards.

In keeping with the policy objectives noted by the Commission, the Amendments can also streamline the making of mandatory standards that are aligned with overseas standards and provide suppliers with alternative methods of compliance with mandatory standards. The Committee considers these Amendments mean that suppliers would not need to undertake additional testing or augmentation which is currently needed to align to purely Australian standards, provided their products comply with the requirements of a referenced overseas standard. The upshot of such Amendments is a broader range of choice and more competitive pricing for consumers, without compromising any of the rigours of the current mandatory safety standard regime.

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34 The ACCC, *Hungry Jack's pays penalties for supplying toys with its children's meals that allegedly breached the mandatory information standard for button batteries* (Web Page, 6 May 2025) <https://www.accc.gov.au/media-release/hungry-jack%E2%80%99s-pays-penalties-for-supplying-toys-with-its-children%E2%80%99s-meals-that-allegedly-breached-the-mandatory-information-standard-for-button-batteries>.

35 Commonwealth Productivity Commission (2024) (n 5) 39-40.

36 The ACCC, *Improvements to mandatory product safety standards* (Web Page) <https://www.productsafety.gov.au/about-us/improvements-to-mandatory-product-safety-standards>.

37 *Treasury Laws Amendment (Fairer for Families and Farmers and Other Measures) Act 2024* (Cth).

38 With consultation closing on 25 October 2024, per Treasury, *Product safety regulation - exposure draft legislation* (Web Page) <https://treasury.gov.au/consultation/c2024-589944>.

39 Commonwealth Productivity Commission (2024) (n 5) 42–3.

The Amendments were strongly supported by the ACCC and many other stakeholders in response to that consultation.[40] The Committee also supported the Amendments and reiterates their importance.

In particular, and relevant for the Commission, is the importance of ensuring any regulatory changes to implement the policy objective include appropriately clear and flexible transition arrangements, including a minimum transition period for businesses to adjust to the broader range of requirements by having time to appropriately manage matters such as manufacturing and supply contracts and relationships, as well as being able to deal with existing inventory.

5 Other competition reform options

Some of the reform options identified by the PC during the study are matters on which the Committee has previously made submissions, which are briefly summarised below.

5.1 Unreasonable use of restraint of trade clauses

The Committee recognises that, in certain circumstances, non-compete and other restraint clauses are necessary to support the legitimate interests of employers in protecting their investment in human resources, intellectual property and confidential information, and client connections.

However, in practice, under the current common law, the restraint of trade doctrine typically favours employers due to an inequality in bargaining power when clauses are negotiated and the uncertainty, cost and time issues of litigation when a dispute arises. As a result, the Committee generally accepts that non-compete clauses have become overly prevalent in Australian employment contracts—particularly in relation to lower-income workers.

Lower-income workers generally have less bargaining power to negotiate or remove a non-compete clause, less capacity to absorb a loss of income between jobs and fewer resources to resolve a dispute if they leave. By and large, lower-income workers are also less likely to have access to information or connections reasonably requiring protection. Reduced job mobility amongst lower income workers serves neither the interests of individual workers nor the broader public interest.

Therefore, the Committee considers that the Australian Government should consider legislating additional limitations on the use of non-compete clauses. Such protections could include:

- legislating an income threshold below which non-compete clauses are generally not permitted;
- requiring employers seeking to include a non-complete clause in a contract to identify the ‘legitimate interest’ that they are seeking to protect;
- requiring employers to provide reasonable compensation when seeking to enforce non-compete clauses; and

[40] The full list of public submissions received during the consultation period is published at Treasury (n 38).

- limiting the maximum length of the non-compete clauses or otherwise limiting cascading clauses.

The Committee does not support a blanket ban on non-compete clauses. It also considers that other types of restraints, including non-solicitation clauses and non-disclosure clauses, play a crucial role in protecting the viability of businesses, and are in less in need of regulation at this time.

The Law Council provided a comprehensive submission to the Competition Review Taskforce on 7 June 2024 that addresses each of these matters in more detail.[41]

5.2 Addressing regulatory barriers to the development and growth of emerging technologies

The Committee's comments are limited to the question of whether existing laws are adequate or whether new laws are required in relation to emerging technologies, focussing on whether amendments to ACL are necessary.

The Committee considers that a balance must be struck between implementing legislation to protect consumers against harm arising from use of emerging technologies and also protecting against the harm to society that will occur if consumers' innovative or creative use of those same technologies is restricted. The Committee considers that reforms to the ACL—implementing provisions that are specifically targeted at the harms that may arise through the application of artificial intelligence (**AI**)—should only be made if needed to better protect consumers and businesses from harms that arise from the use of AI, and only where such harms are identified, and the current provisions of the ACL (and the proposed unfair trading practices amendments) are not capable of addressing such harms. It is important to emphasise that the ACL should remain confined to addressing real consumer harms, and any proposed amendments to the ACL must, therefore, have regard to this limited scope.

The Law Council provided a comprehensive submission in response to the Treasury's Discussion Paper regarding the Review of AI and the ACL on 20 November 2024 addressing these issues in more detail.[42]

5.3 Measuring potential impacts of reform

Finally, the Committee repeats its submission of 17 May 2024 in response to the call for submissions paper issued by the Commission in relation to the NCP analysis.[43] It considers that any proposal for reform should be evidence-based, and that before reforms are introduced, their likely costs and benefits should be assessed. However, the appropriate way to measure the potential impacts of a reform proposal, and the metrics that should be used to measure these impacts, may differ depending on what the reform addresses. Accordingly, any impact assessment should be conducted on a

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41 Law Council of Australia, *Worker non-compete clauses and other restraints* (Web Page, 24 July 2024) <https://lawcouncil.au/resources/submissions/worker-non-compete-clauses-and-other-restraints>.

42 Law Council of Australia, *Review of AI and the Australian Consumer Law* (Web Page, 26 November 2024) < https://lawcouncil.au/resources/submissions/review-of-ai-and-the-australian-consumer-law>.

43 Law Council of Australia, *National Competition Policy analysis* (Web Page, 6 June 2024) < https://lawcouncil.au/resources/submissions/national-competition-policy-analysis>.

case-by-case basis, by reference to the subject matter and intended effect of the relevant reform proposal.

6 Conclusion and further contact

The Committee would be pleased to discuss any aspect of this submission.

Please contact the chair of the Committee, Ms Peta Stevenson, at
if you would like to do so.

Yours faithfully

Adrian Varrasso
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