National Competition Council

Progress on competition reform

A presentation by Graeme Samuel,
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to the Master Builders Association's
Infrastructure Sector Group Breakfast

Tuesday 16 June 1998

SETTING THE SCENE

Three years ago, the Commonwealth and all State and Territory governments agreed to implement the most broad-ranging program of micro-economic reform ever attempted in Australia. The National Competition Policy (NCP) program stretches beyond the year 2000, and entails a raft of reforms which seek to extend the productivity-enhancing effects of competition to virtually all sectors of the economy. The aim is to lower business costs, enhance competitiveness and provide the conditions for more sustainable economic and employment growth.

The reform package has the potential to affect the building industry in various ways. It may affect building design standards and development approval processes. It will affect the professional standards and licensing regimes under which some members of the industry, or people who supply services to the industry, work. It will affect the opportunities for the private sector to supply building- and property-related services to government. And through its broad-based effects on the competitiveness of the economy, it will affect the cost of the property industry's inputs, and the level of demand for its outputs.

When adopting the NCP package, governments established the National Competition Council to assist with the process. We administer some aspects of the reforms, assess governments' progress in implementing the reforms, advise governments on implementation of the policy and where more work is needed, and provide public information on the NCP process generally.

Our role of assessing the progress of governments in meeting their NCP reforms commitments is particularly important, because there is significant funding riding on those assessments. Specifically, as part of the 1995 agreements, the Commonwealth agreed to pay the States and Territories some $16 billion in competition payments over the period to 2005, provided they make satisfactory progress on implementing NCP reform.

The potential benefits are big — estimated to be worth an ongoing increase of more than 5 percent of GDP and up to $1500 per household per year. Add this to the competition payments and it will readily be appreciated that much is at stake.

In this presentation, I will discuss:

- the details of the NCP program;
- it implications for business in general; and
- some specific NCP issues of relevance to the building sector.

THE NATIONAL COMPETITION POLICY REFORMS

The NCP reforms cover three broad areas:

- reforms to legislation and regulation which affects the level of competition in the economy;
- a raft of reforms to government businesses — to make them more efficient and to allow private businesses to compete; and
- reforms to improve the efficiency of infrastructure use and provision.

Implementation of the NCP reform program is now gathering pace. Competition reform has already had significant impacts in several sectors and, over the next four or five years, the NCP program will touch upon each and every Australian in an ever increasing pace of evolution, which for some of those affected will seem more like revolution.

Anti-competitive legislation

The first reform area is the review of anti-competitive legislation.

Legislation can restrict competition in two main ways. First, it can restrict who is able to enter a market. An example is the Queensland law that restricts conveyancing to lawyers. Second, it can restrict how participants already in a market are able to operate. Advertising restrictions and product standards are examples.

Removal of unjustified restrictions enables businesses to enter new previously sheltered markets, or operate in sharper or more innovative ways in existing markets. The removal of unnecessary red tape imposing significant costs and delays has obvious benefits.

The Hilmer Review found that anti-competitive legislation was widespread, but in many cases of questionable merit.

Under the NCP legislation review program, each Australian government has agreed to review all laws which restrict competition. Unless such laws are found to confer a net community benefit, they are to be reformed by the year 2000. That said, the review program is not about competition for competition's sake, nor deregulation for deregulation's sake. The NCP agreements list a range of considerations that may help justify some restrictions on competition. However, in the first instance, the NCP presumes competition will generally be in the public interest, and places the onus of proof on those wishing to retain restrictions to demonstrate that they provide a net benefit for the community as a whole, rather than just for the sheltered group.

The program is ambitious, with some 2000 pieces of legislation scheduled for review. These cover matters as diverse as statutory marketing arrangements for primary produce, financial sector regulation, occupational licensing, import restrictions, business registration requirements and consumer protection legislation [see Box 1].

The legislation review program has important implications for industry, not the least of which will be the removal of unnecessary red tape imposing significant costs and delays on business. For example, in NSW, an examination of 250 business licenses led to the nomination of 34 for repeal and the amalgamation of 44 categories into just 3 — fencing, general maintenance and cleaning.

Further, where restrictions on competition are removed, businesses will be able to enter previously sheltered markets, bringing scope for new innovation and leaner, sharper provision of services, to the benefit of consumers. We have seen this already in telecommunications where, although full legislative restrictions on competition have only recently been removed, earlier reforms have led to an expansion in the range of services and greater customer-focus, as well as lower prices.

There are also benefits for governments: for example, being able to save money where legislation necessitates government expenditures which are excessive or no longer warranted, and by providing an opportunity to rethink approaches to achieving the social, environmental and economic goals which underlie certain laws and regulations. Where governments achieve their objectives more efficiently or at less cost, there are flow-on benefits for the economy generally.

The building industry will have particular concerns in the area of legislative review. For example, there is continual frustration with unnecessary building regulation and the costs flowing from unwarranted delays in construction and development approvals processes primarily administered by local Governments. All States and Territories are looking at issues arising from planning and land use approval systems and building regulations in the context of their NCP legislation review responsibilities. For example, Victoria's timetable lists the *Building Act 1993*, the building regulations and planning and environment regulations for review in during 1998-99. Victoria commenced its review of the restrictions on competition in the *Local Government Act 1989* during 1996-97. I will talk a bit about this shortly when I get on to local Government and the NCP process.

The building industry will also have an interest in the regulation of some professions and occupations, including in relation to the use of mutual recognition. These are areas where all jurisdictions have scheduled a number of pieces of legislation for review. Again, I shall talk about these matters later.

Box 1: Selected legislation from jurisdictions' schedules

Jurisdiction	*Name of legislation*	*Review date*
Cmwlth	Insurance (Agents and Brokers) Act 1984	1997-98
Cmwlth	Navigation Act 1912 (Part IV)	1998-99
Cmwlth	Financial Corporations Act 1974	1998-99
NSW	Murray Valley Citrus Marketing Act 1989	1996-97
NSW	Business Licenses Act 1990	1997-98
NSW	Innkeepers Act 1968	1997-98
Vic	Workers' Compensation Act 1958	1996-97
Vic	Fisheries (Commercial) Regulations 1992	1998-99
Vic	Transport (Taxi-Cab) Regulations 1994	1998-99
Qld	Business Names Act 1962	1998-99
Qld	Tow Truck Act 1983	1997-98
Qld	Financial Intermediaries Act 1996	1998-99
WA	Casino (Burswood Island) Agreement Act 1985	1998
WA	Health (Liquid Waste) Regulations 1993	1999
WA	Employment Agents Act 1976	2000
SA	Legal Practitioners Act 1981	1997
SA	Environment Protection Act 1993	1999
SA	Landlord and Tenant Act 1936	1999
Tas	Mining Act 1929	1997
Tas	Metropolitan Transport Act 1954	1998
Tas	Land Use Planning and Approvals Act 1993	1999
ACT	Business Franchise ("X" Videos) Act 1990	1997
ACT	Fair Trading Act 1992	1997
NT	Business Franchise Act	1998
NT	Pay-Roll Tax Act	1998

[1] This is a small sample of the 2000 odd pieces of legislation in jurisdictions' schedules (as at June 1996). The Council's April 1997 Legislation Review Compendium has a full list.

Government businesses and competitive neutrality reform

The competitiveness of government businesses became a major issue for all Australian governments during the 1980s. Many studies provided widespread evidence of poor performance, including poor capital and labour productivity, overstaffing and excessive use of material inputs, inappropriate management

practices, poor quality goods and services, inappropriate pricing practices and poor financial performance.

In the face of this evidence, and the realisation that government businesses have a significant impact on Australia's economy, all governments have been addressing the nature of their involvement in the businesses they own.

One response to this has been to seek to expose government businesses to the same or similar commercial pressures that private businesses face. For example, under the NCP "competitive neutrality" reforms, governments are removing net advantages enjoyed by public sector businesses over the private sector. Some of these advantages include exemptions from taxes, planning laws and rate of return requirements. By removing these advantages (and any disadvantages), government businesses will be forced to compete on an equal footing with private businesses.

Competitive neutrality policy is aimed at ensuring that significant Government businesses have no advantages or disadvantages over their private sector competitors merely because they are Government owned. The underlying objective is to ensure Australia's resources are used in the areas that they are most valued, and are not artificially attracted to particular areas or businesses because these businesses operate under favoured conditions.

Governments are approaching competitive neutrality implementation through corporatisation of their larger business enterprises and 'commercialisation' of other significant business activities. An essential factor is price setting, such that prices of the goods and services provided by the Government businesses reflect full costs of production. Consequently, in setting competitively neutral prices, Government-owned businesses must take into account factors such as taxation liabilities and any advantages in financing which arise from explicit or implicit Government backing.

The other important aspect of competitive neutrality reform is equality in the regulatory environments facing Government businesses and their actual (or potential) private sector competitors. Relevant to this, the building industry has raised a concern with the NCC about differences in the building and development process faced by public and private sector entities. In principle, the rigorous application of competitive neutrality principles should ensure that any such regulatory advantages available to public sector bodies are eliminated.

Competitive neutrality provides opportunities for business to move into a wide range of areas previously dominated by Government suppliers —for example, accounting services, car parking, cleaning, engineering services, legal work, printing, real estate and property management, and the certification of building and development approvals. The scope for new competition in these markets should drive down prices, bringing competitive advantages to the wide range of business and consumers that use these services. The reforms should also make it easier for

private operators to win contracts against Government-owned competitors in competitive tenders.

The competitive neutrality and related competition-type reforms are also improving the performance of government businesses themselves [see Box 2].

Box 2: Recent performance of Government Trading Enterprises

The May 1997 report of the Standing Committee on National Performance Monitoring found that competitive neutrality and related reforms –many of which predated the NCP agreements –are showing some positive results. The outcomes have varied between the enterprises studied. However, over the four years to 1995-96, overall there have been:

- improvements in labour productivity,
- a doubling of total payments by trading enterprises to governments,
- average price reductions of around 15 percent, and
- some limited improvement in service quality.

While some factors such as technological change may also help explain these improvements, this evidence does suggest that the reforms are paying dividends.

Infrastructure

Infrastructure services such as energy provision, transportation, communications and water supply play a vital role in the Australian economy. They are major business inputs, representing between 7 and 16 percent of production costs for most industries. They are also essential services for consumers. And the industries which supply these services are major resource users in their own right. For example, the electricity supply industry alone has $55 billion in assets, a workforce of 42 000 people, 8 million customers and over $12.3 billion in annual revenue.

Consequently, the efficiency and competitiveness of these sectors is important not only for their direct customers but also for the broader business environment and the performance of the economy generally.

The NCP agenda includes reform packages to improve the efficiency of four industries which are major providers of infrastructure services to Australian

businesses and consumers: electricity, gas, water and road transport. These reforms will promote more efficient supply arrangements, with the likelihood of better service and/or, in most cases, cheaper costs to industry.

In addition, under the NCP 'access' reforms, businesses will be more able to get access to essential infrastructure services which they need to compete effectively with established players. For example, transport companies may be able to get access to rail networks to run their own trains, in competition with the existing train operator.

While there have been some early hiccups, particularly in relation to the timely provision of access, some recent measures to inject competition into the big infrastructure sectors are showing significant benefits [see Box 3].

Box 3: Recent price changes for infrastructure services

Recent benefits from competition in infrastructure sectors include:

- a recent study by Delloite Touche Tohmatsu found that electricity bills have fallen by around 30 percent on average for those businesses able to select their own supplier under the National Competitive Market;
- average airfares are around 20 percent below their pre-deregulation levels (and total domestic air travel is up by more than 80 percent);
- rail freight rates between Melbourne and Perth fell by 40 percent following the introduction of competition on that route in 1995; and
- under the recently approved AGL undertaking, gas access tariffs in NSW will fall to about 60 percent below their 1995 levels by the year 2000.

IMPLICATIONS FOR BUSINESS COMPETITIVENESS

Opportunities and risks for specific businesses

The NCP reforms will have many benefits for business and bring many new opportunities for specific businesses to move into new markets. Lower prices for inputs, fewer restrictions on business conduct, greater consumer spending power resulting from lower prices generally and a more flexible economy less susceptible to external shocks — these things will all benefit the broad business environment.

But it is important to realise that NCP is not all benefits and no costs for business.

In those markets directly affected by reform, there will be both winners and losers. To give just one example, where anti-competitive regulations are removed, new businesses may be able to enter into markets by competing with incumbent producers. Where new businesses succeed, they will obviously be better off. So will consumers. But incumbent businesses may need to lift their game or risk losing market share.

To improve their competitiveness, existing businesses may need to develop or rethink business plans, examine staff training needs and managerial skills, look for opportunities to expand their product range, improve service quality or find ways of reducing costs.

That said, in many cases, incumbent businesses will be well placed to fend off new competition. Often they will understand their market well and know their customers' needs. They may have had time to build up a loyal clientele and, as mature businesses, they are likely to have more settled and stable financial positions than new businesses.

For new businesses, the removal of anti-competitive legislation brings with it normal commercial risks involved in starting a new business. To make inroads into the market, such business people will generally need to be able to offer a more attractive product — whether it be lower priced, higher in quality, or better suited to customer needs — than the products offered by incumbents.

The NCP processes do not seek to favour any one kind of business over another. Rather, the aim is to allow competition to occur such that businesses compete on their merits. In other words, while the NCP is designed to enhance the performance and competitiveness of the Australian economy overall, it is not designed to improve the profitability or viability of specific businesses or industries themselves. Rather, it is intended to foster conditions in which the businesses and industries that most benefit the community prevail.

The broader picture

Under the NCP reforms, three main things should happen.

First, in each market subject to greater competition, the most efficient and competitive firms should be able to outcompete the less efficient. Among other things, this should see improved productivity and lower prices in those markets. As I mentioned earlier, there is already some evidence of this in areas such as airlines, rail, gas and electricity.

Second, businesses in downstream markets should become more competitive as they get the benefits of lower prices and better services. Further, with lower prices, consumers will also have more money to save, thereby boosting national savings. Or they will be able to spend more on other goods and services, thereby boosting demand.

Third, as overall productivity lifts, so should the level of economic growth that our economy can sustain in the longer-term. One of the prospective benefits of the NCP reforms is that, by lifting productivity, the limits to growth we have experienced in recent years are also likely to lift. In other words, governments should be able to expand the economy at a faster rate without the adverse "over-heating" problems with have constrained government macro-policy in the recent past.

Bringing all this together, the aim of the NCP reforms is to provide the framework within which the businesses and industries that most benefit the community prevail, and to thereby provide the environment for sustainable improvements in our economic performance and business environment.

RATIONALE FOR IMPLEMENTATION

Why are governments doing all this?

Firstly, there is an economic imperative, one heightened by recent events in Asia and brought home this week by the fall in our currency. In an increasingly competitive world, the efficiency and competitiveness of our own businesses is vital. As I have just alluded to, the reforms have the potential to significantly improve the robustness and performance of our economy. I have already pointed to some of the early benefits now flowing from implementation of the NCP program. Overall, the Productivity Commission has estimated that full implementation could boost GDP by more than 5 percent per annum, and increase household spending power by $1500 per year. Such estimates can never be precise, but they do give an indication of the magnitude of the effects of the reform program.

Secondly, as mentioned earlier, there are $16 billion in competition payments from the Commonwealth to the States and Territories riding on successful implementation of the reforms.

These competition payments reflect the revenue that it is estimated will flow to the Commonwealth Government as a result of the extra economic growth that is forecast to result from the full implementation of NCP program. The Commonwealth has recognised that this extra revenue will to a large part be

the result of NCP reform undertaken by States and Territories. Accordingly, it has agreed to make competition payments to the States for their part in implementing the reform program.

The Commonwealth can thus be expected to adopt a quite rigorous attitude to these payments, reducing the payments to any State or Territory that fails to implement the reform program as it originally agreed. That is, if a State or Territory fails to implement reform, the Commonwealth will not derive incremental revenue and the State would not therefore be entitled to a full allocation of competition payments.

Thirdly, there is a fundamental equity question here. Whilst many sectors of the economy are exposed on a daily basis to the true rigors of the competitive marketplace, some groups are not subject to the same disciplines. But their privileges are not free — they generally come at the expense of the rest of us. Just as many people rightly question the monopolistic wages and conditions attained by waterside workers, people have a right to question the incomes and conditions enjoyed by all special interest groups *to the extent that those incomes and conditions derive from unwarranted restrictions on competition*.

Competition reform, like justice, must be seen to be blind when it comes to matters of class, career and collar colour. Hence, equity, as well as economic efficiency, demands that privileged groups throughout the economy be subject to scrutiny and, where appropriate, genuine reform.

SOME SPECIFIC COMPETITION REFORM ISSUES

Let me turn now to some specific reform issues of interest to the building industry. For example, I am aware of your interest in building and development approvals processes and in regulation of the professions and occupations, including in relation to the use of mutual recognition. These are areas where all jurisdictions have scheduled a number of pieces of legislation for review. I am also aware of your concerns about the implementation of reform at the local government level, where much land-use planning and building approval work occurs.

Occupational licensing and professions regulation

A range of regulations governing various professions and occupations are also listed for review in the period to the year 2000. Some of the professions and occupations where reviews of regulation, including licensing arrangements, are proposed are architects, licensed surveyors, electrical contractors, plumbers and gasfitters,

building practitioners and certifiers, employment agents, travel agents, auctioneers and real estate agents and legal practitioners.

Traditionally, many professions have been shielded from normal competitive pressures through specific legislative or self regulatory arrangements, combined with an effective exemption from Part IV of the Trade Practices Act. Typical elements of the regulatory landscape have included a professional association, guild and/or registration board with the power to admit members to the profession, to regulate their standards and conduct, often through a code of ethics, and to set schedules of fees. There have also been controls on ownership structures, and the reservation of certain work to members of the profession alone. In some cases, there have also been internal functional distinctions made as, for example, in the split between barristers and solicitors.

While some forms of professions regulation, such as accreditation standards and reservation of professional title, may well be justifiable in some cases, many traditional approaches to professions regulation appear less so. For example, prescribed fee scales for professional services appear to serve no real purpose other than to restrict competition. Likewise, accreditation standards are sometimes set at very high levels and have the potential to unduly exclude entrants from the market.

Controls such as licensing and registration should generally be restricted to dealing with 'information failure' –that is to say, with the fundamental inability on the part of the consumers in the market place to gain sufficient information to enable them to make informed decisions as to whether or not a professional is able to provide the relevant service required. An objective assessment of the extent of true information failure is an essential pre-condition to any restriction on the ability of individuals to provide particular services. Licensing restrictions should not be imposed under the cloak of maintaining professional standards or the more dubious guise of guarding traditional professional ethics when, in reality, they are merely a means of restricting competition in the market for the provision of those services.

There has been some reform to some professions in recent years, but there remains a significant body of anti-competitive legislation relating to specific professions. Without pre-judging the outcome of detailed reviews of these matters, there are many aspects of professions regulation which on first glance appear ripe for reform. In particular, controls on advertising and ownership structures, price scheduling, and licensing schemes which restrict the number of practitioners rather than just setting acceptable minimum entry standards, are all strong candidates for reform.

Some professional associations have expressed reservations about aspects of possible reform, but the NCC is encouraged by its discussions with professional

groups that progress can be made. We will continue this dialogue and continue to pursue sensible review processes and balanced reform outcomes.

One issue that arises in this context is the need for national reviews. There are many similarities in the way professions are regulated from one jurisdiction to the next, and indeed it is not clear that there is any reason for taking different approaches to professions regulation in different States. Further, it is inefficient for several reviews to consider essentially the same set of issues, and costly for professional associations to have to respond to several different reviews. The NCC is therefore working with jurisdictions to facilitate coordination of the review process with the aim of scheduling a greater number of national reviews.

Another issue is the role of mutual recognition. The Commonwealth's *Mutual Recognition Act 1992* is designed to assist the creation of national markets in Australia. Mutual recognition does not require uniform regulations throughout Australia, but rather that jurisdictions accept the standards and regulatory decisions made by other jurisdictions. The Act is currently being reviewed through a national process. I think many members of relevant occupations would recognise the benefits which mutual recognition has brought in terms of allowing more mobility and competition among members of the one industry. But at the same time, some associations have expressed a concern about its potential effects on future reforms to occupational regulation. Specifically, they are concerned that that, if any one jurisdiction were to take an overly radical approach to occupational regulation (for example, by substantially reducing entry requirements into a profession), this could undermine more stringent regimes in other jurisdictions. Of course, one of the goals of mutual recognition is to move away from the 'maximum visible regulation' approach of the past towards 'minimum effective regulation'. Nevertheless, there may be some risks in the process. In the NCC's view, this simply adds support to the case for national reviews and a national approach to regulation of professions.

But while the NCC will work constructively with professional associations, and governments, to achieve sensible reform processes and balanced outcomes, I strongly emphasise that professions must not be immune from competition reform.

Reform at the local government level

All States have scheduled reviews of legislation governing the responsibilities of their local government sector, including legislation that confers specific powers on local governments to the extent that the legislation restricts competition.

Local government regulations and by-laws are to be reviewed as part of this process.

The other NCP commitment relevant to local government is the application of competitive neutrality principles to significant local government businesses.

The building industry has raised a number of local government regulation and competitive neutrality matters in discussions with the NCC Secretariat. Many of these indicate that your industry is concerned with the current performance of local government, and particularly with building and approvals regulation. While we have not yet examined the detail of all the matters raised, the industry's experiences are clearly relevant to our consideration of the progress achieved against NCP obligations. Other suggestions have been made, designed to encourage reform by local governments, including:

- benchmarking local councils against nationally agreed performance indicators; and
- giving local councils across Australia a financial incentive for participation in the NCP reform process, by linking part of the competition payments to performance.

The NCC well recognises that some building regulations and the way they are applied may be unnecessarily stringent, reduce the competitiveness of industry and serve no safety or public interest objective. We have noted the estimates of significant costs of over-regulation for both residential and non-residential buildings, including the Industry Commission's 1995 work showing a potential gain from more cost effective building regulations of $350 million a year. We have also noted the Industry Commission estimates of the costs of unwarranted delays in obtaining approvals to proceed with site preparation and building and of delays after building and construction commences - in total some $750 million might be saved each year. And of course, apart from the Industry Commission work, there is a lot of anecdotal evidence about inflated costs due to over regulation and unwarranted delays.

It has been suggested to us that a component of the competition payments be distributed to local government is something which local government itself has raised as a desirable approach. This is really a matter for each state government. Under the NCP agreements, state governments are responsible for applying reforms at local government level, although in consultation with local governments. The Commonwealth provides money to the states where the NCC is satisfied that reform progress meets NCP obligations.

Queensland, which has the largest local government sector of all jurisdictions, has set aside monies for local governments with demonstrated achievement of reforms. Although other states have not offered financial incentives, all have

devoted some effort to outlining the potential benefits from competition reform. These benefits are beginning to be recognised by some local councils.

To summarise then, the NCC's view is that local government is an integral contributor to competitiveness in some areas of the economy, and as a result must play a central role in the NCP reform process. In our first assessments of reform progress provided to the Commonwealth Treasurer in July last year, we indicated a need to have another look at the local government reforms actually in place prior to recommending that States had met their NCP obligations in this area. The States will be reporting to us on their progress in bring about competition reform at the local government level. We will release our assessment shortly.

CONCLUDING REMARKS

The NCP reform program is ambitious, with the potential to affect virtually every Australian and, in particular, to substantially alter the way we approach doing business.

The ultimate goal of competition reform is a more productive, efficient, innovative and dynamic economy — one more able to cope with external shocks rather than immediately plummeting into recession; one better able to sustain or enhance the material living standards of its people, or to achieve its social, cultural and environmental goals, without simply adding to national debt; and one in which resources are used, or conserved, in the most valuable way.

Australia's governments accepted the need for competition reform when they all signed the NCP agreements. The task now is to implement genuine 'on the

This is not easy. The reform program is wide-ranging and competition entails risks as well as opportunities for businesses. Inevitably, political tensions will arise as the beneficiaries of current restrictions on competition press to retain their privileged positions.

However, just as there is a compelling economic efficiency case for competition reform, so too equity demands that those currently sheltering behind undue anti-competitive arrangements face the same competitive disciplines as all of us.