

— Opinion

# How the doctor and lawyer cartels make the cost of living worse

One idea to boost competition is to remove the power of industry incumbents. Two prime examples are the self-appointed “gatekeepers” in medicine and law.

**John Kehoe**

*Economics editor*



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Australia's economy may have a competition problem.

The largest industries are dominated by a handful of firms across telecommunications, aviation, groceries, fuel retailing, insurance and banking.



The gatekeeping by the Victorian Bar has made it harder for younger lawyers to be admitted and partly responsible for the ageing of the profession. **Peter Rae**

In the last 25 years, only four new companies have entered the top five positions on the Australian Securities Exchange.

Commonwealth Bank of Australia [<https://www.afr.com/markets/equity-markets/cba-still-the-premier-bank-for-fundies-despite-25b-wipeout-20251112-p5neuz>], BHP and National Australia Bank were in the top five in 2000 and still are today. Canada has had its top five firms replaced entirely, and 18 new businesses have spent time in the top five.

Locally, there are fewer startups entering and fewer incumbent firms exiting, limiting the benefits of Joseph Schumpeter's "creative destruction".

Workers are switching jobs less often, reducing the competition benefits from labour mobility and limiting pay rise opportunities for employees.

Price markups – the difference between the sale price of a product and the cost to produce the item – have increased.

These are the conclusions of a detailed new report, *Match Fit: Reinvigorating Competition in Australia*, by the new Policy Institute Australia, founded by

businessman and philanthropist John Wylie [<https://www.afr.com/link/follow-20180101-p5llrx>].

To be sure, part of Australia's oligopolistic industry structure is likely due to the relatively small population mass spread across a large geographical area.

High fixed costs and barriers to entry make it harder for an extra player to enter the market, as the repeated failures of third airlines have demonstrated.

While there are different views among economists [<https://www.afr.com/link/follow-20180101-p5ngae>] about just how competitive or uncompetitive our market is, it would be unequivocally good for Australians to have more competition.

More competition lowers prices for consumers. For example, a basket of groceries was up to 5.2 per cent cheaper at a Coles or Woolworths within one kilometre of an Aldi, according to a 2008 study. Petrol in Canberra was 10.5¢ a litre cheaper at service stations near Costcos in 2019.

Competition spurs firms to produce better quality goods and services. The entry of Uber increased the satisfaction with competitor taxis by 16 percentage points.

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## **“They cartelise the supply of medical and legal professionals competing in the market.”**

Competitive pressure forces businesses to innovate and invest in new technologies, boosting productivity.

The entry of startups creates employment and pay rise opportunities.

The Reserve Bank of Australia has found that workers in competitive markets earn more, while Treasury has concluded that switching jobs is the best way to get a pay rise.

There is a multitude of potential policy levers to boost competition.

One idea put forward by the Policy Institute's chief executive, Amy Auster, is to remove from industry incumbents the power to limit competition.

Two prime examples are the self-appointed industry “gatekeepers” in medicine and law.

Medical colleges and bar associations control who and how many professionals enter the market for specialist doctors and barristers. They cartelise the supply of medical and legal professionals competing in the market.

This is in contrast to other professions, where entry is determined by an institution set up to act in the national interest, usually a government body.

The Grattan Institute found the average out-of-pocket expense to see a specialist has grown by 73 per cent above inflation since 2010, reflecting an uncompetitive market.

Specialist medical colleges can specify the number of trainees allowed under the supervision of qualified specialists. They also dictate training, such as the curriculum, assessment and length of time. This determines how high the bar is for new professionals to enter the industry.

For example, last year there were 281 applicants for orthopaedic surgery, but only 61 were accepted, according to the Australian Medical Council. There were 39 applicants for neurosurgery, with only 11 accepted.

The acceptance rates were 30 per cent for plastic surgery, 36 per cent for urology, 22 per cent for cardiothoracic, 28 per cent for neurosurgery and 35 per cent for paediatrics.

To be sure, there are genuine reasons for rejecting applicants. Some people are probably unsuitable and high standards must be maintained. Patient safety should not be compromised. A lack of hospital funding may also contribute.

But that is unlikely to be the full story.

Specialist medical colleges also control the supply of specialist international medical graduates (SIMGs) before they practice in Australia. A review by health executive Robyn Kruk for the federal government found that it can take two years and \$45,000 for foreign medical graduates to be assessed.

Auster's report says: "The power to determine whether an individual can train for a particular medical specialty, or whether an SIMG can practise in Australia, should rest not with a member-elected body, but with an institution making decisions in the public interest."

"As an immediate priority, the Commonwealth government should review the role of the specialist medical colleges in determining entry to those professions, identify the most egregious and detrimental gatekeeping by certain specialist medical colleges, and transfer the relevant powers – such as the power to accredit training positions – to a public-interest institution such as the Medical Board of Australia."

Committee for Economic Development of Australia research finds many migrants work in jobs beneath their skill level. CEDA has recommended the federal government improve recognition of international qualifications [<https://www.afr.com/politics/federal/migrants-are-driving-ubers-not-working-skilled-jobs-20240523-p5jglc>] and work experience by direct assessment of competence, rather than a requirement to hold qualifications under a specific system.

Similarly, bar associations controlled by their members also restrict the flow of barristers in most states and territories.

In NSW, Victoria, Queensland and the ACT, a qualified lawyer is not allowed to practice as a barrister until they pass the state bar exam, the state bar practice course and a 12-month supervised "readership" period under a senior barrister.

But practice course places are limited and oversubscribed, limiting competition from new entrants.

NSW and Victoria cap places at just 54 and 60 (previously 48), respectively.

The courses, which cost up to \$7700, run full-time for four to six weeks, requiring time off work.

The Victorian bar exam has a reported failure rate of 60-70 per cent, a significant barrier to entry.

Auster says the gatekeeping by the Victorian Bar has made it harder for younger lawyers to be admitted and partly responsible for the ageing of the profession. Only

half of Victorian barristers were under 50 in 2017, compared to 90 per cent in 1980.

“The effect of this is to reduce the number of barristers or counsel able to provide representation in serious matters, to reduce competition, to drive up prices, and reduce access to skilled and competent legal representation,” Auster’s report says.

“States and territories should remove the distinction between solicitors and barristers (with current admission as a lawyer counting for both), or, if separate and higher standards are deemed necessary for barristers, then these should be determined by an institution focused on the public interest and not an incumbent-controlled professional body.”

Former Productivity Commission chairman and Policy Institute director Peter Harris says the “gatekeepers” extend into other professional associations that control the flow of qualified engineers, real estate agents and service providers.

“If you start looking for entry controllers that decrease the potential for competition, particularly in services, they start popping out everywhere,” Harris says.

Harris says big incentive payments from the federal government to the states are required to enforce pro-competition policies.

Chalmers has set up a \$900 million National Productivity Fund to incentivise states to enact reforms. But Harris says that’s less than one-tenth of the \$10 billion in today’s dollars of the payments the Commonwealth gave the states to impose competition reforms from 1995 onwards. The Policy Institute wants that doubled to \$20 billion.

“It’s go big or go home. \$900 million is too small,” Harris says.

Harris was head of Victoria’s Department of Primary Industries in 2005. He recalls the then Victorian Treasury secretary Ian Little phoning him to urgently complete a phytosanitary review. “Because if we didn’t, Vic would miss out on the final NCP money, and he’d already banked it in the budget forecasts! That’s what real incentive payments cause,” Harris says.

Chalmers has toughened merger laws, is banning non-compete clauses for most workers to make it easier to switch jobs and is trying to standardise occupational licensing and product standards across state borders.

Auster, a former federal and Victorian Treasury official, says with Chalmers meeting state treasurers this Friday, it's a good time to advance competition more aggressively.

“The economic roundtable was a good start, but we would like to see them go harder and do more.”

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**John Kehoe** is economics editor at Parliament House, Canberra. He writes on economics, politics and business. John was Washington correspondent covering Donald Trump's first election. He joined the Financial Review in 2008 from Treasury. *Connect with John on [Twitter](#).*  
*Email John at [jkehoe@afr.com](mailto:jkehoe@afr.com)*