



# PC NEWS



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**Australian Government**  
**Productivity Commission**

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians.

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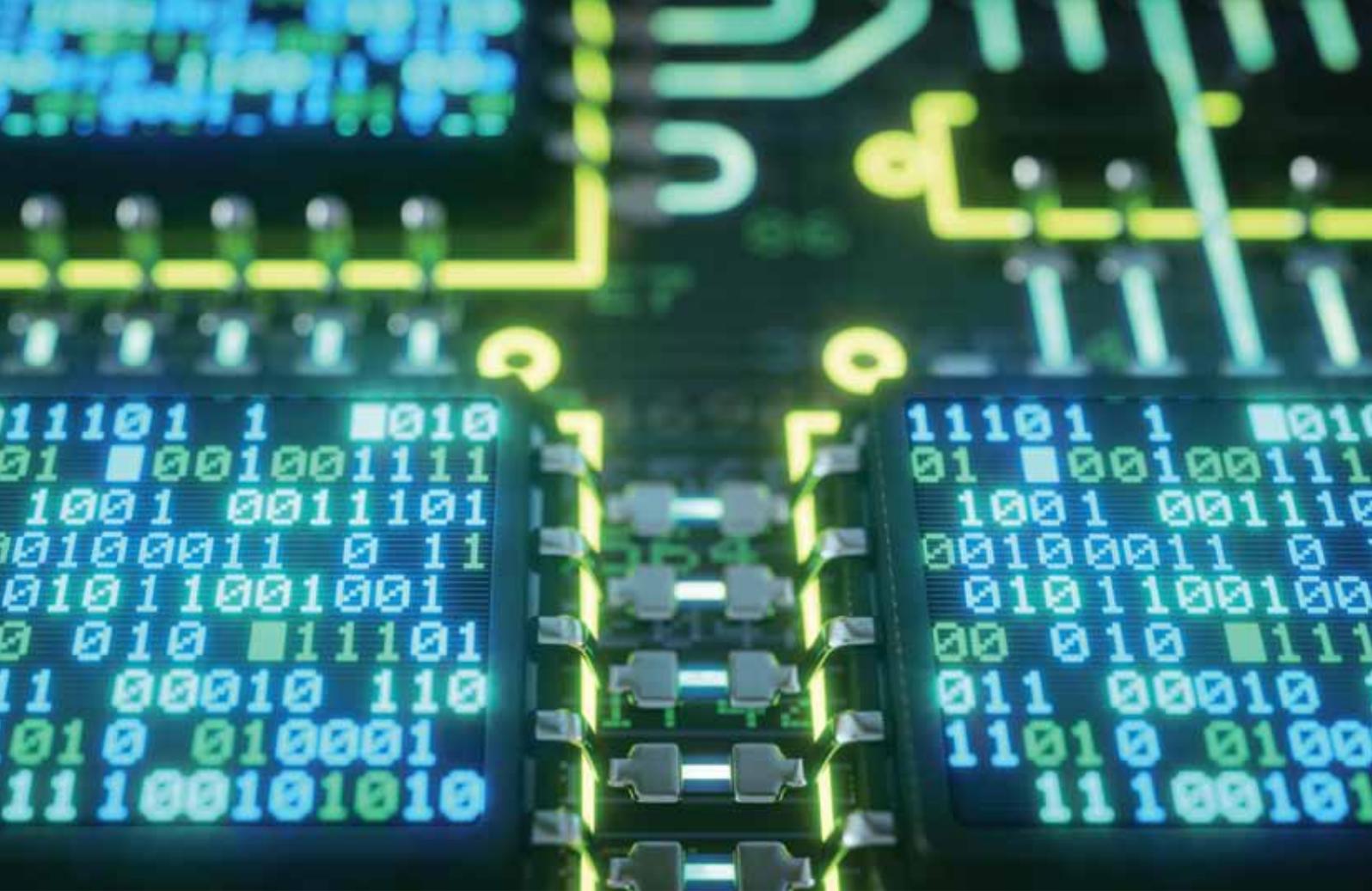
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# Data availability and use – capturing the opportunities of the digital age

Frameworks and protections for data access require major reform to ensure Australia does not miss the economic opportunities provided by the new era of digitisation.

Effective use of data is integral to the efficient functioning of the modern economy. Extraordinary growth in data generation and usability has enabled a kaleidoscope of new business models, products and insights. Improved data access and use can enable development of innovative products and services that transform everyday life, drive efficiency and safety, create productivity gains and allow better decision making.

In 2014, the Financial System Inquiry recommended a review of the benefits and costs of increasing

the availability and improving the use of data. And in 2015, the Harper Review of Competition Policy recommended consideration be given to ways of improving individuals' ability to access their own data to inform consumer choices. The Australian Government subsequently asked the Productivity Commission to undertake an investigation into options for improving the availability and use of data – from both the public and private sectors. The Commission's final report was released in May 2017.

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The Commission found that the frameworks and protections for data access and use, developed prior to sweeping digitisation, require serious re-examination.  
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### Risks from better data use are real but manageable

Increasing data availability and enabling wider use would provide enormous benefits, but there are risks involved. These risks vary with the nature of the data holding, and the purpose for which it is used. Participants in the Commission's inquiry indicated significant risks related to the potential to identify persons or businesses within datasets. In the Commission's view, these risks – and the desire for privacy and confidentiality – should not be downplayed. They are real and important. But many of them are able to be managed – better than they are now – with the right policies and processes.

### Fundamental change is needed

The Commission argues that the legal and policy frameworks under which public and private sector data is collected, stored and used (or traded) in Australia are ad hoc and not contemporary. Privacy has dominated access decisions to date, but privacy is only one, very defensive, aspect of data use. Adding more ad hoc adjustments to existing structures and legislation will not bring about the cultural change necessary in Australia to securely harness the opportunities presented by data. Fundamental and systematic change is needed to the way Australian governments, businesses and individuals handle data.

The Commission has recommended the creation of a new, broad-reaching Framework designed to endure beyond current technologies, policies, personnel and institutional structures. It takes account of the significant differences in data types and uses, and recognises that any associated risks must be managed well.

The Commission concluded that legislative change is needed as a basis for reform. This would involve the creation of a new Commonwealth act – the Data Sharing and Release Act (DSR Act) that would apply to all digital data. By giving consumers new rights to use their digital data and data holders permission

## Australia's health data – an underutilized resource that could improve health outcomes

Australia's health sector exemplifies both the opportunities for greater data use and many of the limitations of current data frameworks and protections.

Due to a multitude of legal, institutional and technical reasons, health information in Australia is poorly used compared to the use of health data in other developed countries. This has significant implications. At the individual level, patients are often required to act as information conduits between the various health care providers from whom they are receiving treatment. Inadequate information can lead to errors in treating patients. At the system level, inefficient collection and sharing leads to data gaps and unnecessary expenditure. Further, the lengthy approval process for researchers requesting access to personal data limits their ability to make potentially life-saving discoveries.

Improved access to health data can enable policy makers and researchers to:

- identify emerging health issues within communities and factors that contribute to particular medical conditions;
- assess the safety of pharmaceuticals and other treatment options on an ongoing basis; and
- evaluate the effectiveness and efficiency of health program delivery and policy.

In the United Kingdom, administrative hospital records linked (via a unique patient health service number) between a number of cancer screening registries have been used to improve how and when cancer is diagnosed (to increase early detection and survival). Undertaking similar analysis in Australia would require linking of data held by a range of groups, including data from Medicare Australia, the Australian Government Department of Health and its counterparts in the States and Territories, various cancer registries and other organisations.

to be pro-active about data possibilities, the DSR Act creates a new lens through which to view data; the lens of a valuable asset being created and utilised, not merely a risk or an overhead.

### The new Framework

The Commission's recommended Framework comprises two facets:

1. a new legislated consumer right enabling opportunities for active data use by those who originate the data (ie, individuals and businesses) and consequent fundamental reinvigoration of Australia's competition policy
2. a structure for data sharing and release that would allow access arrangements to be dialled up or down according to the different risks associated with different types of data, uses and use environments.

Under current arrangements consumers have little capacity to choose how digital data about them is used, and organisations and governments frequently make decisions about the use of individuals' data on their behalf (taking into account privacy principles).

The Commission recommends establishing a new Comprehensive Right for Australian consumers (both individuals and small businesses) to obtain and use their own digital data. This new right would provide:

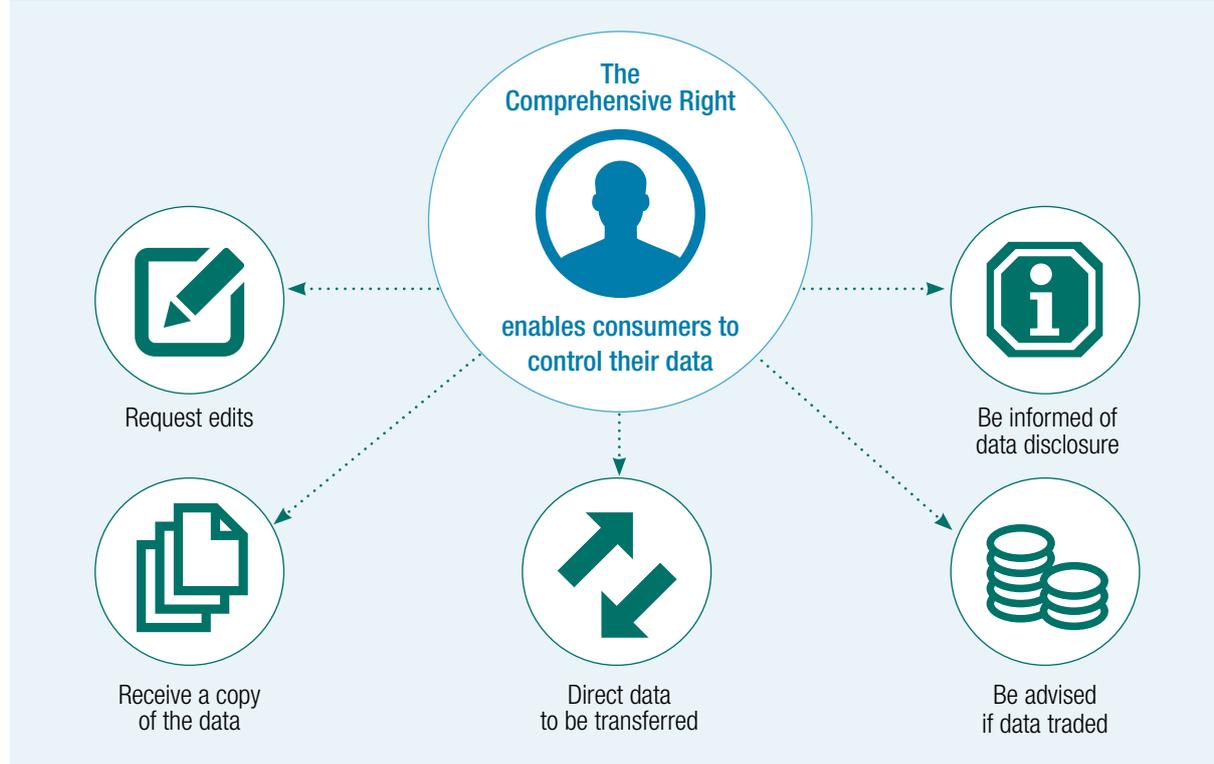
- powers for consumers (including small businesses) to view, request edits or corrections, and be advised of trade to third parties of digital data held about them, similar to privacy rights but with a focus on supporting data use in the digital era; plus
- a new right to have a copy of their consumer data provided either to them or directly to a nominated third party, such as a new service provider, in order to obtain a competitive offer or other benefit.

The right for individual and small business consumers to request that their data be transferred to a third party has the potential to enhance competition between providers in open markets, and would create greater opportunity for innovation by firms, lift accountability and improve service delivery.

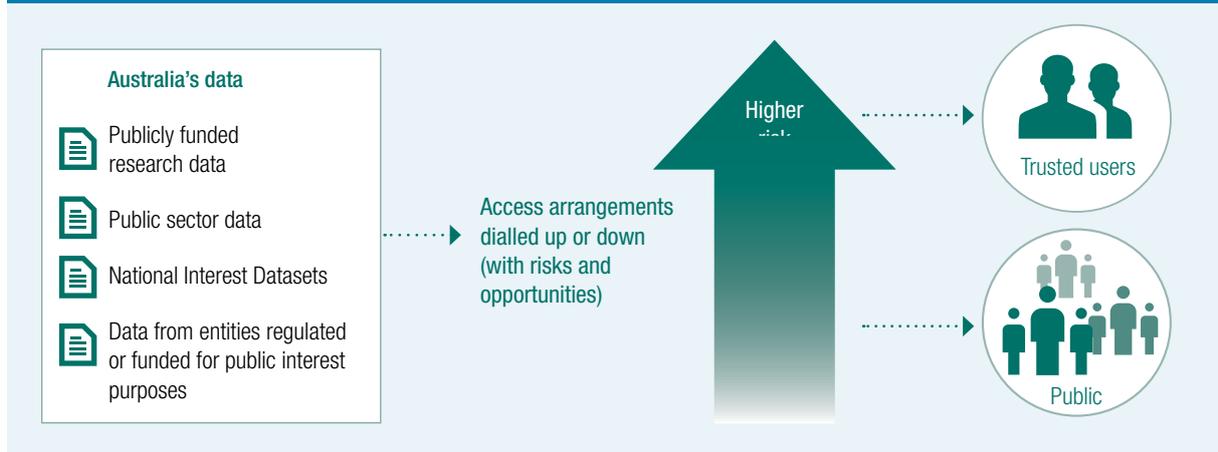
Individuals are likely to be more willing to allow data about themselves to be used by private and public organisations, provided they understand why and how the data is being used, can see tangible benefits, and have control over who the data is shared with.

The second facet of the Commission's recommended Framework is the creation of a data sharing and release structure that signals to all data custodians a strong and clear cultural shift towards better data use and which can be dialled up for the sharing or release of higher-risk datasets.

## Facet 1 – A comprehensive right for Australia's consumers



## Facet 2 – A scalable risk based approach



- For datasets designated as National Interest Data (see summary of key recommendations below), all current restrictions to access and use would be replaced by new arrangements under the proposed DSR Act. National Interest Datasets would be resourced by the Commonwealth as national assets.
  - A suite of Accredited Release Authorities would provide integration, maintenance of, and streamlined access to, National Interest Datasets as well as to other datasets to be linked and shared or released.
  - A streamlining of ethics committee approval processes would provide more timely access to identifiable data for research and policy development purposes.
- The incremental costs of more open data access and use will be outweighed by the opportunities to reap the benefits presented by digital data.

## A new framework for sharing and release of data: summary of the Commission's key recommendations

### A comprehensive right for consumers

Consumer data must be provided on request to consumers (both individuals and small businesses) or to a designated third party in order to exercise a number of rights, summarised as the Comprehensive Right to access and use digital data. This Comprehensive Right would enable consumers to share in perpetuity joint access to and use of their consumer data with the data holder; receive a copy of their consumer data; request edits or corrections to it for reasons of accuracy; be informed of the trade or other disclosure of consumer data to third parties; and request data holders to transfer data in machine-readable form, either to the consumer or to a nominated third party.

The Australian Government should introduce an outcome-based definition of consumer data that is broadly sufficient to enable the provision of a competing or complementary service or product for a consumer. The precise scope of consumer data, as well as necessary data transfer mechanisms, security arrangements and requirements necessary to authenticate a consumer request, should be determined by industry participants on an industry-specific basis. Industry agreement on these should be in the form of a data-specification agreement, registered with the Australian Competition and Consumer Commission (ACCC). All holders of consumer data should include in their privacy policies, terms and conditions, or on their websites a list of parties to whom consumer data has been traded or otherwise disclosed over the past 12 months.

The ACCC should be resourced to undertake the progressive approval and registration of industry-specific data specification agreements, assess the validity of charges levied by data holders in the application of the Comprehensive Right and handle complaints relating to the exercise of the Right by individuals and small businesses.

## A risk-based approach to data sharing and release

As a contribution to innovation, all Australian governments should direct the early release of all non-sensitive publicly funded datasets – whether held by a government agency or other body receiving public funding for data collection activities.

A realistic assessment of the risks attached to public release of identifiable information that is already public (in a less accessible form) should be undertaken by all governments, with the intention of releasing low risk data, and mitigating risks where possible to enable far greater public release of data, including that which could be used for program or agency performance management purposes.

Publicly funded entities, including all Australian Government and State and Territory agencies, should create and publish comprehensive, easy to access registers of data, including metadata and linked datasets, that they fund or hold.

The Australian Government should establish an Office of the National Data Custodian (NDC) to take overall responsibility for the implementation of data policy, in consultation with all levels of government. The Office of the NDC would streamline and make transparent approval processes for access to data, with specific functions including recommending the designation of National Interest Datasets, accreditation of data release authorities, advising on ethics and emerging risks and opportunities in data use, and provision of practical guidance material for data custodians.

Selected public sector and public interest entities should be approved as Accredited Release Authorities with responsibility for deciding on the release of data sets; collating, curating, linking and ensuring the timely updating of National Interest Datasets and other datasets; and providing risk-based data access to trusted users.

## National Interest Datasets

The Australian Government, in consultation with State and Territory governments, should establish a public process whereby datasets are nominated and designated as National Interest Datasets. National Interest Datasets that contain non-sensitive data should be available for immediate release; those that include sensitive data on individuals would be available to trusted users with management of any associated risks.

## Legislative reform

New Commonwealth legislation – the Data Sharing and Release Act – should be passed drawing on the full range of Commonwealth powers to regulate digital data, in order to authorise the better sharing and release of data.

The new Act should establish the Comprehensive Right of consumers to access their data from government and private data holders alike, for the purposes of improving the services that are offered to them by alternative providers. The Act should also establish the risk-based approach to data sharing and release, the National Data Custodian, and Accredited Release Authorities.

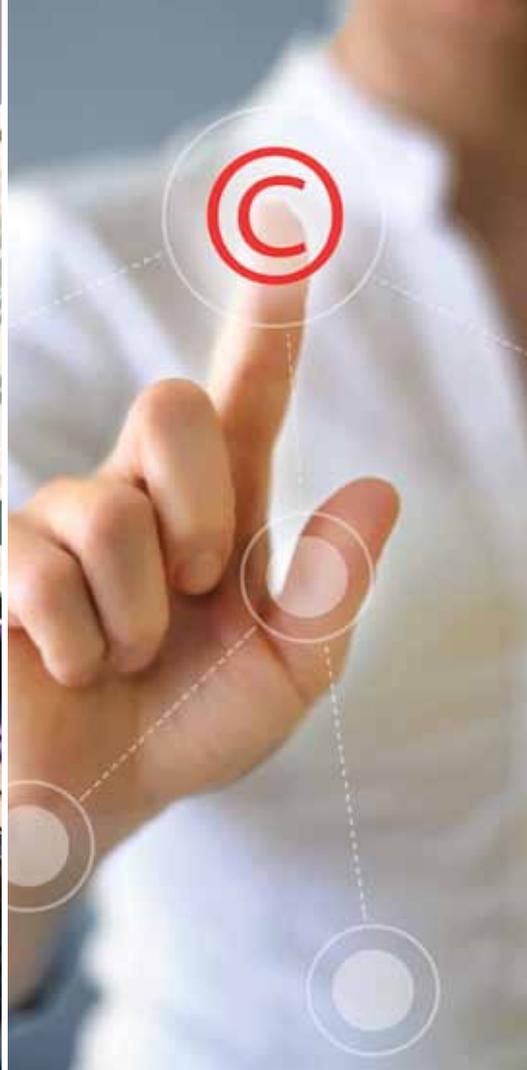
Where possible, the new Act would override secrecy provisions or restrictions on use that actively prevent access to data within and across the public sector, including between Australian governments.

[The Australian Government has established a cross-portfolio taskforce to prepare the Government's response to the Productivity Commission's inquiry report.](http://pmc.gov.au/public-data/data-availability-and-use-taskforce) [pmc.gov.au/public-data/data-availability-and-use-taskforce](http://pmc.gov.au/public-data/data-availability-and-use-taskforce)

## Data Availability and Use

> Inquiry Report

> Released May 2017



# Reforming Australia's intellectual property arrangements

A Productivity Commission inquiry found that Australia's intellectual property arrangements fall short in many ways.

Australia provides protection for intellectual property (IP) through a range of statutory measures including patents, copyright, trademarks, and rights over performances, designs, plant varieties and circuit layouts.

Over recent years there have been increases in the scope and duration of IP protection. At the same time, the global economy and technology have changed. In order to examine whether Australia has the right balance between incentives for innovation and investment and the interests of individuals and businesses accessing the ideas, the Productivity Commission was asked to undertake an inquiry into Australia's IP arrangements and recommend changes that would improve the overall wellbeing of Australian society.

## The Commission's approach

The Commission identified four guiding principles that the IP system should embody:

- *Effectiveness*: the system should be effective in encouraging *additional* ideas and in providing incentives that ensure knowledge is disseminated through the economy and community.
- *Efficiency*: the system should provide incentives for IP to be created at the lowest cost to society.
- *Adaptability*: the system should adapt to changes in economic conditions, technology, markets and costs of innovating.

## A single product can embody many IP rights – the smartphone is an example



Today's smartphones are protected by over 1000 **patents**, including for their semiconductors, cameras, screens, batteries and calendars.

**Copyright** protects the artwork and software code within smartphones.

**Design rights** protect the aesthetics, and the placement of cameras, buttons and screens.

**Circuit layout rights** protect the electrical integrated circuits.

Brands, logos and other distinctive marks such as 'iPhone' are protected by **trade marks**.

- *Accountability*: the policies and institutions that govern the system, and the way that changes are made to them, need to be evidence-based, transparent, and reflect community values.

IP arrangements should ensure that creators and inventors are rewarded for their efforts, but in doing so the arrangements must:

- foster creative endeavour and investment in IP that would not otherwise occur
- only provide the incentive needed to induce that additional investment or endeavour
- resist impeding follow-on innovation, competition and access to goods and services.

### Copyright – assessing the evidence

Copyright protects the material expression of literary, dramatic, artistic and musical works, as well as books, photographs, sound recordings, films and broadcasts. Under the Copyright Act, creators are granted the exclusive right to reproduce or adapt their work in material form, as well as to publish, perform, and communicate their work to the public. The Commission found that copyright protection in Australia suffers from a number of shortcomings.

### *Copyright is overly broad, to the detriment of intermediate users and consumers*

Copyright protection in Australia applies automatically to all creative works. Unlike other IP rights, copyright does not require formal registration. The lack of a screening mechanism means that copyright protects a wide array of material that may not need protection, or would be produced in the absence of such protection. It applies equally to commercial and non-commercial works, works with very low levels of creative input, works that are no longer being supplied to the market, and works where ownership can no longer be identified.

### *Rights have expanded over time, despite little evidence of benefits*

Copyright has its genesis in protecting the publication and distribution of books. But as new technologies have developed to produce and transmit creative works, new rights were extended to copyright holders. Progressively, copyright has expanded to cover a wider range of activities – some only loosely considered 'creative'. New exclusive rights have also been granted to rights holders, including controls over importation of goods, moral and performers' rights, and rights to control communication of a work to the public.

### *The term of protection is overly long, reducing access to valuable works*

Copyright protects literary, musical, dramatic and artistic works for the duration of the creator's life plus 70 years, sound recordings and films for 70 years, television and sound broadcasts for 50 years, and published editions for 25 years. For example, a new work produced in 2016 by a 35 year old author who lives until 85 years of age will be protected until 2136.

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The Commission found that copyright protection lasts far longer than is needed. Few creators are motivated by the expectation of financial returns long after death. And evidence suggests that the vast majority of works do not make commercial returns from copyright beyond their first couple of years on the market.

The Commission did not recommend changes to the length of copyright term – doing so would require amendments to international agreements such as the Berne Convention, TRIPS and AUSFTA. But even within the limits of these agreements, the Commission found scope to do more.

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The scope and term of copyright protection in Australia has expanded over time, often with no transparent evidence-based analysis, and is now skewed too far in favour of copyright holders. Innovative firms, universities and schools, and consumers bear the costs.

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#### *A fairer system of user rights*

Under the Copyright Act, certain uses of copyrighted material are allowed without the authorisation of rights holders. This includes an exception for ‘fair dealing’ for research or study, criticism or review, parody or satire, reporting the news, judicial proceedings and professional advice. Exceptions also allow for temporary reproductions to be made in the course of communicating a work, and for recording a television show on a video tape for private viewing, or copying music to an mp3 player.

The Commission found that Australia’s fair dealing exceptions are too narrow and prescriptive, do not

reflect the way people consume and use content in today’s digital age, and do not readily accommodate new legitimate uses of copyright material.

Participants in the Commission’s inquiry argued that Australian businesses and consumers forego extensive opportunities because of the current inflexible exceptions. And large costs are imposed on the education sector – for example, Australian schools pay millions of dollars each year to use materials that are currently freely available online.

Legislative change is required to expand the categories of use deemed to be fair. The Commission recommended that Australia’s narrow purpose-based exceptions be replaced with a principles-based, fair use exception, similar to the well-established system operating in the United States and other countries. Introducing a broad fair use exception would allow adaption of Australia’s copyright arrangements to new circumstances, technologies and uses over time.

#### *Easier user access to legitimate content*

The Commission examined several issues that affect the use and licensing of copyright material, including geoblocking and restrictions on the parallel importation of books

Geoblocking is the practice of restricting a consumer’s access to websites and digital goods and services within their ‘home market’. The Commission found that the use of geoblocking technology is widely imposed on Australian consumers who are frequently offered a lower level of digital service (such as a more limited music or TV streaming catalogue) at a higher price than in overseas markets.

‘Parallel imports’ are goods protected by IP rights and produced with the permission of the rights holder overseas, but imported into Australia without permission of the domestic rights holder. While there are no restrictions on parallel importation of sound recordings, computer software and goods embodying electronic literary or music items, Australia retains parallel import restrictions (PIRs) on books.

Prohibiting parallel imports enables IP rights holders to engage in geographic-price discrimination – charging different prices for the same good in different countries, or varying the quality of goods supplied in different countries.

While the Commission recognises the significant cultural and educational value of books, it does not view PIRs as the most effective way to generate these benefits. Provision of direct support to local authors – as is already provided by Australian, state and territory governments, to the amount of around \$40 million each year – is a more effective policy approach.



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## Does copyright provide a just reward for creators?

Some participants in the Commission's inquiry argued that the copyright system was aimed at providing creators with a 'just reward' or a 'living income'.

Evidence suggests much of the returns from copyright material are earned by intermediaries, rather than creators. The stereotype of the 'struggling artist' has some degree of truth to it, and many involved in creative endeavours work multiple jobs and receive financial support from their families.

However, the distribution of revenues along the value chain reflects the risks borne in bringing works to market. Creators commonly licence their copyrights to a publisher and according to some, creators have little choice but to accept the terms presented by a publisher. As one participant noted:

*Individuals are powerless to resist the egregious terms offered by publishers ... We have little ability to negotiate ... The publisher has all the power.*

Others argued that a 'just rewards' framework overly relies on emotion to obscure the realities of commercial arrangements. Another participant noted:

*Relatively few of copyright's rewards find their way to ... creators ... such a huge proportion of the benefits of increased protection are captured by other cogs in the cultural production chain that authors are sometimes viewed as a mere 'stalking horse' masking the economic interests of others.*

While others pointed out that the role of intermediaries has always been central to copyright.

*Beyond the absence of data, the biggest problem in discussions of copyright policy is the failure to recognise the centrality of distributors to copyright policy design. Most copyright policy discussion is founded on the myth that copyright is designed to meet the needs of authors. Yet the history of copyright policy shows clearly that copyright was an exchange of censorship services for monopoly privileges for publishers.*

Source: Productivity Commission 2016, *Intellectual Property Arrangements*, Box 4.3

## Patents – getting the fundamentals right

Patents can advance knowledge by encouraging socially valuable innovation that would not have otherwise occurred. But if poorly calibrated, they can impose net costs on the community. Patent protection inhibits competitors from freely using an inventor's technology, but over-protection can stifle competition, leading to reduced innovation and excessive prices. Moreover, by blocking subsequent innovators, patent protection can perversely inhibit the advancement of knowledge through 'follow-on' innovation.

Despite recent reforms, Australia's patent system remains tipped in favour of rights holders and against the interests of the broader community. The Commission found that Australia's patent system grants exclusivity too readily, allowing a proliferation of low quality patents, frustrating follow-on innovators and stymieing competition.

As in other areas of IP, reform options are restricted by Australia's international obligations. However, within these constraints, the Commission identified a package of reforms that would go some way to striking a better balance. To raise patent quality, the degree of invention required to receive a patent should be increased, the failed innovation patent should be abolished, and patent fees should be better structured. Costly extensions of terms for pharmaceutical patents should be reconfigured.

## Improving the broader IP landscape

The Commission's report also made recommendations on a number of issues concerning the broader IP landscape, including some current exemptions of IP arrangements from competition law, IP rights and publicly-funded research, institutional arrangements shaping Australia's IP system, international cooperation in IP, and compliance and enforcement of IP rights.

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## Summary of the Commission's proposed IP reforms

### Copyright

Replace Australia's existing fair dealing exceptions in the Copyright Act with a broad and open-ended fair use exception.

Repeal parallel import restrictions for books.

Strengthen the Copyright Act to make clear circumventing geoblocking technology is not a copyright infringement.

ACCC review to ensure best practice in governance, reporting and transparency arrangements for collecting societies.

### Patents

Raise the inventive step for patent eligibility, add an objects clause to the Patents Act, improve patent filing processes, restructure patent fees and abolish the innovation patent system.

Reform extensions of term for pharmaceutical patents.

Improve monitoring of settlements between originator and generic drug companies.

### Other IP rights

#### *Trade marks*

Expedite the removal of unused marks, and make it harder to register misleading marks.

Link the business name and trade mark registers, and allow the importation of legitimately marked goods.

#### *Plant breeders' rights*

Enable IP Australia to make essentially derived variety declarations in respect of any new plant variety.

### Enforcement and governance

Enhance the role of the Federal Circuit Court by introducing a dedicated IP list with caps on claimable costs and damages.

Expand the safe harbour scheme to cover all online service providers.

Implement an open access policy for publicly-funded research.

Identify overarching objectives and a common framework for IP policy development, and establish an interdepartmental policy group and other formal working arrangements between agencies.

Develop best practice guidance for developing IP provisions in international treaties.

Work with like-minded countries through multilateral forums to achieve more balanced IP settings and to reduce transaction costs.

### Intellectual Property Arrangements

> Inquiry Report

> Released December 2016



## How should Australia respond to increased global protectionism?

Rising protectionism within the global economy threatens Australia's economic wellbeing and future prosperity. A new Commission Research Paper examines the potential impacts on Australia of increased global protection, and outlines policy measures to minimise the impact of this dangerous new trend.

Over many decades, lower barriers to global trade and investment have helped increase growth and prosperity in Australia and elsewhere. However, these gains are at risk of reversing. The use of tariffs and other protectionist measures has increased in G20 nations since the Global Financial Crisis, and there are clear signs that the protectionist trend could accelerate. US President Donald Trump was

elected advocating a return to protectionist trade policies, and proponents of protectionism have been empowered in parts of Europe. Rising protectionist sentiment elsewhere might lead some to call for a re-think of Australia's commitment to free trade. The Commission's analysis shows that this would be a mistake.

Figure 1: Tariffs have fallen markedly since the middle of the 20th century

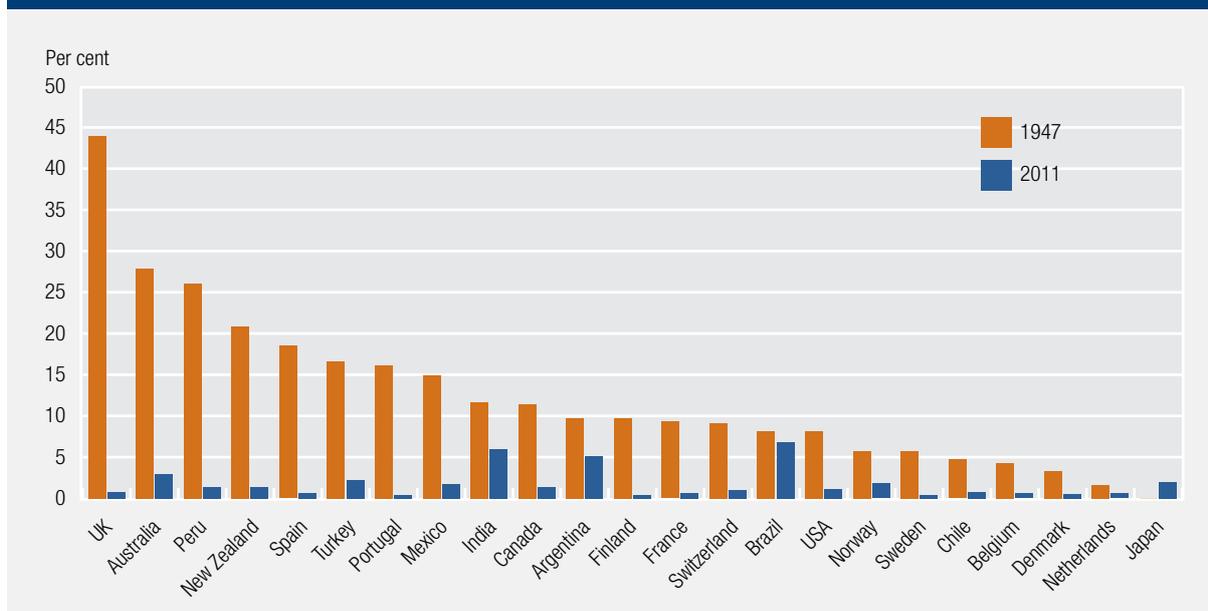
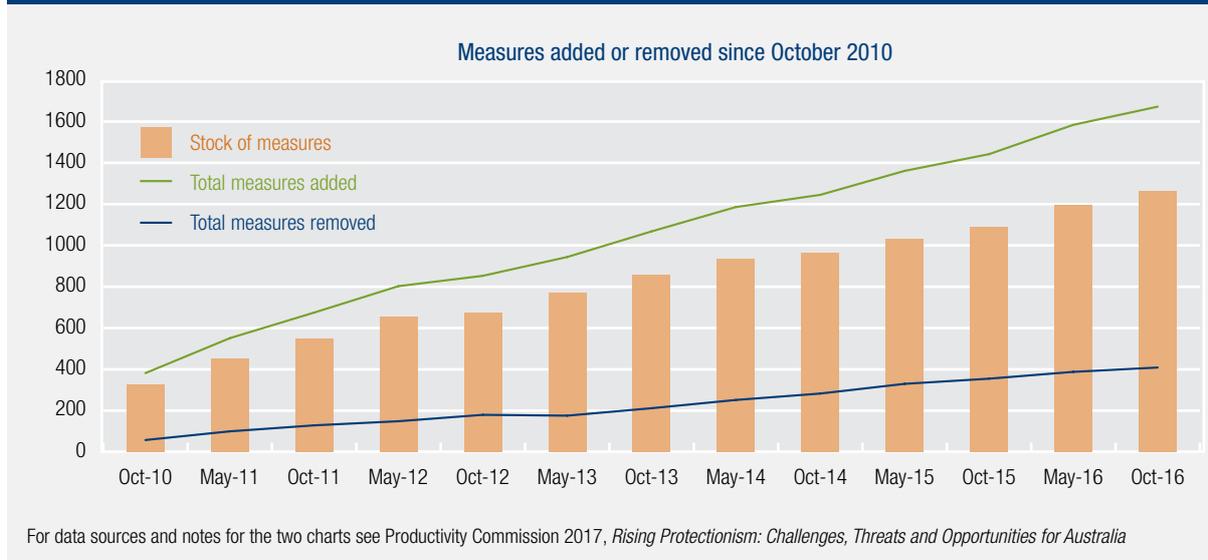


Figure 2: G20 countries have been adopting new trade restrictive measures more quickly than they have been removing old ones



The Commission has assessed the potential impacts on Australia of significant international increases in protectionism, and the implications of such shifts for Australian policy settings. Key scenarios examined included the effects of:

- higher US tariffs on imports from China and Mexico
- introduction, in the US, of border adjustments to the corporate income tax base, whereby revenue from sales overseas would be untaxed and the cost of imported goods would no longer be deductible when calculating taxable income – equivalent to a subsidy for exports and a tax on imports

- potential global contagion of higher trade barriers, where all countries raise tariffs by 15 percentage points
- facing such global contagion, Australia:
  - unilaterally maintains current levels of protection
  - cooperates with a group of countries – such as the Regional Comprehensive Economic Partnership (RCEP) comprising Australia, China, Japan, South Korea, India, New Zealand and the ASEAN countries – to maintain their existing levels of protection
  - joins with that grouping to further reduce trade barriers.

## How did the Commission estimate the effects of increased protectionism?

Changes in protection affect trade in numerous and complex ways. Mapping these complex interactions is impossible without the aid of models that trace the various channels of impact. The Commission developed two models for its analysis.

**PC Global**, which traces trade and capital flows between countries, was used to estimate the impacts on the Australian economy of a number of scenarios of changes in international trade policies.

**PC National** was used to look at potential changes in the distribution of income in Australia resulting from global contagion of significant rises in protection. PC National recognises that while households benefit from trade, these benefits are not evenly distributed. For policy purposes, it is important to identify the types of households that bear the costs of trade – in the form of structural adjustment that leads to job losses, for example – so that governments can better design policies that lessen the disruptive impact of trade reform and spread the benefits more widely.



- A repeat of a scenario akin to the experience of the 1930s – with trade barriers significantly higher around the world – would unleash economic dislocation with the capacity to cause a global recession and put the rules-based global trading system under much strain. Australia wouldn't escape unharmed.

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Significant worldwide increases in protection would have the capacity to cause a global recession. The Commission's modelling estimates that global trade would fall by 22 per cent, and global output by nearly 3 per cent – the equivalent of more than a year of global growth at current rates. Australia would not escape unscathed. Over one per cent of GDP every year and close to 100 000 jobs would be lost, and up to 5 per cent of our capital stock would be mothballed. Living standards would fall across the income distribution.

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## What does the modelling tell us?

The Commission's key findings include:

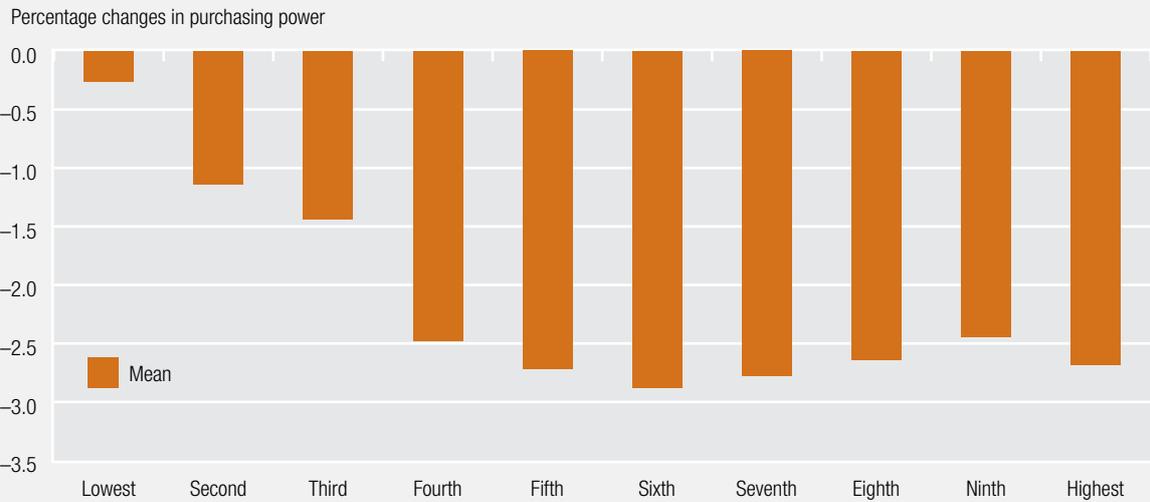
- A US trade war with China and Mexico would lower economic growth in all three countries, and particularly severely in Mexico, unleashing a reorganisation of world trade, but once the dust had settled economic activity in Australia would be little affected.
- Uncertainty around what might eventuate from rising protectionist sentiment is likely to be impacting already on global trade and investment.
- The adoption of US border adjustments could have material transitional costs for Australia and other trade partners of the United States, as markets responded to such measures. These disruptions could damage trade relations. However, in the long-term (and noting that exchange rates may not readily or fully adjust) border adjustments as modelled would likely have little effect on Australia.

## How would Australian households be affected?

Significant global increases in tariffs would cause lower living standards, on average, in every decile of the income distribution. Households on the median weekly income would face an income cut of about \$1500 a year. But not all households would be affected equally.

The average falls mask considerable variation within income deciles. According to the Commission's modelling, significantly increased global protection would result in lower living standards for nearly 80 per cent of Australian households. The fall would be relatively small for some households, but nearly 30 per cent of households would experience a fall in purchasing power of at least 4 per cent. For example, a household that spends \$2500 a fortnight on goods and services would be worse off by \$100 a fortnight.

**Figure 3: Global tariff increases would see Australian living standards fall in all income deciles**



Data source: Commission estimates generated using the PC Global and PC National models.

### How should government respond?

#### *Pursue further liberalisation*

In the event of a global rise in protection, Australia is likely to face intense pressure to lift its own barriers to international trade and investment. The Commission’s analysis shows there would be no economic justification to join such a trade war. Raising barriers would shrink economic activity and harm employment and wages. The average Australian would be worse off.

Rather, Australia should continue to pursue freer markets and improve the functioning of the rules based international trading system by:

- prioritising regional agreements that follow, or work directly towards, WTO ‘most favoured nation’ treatment (under which countries provide equal trade advantages to all their trading partners)
- promoting the greater use of plurilateral sector specific agreements negotiated in the context of the World Trade Organization
- pursuing only those trade agreements where there is a strong case that a clear net benefit to Australia will result
- broadening negotiations over agreements to include parties capable of offering critical assessment, not just involving parties seeking an advantage or protecting a constituency
- adopting better consultation processes in negotiating agreements, including widening the access

of stakeholder groups to draft treaty text on a confidential basis during the negotiation

- strengthening Australia’s reputation as an attractive destination for international investors through more consistent, transparent and predictable foreign investment approval processes while preserving our vital national security interests.

To illustrate the potential effects of pursuing further trade liberalisation, the Commission modelled a scenario based on RCEP participants.

Relative to a scenario in which all countries significantly lifted barriers to trade, if RCEP members simply maintained tariffs at current levels in the face of rises elsewhere, the Commission’s modelling shows that the negative impact on Australia’s income would be largely offset and the drop in living standards smaller by a factor of five. With liberalisation of tariffs, economic activity in Australia would be about 2.5 per cent higher (or more than a year of growth at current levels). And benefits would be even larger if RCEP countries extended liberalisation efforts to non-tariff barriers and barriers to services trade. A household with the median weekly gross income of about \$1600 a week would be better off by about \$44 a week.

Moreover substantial scope still exists to lower existing trade barriers. Estimates of non-tariff barriers and barriers to services trade, while hard to quantify, are typically large. There is no reason why Australia could not proceed unilaterally. Lowering

these barriers would not depend on our trading partners taking similar actions and the benefits would be predominantly and widely distributed across Australian households and businesses.

**Enhance resilience and workforce adaptability to economic change**

Governments should also pursue broader policies that strengthen the economy’s resilience and the workforce’s adaptability to changes taking place in the global economy, many of which are driven by new technologies.

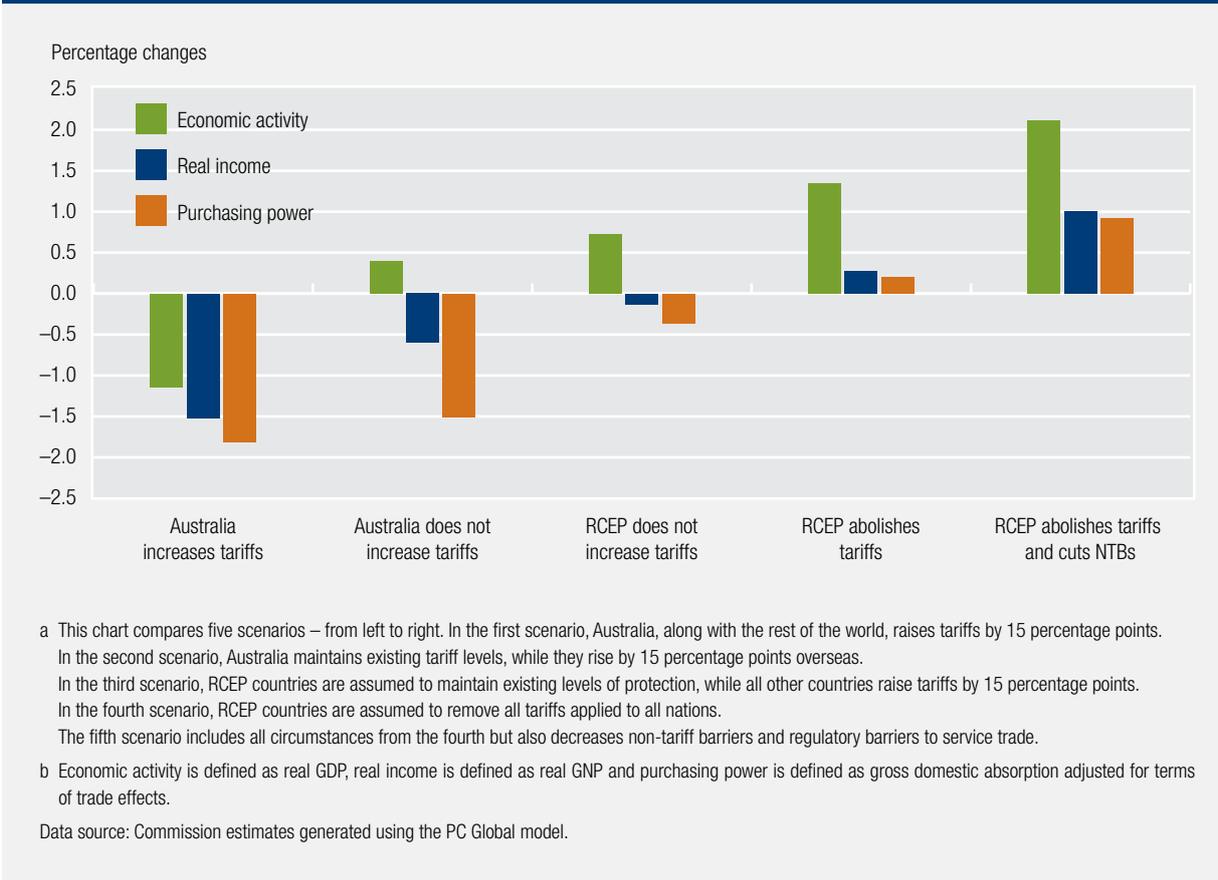
These companion policies can serve to lessen the disruptive impacts of change and create an environment that spreads the benefits of globalisation more widely. They include education and training policies

that aim to build solid foundation skills and enable participation in further training and reskilling for displaced workers; workforce policies that influence how readily firms can adjust the size and composition of their workforce; and macroeconomic stability.

**Improve community understanding of the benefits of open markets**

Governments need to better engage with the community about the case for free trade, and about policies aimed at managing the costs of adjustment and ensuring the benefits of liberalisation are shared more widely. Sharing better the benefits from persisting with open markets would help to build community confidence in trade and foreign investment policies.

**Figure 4: Removing tariffs and other barriers to trade would increase living standards in Australia<sup>a,b</sup>**



**Rising Protectionism: Challenges, Threats and Opportunities for Australia**  
 > Commission Research Paper  
 > Released July 2017



# Improving human services through greater choice and competition

A Commission draft report recommends reforms to improve the effectiveness of certain human services by introducing informed user choice and competition.

Human services – such as health, social housing and family and community services – are essential for the wellbeing of individuals and their families, and underpin social and economic participation.

The effectiveness of many human services can be improved by putting people who use them at the heart of service provision. In the second stage of its inquiry, the Commission has recommended reforms to six services where user choice and competition could improve outcomes for users.

## Why user choice and competition?

Users of human services could make choices over: their provider; the service they receive; and where, when and how that service is delivered. Allowing for these choices can improve outcomes by giving users greater control over their lives and to make decisions that meet their needs, while making providers more responsive to users' preferences.

User choice is not always appropriate. For example, a person in the late stages of dementia or experiencing a medical emergency may struggle to make an

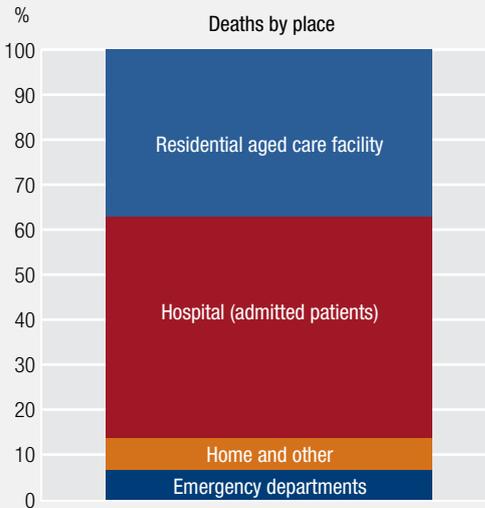
informed decision themselves. In these cases, governments and providers usually make choices for users, and should do so with a firm focus on the user.

Competition is a means to improving the effectiveness of service provision, rather than an end in itself. Competition can provide incentives to deliver more effective services. When competition is not possible or desirable, contestability, by mimicking competitive pressures, can deliver many of the same benefits as competition. Sometimes, neither competition nor contestability are appropriate.

## Government stewardship is important

Stewardship involves a range of functions that help to ensure service provision is effective at meeting its objectives, and users are protected. Unlocking the potential benefits of competition or contestability relies on careful stewardship by governments. Stewardship arrangements are difficult to get right, and it can be harmful when they fail.

## Seventy per cent of people would prefer to die at home



Data source: see Productivity Commission 2017, *Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services*, Draft Report.

### The Commission's reforms

#### *Better care for people at the end of life*

Each year, tens of thousands of people approaching the end of life are cared for and die in a place that does not reflect their choice or fully meet their needs. Most people who die do so in two of the least preferred places – hospitals and residential aged care.

People will benefit from more community-based palliative care services, which assist people who wish to die at home. Better resourced and delivered end-of-life care in residential aged care could also improve the quality of care.

#### *Fixing social housing*

The current two tiered system of financial assistance for people who live in social housing or the private rental market is inequitable, and limits tenants' choice. The system would be improved if a single model of financial assistance was applied across social and private housing, based on an increase and extension to Commonwealth Rent Assistance. Social housing should continue to provide a home for people who are not well placed to rent in the private market.

#### *Shifting the focus of family and community services to commissioning*

Family and community services are not meeting users' needs. Poorly designed contracting and contestability arrangements are hindering providers in

their efforts to achieve positive outcomes for service users.

Practical changes could shift the focus to improving outcomes for users. These include system planning that builds a better understanding of users and their needs, selecting providers with skills and attributes that help them deliver outcomes and extending contract lengths to give service providers greater certainty. Smarter data collection and contracting arrangements would assist providers to more effectively deliver services.

#### *Improving outcomes for Indigenous people in remote communities*

Although more effective services alone will not address the disadvantage in some remote Indigenous communities, human services are not making the contribution they should. Increasing contract lengths for service providers, developing better planning, evaluation and feedback systems, and improving processes for selecting and managing service providers would help to improve outcomes.

#### *More information and choice to public hospital patients*

Many Australians will be admitted to a public hospital at some stage of their life, often for elective (planned) care. Elective patients are often given limited control over the pathway which determines the hospital and clinician that treats them. That pathway typically begins with a referral from the patient's general practitioner (GP) to an initial specialist consultation at either a public outpatient clinic or private outpatient rooms.

Public hospital patients should be given greater control over this pathway. This requires removing barriers to patients choosing the outpatient clinic or specialist they initially attend when given a referral by their GP. Improved public reporting on individual hospitals and specialists would support greater user choice and encourage performance improvements in hospitals.

#### *Shifting public dental towards targeted preventive care*

Public dental services do not focus on prevention and early intervention. Public dental patients have little choice in who provides their care, when and where. Patients' choice and outcomes could be improved by rewarding preventive care through a new consumer directed care model, where users are given the choice of a public or a participating private dental clinic.

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## Summary of the Commission's key draft recommendations

### End-of-life care

State and Territory Governments should use competitive processes to select providers of additional community-based palliative care services. The Australian Government should remove restrictions that limit access to palliative care in residential aged care, so that people living in residential aged care receive end-of-life care that aligns with the quality of that available to other Australians.

### Social housing

Commonwealth rent assistance should be extended to cover tenants in public housing, and increased by about 15 per cent. State and Territory Governments should charge market rents for tenants in social housing, and provide additional payments to those in need of additional assistance. Social housing tenants should have more choice over their home.

### Family and community services

Governments should improve the way they select service providers on behalf of users, and should plan and contract services in a way that puts users at the centre of service provision. Tenders should be held open for longer and governments should announce forward schedules of tenders. Default contract lengths should be increased to seven years, to enable investment by providers and ensure continuity for users.

### Remote Indigenous communities

Governments should increase default contract lengths for human services in remote Indigenous communities to ten years (with safeguards in case of serious failure) and better align tender processes for related services. There should be a strong focus on transferring skills and capacity to the community.

### Public hospitals

The Australian Government should clarify, in regulation, that referrals to a specialist do not need to name a particular clinic or specialist, and that any specialist can accept a referral to a specialist of their type. State and Territory public outpatient clinics should accept any patient with a referral, regardless of where the patient lives.

Governments should strengthen and expand their commitment to public reporting on hospital and specialist performance by publicly releasing data and improving the MyHospitals website.

### Public dental services

Governments should give users choice over dental provider, and use a payment model that increases the incentives to provide preventive care and rewards high quality care. Where user choice is not feasible (such as remote locations) the government should take a more systematic approach to selecting providers and monitoring their performance. Work should begin on data collection needed for the outcomes framework that underpins these reforms.

## Introducing Competition and Informed User Choice into Human Services: Reforms to Human Services

> Draft Report

> Released June 2017

> The Commission's final report will be handed to the Australian Government in October 2017



# The National Disability Insurance Scheme – a review of costs

A Productivity Commission position paper on National Disability Insurance Scheme (NDIS) Costs found that, while it is still early days, the NDIS is on track in terms of costs. However, the speed of the NDIS roll-out, as specified in Bilateral Agreements between governments, has created significant challenges and will require further scrutiny.

## About the National Disability Insurance Scheme

The NDIS is a new scheme designed to change the way that support and care are provided to people with permanent and significant disability. The NDIS is currently being rolled out across Australia. At full scheme, about 475 000 people will receive

individualised supports, at an estimated cost of \$22 billion in the first full year of operation.

The NDIS is based on the premise that individuals' support needs are different, and that scheme participants should be able to exercise choice and control over the services and support they receive. The scheme differs from previous approaches in a number of ways:

- it adopts a person-centred model of care and support
- it is an insurance-based scheme – it takes a long-term view of the total cost of disability to improve participant outcomes and to meet the future costs of the scheme
- funding is determined by an assessment of individual needs (rather than a fixed budget)
- it is a national scheme.

### An enormous challenge

The NDIS is a major, complex national reform – the largest social reform since the introduction of Medicare. It will:

- involve a shift away from a block-funded welfare model of support to a fee-for-service market-based approach
- increase funding in the sector from around \$8 billion each year to \$22 billion in 2019-20
- require around 70 000 additional disability support care workers (or around 1 in 5 of all new jobs created in Australia over the transition period).

### Costs are broadly on track and benefits are being realised

Based on trial and transition data, NDIS costs are broadly on track with the National Disability

Insurance Agency’s (NDIA’s) long-term modelling. While there are some emerging cost pressures – including higher numbers of children entering the scheme and higher average package costs – lower than expected utilisation rates (only about three quarters of committed supports are being used) are offsetting the higher costs.

The benefits of the NDIS are also becoming apparent. Early evidence suggests that many (but not all) NDIS participants are receiving more disability supports than previously, and that they have more choice and control.

### But the rollout schedule is highly ambitious

The rollout schedule for the NDIS is highly ambitious, given the magnitude of the reform. To reach the estimated 475 000 participants by 2019-20, the NDIA will need to approve hundreds of plans a day, while reviewing hundreds more (figure 1).

And while it is inevitable (given the size, speed and complexity of the reform) that there will be transitional issues with the rollout of the NDIS, the Commission found that there are already signs that the rollout schedule is compromising the NDIA’s ability to implement the scheme as intended, putting the scheme’s success and financial sustainability at risk. And the number of participants entering the scheme is also only just starting to ramp up (figure 1).

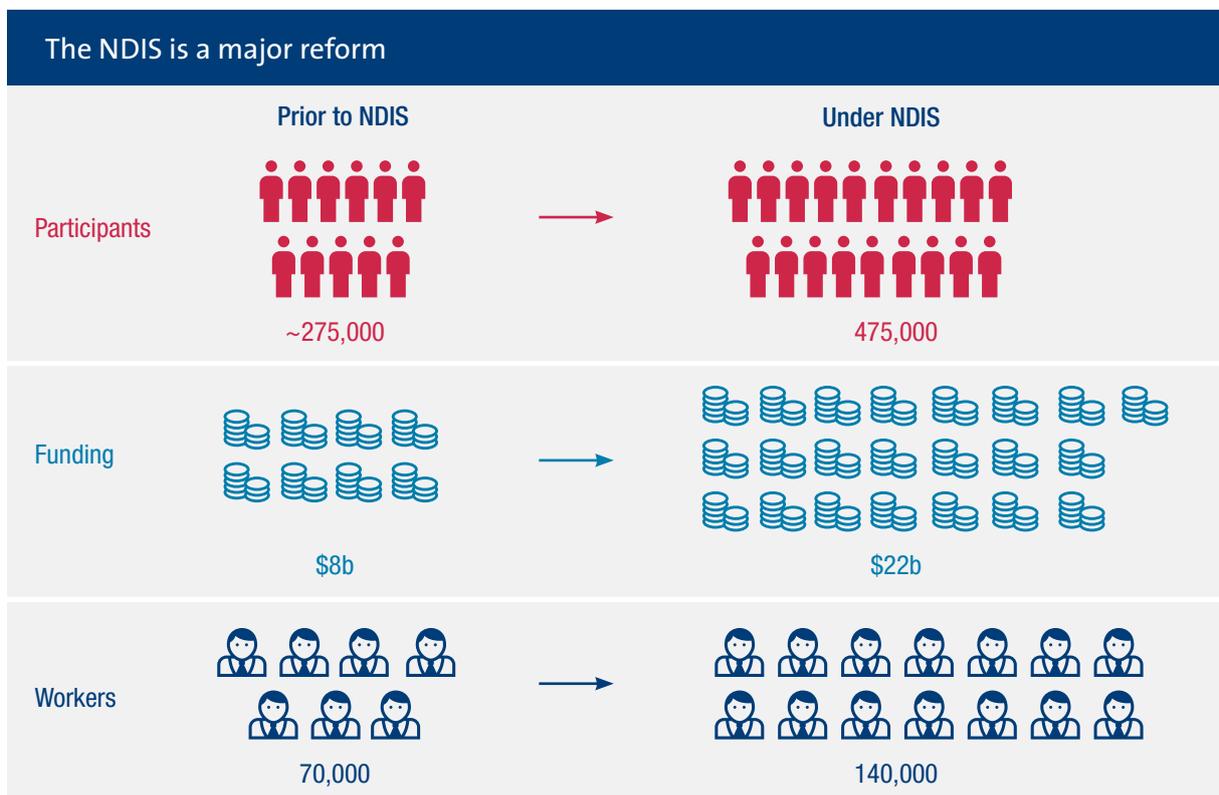
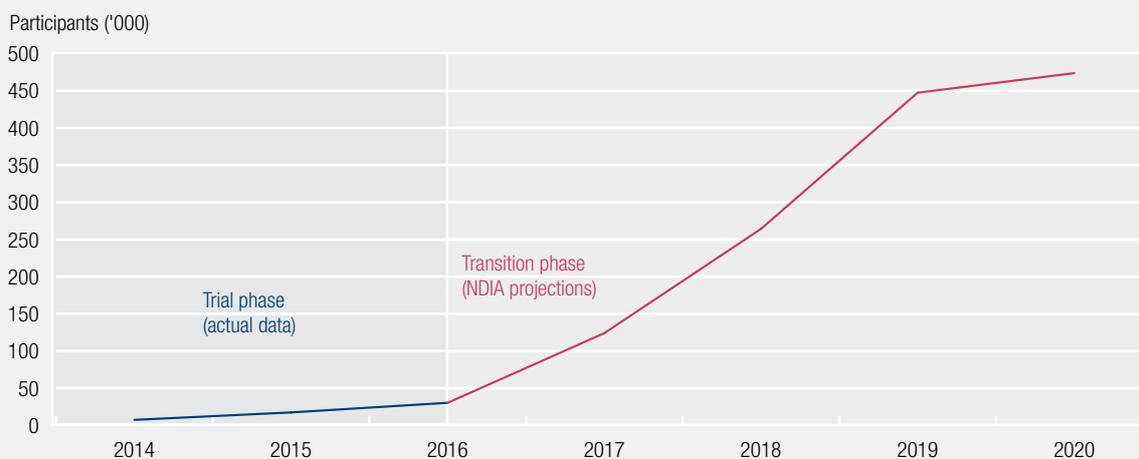


Figure 1: Growth in number of participants in the scheme<sup>a</sup>



<sup>a</sup> The projections of scheme participants were prepared by the Scheme Actuary for the NDIA's 2015/16 Annual Financial Sustainability Report using data at 30 June 2016. They do not incorporate actual participant numbers beyond June 2016.

Data source: See Productivity Commission 2017, *National Disability Insurance Scheme (NDIS) Costs*, Position Paper, figure 2.1

The speed of the rollout has meant that the NDIA has focused too much on meeting participant intake estimates and not enough on planning processes, supporting infrastructure and market development. This focus has resulted in confusion for participants about planning processes; rushed phone planning conversations; inadequate pre-planning support for participants; problems for providers with registering, pricing and receiving payment; and a lack of effective communication with both participants and providers.

The position paper states that the NDIA must find a better balance between participant intake, the quality of plans, participant outcomes, and financial sustainability. Greater emphasis is needed on pre-planning, in-depth planning conversations, plan quality reporting and more specialised training for planners. The sustainability of the projections in Figure 1 requires closer consideration.

### An effective interface with other services is essential

The interface between the NDIS and other disability and mainstream services is critical for participant outcomes and the financial sustainability of the scheme. The position paper calls for governments to set clearer boundaries at the operational level around 'who supplies what' to people with disability, and only withdraw from services when continuity of service is assured. Adding a standing item to the agenda of each COAG council responsible for a service area

that interfaces with the NDIS is also recommended to provide an opportunity to discuss, monitor and address emerging service gaps.

### Prices are important for market development

Prices will play an important role in fostering a disability services market that will efficiently and effectively respond to the choices of people with disability. While the NDIA currently sets the maximum price of disability supports that can be charged by NDIA-registered providers, the Commission highlights a potential conflict with the Agency's other responsibilities, including maintaining financial sustainability. The Commission suggests addressing the potential conflict in three stages – by introducing an independent price monitor over the transition period; transferring the NDIA's powers to an independent price regulator; and continuing price monitoring following price deregulation.

A complete list of the Commission's findings, recommendations and information requests is available in the overview of the position paper.

#### National Disability Insurance Scheme (NDIS) Costs

- > Position Paper
- > Released June 2017
- > The Commission's final report will be presented to the Australian Government in October 2017



# The telecommunications universal service obligation

The Commission's inquiry into the telecommunications universal service obligation (TUSO) found that the TUSO is no longer fit for purpose. Given technological and market developments the Government's policy objective should be revised. Market gaps and particular user needs should be addressed via the National Broadband Network and mobile infrastructure instead of the provision of fixed line services.

## What is the TUSO?

The TUSO was introduced in the 1990s to provide all Australians with 'reasonable' and 'equitable' access to a premises-based telephone service and payphones. At the time, telecommunications centred on basic telephones and the sector was being deregulated.

The Australian Government entered into a 20-year contract (concluding in 2032) with Telstra to deliver the TUSO. Under the contract, worth \$3 billion in net present value terms, Telstra receives around \$300 million annually from the Government (\$100 million) and industry (\$200 million).

**The TUSO has problems and is past its use-by date**

Today, consumers are shifting from fixed-voice telephony – the key focus of the TUSO – to mobile services and broadband data use. Service providers are also increasingly providing telecommunications for all media (data, video and voice) simultaneously. These changes are making payphones redundant.

The TUSO takes a one-size-fits all approach with no contestability in universal service provision, making it out-of-sync with technological and market developments.

Telstra’s contract also suffers from a lack of transparency and accountability. As a consequence, the basis for TUSO funding remains unclear and disputed.

Even so, consumers in regional and remote Australia with no access to mobile services see their landline or an equivalent service as critical, particularly in times of emergency. But the weight of evidence suggests that TUSO costs are likely to be greater than its benefits.

**A new universal service objective...**

The *objective* of a universal telecommunications service needs to be modernised – to provide all premises a *baseline* broadband and voice service that is sufficiently *accessible* and *affordable*. Technical baseline standards should be set to meet the basic needs of most Australians. To do so, the complex mix of regulatory and contractual settings governing voice and broadband service quality needs to be streamlined.

For wholesale providers, baseline standards could be specified under the Government’s proposed legislation that aims to guarantee access to wholesale broadband infrastructure and services. At the retail level, the Government could modify existing consumer protection codes to implement retail baseline standards that complement these wholesale standards.

**...will largely be met by the NBN and mobile infrastructure...**

The sizable public investment in NBN infrastructure will provide high-speed (voice-capable) broadband to all premises (on request) across Australia by 2020 – of a better quality, for the most part, than what has been available. Australians are also well served by mobile networks, with over 99 per cent of people having access to mobile services (and to a slightly lesser extent, broadband) where they live.

Increasingly, broadband will be the main medium for voice services. For the vast majority (more than 99 per cent) of premises, having both the NBN and mobile networks is likely to meet or exceed minimum standards. Given these considerations, the TUSO should be wound up following the full rollout of the NBN (expected to be in 2020).

**... with targeted intervention to address market gaps and particular user needs**

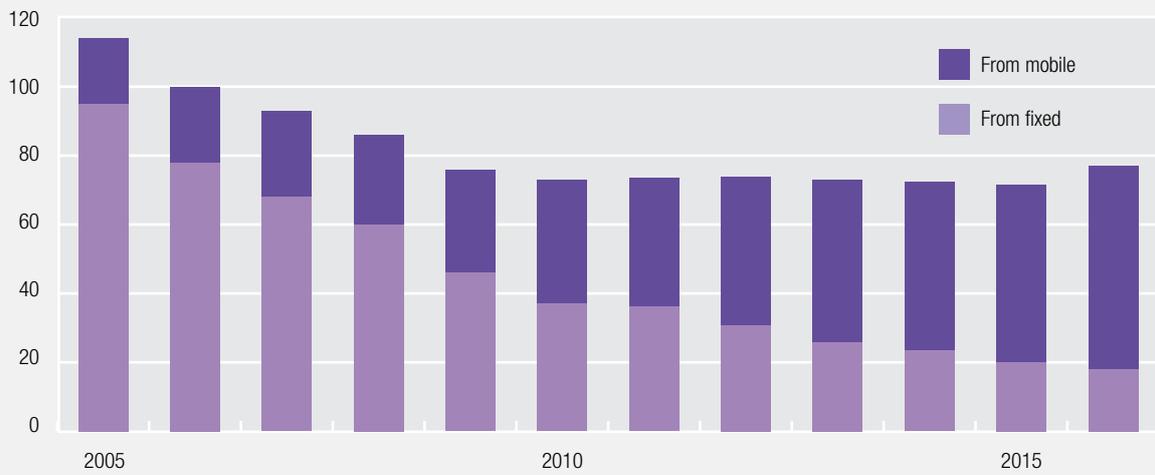
Targeted intervention will better address remaining market gaps in telecommunications *availability*, *accessibility* and *affordability*. The Commission estimates that up to 90 000 premises within the NBN satellite footprint will have inadequate mobile coverage. And groups including people with disability, people in remote Indigenous communities, some older people, and people who are homeless are also likely to have particular user needs. Programs to address these gaps should be flexible, allow for community input and facilitate informed consumer choice. Their costings should be transparent and subject to competitive tendering where this is possible.

Despite increasing affordability of telecommunications, some people on low incomes may find it difficult to afford these services without targeted government support. Where required, this could be provided through the existing transfer system.

## Key trends in the Australian telecommunications sector

Voice call minutes (billions)

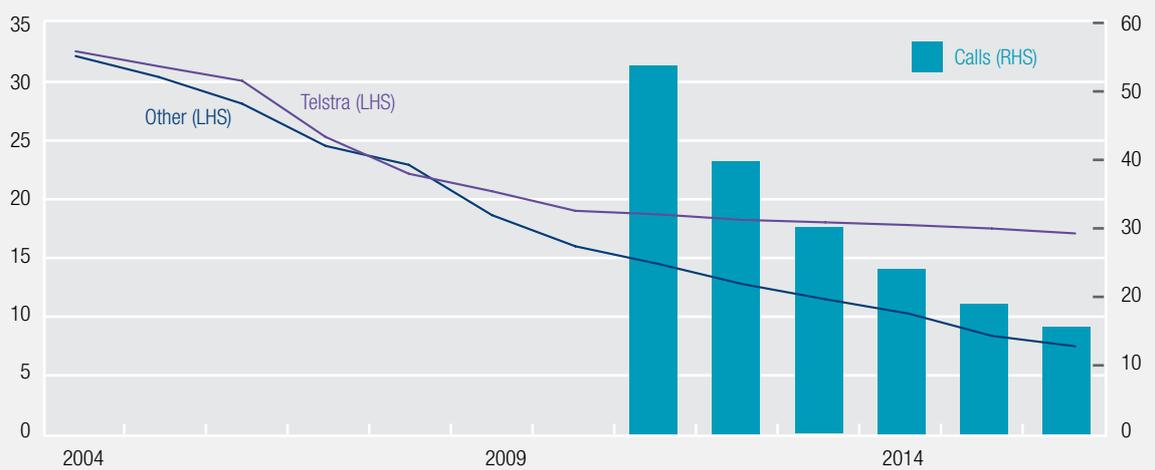
### A shift from fixed to mobile services



Payphones (thousands)

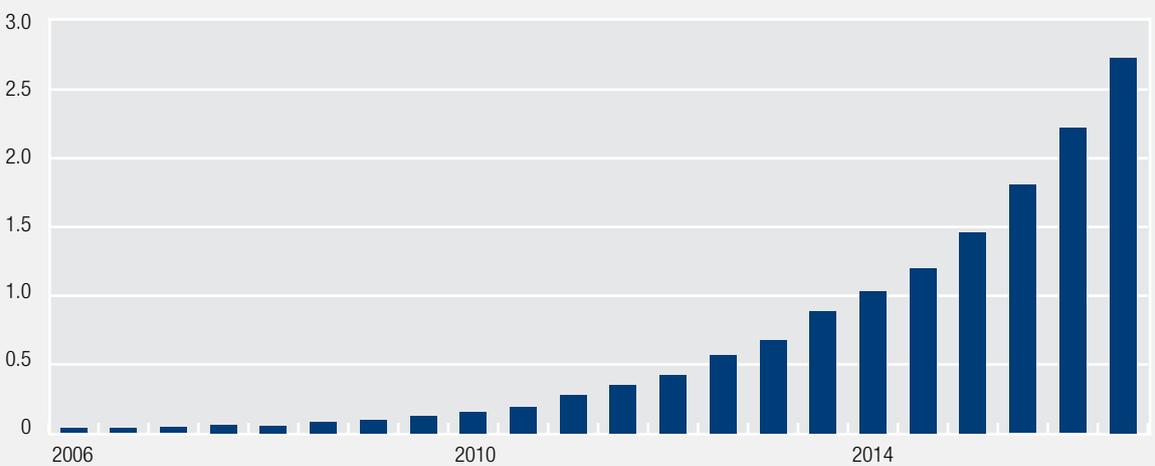
### Payphones increasingly redundant

Telstra payphone calls (millions)

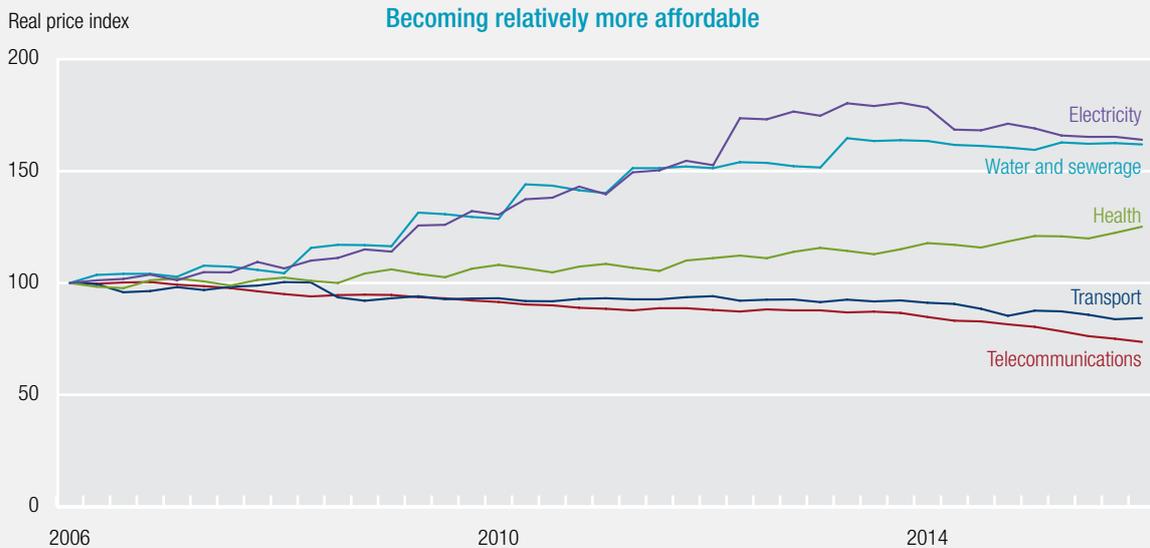


Data download (millions of petabytes)

### Exponential growth in data usage



## Key trends in the Australian telecommunications sector... continued



Data sources: see Productivity Commission 2017, *Telecommunications Universal Service Obligation*

## Summary of the Commission's key recommendations\*

### A new policy objective with a baseline (minimum standard)

The Government should wind up the TUSO by 2020, in time for the full NBN rollout. It should then focus on meeting a modernised policy objective – to provide all premises a baseline broadband and voice service that is sufficiently *accessible* and *affordable*. But developing a technical baseline will need more work.

### Identifying gaps outside of what the market delivers

To identify any remaining gaps around what the market delivers, regulators should work with mobile network operators to identify where coverage is inadequate in the most remote NBN 'satellite footprint'. nbn (the Government company delivering NBN infrastructure) should also report on its network reliability.

### A targeted approach to addressing these gaps

Any remaining gaps in *availability*, *accessibility* and *affordability* of voice and broadband are likely to be small. The Government should design targeted programs rather than a universal service obligation to address these gaps. The programs should be funded from government revenue, meaning the current industry levy can ultimately be removed.

The Government should also collect data from Telstra and NBN to build a robust evidence base for negotiating transparent and coherent policies.

\* A complete list of the Commission's findings and recommendations is available in the final report overview.

### Telecommunications Universal Service Obligation

- > Inquiry Report
- > Released June 2017

# Current commissioned projects

16 August 2017

<b>Collection Models for GST on Low Value Imported Goods – Public Inquiry</b>	
Discussion paper: July 2017	Final report to Government: October 2017
<b>Competition in the Australian Financial System – Public Inquiry</b>	
Consultation paper: July 2017 Draft report: early 2018	Final report to Government: July 2018
<b>Horizontal Fiscal Equalisation – Public Inquiry</b>	
Guidance note: May 2017 Draft report: October 2017	Final report to Government: January 2018
<b>Productivity Review – Public Inquiry</b>	
Discussion paper: November 2016	Inquiry report to Government: September 2017
<b>Human Services – Commissioned Study and Public Inquiry</b>	
<b>Stage 1 Study: Identifying Sectors for Reform</b> Study report released December 2016	<b>Stage 2 Public Inquiry: Reforms to Human Services</b> Issues paper: December 2016 Draft report: June 2017 Inquiry report to Government: October 2017
<b>Superannuation – Commissioned Study and Public Inquiry</b>	
<b>Stage 1 – Study: Superannuation Competitiveness and Efficiency</b> Study report released November 2016 <b>Stage 2 – Public Inquiry: Alternative Default Fund Models</b> Issues paper: September 2016 Draft report: March 2017 A final inquiry report from stage 2 will not be issued separately. The stage 2 inquiry will be incorporated into and finalised as part of the stage 3 inquiry by June 2018.	<b>Stage 3 – Public Inquiry: Assessing Competitiveness and Efficiency</b> Issues paper: July 2017 Draft report: January 2018 Final report to Government: June 2018
<b>National Water Reform – Public Inquiry</b>	
Issues paper: March 2017 Draft report: September 2017	Inquiry report to Government: December 2017
<b>National Disability Insurance Scheme (NDIS) Costs – Commissioned Study</b>	
Issues paper: February 2017 Position paper: June 2017	Study report to Government: October 2017
<b>Transitioning Regional Economies – Commissioned Study</b>	
Initial report: April 2017	Study report to Government: December 2017

Log on to the Commission’s website [www.pc.gov.au](http://www.pc.gov.au) for full details of all current projects.