NATIONAL
COMPETITION
COUNCIL

ANNUAL REPORT

2008 – 2009

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The National Competition Council

The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Australian Government and state and territory governments. It is a federal statutory authority which functions as an independent advisory body for all governments on third party access regulation. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'. Information on the National Competition Council, its publications and its current work program can be found on the internet at www.ncc.gov.au or by contacting NCC Communications on (03) 9285 7474.

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Office of Council President

28 August 2009

The Honourable Wayne Swan MP
Treasurer
House of Representatives
Parliament House
Canberra ACT 2600

Dear Treasurer

In accordance with section 29O of the *Trade Practices Act 1974* the National Competition Council is pleased to present you with its fourteenth annual report covering the Council's operations for the year 2008-09.

Yours sincerely

David Crawford
President

Doug McTaggart
Councillor

Rod Sims
Councillor

Virginia Hickey
Councillor

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Abbreviations

ACCC	Australian Competition and Consumer Commission
AER	Australian Energy Regulator
ANAO	Australian National Audit Office
BHPB	BHP Billiton Iron Ore Pty Ltd
CIRA	Competition and Infrastructure Reform Agreement
COAG	Council of Australian Governments
Council	National Competition Council (see also NCC)
CPA	Competition Principles Agreement
EAPL	East Australian Pipeline Pty Limited
FMG	Fortescue Metals Group Limited
GST	Goods and Services Tax
ICT	information and communications technology
IPART	Independent Pricing and Regulatory Tribunal of NSW
Jemena	Jemena Gas Networks (NSW) Limited
MSP	Moomba to Sydney Pipeline
National Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NCC	National Competition Council
NCP	National Competition Policy
NGL	National Gas Law
NGR	National Gas Rules
NSW	New South Wales
RTIO	Rio Tinto Iron Ore Pty Ltd
SES	Senior Executive Service
TPA	*Trade Practices Act 1974* (Cth)
TPI	The Pilbara Infrastructure Pty Ltd
Tribunal	Australian Competition Tribunal
WICA Access Regime	Water industry infrastructure services access regime (NSW)

About this report

In the Treasury Portfolio 2008-09 Budget Statement the National Competition Council (**Council**) set out a summary of the products and services it proposed to provide during the year to deliver its outcome. The Council's outcome and outputs from the Treasury 2008-09 Portfolio Budget Statements are below.

Outcome

The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community

The outcome relates to the Treasury outcome of 'well functioning markets'.

The Council reported one output in the Treasury 2008-09 Portfolio Budget Statements.

Output 1: advice to governments on infrastructure access issues

This annual report addresses the Council's access regulation role and provides information on the agency's governance arrangements.

- Chapter 1 provides the President's review of significant events and actions relevant to the Council during 2008-09.
- Chapter 2 reports on the Council's performance during 2008-09 in its role of making recommendations to Ministers on applications for declaration and certification and on applications regarding the Council's work pursuant to the National Gas Law. The chapter also reports on relevant legislative developments and on matters relating to the effectiveness of the National Access Regime required under section 29O of the *Trade Practices Act 1974* (Cth). The discussion in this chapter relates to the Council's efficiency in achieving its outcome and output.
- Chapter 3 provides an overview of organisational governance and performance.
- Chapter 4 provides the Council's audited financial statements for 2008-09.

Summary resources for the 2008-09 output are tabulated on page 38.

Compliance with the Department of the Prime Minister and Cabinet requirements for annual reports is shown on pages 57-58.

1 President's review

Third party access arrangements in states and territories

In Australia third party access to monopoly infrastructure services is regulated through the National Access Regime in Part IIIA of the *Trade Practices Act 1974* (Cth) (**TPA**) and through state or territory access regimes. The two approaches are complementary and the TPA contains provisions for determining which regulatory regime applies in any situation, thus largely avoiding the prospect of conflicting regulatory requirements.

The National Access Regime applies generally across all of the country.[1] Under the regime, an infrastructure owner may choose to submit an access arrangement to the Australian Competition and Consumer Commission (**ACCC**) for approval. Where an access arrangement is approved, the terms of that arrangement set the basis for access to the relevant services. Where there is no ACCC-approved access arrangement (or effective state / territory access regime) a person seeking access to an infrastructure service may apply to the National Competition Council (**Council**) for a recommendation that the designated Minister declare the service.

The Council considers applications for declaration of services against the declaration criteria in the TPA. It then makes a recommendation to a designated Minister who decides the application after considering a parallel set of criteria. If a service is declared, it is brought within Part IIIA's negotiate-arbitrate arrangements. These arrangements require that asset owners and access seekers negotiate access terms, and where an agreement cannot be reached provide for the ACCC to arbitrate access disputes.

A state or territory government may enact access regimes that provide for access to infrastructure services in the relevant jurisdiction. There are two broad approaches to implementing such regimes: one involves regulating particular infrastructure services or an infrastructure sector; the other takes a more general approach where a state or territory regulatory body is empowered to set access terms on a case by case basis.

Under the TPA state and territory governments may apply to the Council to have their access regimes certified as effective. Where a state or territory regime is certified, that regime will apply to the exclusion of other forms of access regulation. The certification process is designed to ensure state and territory access regimes embody the same principles that underpin the national approach and to allow state and territory regimes to take precedence where they are found to be effective. The principles[2] that must be considered in relation to a certification application address:

- the scope of an access regime

[1] Except access to telecommunications infrastructure which is regulated at a national level under Part XIC of the TPA.

[2] See clauses 6(2)-(5) of the Competition Principles Agreement.

- the treatment of interstate issues
- a negotiation framework for determining access
- dispute resolution
- promotion of efficiency.

Where the Council receives an application for certification it must recommend to the Commonwealth Minister whether or not a regime should be certified as effective. In deciding whether to recommend that a regime be certified as effective, the Council must:

- assess whether the access regime is an 'effective access regime' by applying the relevant principles set out in the Competition Principles Agreement (**CPA**) (summarised above)
- have regard to the objects of Part IIIA of TPA, and
- not consider any other matters.

During 2008-09 the Council considered the NSW Government's application for the certification of its water infrastructure services access regime. In substance this regime mimics the National Access Regime, substituting the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) for the ACCC as the arbiter of access disputes and an IPART report and a decision by the NSW Premier for the process of declaring a service under Part IIIA of the TPA. As at 30 June 2009, the Council had made its final recommendation on the NSW certification application but the Commonwealth Minister had yet to make his decision. The Council's recommendation is made public at the time of the Minister's decision.

Subsequently (on 13 August 2009) the Minister for Competition Policy and Consumer Affairs accepted the Council's recommendation that the NSW regime be certified as effective for a period of 10 years. Given some of the services to which the NSW regime applies are already declared and subject to the National Access Regime—the immediate practical effect of certification is a change in the body that would arbitrate any access disputes and the revocation of the declaration of the relevant services under the National Access Regime now that the services are subject to a certified state access regime.

In its draft and final recommendations on the NSW water industry access regime the Council noted that a state or territory access regime that merely replicates the declaration and negotiate/arbitrate approach already available under the general provisions of the National Access Regime appears to offer little benefit while arguably adding to cost and uncertainty. In the Council's view access to water infrastructure is an area where coordinated consideration across jurisdictions would be valuable and where a regulatory approach tailored to the likely nature of access issues in the water sector is highly desirable. Governments have adopted such an approach in the regulation of access in the energy sector. Instead of potentially fragmented jurisdictional regulation, a coordinated national approach would likely reduce uncertainty and costs for access seekers and existing water infrastructure owners and encourage efficient use of and investment in water infrastructure.

The Council is conscious that third party access to water infrastructure is a relatively new issue and that the level and nature of any access that may be sought is uncertain. In the Council's view the general provisions of the National Access Regime are likely to be sufficient to address any access issues that arise in the near term—with asset owners submitting undertakings to the ACCC, or access seekers making declaration applications—and in the medium term a cooperative approach (along the lines of that adopted for access to energy infrastructure) has significant merit. This approach also has the advantage of establishing a national basis for access regulation while retaining direct state and territory authority.

Under the Competition and Infrastructure Reform Agreement reached on 10 February 2006 (**CIRA**) Australian governments agreed to submit their access regimes for certification by the end of 2010. In a number of cases this is to be preceded by reviews of the regimes to ensure they remain relevant and effective. At 30 June 2009, the Council had received no applications in respect of the regimes covered by the CIRA. The Council was also yet to receive applications for the certification of the coordinated access regimes that apply to energy infrastructure.

While it is appropriate for certification applications to await the outcomes of reviews of access regimes where these are to be undertaken, time is running out and state and territory governments should look to commence the process for obtaining certification of other regimes well in advance of the December 2010 deadline.

Declaration of infrastructure services

During 2008-09 a significant declaration matter was the consideration of access to the services provided by various Pilbara iron ore railways operated by BHP Billiton Iron Ore Pty Ltd (**BHPB**) or Rio Tinto Iron Ore Pty Ltd (**RTIO**). In a series of applications for declaration Fortescue Metals Group Limited (**FMG**) and its subsidiary The Pilbara Infrastructure Pty Ltd (**TPI**) applied for access to BHPB's Mt Newman Railway (an application lodged in June 2004) and to RTIO's Hamersley and Robe Railways and BHPB's Goldsworthy Railway (applications lodged December/January 2008). All four applications have been the subject of past Council recommendations.

- In May 2006 the then Treasurer was deemed to have declined the application for declaration of the Mt Newman railway service when the time in which he was required to make his decision expired. The Council had recommended that declaration be granted.
- In October 2008 the Minister for Competition Policy and Consumer Affairs accepted the Council's recommendations and declared services provided by the Hamersley, Robe and Goldsworthy railways.

The Council's consideration of these applications has been subject to a series of legal challenges in the Federal Court, the Full Federal Court and the High Court. These various actions all proved unsuccessful with the courts upholding the Council's ability to consider

these applications on the merits and make recommendations to Ministers. Of particular note in 2008-09, the High Court unanimously dismissed BHPB's final appeal in the long running production process proceedings. In a single judgment,[3] the High Court held that the Pilbara railway services sought to be declared by FMG in 2004 were capable of being considered for declaration, rejecting BHPB's argument that the services were exempt 'production processes'. In doing so the High Court noted the need to interpret Part IIIA of the TPA in a manner that 'would advance the attainment of the large economic objectives' of the National Access Regime.

In the Council's view this is a significant decision. It provides important guidance to other courts regarding the need to apply Part IIIA of the TPA with a focus on its economic objectives.

By 14 November 2008 the Ministers' decisions in the Pilbara railway matters (deemed decision in the case of the Mt Newman railway) were subject to review proceedings in the Australian Competition Tribunal (**Tribunal**). On 22 January 2009 the Tribunal determined it would hear the four matters together. A hearing is expected to commence in September 2009.

In its previous annual report the Council expressed concern that delays in the process for considering applications of access to monopoly infrastructure were impeding the operation of the National Access Regime established in Part IIIA of the TPA. The Council recommended consideration of a series of amendments that would prevent well resourced parties, particularly infrastructure service providers, from frustrating the declaration process and better enable the Council and the Tribunal to counter delaying efforts.

On 7 April 2009 the then Minister for Competition Policy and Consumer Affairs announced several proposed amendments to the TPA, including several steps responding to the Council's concerns. Most significantly from the Council's point of view, the Government is proposing to:

- create binding time limits for decision-makers, and generally limit merits review to information submitted to the regulator, implementing commitments under the CIRA
- provide scope for binding 'no-coverage' rulings exempting services from declaration for a 20 year period
- focus consideration of health and safety issues associated with access on the arbitration stage of the process
- provide that only services that are subject to certified state or territory access regimes are exempt from declaration

[3] *BHP Billiton Iron Ore Pty Ltd v National Competition Council* [2008] HCA 45

- provide that in the event a Minister does not make a decision in a required time period he or she is deemed to have accepted the Council's recommendation, rather than to have declined an application in all cases
- remove uncertainty as to the Council's ability to accept reasonable amendments to applications
- allow the Tribunal to determine whether a declaration decision should be stayed pending the Tribunal's determination of a review application.
- provide for costs to be awarded in relation to applications to the Tribunal
- reform Council and ACCC administrative processes, and Tribunal processes, to improve the timeliness of outcomes.

The Council welcomes these proposals and looks forward to the swift passage of amending legislation.

Access regulation under the National Gas Law

Access to natural gas transmission and distribution pipeline systems is regulated under the National Gas Law (**NGL**) and National Gas Rules (**NGR**), which commenced on 1 July 2008. These arrangements, developed under the auspices of Energy Ministers via a cooperative national approach, replaced the former National Third Party Access Code for Natural Gas Pipeline Systems (**National Gas Code**).[4]

Under the NGL the Council recommends on whether particular natural gas pipeline systems should be subject to access regulation (covered). The Council also recommends in relation to the price regulation and green field exemptions available under the NGL. As well as these recommendatory roles, the Council is responsible for determining whether covered pipelines should be subject to full regulation or light regulation and for classifying pipelines as transmission or distribution pipelines.

The Council considered two matters in 2008-09 relating to the regulation of access to natural gas pipelines.

On 8 September 2008 East Australian Pipeline Pty Limited made an application to the Council for a decision to apply light regulation to the services of the covered portion of its Moomba to Sydney Pipeline. On 19 November 2008, the Council made a decision in favour of the application.

On 22 April 2009 Jemena Gas Networks (NSW) Limited made an application to the Council for a decision to reclassify its Wilton to Newcastle (Northern Trunk) and Wilton to Wollongong (Southern Trunk) transmission pipelines as distribution pipelines. The Council

[4] The National Gas Code was relevant for the regulation of gas transmission and distribution pipelines prior to 1 July 2008.

released its decision on 29 June 2009, determining that the pipelines be reclassified as distribution pipelines.

David Crawford
President

2 The National Access Regime and the National Gas Law

The National Access Regime, established by Part IIIA of the *Trade Practices Act 1974* (**TPA**), provides a legal avenue through which an access seeker can gain access to the services provided by an infrastructure facility—such as a railway, port, or other handling, transport or communications facility—on commercial terms and conditions. It is a mechanism that is available when attempts at commercially negotiated access are unsuccessful.

The regime provides an important means of promoting competition in markets where the ability to compete effectively is dependent on being able to use monopoly infrastructure. At the same time the regime ensures that infrastructure owners receive a commercial return and incentives for efficient investment are not affected.

Part IIIA of the TPA provides three alternative pathways for providing third parties with access to infrastructure services. These are:

- declaration, which provides access seekers with a legal right to negotiate terms and conditions for access with the service provider of a declared service
- an effective access regime established by a state or territory (a service that is subject to an effective regime certified under Part IIIA is immune from declaration), or
- a voluntary access undertaking made by a service provider and accepted by the Australian Competition and Consumer Commission (**ACCC**).

Applications for declaration and certification are made to the Council which assesses the application and conducts a public consultation process before making a recommendation to the relevant Minister.

Upon receiving an application for declaration, the Council must consider the application against the declaration criteria (set out in section 44G(2) of the TPA) and other prescribed factors in Part IIIA of the TPA. Based on its assessment the Council must make a recommendation to the designated Minister who decides using parallel criteria whether to declare or not declare the service to which access is sought. If the designated Minister makes a decision to declare the service, then access seekers acquire a legal right to negotiate access with the service provider. If necessary, the ACCC, through arbitration, will determine disputes over the terms and conditions of access.

For the purpose of the National Access Regime, a service does not include the supply of goods or the use of intellectual property or the use of a production process, except to the extent that these are an integral but subsidiary part of a service. Services already subject to an 'effective' access regime or an access undertaking accepted by the ACCC are excluded from declaration.

Upon receiving an application for the certification of a state or territory access regime, the Council must consider the application against the guiding principles in clauses 6(2) to 6(5) of the Competition Principles Agreement (**CPA)**. In summary, this involves assessing whether the access regime has an appropriate framework, consistent with the objects of Part IIIA of the TPA, to promote competitive and efficient outcomes. The Council makes its recommendation to the designated Minister on applications for certification. Because certification removes the entitlement to seek a recommendation for declaration, the Council seeks to ensure that state or territory access regimes provide rights equivalent to those gained under declaration. Where there is an 'effective' access regime in place, a party seeking access must use that regime.

Since the Parliament amended the TPA in 2006 the Council has been required to use its best endeavours to make a recommendation on a declaration application within four months and on a certification application within six months from the date it receives the application.

The Council has a similar role under the National Gas Law (**NGL**) and National Gas Rules (**NGR**), whereby it makes recommendations to the relevant Minister(s) on the coverage of natural gas pipeline systems. Commencing operation on 1 July 2008, the NGL and NGR replaced the former National Third Party Access Code for Natural Gas Pipeline Systems (**National Gas Code**). Under the NGL, the Council also has the tasks of:

- deciding the form of regulation of natural gas pipeline systems (light or full regulation),
- classifying pipelines (as transmission or distribution), and
- recommending in relation to various exemptions for greenfields gas pipelines.

The Council's work on declaration, certification and National Gas Law matters

At the commencement of 2008-09, the Council had three declaration matters on hand. These were applications by The Pilbara Infrastructure Pty Ltd (**TPI**) (a wholly owned subsidiary of Fortescue Metals Group Limited (**FMG**)) for the declaration of rail track services provided by various railways in the Pilbara, Western Australia. In addition, the Treasurer's deemed decision in 2006 to decline an application by FMG for a recommendation to declare a service provided by the Mt Newman Railway was before the Australian Competition Tribunal (**Tribunal**). The Council received no new applications for the declaration of infrastructure services during the year.

The Council received one new application for the certification of a state or territory access regime in 2008-09. This was an application by the NSW Premier for the certification of the NSW water industry infrastructure access regime. There were no ongoing matters regarding the certification of state and territory access regimes.

The Council received two applications under the NGL and NGR. These were an application by East Australian Pipeline Pty Limited (**EAPL**) for the light regulation of the services of the Moomba to Sydney Pipeline (**MSP**), and an application by Jemena Gas Networks (NSW) Limited (**Jemena**) for the reclassification of the Northern Trunk (Wilton to Newcastle) and Southern Trunk (Wilton to Wollongong) transmission pipelines as distribution pipelines. There were no ongoing matters under the NGL or National Gas Code (which preceded the NGL) at the commencement of 2008-09.

During 2008-09, the Council also completed a major overhaul of its website, updated its guides to certification and declaration and produced new guides on the NGL. In June 2009, the Council launched its new bi-monthly newsletter, *Accessible*.

A register summarising all third party access matters considered by the Council since the commencement of Part IIIA of the TPA is available on the Council's website at www.ncc.gov.au.

The Pilbara railway declaration matters

In a series of applications for recommendations for declaration FMG and its subsidiary TPI applied for access to services provided by Rio Tinto Iron Ore Pty Ltd's (**RTIO**) Hamersley and Robe railways and BHP Billiton Iron Ore's (**BHPB**) Goldsworthy Railway (applications lodged December/January 2008). In addition FMG had applied in June 2004 for a recommendation for the declaration of a service provided by BHPB's Mt Newman Railway.

The Council has recommended on all four applications and there have been decisions taken in each case.[5]

- On 24 March 2006, the Council recommended to the Parliamentary Secretary to the Treasurer that the Mt Newman Railway service be declared for a period of 20 years. On 23 May 2006 the then Treasurer was deemed to have declined the application for declaration of the Mt Newman service when the time in which he was required to make his decision expired.
- On 29 August 2008, the Council recommended to the Treasurer that the services provided by the Hamersley, Robe and Goldsworthy railways each be declared for a period of 20 years. On 27 October 2008 the Treasurer declared the services provided by the Hamersley, Robe and Goldsworthy railways for 20 years.

The Council's consideration of these applications has been subject to a series of legal challenges in the Federal Court, the Full Federal Court and the High Court.

[5] The Council's previous annual report (2007-08) provides summary detail on the Council's consideration of these applications. Each application is also documented on the Council's website at www.ncc.gov.au.

On 24 December 2004 BHPB sought a determination in the Federal Court that the service provided by the Mt Newman Railway is a production process (so is not capable of being considered for declaration). The Federal Court determined on 18 December 2006 that the services provided by the Mt Newman and Goldsworthy railways could be considered for declaration. BHPB appealed the Federal Court decision to the Full Court of the Federal Court, which in October 2007 dismissed the appeal. BHPB then took the matter to the High Court of Australia. On 24 September 2008, the High Court unanimously dismissed BHPB's appeal. In a single judgment,[6] the High Court held that the services provided by the Mt Newman Railway sought to be declared by FMG were capable of being considered for declaration, rejecting BHPB's argument that the services were exempt 'production processes'. (See below for a further discussion of the production process matter.)

By 14 November 2008 the Ministers' decisions in all of the Pilbara railway matters (deemed decision in the case of the Mt Newman railway) were subject to review proceedings in the Tribunal. The reviews of the Goldsworthy, Hamersley and Robe decisions were the first under Part IIIA since its amendment to insert target time limits for decision-makers under the National Access Regime. The new s44ZZOA provides that the Tribunal must use its best endeavours to make decisions on any reviews under Part IIIA within a standard period of four months (with provision to extend the standard period).

At hearings on 8 and 19 December 2008, the Tribunal heard the Council and the parties regarding the appropriate way to structure and timetable its review of the Mt Newman matter and the new Goldsworthy, Hamersley and Robe matters. Given the new standard period for decisions on Tribunal reviews, the Council submitted that if heard separately the Tribunal should adopt timetables for the Goldsworthy, Hamersley and Robe matters that would allow those reviews to be decided within four months of the commencement of the reviews. Alternatively, if the Tribunal decided to hear the Goldsworthy, Hamersley and Robe matters together, giving rise to similar issues of fact and law, the Council submitted that the standard period should not be extended beyond six months (which would have seen the Tribunal determine these reviews before the end of 2008-09).

The access seekers (FMG and TPI) and the service providers (BHPB and RTIO) submitted an alternative timetable, under which the reviews would take some 13 months to be determined.

On 22 January 2009 the President of the Tribunal (Justice Finkelstein) made directions for the conduct of the reviews as requested by BHPB, RTIO and FMG/TPI, noting that it was difficult to order a shorter period when all parties to the review had argued against it. Under the Tribunal directions:

- the Goldsworthy, Hamersley and Robe reviews were consolidated with the Mt Newman review

[6] *BHP Billiton Iron Ore Pty Ltd v National Competition Council* [2008] HCA 45.

- the parties are to submit evidence on which they intend to rely at the hearing of the four matters (including evidence updating that already filed in the Mt Newman review) sequentially over various dates between 30 March 2009 and 18 September 2009
- a case management conference is to occur on 17 July 2009, and
- the hearing is to commence on 28 September 2009 (and is expected to take 9 to 13 weeks).

The target time limits introduced in 2006 recognised that decision making under Part IIIA (and in particular the Mt Newman matter) had been unduly protracted, and that this detracted from the ability of the National Access Regime to deliver efficient outcomes and acted as a disincentive for access seekers to pursue declaration. The timetable adopted for the Pilbara railway matters indicates that the introduction of target time limits may not have been sufficient to improve the timing of processes under the National Access Regime.[7]

Certification of the NSW water industry infrastructure access regime

The Council received one new matter regarding the certification of state and territory access regimes in 2008-09. This was for the certification of the NSW water industry infrastructure services access regime (**WICA Access Regime**). There were no ongoing matters regarding the certification of state and territory access regimes.

On 19 December 2008 the NSW Government applied to the Council for a recommendation pursuant to s44M(2) of the TPA that the WICA Access Regime is an effective access regime. The NSW Government requested certification for a period of 25-50 years.

The WICA Access Regime, established under Part 3 of the *Water Industry Competition Act 2006* (NSW) currently applies to the areas of operation of Sydney Water Corporation and Hunter Water Corporation. The Minister (NSW Premier) may expand the geographic areas subject to the Act by regulation. The NSW Government deemed certain services to be the subject of a coverage declaration upon the commencement of the Water Industry Competition Act. These services are also the subject of a current declaration under Part IIIA of the TPA pursuant to the decision of the Australian Competition Tribunal in *Re Services Sydney*.[8]

Under the WICA Access Regime, where a service is in a scheduled geographic area, an access seeker may apply to the Independent Pricing and Regulatory Tribunal of NSW (**IPART**) for recommendation that the service is 'coverage declared' by the Premier. Where a service is not located within a scheduled area an access seeker would need to have the relevant

[7] The deemed decision in the Mt Newman matter is not subject to the four month target timeframe as the decision preceded the amendment of the TPA.

[8] *Re Services Sydney Pty Limited* [2005] ACompT 7 (21 December 2005).

area made subject to the Act and then apply to IPART for a recommendation that the service be coverage declared.

Upon receiving an application for a coverage declaration, IPART must consider it against the declaration criteria in the Water Industry Competition Act. These criteria are broadly similar to the declaration criteria in Part IIIA of the TPA. IPART must report on the application to the Premier, providing its views on whether the declaration criteria are met. Where IPART makes a recommendation supporting a coverage declaration, the recommendation must also address the terms of the coverage declaration and the period of its effect. The Premier must consider, but is not bound to accept, IPART's recommendation. If satisfied that all of the declaration criteria are satisfied, the Premier must determine the application by making a coverage declaration in relation to the service.

Once a coverage declaration is in place an access seeker obtains the right to negotiate the terms and conditions of access. Where agreement cannot be reached, binding arbitration (by IPART or an alternative) is available. Neither the Premier's coverage declaration decision nor an arbitration decision is subject to merits review. In substance the WICA Access Regime mimics the National Access Regime (albeit without provision for the merits review of regulators' decisions), substituting IPART for the ACCC as the arbiter of access disputes and an IPART report and a decision by the NSW Premier for the process of declaring a service under Part IIIA of the TPA.

The Council conducted a public consultation process in assessing whether the WICA Access Regime is an effective access regime. So that likely interested parties were not disadvantaged by the Council commencing its consideration close to the Christmas-New Year period when the application was received, the Council delayed notification of its receipt of the application until 2 February 2009. The Council released its draft recommendation on 2 April 2009 following a period of public consultation and, following further consultation on the draft recommendation, provided its final recommendation to the decision-making Commonwealth Minister (the Minister for Competition Policy and Consumer Affairs) on 11 May 2009.

At 30 June 2009 the Commonwealth Minister was yet to make a decision on the application for certification.

The TPA provides a standard period of 60 days for the Commonwealth Minister to make his or her decision beginning on the day he or she received the Council's recommendation (the period may be extended). A new Minister for Competition Policy and Consumer Affairs was appointed on 9 June 2009. Arising from this change in Ministerial responsibilities, on 10 July 2009 the Commonwealth Minister gave notice pursuant to section 44ND of the TPA extending the standard period for making a decision on the Council's recommendation by 60 days. The Council's recommendation is made public as soon as practicable after the Minister's decision is published.

In its draft recommendation, the Council noted aspects of the WICA Access Regime that it considered warranted further consideration. The Council considered that to provide greater certainty a better approach would be to delineate the scope of a regime's application at the outset (rather than requiring access seekers to employ a potentially two-stage process as in the WICA Access Regime of seeking to have the Premier add an area to the Act and then make an application for a coverage declaration) and to incorporate arrangements for limited merits review of critical decisions, particularly where a government has significant ownership interest in a business that is potentially exposed to competition from access seekers.

The Council also considered that the capacity for the Premier to extend the scope of the regime by adding geographic areas might potentially introduce a substantial modification of the regime. This might arise if the addition of large geographic areas broadens the type and size of facilities that provide water industry infrastructure services that become subject to the WICA Access Regime, which may increase the prospect that services subject to the regime are largely provided by facilities that are not uneconomic to duplicate. Where a substantial modification occurs to a certified access regime (or to the relevant CPA principles) then it may be possible for infrastructure services to be declared under Part IIIA notwithstanding that those services are subject to a certified regime.

More generally, the Council expressed the view that a state or territory access regime that merely replicates the declaration and negotiate/arbitrate approach already available under the general provisions of the National Access Regime (as is the case with the WICA Access Regime) appears to offer little benefit while arguably adding to cost and uncertainty.

Notwithstanding these questions about the WICA Access Regime, in its draft recommendation the Council outlined its preliminary view that the regime met the requirements for certification. The Council's preliminary view was that certification should be available for a period of 10 years. In reaching this preliminary view, the Council noted in particular the NSW Government's stated purpose in regulating access (to promote greater efficiency through facilitating competitive service provision) and that the CPA requires that a range of regulatory arrangements may be capable of delivering efficient outcomes consistent with the principles in clause 6 of the CPA. The requirement for a regime to be certified as effective is that it is assessed as satisfying each of the principles in clause 6 of the CPA and has regard to the objects of Part IIIA: the certification process does not involve an inquiry that the particular regime provides the most effective means of achieving efficient access outcomes.

National Gas Law matters

Light regulation of the Moomba to Sydney Pipeline

On 8 September 2008, the Council received an application under section 112 of the NGL from the EAPL—which is part of the APA Group—for a decision to apply light regulation to

the services of the covered portion of the MSP. The covered portion includes the Marsden to Wilton Pipeline, as well as the Canberra, Northern, Wagga and Griffith laterals.

In essence, the determination of whether or not to apply light regulation to a pipeline turns on a comparison of the effectiveness and costs of full regulation and light regulation. Full regulation involves the lodging of an access arrangement which must be approved by the Australian Energy Regulator (**AER**). Access arrangements set out the terms and conditions of access as well as reference tariffs for services likely to be sought by a significant part of the market. Light regulation is similar to the negotiate/arbitrate regime for declared infrastructure services, supported by the additional requirement that service providers publish the prices for light regulation services and other terms and conditions of access to those services; and not engage in price discrimination, unless it is conducive to efficient service provision. The service provider must also report annually to the AER on negotiation outcomes.

After evaluating the application and submissions, the Council considered that in relation to the MSP, the light regulation regime would be as effective as full regulation in protecting users and other parties that are dependent on access to the pipeline. This is due to the availability of relevant pipeline costs information, as well as the legislative protections contained within the light regulation regime. On 19 November 2008 the Council made a determination in favour of the application.

Reclassification of Jemena's Northern Trunk and Southern Trunk pipelines

On 22 April 2009, Jemena applied for the reclassification of its Northern Trunk pipeline (Wilton to Newcastle) and the Southern Trunk pipeline (Wilton to Wollongong) as distribution pipelines.

In making its decision, the Council is required to consider the pipeline classification criteria and the national gas objective. The classification of pipelines involves the Council determining whether a pipeline is used for transmission or distribution, by applying classification criteria in s13.

The Council released its decision to reclassify the pipelines on 29 June 2009. The Council concluded that with the development of the Short Term Trading Market in New South Wales, the role of the Northern Trunk pipeline and Southern Trunk pipeline is more akin to that of a distribution pipeline. The Council also found that the previous classification is likely to give rise to a range of inefficiencies, including the imposition of unnecessary costs and complexity.

Council performance in 2008-09 against target timeframes

The Council met legislative timeframes for the WICA, MSP light regulation and Jemena reclassification matters.

The Council used its best endeavours to make recommendations on the Robe, Hamersley and Goldsworthy applications for declaration to the designated Minister within the standard period of four months. The Council was however unable to make its recommendations within the standard period, and, pursuant to section 44GA of the TPA, on 12 March 2008, the Council extended the standard period by 167 days in the case of Goldsworthy and Hamersley and 104 days in the case of Robe (until 29 August 2008).

Several factors contributed to this outcome:

- there were three applications relating to iron ore railways in the Pilbara that the Council sought to address concurrently
- the applications contained limited information, and in the case of the Hamersley application and the Goldsworthy application some time elapsed before sufficient information was provided to enable proper consideration of the applications to commence
- all three applications were complex with the service providers in particular making extensive submissions on a number of aspects of the applications
- in the case of the Hamersley application, the Council's power to consider the application was subject to a legal challenge by Hamersley Iron Pty Ltd (a wholly owned subsidiary of RTIO) (while this did not of itself delay the Council's work it diverted significant Council resources)
- the service providers relevant to each of the applications requested additional time to provide their submissions on the applications, and the Council considered additional time was warranted.

A summary of the Council's performance in 2008-09 against target timeframes is provided in Table 2-1 below.

Table 2-1: The Council's performance in meeting timeframes 2008-09

Matter	Time target	Time taken
Pilbara declaration matters		
Goldsworthy Railway	4 months	9 months 13 days
Hamersley Railway	4 months	9 months 13 days
Robe Railway	4 months	7 months 11 days
WICA Access Regime certification	6 months	4 months 22 days
MSP light regulation	4 months	2 months 11 days
Jemena reclassification	4 months	2 months 7 days

Assistance to stakeholders

Guides to declaration and certification

During 2008-09 the Council updated its guides to declaration and certification. These updates, which are available on the Council's website, replace the Council's former three-part guide to Part IIIA of the TPA.

With the release of these guides, the Council has decided to dispense with the production of hard copies of the guides. The guides are published electronically on the Council's website (www.ncc.gov.au) and so are readily available. Electronic publication also facilitates the Council's ability to update the guides. The Council will continue to provide a printed copy of the guides upon request.

Guide to the National Gas Law

The Council has prepared a guide to its roles and functions under the NGL. The guide is currently in three parts:

- Part A – Overview
- Part B – Coverage (including pipeline classification)
- Part C – Light regulation.

Parts A to C of the guide are published electronically and are available from the Council's website (www.ncc.gov.au) with printed copies available upon request. The Council intends to review and update the guide periodically in light of significant developments or legislative changes. The Council also proposes to develop a further part of the guide to deal with procedures concerning greenfields pipelines.

Bi-monthly newsletter

In June 2009, the Council launched its new bi-monthly newsletter, *Accessible*, which will be published in February, April, June, August, October and December each year. The newsletter is emailed to interested parties who subscribe and may be downloaded from the Council's website (www.ncc.gov.au).

Websites

The Council has redesigned its website (www.ncc.gov.au). The new website focuses on the Council's responsibilities and roles concerning third party access to infrastructure under both the TPA and the NGL. The website aims to provide ready access to:

- information on current applications, including copies of the application and submissions and timing matters
- information on past applications

- Council guides, templates and other publications and resources, and
- details of the Council's operations.

The Council has also developed a second website to incorporate the material from its previous role and work on the National Competition Policy (**NCP**) reform program (www.ncp.ncc.gov.au). This website provides an historic record of governments' development of, agreement to and implementation and outcomes of the (now concluded) NCP reform program, the reforms included in the program and the outcomes of the Council's regular assessments of progress.[9] The Council's objective in establishing the website is to provide a comprehensive resource for governments and other users. The Council hopes the new website will help preserve the legacy of the NCP program, which has been generally recognised as contributing greatly to Australia's economic well being.

Recent legislative developments

Recent and proposed changes to Part IIIA of the Trade Practices Act

On 7 April 2009, the then Assistant Treasurer and Minister for Competition Policy and Consumer Affairs (Hon. Chris Bowen) announced that he had commenced consultation with the states and territories on a package of reforms to Part IIIA of the TPA to enhance the National Access Regime.

The Minister stated that while the National Access Regime appeared to be operating effectively, there were concerns about the length and cost of the process at present. The Minister noted that '... currently, processes under the National Access Regime can go on for years. The National Access Regime needs to be improved to make decisions and arbitration faster' (Bowen 2009).

Most significantly from the Council's point of view, the Minister is proposing to:

- create binding time limits for decision-makers (of generally six months), and generally limit merits review to information submitted to the regulator, implementing commitments under the Council of Australian Governments' Competition and Infrastructure Reform Agreement (**CIRA**)
- provide scope for binding 'no-coverage' rulings exempting services from declaration for a 20 year period
- focus consideration of health and safety issues associated with access on the arbitration stage of the process
- provide that only services that are subject to certified state or territory access regimes are exempt from declaration

[9] The Council delivered its final NCP report in 2005.

- provide that in the event a Minister does not make a decision in a required time period he or she is deemed to have accepted the Council's recommendation, rather than to have declined an application in all cases
- remove uncertainty as to the Council's ability to accept reasonable amendments to applications
- allow the Council and the ACCC to make decisions by circulation of papers
- allow the Tribunal to determine whether a declaration decision should be stayed pending the Tribunal's determination of a review application rather than decisions being stayed in all cases.
- provide for costs to be awarded in relation to applications to the Tribunal (Bowen 2009).

The Minister emphasised that these reforms are not fundamental changes and so do not aim to strengthen or weaken the criteria for application of the National Access Regime.

Developments in gas access regulation – the National Gas Law

The *National Gas (South Australia) Act 2008* commenced operation on 1 July 2008. Mirror application Acts were subsequently enacted in the other relevant jurisdictions, implementing the NGL in all states and territories except Western Australia.[10] The National Gas (South Australia) Act, which has replaced the *Gas Pipelines Access (South Australia) Act 1997*, and the mirror changes in the other jurisdictions, bring gas access regulation under the jurisdiction of the Australian Energy Market Commission as the rule maker and the AER as the economic regulator and enforcement body (except in Western Australia where the Economic Regulation Authority retains this function).[11]

The national gas objective explicitly stated in the NGL is to promote efficient investment in, and efficient use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, reliability and security of supply of natural gas (NGL, s23).

Under the NGL the Council maintains a similar, but expanded, role compared to its role under the former National Gas Code. In addition to making recommendations on coverage and revocation of coverage, and no-coverage and price regulation exemptions for greenfields pipelines, the Council is responsible for classifying and reclassifying pipelines, determining the form of regulation, and providing advice on an application for amendment to a pipeline description referred to it by the relevant Minister.

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10 At 30 June 2009, the National Gas Access (WA) Bill 2008 was before the Western Australian Parliament.

11 Western Australia intends to retain the Energy Disputes Arbitrator as the relevant disputes body (formally known as the Gas Disputes Arbitrator). Merits reviews will be conducted by the Tribunal instead of the Western Australian Energy (Gas) Review Board, which was responsible for reviewing decisions under National Gas Code.

In 2008-09, the Council made two decisions under the NGL and NGR. These were discussed earlier in this chapter in the section on NGL matters.

Recent case law developments

BHP Billiton Iron Ore Pty Ltd & Anor v the National Competition Council & Fortescue Metals Group Ltd

The key case law development relevant to the Council this year was the unanimous decision of the High Court on 24 September 2008[12] dismissing BHPB's final appeal in this matter, often referred to as the 'production process case'. The High Court held that certain rail track services sought to be declared by FMG were each a 'service' within the meaning of s44B of the TPA and thus potentially subject to Part IIIA, rejecting BHPB's argument that those services constituted 'the use of a production process' and were therefore exempt from Part IIIA.

On 24 December 2004, BHPB (the operator of the Mt Newman Railway) applied to the Federal Court for a determination that the track service provided by the Mt Newman Railway which FMG applied to have declared was 'the use of a production process' and therefore exempt from Part IIIA. BHPB's application relied upon the reasoning of Kenny J in her 1999 decision[13] in relation to an application for the declaration of a service provided by the Hamersley Railway. On 25 February 2005, FMG applied to the Federal Court for a determination that the use of the Goldsworthy Railway service is not part of a production process.

The Federal Court heard these proceedings together in October 2006. In his decision[14] Middleton J held that a production process is the making of a product or the transforming of one thing into another, and found that both services were not production processes, and therefore that they could both be considered for declaration under Part IIIA of the TPA.

BHPB appealed Middleton J's decision to the Full Court of the Federal Court, which heard the matter in April 2007. The court delivered its decision[15] in October 2007, dismissing the appeal. The court did not adopt Kenny J's reasoning in Hamersley, or Middleton J's 'transformation' test. Instead, the majority of the court hearing the matter (Sundberg and Greenwood JJ) held that the proper approach is to identify the service sought to be declared, identify the production process which that service is said to use, and then ask whether the use of the service is the use of *that* production process. The court held that the production process exception did not generally apply to the use of a part of a production process, unless the use of part of a process necessarily involved the use of the whole. In a

12 *BHP Billiton Iron Ore Pty Ltd v National Competition Council* [2008] HCA 45.

13 *Hamersley Iron Pty Ltd v National Competition Council* [1999] FCA 867 (28 June 1999).

14 *BHP Billiton Iron Ore Pty Ltd v the National Competition Council and Fortescue Metal Group Ltd* [2006] FCA 1764.

15 *BHP Billiton Iron Ore Pty Ltd v National Competition Council* [2007] FCAFC 157.

separate judgment, Finkelstein J stated that he would have referred the matter back to the Federal Court for additional factual inquiry.

On 23 October 2007, BHPB applied to the High Court for special leave to appeal the decision of the Full Court of the Federal Court. The High Court granted special leave to appeal, and the appeal was heard by the High Court (Gummow, Kirby, Hayne, Heydon, Crennan and Kiefel JJ) on 29 July 2008, with judgment delivered on 24 September 2008.[16]

Their Honours delivered a single, unanimous decision dismissing the appeal. The High Court accepted that the expression 'a production process' had the ordinary meaning adopted by Kenny J in 1999, being 'the creation or manufacture by a series of operations of some marketable commodity'. The court also accepted that BHPB's process for mining iron ore, transporting it to port by rail, blending and loading it onto ships for export may be 'a production process' within the meaning of Part IIIA. The court further held, however, that it did not then follow that the use by FMG (or any other access seeker) of railways used in BHPB's production process meant that the access seeker was using BHPB's production process. In more general terms, the court's decision implies that where a facility is used in a production process, it does not follow that any service provided by that facility constitutes the use of that production process.

The High Court stated that while the alternative legislative construction argued for by BHPB (under which any use of a facility used in a production process constituted use of that production process) was not untenable, it adopted the respondents' construction because it was the only construction that 'would advance the attainment of the large national and economic objectives of Pt IIIA'. The decision highlights the need to interpret the legislation creating the National Access Regime in a manner that would advance the objectives it seeks to obtain.

The High Court also recognised that the National Access Regime (as established in Part IIIA) is a two stage process. First, it provides for declaration of a service only upon satisfaction of the six declaration criteria in s 44H(4) of the TPA. Second, the National Access Regime provides for the terms and conditions on which access will be provided either by commercial negotiation or arbitration by the ACCC, where the ACCC would be required (among other things) to take into account the legitimate business interests of the provider.[17]

Matters impeding the operation of Part IIIA of the TPA

Section 290 of the TPA requires the Council to report to the Parliament on, among other things, any matter that the Council considers has impeded the operation of Part IIIA of the TPA from delivering efficient access outcomes.

[16] *BHP Billiton Iron Ore Pty Ltd v National Competition Council* [2008] HCA 45.

[17] Section 44X of the TPA.

In previous annual reports, the Council reported on matters it considered impede the efficiency and operation of Part IIIA of the TPA and suggested rectifying action. Many of the Council's suggestions were taken up in the April 2009 announcement by the Minister for Competition Policy and Consumer Affairs of a suite of proposed reforms to Part IIIA. The Council welcomes the proposed reforms (see above), which it considers, when implemented, should streamline, simplify and improve the efficiency, certainty and timeliness of the National Access Regime.

The Council looks forward to the swift passage of amending legislation following consultation with the state and territories. As part of its future reporting to the Parliament, the Council will review the effect of the reforms and identify any new or continuing impediments to the operation and efficiency of Part IIIA.

The Council will be particularly concerned to assess how the proposed reforms help to address the significant impediments to the effective and timely operation of Part IIIA of the TPA observed in relation to some recent applications. The Council's observations in relation to key elements of the Government's reform program are discussed below (in the section on the implications for the future operation of Part IIIA).

Australian Competition and Consumer Commission arbitration determinations: evidence of benefits

Arbitration of access disputes under Part IIIA of the TPA operates within a negotiate/arbitrate model. This approach seeks to encourage commercial negotiation between an access seeker and the service provider as a means for providing for effective and efficient access outcomes. It is only where parties are unable to reach a commercial agreement in a reasonable timeframe that formal arbitration by the ACCC becomes available for resolving disputes concerning the supply of services that have been declared.

Part IIIA does not require that parties to a dispute use the formal arbitration process. It is open to parties that are unable to agree on access arrangements to use a consensual dispute resolution process such as mediation. Should an access seeker or service provider use the formal dispute resolution by notifying the ACCC of a dispute, the ACCC then makes a determination that is binding on the parties. Parties can withdraw notification of an access dispute at any time. This aspect of the arbitration framework encourages the parties to reach a commercial agreement.

The ACCC conducts arbitrations in private with the disputing parties. It is required to use its best endeavours to arbitrate an access dispute within six months of being notified of a dispute. Where necessary it may extend the time for arbitration beyond the six month period. In setting a six month target timeframe for arbitration the Parliament sought to increase incentives for timely decision making, without compromising the rigour of the decision making process (Pearce 2005). If either party to a dispute is dissatisfied with the ACCC's determination then it can seek re-arbitration by the Tribunal.

Since the enactment of Part IIIA in 1995 the Council has received applications for declaration relating to some 41 services. In some instances applications have been withdrawn and access achieved through commercial negotiation. Of the 12 services declared to date,[18] two matters were notified to the ACCC, both in 2006-07, for an arbitration determination.

- On 6 November 2006 Services Sydney Pty Ltd notified a dispute between itself and Sydney Water Corporation regarding the methodology for pricing access to declared sewage transportation services supplied by Sydney Water Corporation by means of its North Head, Bondi and Malabar sewerage reticulation networks. On 22 June 2007, the ACCC determined the dispute. Services Sydney applied to the Tribunal on 3 July 2007 for review of the ACCC's determination. It withdrew its application on 10 August 2007.
- On 29 January 2007 Virgin Blue Airlines Pty Limited notified a dispute between itself and Sydney Airport in relation to domestic runway charges. Virgin Blue withdrew its notification on 22 May 2007 following an independent commercial settlement with the Sydney Airport Corporation.

There were no matters notified to the ACCC for arbitration under Part IIIA of the TPA during 2008-09.

Evidence on the costs of, or disincentives for, investment in infrastructure

Access regulation seeks to encourage the shared use of spare capacity in (typically capital-intensive long-lived) infrastructure that is uneconomic to duplicate (where this can be achieved on commercial terms and conditions, while maintaining an owner's usage rights). It also aims to encourage investment in such infrastructure to accommodate additional demand where this can be done at lower net social cost rather than to require businesses to invest in high cost duplicate infrastructure. Access regulation seeks to maintain appropriate incentives for infrastructure investment: however, it is important to consider investment not only in the infrastructure areas that provide declared services but also in related upstream and downstream markets that depend on access to the service.

Service providers frequently argue that the requirement to share the use of their infrastructure with competitors (albeit on commercial terms and conditions) results in inefficiencies and that the costs of regulated access outweigh the benefits, increasing the risk of deterring future investment. The Council noted such arguments in its previous annual report, particularly those by parties opposing the TPI applications for declaration of the services provided by the Goldsworthy, Hamersley and Robe railways who argued that, for

[18] The declarations for four of these services have since expired, leaving eight currently declared services.

various reasons, access would significantly disrupt their businesses and cause them to delay investment now and into the future.

The provisions of Part IIIA mean that such disruptions to investment are unlikely to eventuate. Declaration under the National Access Regime is designed to address the small number of situations where access to a service provided by means of a facility which cannot be economically duplicated is necessary to enable third parties to compete effectively in a dependent market. The negotiate/arbitrate process that results from declaration is a light handed intervention designed to maximise opportunities for commercial resolution of access issues, minimise regulatory intervention and protect the legitimate interests of service providers so as to ensure that incentives for efficient investment are maintained.

Moreover, declaration does not necessarily lead to regulated access through application of an ACCC arbitration determination and cannot result in any change in ownership or control of a facility. The ACCC's arbitration role is governed by a range of specific statutory requirements that explicitly recognise the relevant interests of the various parties affected, including the legitimate interest of service providers in preserving their use of a service and making a commercial return on investment in infrastructure and other facilities. Further, Part IIIA also requires a broad consideration of the public interest that includes consideration of the effects of a declaration on investment activity.

The Council therefore sees little basis for concluding that access regulation is a significant cause of delay in investment activity. The Council is not aware of any data that support an argument that third party access regulation is leading to adverse investment outcomes.

Other broader factors are likely to have a far greater effect on Australia's infrastructure investment performance than access regulation.

In a report to COAG, Infrastructure Australia identified five challenges in relation to Australia's infrastructure needs: delivering better governance; creating competitive markets; one economy, one set of rules; better use of existing infrastructure; and climate change (Infrastructure Australia 2008). Infrastructure Australia noted that where infrastructure and related services are natural monopolies, such as rail lines and water distribution networks, the priority should be to implement independent regulation of access and pricing, and noted that regulatory reforms in Australia's energy sector had delivered substantial benefits in terms of national income, prices and investment.

Private sector investment tends to be pro-cyclical: in times of recession, demand is reduced and businesses are generally less able to access finance for investment. During 2008-09 the Australian Government committed $8.5 billion to investment in priority infrastructure projects (covering highways, rail extensions and rail tunnels) and in other projects indentified by Infrastructure Australia (Albanese 2009).

Implications for the future operation of Part IIIA

The Council's experience during 2008-09 suggests three main areas that have implications for the future operation of Part IIIA of the TPA.

- Events in connection with the declaration applications for the four Pilbara railway services discussed above reinforce the Council's view (as noted in last year's annual report) that there is a need to improve the timeliness of decision-making and the efficiency of processes under the National Access Regime. The Council believes that the Government's announced reform package should improve the regime's timeliness, efficiency and effectiveness, and considers it is important for the announced reforms to be enacted as soon as possible.
- The Council's certification work raises the question of the circumstances in which it is appropriate for states and territories to develop specific sectoral access regimes rather than rely on the generic National Access Regime. This is especially so where a state or territory regime merely replicates the requirements of the National Access Regime under the auspices of state based regulatory bodies. More generally there is a need for governments to progress both their agreed programs for certifying their energy regimes and the certification program agreed under the CIRA.
- While the Council considers the Government's announced reform program for the National Access Regime to be important, experience to date indicates that the regime is broadly achieving COAG's objectives and provides significant benefits to the Australian public.

Reforms to Part IIIA

In its previous annual report, the Council drew attention to matters that it considered were impeding the operation of Part IIIA. The Council stated that the timeliness of finally resolving matters under National Access Regime could be improved, including by reforms to the process for reviewing decisions under the regime. Experience during the past year has reinforced the Council's views.

Importance of timely decisions under the National Access Regime

Timeliness of access outcomes is a key factor in ensuring that the National Access Regime achieves its objective of promoting economically efficient use of, and investment in, the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets. The need to promote such timeliness has been a consistent theme of the Council's advice concerning the regime. This need has also been recognised by others including the Productivity Commission (PC 2001). The introduction of

best endeavours timeframes for decision-makers under Part IIIA in 2006 was made with the objective of improving the timeliness of outcomes in mind.[19]

In the Council's view, experience in 2008-09 suggests that the current best endeavours standard periods for decision-makers may not have been sufficiently effective in improving the timeliness of access outcomes.

The Council took longer than the standard four month period to deliver recommendations on the three Pilbara railway declaration matters. The factors that contributed to this outcome are set out in the section above on the Council's performance against target timeframes. A significant element in the delay was the willingness of the operators of the railways subject to the declaration application to devote resources to resisting the processes established under the National Access Regime. The Council met all other time targets including those under the NGL.

In reviewing the Goldsworthy, Hamersley and Robe railway services declaration decisions, the Tribunal adopted a timetable that, assuming deadlines are adhered to, would see the reviews being determined in early 2010. This timeframe will mean that decisions are available, at the earliest, some 14 months from the date of the application to the Tribunal. The Tribunal adopted this timetable notwithstanding the Part IIIA requirement that it to use its best endeavours to determine reviews of declaration decisions within a standard period of four months.[20] The Tribunal is yet to determine its review of the deemed declaration decision relating to the Mt Newman railway service, which commenced in June 2006.

The Council acknowledges that in adopting the timetable it did, the Tribunal was concerned to ensure that each party be afforded natural justice in preparing their evidence and responding to the evidence of the other parties, and indicated that it considered itself constrained by the submissions from all parties (including the applicant for declaration) that the longer timetable was the minimum period required to enable parties to prepare their cases and make their counter arguments.

The Council is concerned that the experience of the time and costs of dealing with the various Pilbara rail declaration applications may deter access seekers from using Part IIIA. The experience with the Pilbara rail matters may also encourage infrastructure owners to believe that if they are prepared to endure the costs and deploy significant legal resources they can defer declaration indefinitely. Both these outcomes are unacceptable. The Government's proposed reforms will likely significantly improve the timeliness and efficiency of decision-making under the regime. The Council will continue to monitor the National Access Regime and in future annual reports examine whether the reforms (when enacted) are achieving the desired improvements.

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19 See the Explanatory Memorandum for the *Trade Practices Amendment (National Access Regime) Act 2006* (Cth).

20 Section 44ZZOA of the TPA.

Further steps, in particular additional power for the Tribunal to more closely manage merits review proceedings, may be necessary. Powers akin to those proposed for the Federal Court under the Access to Justice (Civil Litigation Reforms) Amendment Bill 2009 might be considered if there is any doubt as to the Tribunal's ability to actively manage proceedings before it.

Binding time limits

The proposal to introduce binding time limits for decision-makers, generally of six months, should reduce the scope for interested parties to challenge timetables on the basis that natural justice requires that a longer period be adopted. In this way, the introduction of binding time limits should widen the ability of decision-makers to determine matters in a timely fashion while retaining the ability to stop the clock where, in extenuating circumstances, a longer period is necessary for consultation and information gathering.

Limiting merits review to information submitted to regulator

In the Council's view, the proposal to limit merits review of decisions to the information that was submitted to the regulator is key to improving the timeliness and efficiency of the National Access Regime. At present, when an interested party seeks merits review by the Tribunal of a decision made under the National Access Regime, there are few limits on the scope of the evidence that a party can adduce. This typically means that Tribunal proceedings are conducted much like court proceedings. As a result, a majority of the time taken to conduct merits reviews is taken up by the parties preparing and submitting sworn evidence to establish each aspect of their case, and then preparing further evidence in reply to the evidence of the other parties.

In the Council's experience with the Pilbara railway matters, the process for adducing evidence to support each party's case from scratch before any hearing or substantive argument can commence is the major contributor to the long time periods taken to resolve merits reviews under National Access Regime. This is despite the fact that the Tribunal's review of decisions under the National Access Regime was always intended to be a flexible administrative process rather than a court-like judicial process. The TPA (s103) provides that the Tribunal must conduct its proceedings with as little formality and as much expedition as it can, and is not bound by the rules of evidence. Nevertheless, that parties are able to present their cases again from scratch before the Tribunal has resulted in merits review proceedings being, typically, little different from those before a court.

The process of adducing evidence before the Tribunal from scratch seems to the Council to be unnecessary where interested parties will have presented evidence and submissions in support of their case to the Council and the designated Minister before any matter reaches the Tribunal. The proposed limitation should therefore remove the need for unnecessary and wasteful duplication of evidence gathering processes. Further, interested parties will have a greater incentive to ensure that their materials are thorough and properly support their case at the time they present their submissions to the regulator, improving the quality

of information available to the regulator and the Minister in making their recommendations or decisions. The Council therefore supports the Government's proposal to limit merits review of decisions under the National Access Regime to the information that was initially supplied to the regulator (with limited exceptions in cases where it is clearly necessary to establish that relevant circumstances have changed). The Council considers this to be an important reform that is likely to significantly improve the efficiency of the National Access Regime and in particular the timeliness of outcomes under it.

Costs awards in Tribunal reviews

The proposal to allow for the Tribunal to make costs awards under a regime similar to that in the NGL would discourage conduct designed to waste time and provide and additional incentive to ensure parties comply with the Tribunal's directions. Parties to review processes before the Tribunal, particularly the Mt Newman proceedings, have frequently missed deadlines for the filing of evidence. There are few mechanisms currently available to the Tribunal to sanction non-compliance with timetables and other inefficient behaviour short of the drastic step of refusing leave to file late evidence at all.

Removal of automatic stay of decisions

The Council considers that service providers will have less incentive to initiate merits review proceedings in the Tribunal with the predominant goal of delaying the effects of declaration if, as proposed, declarations are not automatically stayed merely due to an application for review. Instead, the Tribunal should have the power to determine whether a stay is appropriate, having regard to whether the lack of a stay would expose a service provider to undue cost or other prejudice. In other cases access seekers could seek to negotiate with the service provider while the review proceeds and it would be open to either party to notify an access dispute to the ACCC. Given the proposed time limits for Tribunal reviews it is unlikely that an access dispute would be determined by the ACCC before the Tribunal completed its review, but such a risk could be avoided if it were provided that no arbitrated access determination came into force until the Tribunal had determined its review.

Streamlining declaration criteria

The Council considers that the proposed removal of the health and safety criterion for declaration (criterion (d))[21] would improve the efficiency of the National Access Regime without any prejudice to the health and safety of the public. No application for declaration has been rejected for failing to meet criterion (d). A range of health and safety laws invariably apply to significant infrastructure facilities and the services provided by them, irrespective of decisions under Part IIIA. The existence of this criterion therefore creates an unnecessary requirement for submissions on the health and safety aspects of declaration applications without any tangible benefit.

[21] Sections 44G(2)(d) (the Council's criteria) and 44H(4)(d) (the Minister's criteria) of the TPA.

Any residual risk that the mere fact of declaring a service under Part IIIA could lead to risks to health or safety that are not addressed by existing health and safety laws and are incapable of being dealt with in setting terms of access by a particular access seeker could be appropriately assessed under criterion (f),[22] the declaration criterion dealing with the public interest.

The efficiency of the National Access Regime will also be improved by the proposal to restrict declaration criterion (e).[23] Currently, where a service sought to be declared is subject to an access regime (or an alleged access regime), the Council is obliged to assess in essence whether that regime would be certified, were it subject to an application for certification. Consideration of certification applications for access regimes are substantial regulatory processes in themselves; indeed, the TPA currently requires the Council to use its best endeavours to make a recommendation on a certification application within six months, a longer period than the four months that is currently prescribed for declaration recommendations. Further, state or territory regimes and contractual arrangements that have only a tangential connection to the service are often argued to give rise to issues that the Council must consider under this criterion.

The Council therefore supports the proposal to confine criterion (e) to access regimes that have been certified. This is consistent with the Council's understanding of the intention of this criterion, and would improve the efficiency of consideration of declaration applications. Where a service is subject to an uncertified access regime it would still be open to the Council and the Minister to consider whether that regime had the effect of obviating any promotion of competition that access under Part IIIA may otherwise have had as part of its assessment of criterion (a)[24] (promotion of competition).

Certification of state and territory access regimes

Under the CIRA states and territories committed to seek certification under section 44M of the TPA for all state and territory access regimes. Governments agreed that all new third party access regimes will be submitted for certification as soon as practicable, and all existing third party access regimes will be submitted for certification by no later than the end of 2010.[25] In addition governments have agreed to seek certification of their revised energy (electricity and gas) access arrangements.

The challenge for the Council will be to consider the anticipated large number of certification applications within the six month time frame required by the TPA (currently, this is a best endeavours requirement although as discussed above the Government's proposed reforms would see this become a strict time limit with limited opportunities for 'clock-stopping'). If the bulk of certification applications envisaged under the CIRA for

[22] Sections 44G(2)(f) (the Council's criteria) and 44H(4)(f) (the Minister's criteria) of the TPA.

[23] Sections 44G(2)(e) (the Council's criteria) and 44H(4)(e) (the Minister's criteria) of the TPA.

[24] Sections 44G(2)(a) (the Council's criteria) and 44H(4)(a) (the Minister's criteria) of the TPA.

[25] Clause 2.9 of the CIRA.

existing third party access regimes are not initiated until just before the end of 2010 then the Council would face significant problems. The Council therefore encourages governments that have completed reviews of regimes and decided to retain those regimes (sometimes in amended form) to pursue certification as soon as possible. A list of the current state and territory access regimes and the underlying legislative bases is set out in Table 2-2.

Table 2-2: State and territory infrastructure access regimes at 30 June 2009

Jurisdiction	Scope of access regulation
New South Wales	Gas pipelines (*National Gas (New South Wales) Act 2008*)
	Electricity networks (*National Electricity (New South Wales) Act 1997*)
	Water and wastewater infrastructure (*Water Industry Competition Act 2006*)
Victoria	Gas pipelines (*National Gas (Victoria) Act 2008*)
	Electricity networks (*National Electricity (Victoria) Act 2005*)
	Railways (*Rail Corporations Act 1990*)
	Grain handling and storage (*Grain Handling and Storage Act 1995*)
	Shipping channels (*Port Services Act 1995*)
Queensland	Gas pipelines (*Gas Pipelines Access Act 1998/Queensland Competition Authority Act 1997*)
	Electricity networks (*Electricity-National Scheme (Queensland) Act 1997*)
	Intrastate rail (*Queensland Competition Authority Act 1997*)
	Dalrymple Bay Coal Terminal (*Queensland Competition Authority Act 1997*)
South Australia	Gas pipelines (*National Gas (South Australia) Act 2008*)
	Electricity networks (*National Electricity (South Australia) Act 1996*)
	Railways (*Railways (Operations and Access) Act 1997*)
	Ports *(Essential Services Commission Act 2002 /Maritime Services (Access) Act 2000*)
Western Australia	Gas pipelines (*National Gas Access (WA) Bill 2008* (before the Western Australian Parliament)
	Electricity networks (*Electricity Industry Act 2004*)
	Railways (*Railways (Access) Act 1998)*
Tasmania	Gas pipelines (*National Gas (Tasmania) Act 2008)*
	Electricity networks (*Electricity National Scheme (Tasmania) Act 1999*)
Northern Territory	Gas pipelines (*National Gas (Northern Territory) Act 2008)*
	Electricity networks (*Electricity Networks (Third party Access) Act 2003*)
ACT	Gas pipelines (*National Gas (ACT) Act 2008)*
	Electricity networks (*Electricity (National Scheme) Act 1997)*

Note: The regulation of access to energy infrastructure (gas pipelines and electricity networks) is achieved through a coordinated set of state and territory access regimes implemented by way of legislation enacted first in South Australia and then adopted in legislation in the other states and territories.

For governments contemplating new access regimes, the Council draws attention to its comments above relating to the NSW WICA Access Regime, and particularly its view that there appears to be little benefit in enacting regimes that essentially replicate the declaration and negotiate/arbitrate approach already available under the general provisions of the National Access Regime. The CPA envisages that states and territories will implement jurisdictional access regimes, and where, in particular, the nature of access issues arising in an industry or sector within one or more jurisdictions call for a specific regulatory arrangement, the implementation of sector or industry specific jurisdictional access arrangements may be warranted. However, a state or territory access regime that merely replicates the general provisions of Part IIIA of the TPA would appear to offer little benefit while arguably adding to cost and uncertainty.

National Access Regime broadly meeting COAG's objectives

Since 1995 when the National Access Regime in Part IIIA of the TPA came into force, there have been applications for declaration covering some 41 services across a range of sectors including rail, airports, water and wastewater, gas transport (outside the National Gas Code or the NGL), electricity transmission and data processing. Of these, 14 services—in the rail, airports and water and wastewater industries—have been declared.[26]

A significant part of the Council's access work under the TPA in 2008-09 has related to facilities that exhibit natural monopoly characteristics with the relevant infrastructure services provided as part of vertically integrated operations. In the three Pilbara railway declaration recommendations made during 2008-09, the Council reached a view that declaration is necessary to help address service providers' incentives to adversely affect competition in upstream or downstream markets. The Treasurer accepted the Council's recommendations and declared those services, and the Council has been assisting the Tribunal in its reviews of those declarations.

Since 1995 there have been two notifications to the ACCC of an access dispute, one of which was withdrawn. No party notified the ACCC of an access dispute in 2008-09. The relatively few access disputes compared to the number of declared services would suggest that access has remained largely subject to commercial dealings between access seekers and service providers and that the National Access Regime is broadly meeting COAG's objectives for third party access.

Finally the Council reiterates its view expressed in previous annual reports concerning the institutional underpinning of Australia's access regulation arrangements. COAG's April 2007 decision that the Council should continue its National Access Regime role and the institutional framework adopted in the NGL regarding the access regulation of natural gas pipelines ensures that the process of determining what is subject to access regulation remains separate from the administration of that regulation. Except in the case of telecommunications, Ministers (or the Tribunal on review) are responsible for declaration

[26] Declarations in respect of four of these services have since expired.

decisions and a body other than a regulator advises the relevant ministerial decision maker on whether access to the services of a particular infrastructure facility should be regulated or a gas pipeline should be covered. These institutional arrangements ensure decision makers have access to independent advice developed through transparent public processes and reduce incentives for unnecessary regulation.

3 Governance and organisation

Agency overview

Role and functions

The National Competition Council (**Council**), established in 1995 by agreement of the Council of Australian Governments (**COAG**), is an independent research and advisory body for all Australian governments. Its functions and powers are set out in section 29B of the *Trade Practices Act 1974* (**TPA**).

The Council's functions include carrying out research into and providing advice on matters referred to it by the Minister. The Council makes recommendations on the regulation of third party access to services provided by monopoly infrastructure under the National Access Regime in Part IIIA of the TPA (declaration and certification) and recommendations and decisions under the National Gas Law (**NGL**).[27]

Vision and mission

The Council's vision is to help achieve outcomes that benefit the community as a whole by providing objective and constructive advice to governments. This incorporates building community understanding of, and support for, national access regulation.

Appropriate application of the National Access Regime and access regulation of gas pipelines encourages competition in markets that depend on the use of monopoly infrastructure. This facilitates economic growth, employment growth, optimal resource use and improved social outcomes for all Australians.

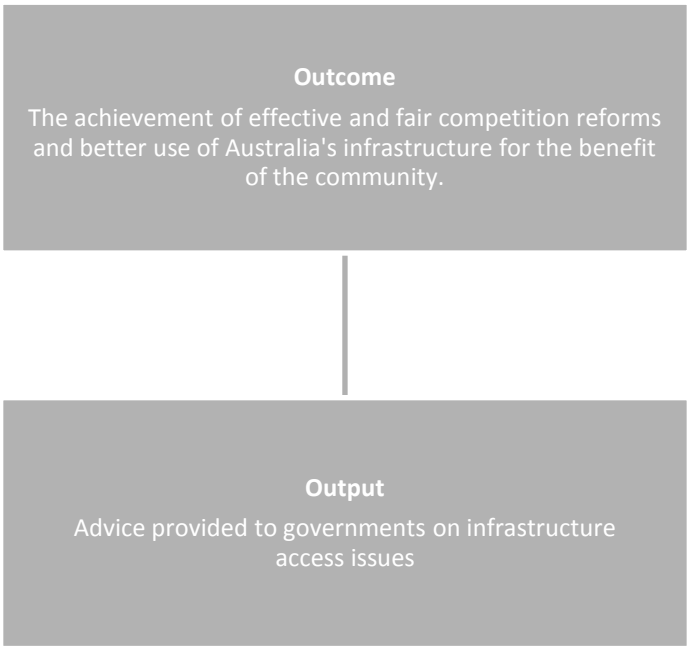
The Council's vision is embodied in its mission: 'To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest'.

Outcome and output 2008-09

The Council has a single outcome and a single contributing output. These are shown in Figure 3-1.

[27] The Council's third party access work is discussed in chapter 2.

Figure 3-1 National Competition Council's outcome and contributing output 2008-09



The Council delivers its outcome by providing advice to governments on the design and coverage of infrastructure access regimes and making decisions on the regulation of gas pipelines. It develops the advice it provides to governments and makes decisions using a public process. When it receives an application for declaration or certification under the National Access Regime or an application on the regulation of gas pipelines under the NGL the Council publishes the application and then consults with stakeholders by inviting submissions and providing public reports. The Council supports its access regulation function by way of publicly available third party access guidelines and application templates. This documentation is available on the Council's website.

Indicators of performance

The performance indicators for assessing the Council's output along with the targets and summary information on the Council's performance in 2008-09 against those targets are set out in Table 3-1. More detailed information on the Council's performance efficiency in 2008-09 is provided in chapter 2 of this annual report, which discusses the Council's third party access work. Chapter 2 also provides the Council's report to the Australian Parliament on the operation of the National Access Regime, which is required under section 29O of the TPA.

Table 3-1 Summary of National Competition Council output performance indicators, targets and performance 2008-09

Key performance indicator	2008-09 target	Outcome
Council recommendations on applications for the declaration of services provided by monopoly facilities meet statutory requirements (including target time limits in the TPA) and the advice requirement of decision making Ministers.	Recommendations on applications are provided within statutory time guidelines (target of 4 months). Recommendations meet the advice requirements of decision making Ministers.	In 2008-09 the Council provided recommendations to the Commonwealth Treasurer on three declaration applications as follows: Goldsworthy Railway service declaration application: 9 months 13 days Hamersley Railway service declaration application: 9 months 13 days Robe Railway service declaration application: 7 months 11 days. The Commonwealth Treasurer accepted the Council's recommendations in the Goldsworthy, Hamersley and Robe matters, announcing decisions to declare each of the services on 27 October 2008. The Commonwealth Treasurer's decisions on these three matters are currently before the Tribunal. A fourth matter (the Commonwealth Treasurer's deemed decision of 22 May 2006 not to declare the Mt Newman railway service) was before the Tribunal at 1 July 2008. The Council received no new declaration applications in 2008-09.
Council recommendations on applications for the certification of state and territory meet statutory requirements (including target time limits) and the advice requirement of decision making Ministers.	Recommendations on applications are made within statutory time guidelines (target of 6 months). Recommendations meet the advice requirements of decision making Ministers.	At 1 July 2008 the Council had no ongoing applications for certification. The Council received one new application for certification in 2008-09 being the application by the NSW Government for a recommendation to certify as effective NSW's water infrastructure services access regime. The Council provided its recommendation to the Commonwealth Minister for Competition Policy and Consumer Affairs within 6 months

Table 3-1 continued

Key performance indicator	2008-09 target	Outcome
		(4 months and 22 days following receipt of the application). At 30 June 2009 the Minister was yet to make a decision on the Council's recommendation.
Council recommendations and decisions under the NGL are made in accordance with the processes and criteria provided for in that law and related rules.	Recommendations and decisions are made within specified time limits. Recommendations meet the advice requirements of decision making Ministers.	The Council received two new applications under the NGL in 2008-09. The Council determined these matters within the NGL target time frames as follows: East Australian Pipeline Pty Limited light regulation of the covered portion of the Moomba to Sydney Pipeline: 2 months 11 days Jemena pipeline reclassification: 2 months 7 days During 2008-09 the Council received no applications in relation to NGL matters for which it was required to make a recommendation to a decision-making Minister.
The Council develops and maintains informative and up to date information resources for applicants, infrastructure owners and other interested parties in relation to all matters for which it is responsible.	A new website is launched to provide accessible information on all access regulation matters for which the Council is responsible. Updated guidelines on declaration and certification under Part IIIA of the TPA are available on the Council's website by 31 December 2008. Initial guidelines relating to the Council's areas of responsibility under the new NGL are available on the website within three months of that law coming into effect. Case law developments, legislative amendments and developments in Council	On 1 June 2009 the Council launched its revamped website providing ready access to information on all access regulation matters for which the Council is responsible. The Council also launched a new legacy website which provides information on the now concluded National Competition Policy reform program. The Council updated its guides on the certification of state and territory access regimes and published these in January 2009. The Council updated its guides on the declaration of infrastructure services and published these in March 2009. The Council developed new guides relating to the coverage of gas pipelines and light regulation under the NGL and published in May 2009.

Table 3-1 continued

Key performance indicator	2008-09 target	Outcome
	processes or policies are reflected in Council information resources within 30 days.	The Council will develop and publish a guide on greenfields pipeline regulation in 2009-10. In June 2009 the Council instituted a new bi-monthly newsletter 'Accessible' to provide information on key access matters including case law developments.
The Council provides timely advice on the operation of the National Access Regime (including by way of the reporting required by s29O(2) of the TPA which requires reporting on time taken to make recommendations, court or Tribunal interpretation of key provisions, matters impeding the operation of the regime, benefits and costs (including any disincentives for investment) resulting from the regime's operation, and implications for the future operation of the regime).	The Council's annual report includes a comprehensive report on the National Access Regime that meets the requirements of s29O(2) and is provided by 31 August 2009.	The Council will provide its annual report to the Treasurer by 31 August 2009. The Council's annual report will include a report on the National Access Regime as required by the TPA.

Resources used in performing the National Competition Council outcome

The Council's received revenue from the Government in 2008-09 of $2.781 million, which incorporated a budget saving measure of $1.2 million. The Council received other revenue of $207 000 from court costs awards and application fees relating to its NGL work.

The price of the Council's output in 2008-09 was $2.726 million. This represented a reduction from the portfolio budget statement estimate of 3 per cent. The variation occurred primarily because applications anticipated in 2008-09 from state and territory governments for the certification of their access regimes, including the certification of energy access regimes developed under the auspices of Energy Ministers, did not eventuate. In addition, the Council received no new applications for declaration under the National Access Regime. As a consequence, the Council considered that it was appropriate to delay recruitment activity to fill staffing vacancies and needed to devote fewer resources to the purchase of the services of legal and economic experts.

The Council recorded a surplus of $284 549 in 2008-09.

Table 3-2 summarises the financial resources used by the Council[28] during the year.

Table 3-2 National Competition Council resourcing 2008-09

	Actual available appropriations ($'000)	Payments made ($'000)	Balance remaining ($'000)
Agency appropriations			
Prior year appropriation	4144	0	4144
Actual current year appropriation	2781	2721	60
Other agency revenue	355	0	355
Total	7280	2721	4559

Source: Portfolio Budget Statements 2008-09 and Financial Statements 2008-09.

Table 3-3 provides a summary of the resources used by the Council in performing its outcome in 2008-09 showing the variation against budget. The Council's average staffing level (including secretariat staff and councillors) in 2008-09 was 11.4 full time equivalent persons, representing a variation from budget of 1.6 (12 per cent).

[28] See also the audited Financial Statements for 2008-09.

Table 3-3 Resourcing for the National Competition Council outcome, 2008-09

	Appropriation 2008-09 Budget $'000	Actual expenses 2008-09 $'000	Variation $'000
Output group 1.1—National Competition Council			
Departmental outputs	2085	2726	79
Total resource for outcome 1	2805	2726	79
Average staffing level	13	11.4	

Source: Portfolio Budget Statements 2008-09 and Financial Statements 2008-09.

Corporate governance

The Council's governance framework establishes accountability and decision-making processes to effectively and efficiently manage its resources and allocate those resources to its statutory priorities. The Council has embraced the management, accountability, financial and employment reforms applicable to government agencies.

The Council's outcome and output are agreed with the Department of Finance and Deregulation and reported in the Treasury Portfolio Budget Statements. The Australian Government funds the Council through budget appropriations. The Council also receives application fees in relation to making recommendations on the access regulation (coverage) of natural gas pipelines and making decisions on the classification of pipelines. The purpose of the application fee is to contribute to the Council's costs in processing an application, which include the conduct of a public process. The charge of $7500 per access application and $2000 per reclassification application represents partial cost recovery.

The Council is responsible for its activities, consistent with the requirements of the TPA. Decisions are made at Council meetings (see Table 3-4) and day to day management is undertaken by an executive team in the Council secretariat. The Council is accountable for its decisions through the courts, tribunals, the Parliament and the Commonwealth Ombudsman.

National Competition Council structure

The Council comprises the President and up to four other councillors appointed by the Governor-General, with appointments—generally for three-year periods—supported by a majority of state and territory governments. Part IIA of the TPA specifies the processes for appointing councillors, conducting Council meetings and disclosing interests by councillors. The Council is supported by a secretariat located in Melbourne. At 30 June 2009 the secretariat comprised 9 staff (7.4 full time equivalent), including one short-term non-ongoing appointment.

The President and councillors

At 30 June 2009, there were four councillors, including a President. The councillors were David Crawford (President), Doug McTaggart, Rod Sims and Virginia Hickey (see Box 3-1). The councillors are drawn from across Australia and different industry and community sectors to provide a range of skills and experience. The terms of office of all current councillors, including the President, end on 17 December 2009.

The councillors endorse the operating policies of the Council, and consider, review and approve all of the Council's recommendations and major publications before release. The councillors also consider governance issues, including performance against budget.

Box 3-1 Councillor profiles

David Crawford - President

Mr David Crawford was appointed as the President of the National Competition Council for a period of three years in December 2006, having been a councillor for eight years before that (including two years as acting Council President). Mr Crawford lives in Perth, Western Australia. He is also Chairman of the Airstralia Development Group Pty Ltd, Westralia Airports Corporation Pty Ltd, PAPT Holdings Pty Ltd, PAPT Nominees Pty Ltd, HRZ Wheats Pty Ltd, and Canola Breeders Western Australia Pty Ltd.

Mr Crawford is a director of Grain Foods CRC Ltd, Grain Foods Solutions Pty Ltd, Canola Breeders International Pty Ltd, and Pinnacle Corporate Pty Ltd. He is also Chair of the Board of Advisors of Curtin University Graduate School of Business, and a management committee member of both educational and service organisations. Mr Crawford was previously the corporate affairs director of Wesfarmers Limited, managing director of Western Collieries Ltd, chief operating officer of Ranger Minerals NL and managing director of Abosso Goldfields Limited. Mr Crawford has also been a member and/or chair of a number of government and non-government committees in the agriculture and mining industries.

Mr Crawford has an Honours degree in Economics from the University of Queensland and a Master of Arts (Political Science) from the University of Toronto. He is also a Fellow of the Australian Institute of Company Directors.

Dr Doug McTaggart

Dr Doug McTaggart was first appointed as a councillor in December 2000. He was reappointed in December 2003 and again in December 2006 for a further three year term.

Dr McTaggart lives in Brisbane, Queensland. Dr McTaggart is the Chief Executive of QIC. He is also a member of the Council of Australian Governments Reform Council (COAG Reform Council) and a board member of Committee for Economic Development of Australia (CEDA).

Dr McTaggart has held various positions as an academic economist, most recently Professor of Economics and Associate Dean at Bond University. He was previously the Under Treasurer of the Queensland Department of Treasury. He has been president of the Economic Society of Australia, a member of the Australian Accounting Standards Board and a member of the Queensland University of Technology Council. Dr McTaggart holds an Honours degree in Economics from the Australian National University and a Masters degree and PhD from the University of Chicago.

Rod Sims

Mr Rod Sims was appointed to National Competition Council in December 2003 and reappointed for a three year term in December 2006. Mr Sims is a director of Port Jackson Partners Limited, which he joined in 1994. In addition to his role as a councillor, Mr Sims is also a Director of InfraCo Asia based in Singapore, and Ingeus Limited. From 1996 to 2003, he was the chair of the NSW Rail Infrastructure Corporation and later chair of the State Rail Authority. Mr Sims was a member of the panel that undertook the review of Australia's energy policy for the Council of Australian Governments in 2002.

Mr Sims previously worked for the Australian Government for over eight years, including as the Deputy Secretary in the Department of Prime Minister and Cabinet and Deputy Secretary responsible for Transport in the Department of Transport and Communications. From 1988 to 1990, Mr Sims was the economic advisor to the Prime Minister.

Mr Sims holds a first class honours degree in Commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Virginia Hickey

Virginia Hickey is director of @ the Board Table, a corporate governance consulting business. She is also the Chair of TransAdelaide, Chair of the Telecommunications Industry Ombudsman Council and board member of Flinders Ports, Medical Insurance Group Australia and SafeCom. Ms Hickey was formerly a Commissioner of the National Transport Commission through which role she was involved in the Council of Australian Governments National Reform Agenda. Her other previous board positions include member of the Council of the University of South Australia, Vice President Australian Institute of Company Directors SA & NT Division and board member of Playford Capital and the Art Gallery of South Australia.

Ms Hickey was formerly a partner of Finlaysons Lawyers in Adelaide with particular expertise in corporate governance, directors' accountants' liability and general commercial litigation including actions under the Corporations Law and the Trade Practices Act. Ms Hickey was appointed as a Councillor of the National Competition Council in December 2003.

Virginia Hickey has a Bachelor of Arts from Monash University and a Bachelor of Laws from Melbourne University and is a Fellow of the Australian Institute of Company Directors.

National Competition Council meetings

During 2008-09 councillors met on nine occasions, including four times by teleconference. In-face meetings were held in the Council's Melbourne office.

The number and timing of meetings in 2008-09 were determined largely on the basis of the Council's work priorities. Table 3-4 lists the dates of the meetings in 2008-09 and councillors' attendance. Councillors received and considered each month (at meetings or out of session) a financial statement of the Council's performance against budget.

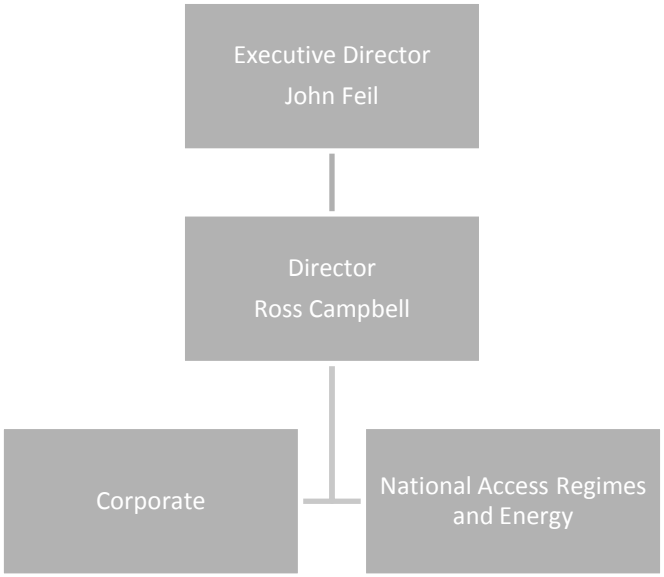
Table 3-4 National Competition Council meetings, 2008-09

Meeting date	Attendance
19 August 2008	all councillors, except R Sims who had advised of a conflict of interest in relation to the matter considered
22 August 2008	all councillors
21 October 2008	all councillors, except R Sims who had advised of a conflict of interest in relation to the matter considered
18 November 2008	all councillors
17 February 2009	all councillors
1 April 2009	all councillors
7 May 2009	all councillors, except V Hickey who was overseas
27 May 2009	all councillors
26 June 2009	all councillors, except V Hickey

The secretariat

The secretariat provides advice and analysis at the councillors' direction on competition matters, primarily matters related to Part IIIA of the TPA and similar functions relating to the regulation of natural gas pipelines. It represents the Council in dealings with officials from the Australian, state and territory governments and with other parties that have relevant interests in the services provided by monopoly infrastructure. Figure 3-2 depicts the structure of the secretariat at 30 June 2009.

Figure 3-2 National Competition Council secretariat organisation chart, 30 June 2009



Day-to-day management of the secretariat is the responsibility of the Executive Director and Director, who comprise the executive team. The executive team is also responsible for forward planning and for policy and expenditure decisions. The executive team met regularly with secretariat staff during 2008-09 to consider work and organisational issues.

Internal and external scrutiny

Internal scrutiny is undertaken via regular meetings of councillors (see above) and through the Council's Audit and Risk Management Committee.

Mechanisms for external scrutiny include: formal reviews of the National Access Regime and the NGL, and the role of the Council; legal mechanisms (courts and tribunals) for reviewing Ministers' decisions arising from Council recommendations; and the Commonwealth Ombudsman. The Council is subject to external scrutiny more generally through its published recommendations to governments on matters relating to access determinations and through its processes for engaging with stakeholders.

Audit and Risk Management Committee

The Council's Audit and Risk Management Committee oversees the organisation's financial statements, audit functions, risk management, fraud control and business continuity planning. At 30 June 2009 the Audit and Risk Management Committee comprised councillors Doug McTaggart (Chair) and Virginia Hickey. The committee met twice during 2008-09.

On 27 August 2008 the committee considered and agreed that the Council adopt the audited financial statements for 2008-09. The committee received a report from the Australian National Audit Office (**ANAO**) in relation to its audit of these financial statements. At its meeting on 17 February 2009 the committee reviewed and endorsed the Council's policies governing risk management and fraud control.

Virginia Hickey and Doug McTaggart attended both meetings of the Audit and Risk Management Committee. Secretariat members John Feil (Executive Director) and Ross Campbell (Director) also attended the two meetings.

Formal reviews

There were no reviews during 2008-09 of instruments or processes relating to the National Access Regime in Part IIIA of the TPA or access arrangements under the NGL and the National Electricity Law.

Legal mechanisms for reviewing National Competition Council decisions

Under both Part IIIA of the TPA and the NGL, an applicant or service provider may seek review of decisions (made in response to a recommendation from the Council) by the

designated Commonwealth Minister or state premier. The Australian Competition Tribunal is the appellate body for decisions on declaration, certification and coverage/revocation of coverage except that under the NGL, the appellate body in Western Australia is the Western Australian Gas Review Board. Chapter 2 reports on the Council's work relating to Part IIIA and the NGL, including where parties sought review of Ministers' decisions and, where available, the outcomes of those reviews.

Other reviews

There were no reports or comments during 2008-09 by the Australian Government Ombudsman or by a parliamentary committee, and no decisions by administrative tribunals involved the Council.

Engagement with stakeholders

In June 2009, the Council launched a new website to replace its previous website. The Council's revamped site, located at www.ncc.gov.au, contains information about the Council's role under Part IIIA of the TPA and the NGL. The site also contains current corporate information including annual reports to Parliament and required Australian Public Service reporting.

The Council also launched a second website, located at www.ncp.ncc.gov.au, to provide historic information on the Council's previous role of administering the National Competition Policy. This legacy site contains resources on the development, content and implementation of the (former) National Competition Policy. The Council established this website as a resource for governments and other users.

On 1 June 2009, the Council released the inaugural issue of its new bimonthly newsletter, *Accessible*. *Accessible* aims to provide updates of the Council's activities under Part IIIA of the Trade Practices Act and the NGL. The newsletter is available on the Council's website, and interested parties are invited to subscribe to the distribution list.

Following recent amendments to the TPA and judgments by courts and tribunals, and the implementation of the NGL, the Council has updated its guides to declaration and certification and developed a guide on gas pipeline regulation issues. These guides are available on the Council's website.

Financial management

The financial management of the Council was undertaken on a sound basis involving budget setting, variance analysis and reporting for the organisation as a whole. Financial monitoring and reporting against budget occurred on a monthly basis, and involved all councillors considering a financial report.

The Council continued to work with the Treasury, the Department of Finance and Deregulation, the Australian Competition and Consumer Commission (**ACCC**) (as the outsourced provider of financial services) and the ANAO as key stakeholders to ensure that financial performance aligns with expectations.

The Council received audit clearance of its financial statements from the ANAO on 28 August 2009. The ANAO issued an unqualified audit report.

Outsourced services

The Council undertakes purchasing in accord with the *Commonwealth Procurement Guidelines* and *Good Procurement Practice Guidance*. The key elements of these guidelines are value for money, efficiency and effectiveness, accountability and transparency, ethics and industry development.

The Council has assurance and reporting processes in place to ensure compliance with requirements. These include publishing an annual procurement plan and significant procurements on AusTender, and listing contracts that exceed $100 000 on the Council website in accord with the Senate Order on departmental and agency contracts.

Information on expenditure on contracts and consultancies is also available on the AusTender website www.tenders.gov.au.

The Council purchased legal advice services, communications advice services, economic consultancy services, specialised human resources services, information and communications technology (**ICT**) services and website development services during the year (see the discussion under Use of consultants). The Council also renewed the contract for the provision of its employee assistance program.

During 2008-09, the Council purchased the following corporate services:

- finance and accounting
- printing of Council publications
- payroll and human resource management
- website and information technology support
- document management and storage software
- document storage
- supply and maintenance of indoor plants, and
- internal office maintenance.

The ACCC is contracted to provide all financial and personnel services to the Council, and processed the Council's accounts during 2008-09.

As an Australian Government body, the Council is required by the Department of Finance and Deregulation to reconcile its Goods and Services Tax (**GST**) components on a monthly basis.

Risk management and fraud control

The Council has in place a risk management framework, including a business continuity plan and a fraud control policy. These frameworks have been developed taking account of relevant legislation and standards including the *Australian Government Information Technology Security Manual*, the *Protective Security Manual* and the *Commonwealth Fraud Control Guidelines*.

The Council conducted its annual review of its risk management plan and fraud control policy which was endorsed by the Audit and Risk Management Committee at its meeting on 17 February 2009. Management functions that have an impact on the effectiveness of the Council's fraud control measures included:

- the Council's encouragement of ethical behaviour by staff, including by emphasising the importance of the Australian Public Service Code of Conduct
- arrangements for financial authorisations such that dual authorisation is required for all expenditures
- provisions aimed at ensuring information and information technology security
- appropriate written delegations, and
- protective security.

There were no instances of fraud or allegations of fraud in 2008-09.

Certificate of Fraud Measures

I certify that, as at 30 June 2009, the National Competition Council (**NCC**) had completed its fraud risk assessments and fraud control plan. I also certify that the NCC has in place appropriate fraud detection, prevention, investigation, reporting and data collection procedures and processes that meet the specific needs of the organisation and comply with the *Commonwealth fraud control guidelines - May 2002*.

John Feil
Executive Director

People management

Staffing

At 30 June 2009 the Council's staffing level was 11.4. This comprised 7.4 full time equivalent secretariat staff and four councillors (including the Council President). All secretariat staff were located at the Council's office at level 9, 128 Exhibition Street, Melbourne Victoria.

The secretariat staff comprised the Executive Director, one director, 4 legal counsel (Executive, levels 1-2) and 3 administrative staff (Administrative Service Officer, grades 3-6). These staff comprised eight ongoing and one non-ongoing personnel (see Table 3-5). Two ongoing staff members left the Council during 2008-09 while two others joined.

Table 3-5 Secretariat staff by gender and employment status, as at 30 June 2008 and 30 June 2009

Employment status	2008	2009
Female		
Full-time ongoing	5	1
Full-time non-ongoing	1	-
Part-time ongoing	-	3
Part-time non-ongoing	1	1
Male		
Full-time ongoing	2	4
Full-time non-ongoing	1	-
Part-time ongoing	-	-
Total	10	9

Staff remuneration and conditions

At the commencement of 2008-09, all Council staff were employed under Australian Workplace Agreements (AWAs) except for one non-ongoing staff member who was employed on a common law contract. Upon expiry of the AWAs, staff transitioned to section 24 determinations pending the Council's negotiation of a replacement employee collective agreement. The Council developed an employee collective agreement via a consultative process. On 30 June 2009, the Council's employee collective agreement was approved by the Workplace Authority, with effect from 7 July 2009.

Salary remuneration (excluding superannuation contributions) to Senior Executive Service (**SES**) staff was approximately $520 500 while that to non SES staff was approximately $587 000. Remuneration to councillors in 2008-09 was approximately $159 000.

The range of the salaries paid in 2008-09 to SES and other staff in the Council secretariat are shown in Table 3-6. Salary sacrifice arrangements are available. No secretariat staff member opted for a Commonwealth funded vehicle as part of their remuneration package.

Table 3-6 Staff profile, Council secretariat, 30 June 2009

Level	Salary range ($'000)	Female	Male	Total
Senior Executive Service, band 2	Up to 235		1	1
Senior Executive Service, band 1	Up to 175		1	1
Executive, levels 1 -2	85 - 115	2[a]	2	4
Administrative Service Officer, grades 3-6	50 - 85	3[a]	-	3
Total		5	4	9

[a] Two staff members worked part time.

Salary levels for all secretariat staff including SES staff are determined by reference to the comparative remuneration available in similar Australian Public Service and Victorian Public Service agencies, in particular those agencies seeking staff with skills and experience in law and/or economics. The Council does not operate performance pay arrangements.

The Council supports maximum possible flexibility in conditions and working arrangements, with the objective of encouraging the recruitment and retention of staff with appropriate skills.

Staff training

Study assistance in the form of study leave and reimbursement of tuition fees for approved courses of study are available for all Council secretariat staff. Fee assistance (upon successful completion of a course of study) is provided where the study or training undertaken is directly relevant to the work of the Council or relevant more generally to the Australian Public Service. Staff may also participate in training for skill and professional development, including executive and leadership development, and attend conferences and seminars on issues associated with competition policy and competition law.

Excluding the salary costs of staff undertaking training, the Council devoted a total of $9779 to staff training and development in 2008-09.

Industrial democracy

The Council's *Industrial Democracy Plan* was the basis of its industrial democracy practices during the year. The Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

Being a co-located small agency, all Council staff met regularly during the year to consider work program and other organisational issues. These meetings were the principal means for

staff to consider and discuss issues facing the Council, including the Council's employee collective agreement, changes to work and agency priorities, staffing arrangements, accommodation, office policies, occupational health and safety, information technology and training. Project teams also met to discuss specific work priorities and progress. All staff are invited to attend meetings with Councillors and have access to the minutes of Council meetings.

During the year, the Council also updated its risk management framework, including its *Fraud Control Policy.* All staff have access to the Council's *Policy Manual* and its *Office Procedures* document.

Equity matters

Social justice

Within its work program, the Council addressed social justice issues when conducting its functions related to the National Access Regime and the access regulation of gas pipelines. The Council may consider public interest issues, including:

- policies concerning occupational health and safety, industrial relations, access to justice and other government services, and equity in the treatment of different persons
- economic and regional development, including employment and investment growth, and
- the interests of consumers generally or of a class of consumers.

Application of the Australian Government disability strategy

The Australian Government disability strategy recognises that many programs, services and facilities have an impact on the lives of people with disabilities. The strategy is about enabling the full participation of people with disabilities. It obliges Australian Government organisations to remove barriers that prevent people with disabilities from having access to these programs, services and facilities.

As noted, the Council's mission is to improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest. The Council's third party access recommendations affect the broad community because they have a positive economic benefit. The Council's policies do not discriminate against any group within the community. The Council thus met the performance criterion for the year, because its policies did not isolate people in the community with disabilities.

Further, the Council's consultation process does not discriminate against any group within the community, satisfying that performance criterion in 2008-09. Similarly, the Council's recruitment policy does not discriminate on the basis of race, disability, colour, gender or religion. (Recruitment information is available in electronic and hard copy formats.)

The Council's publications are available electronically, and are provided in hard copy form upon request.

The Council developed its workplace, including office facilities and workstations, with the aim of reducing barriers to access by people with disabilities.

Workplace diversity

The Council continued to apply its *Workplace Diversity Plan* in 2008-09. No workplace harassment was reported during 2008-09.

A number of secretariat staff identified themselves as members of an equal employment opportunity group (see Table 3-7).

Table 3-7 Staff by equal employment opportunity group at 30 June 2009

Level	Female	NESB 1[a]	NESB 2[b]	ATSI[c]	Persons with disabilities
Senior Executive Service	-	-	-	-	-
Executive, levels 1–2	2	-	-	-	-
Administrative Service Officer, grades 1–6	3	-	1	-	-
Total	5	-	1	-	-

[a] Non-English speaking background, first generation.
[b] Non-English speaking background, second generation.
[c] Aboriginal or Torres Strait Islander.

Other matters

Occupational health and safety

During 2008-09, the Council continued to place significant weight on providing a safe and healthy work environment for its staff.

The Council offered all staff access to screen based eyesight testing, the review by an ergonomist of work stations and the flu vaccine. Staff members also continued to have access annually to the confidential health appraisal and advisory program and an employee assistance program.

Reports on monthly testing of cooling towers for legionella and other bacteria were considered by to the Occupational Health and Safety Committee. Fire extinguishers and emergency exit lights were checked every six months and the Council replaced two fire extinguishers during the year. Fire wardens participated in regular briefing and training sessions and all staff participated in fire evacuation exercises. The first aid officer undertook CPR training to ensure skills remained current.

The Occupational Health and Safety Committee met on a quarterly basis during the year, inviting staff to contribute to its agenda and circulating its minutes to all staff.

The Council received no accident or incident reports during 2008-09. No notices were lodged under section 68 and no directions were given to the Council under sections 29, 46 or 47 of the *Occupational Health and Safety Act 1991* during the year.

Freedom of information

The Council did not receive any requests for the release of documents under the *Freedom of Information Act 1982* during 2008-09.

Categories of documents held by the National Competition Council

The secretariat holds three classes of document. First, it holds representations to the Council's President, Executive Director and staff. The Council receives correspondence covering aspects of government microeconomic policy and administration, primarily matters relating to the now concluded National Competition Policy reform program and to third party access regulation. Second, it holds files relevant to the Council's operations. The documents on these files include correspondence, analysis and policy advice prepared by secretariat officers. Four main categories of file are relevant to the Council's operations being:

- Council views on the progress of the Australian, state and territory governments in implementing the now concluded National Competition Policy program.
- Council recommendations on applications for declaration of services for third party access and the certification of access regimes. The designated Ministers are required to publish their decisions on these applications. The Council makes its recommendations and reasons publicly available after the designated decision maker has published a decision. In the case of a declaration application, if the decision maker does not determine the matter within 60 days of receiving the Council's recommendation, then the decision is deemed to be not to grant access, and the Council publishes its recommendation.
- Council recommendations on coverage or revocation of coverage under the NGL, which are made public when sent to the relevant decision maker.
- material relating to other work assigned to the Council.

Third, the Council holds documents on internal office administration. They include personal details of staff, organisation and staffing records, financial and expenditure records, and internal operating documentation such as office procedures and instructions.

Documents open to public access subject to a fee or available free of charge on request

The following categories of document are publicly available:

- the Council's annual reports to Parliament
- speeches by councillors and secretariat staff
- research papers and guides on specific competition policy issues
- submissions by the Council
- the Council's strategic plan
- applications received for declaration or certification, or the regulation of gas pipelines
- submissions by interested parties on access declaration or certification applications, applications relating to access regulation of gas pipelines, and other reviews and matters considered in the Council's assessments of governments' compliance with the National Competition Policy and related reforms where information contained is not commercial-in-confidence (for the period from 1996 to 2005, when the program concluded)
- the Council's issues papers and recommendations on applications for declaration, certification and the access regulation of gas pipelines
- assessments and recommendations to the Australian Government Treasurer on governments' progress in implementing the concluded National Competition Policy
- media releases, and
- issues papers, draft reports and final reports on other reviews referred to the Council.

These documents are usually available in both hard copy and electronic form. The Council places as much material as possible on its website (www.ncc.gov.au). Documents, publications and speeches can be obtained directly from the Council. Documents relevant to the Council's former National Competition Policy role are available on the new legacy website (www.ncp.ncc.gov.au).

Facilities for access to National Competition Council documents

Applicants seeking access under the Freedom of Information Act to documents in the possession of the Council should apply in writing to:

Director (Freedom of Information Request)
National Competition Council
GPO Box 250
Melbourne VIC 3001
Attention: Freedom of Information Coordinator

An application fee of $30 must accompany requests. Unless an application fee is received or an explicit waiver is given, the request will not be processed. Telephone enquiries should be directed to the Freedom of Information Coordinator (telephone 03 9285 7474) between 9.00 am and 5.00 pm, Monday to Friday.

The Director (Freedom of Information Request) is authorised under section 23 of the Act to grant or refuse requests for access to documents. In accordance with section 54, an applicant may apply to the Executive Director within 28 days of receiving notification of a decision under the Act, seeking an internal review of a decision to refuse a request. The application should be accompanied by a $40 application review fee, as provided for in the Act.

If access under the Act is granted, then the Council will provide copies of documents after receiving payment of all applicable charges. Alternatively, applicants may arrange to inspect documents at the National Competition Council office, level 9, 128 Exhibition Street, Melbourne, between 9.00 am and 5.00 pm, Monday to Friday.

Advertising and market research

The Council made no payments during 2008-09 to advertising agencies, market research organisations, polling organisations, direct mail organisations or advertising agencies that place government advertising in the media.

Expenditure on advertising during 2008-09 totalled $3249. This expenditure was solely for the purpose of public consultation regarding the Council's consideration of third party access matters in line with the Council's statutory obligations under the TPA and NGL.

Ecologically sustainable development and environmental performance

The Council aims to operate in an ecologically sustainable manner and to provide an environmentally sound workplace. The Council has adopted practices designed to minimise adverse effects on the environment subject to assessment of the financial costs or savings involved. To minimise its environmental impact, the Council:

- procures and uses office equipment with low energy use and power saving modes (the Council replaced two of its multifunction units with new machines which consume less electricity and the outer casing of which is constructed from non bleached materials)
- recycles paper and cardboard products including pulping of classified waste
- uses tap flow restrictors to reduce water use
- uses LCD computer screens
- disposes of cartridges through a recycling outlet

- encourages staff to minimise their use of energy and paper (printing is defaulted to duplex, and incoming faxes are received and distributed electronically) and to use water wisely
- disposes of mobile phones and batteries through a recycling outlet
- when replacing its computing and other equipment, makes available to not for profit organisations the replaced equipment
- relies primarily on electronic publication of documents via its website (providing hard copy documents on request), and
- implemented a new electronic document retention and management system to reduce its reliance on paper files.

The Council buys goods and services in accord with the environmental purchasing guide promoted by the Department of the Environment, Water, Heritage and the Arts.

Energy used by the Council in 2008-09 varied less than half a percent from the previous financial year.

Grant programs

The Council does not administer grants.

Use of consultants

The Council purchased the services of consultants for specialist advice when the required expertise was not available within the Council, and when it was efficient and cost-effective to do so.

The Council previously established a panel of five legal services providers, comprising Allens Arthur Robinson, the Australian Government Solicitor, Clayton Utz, Gilbert + Tobin and DLA Phillips Fox using an open tender process (notified on AusTender). During 2008-09, the Council extended the deeds of standing offer for its current legal services panel members for a two year period. Where the Council requires specialist legal services, it draws from the firms on its panel. The choice of panel firm is frequently constrained by the need to avoid conflicts of interest.

The Council also purchases other non-legal consultancy services (in particular economic advice) whenever possible endeavouring to use an open competitive process. Generally it uses a select tendering process when engaging economic consultants. The nature of the Council's work frequently constrains the tendering process: experts are generally required to have specialist economic or technical expertise. There is also a need to avoid conflicts of interest. The Council engages consultants directly where the choice of required specialist expertise is extremely limited.

At the commencement of 2008-09, the Council had six ongoing legal services contracts that involved total expenditure in 2008-09 of $521 704, one ongoing contract for the provision of communications and media advisory services that involved expenditure in 2008-09 of $14 194 and one ongoing contract for the provision of ICT services that involved expenditure of $63 895 in 2008-09. Associated with one of its legal services contracts, the Council purchased economic advice services, with expenditure totalling $128 972 in 2008-09.

During the year, the Council commenced and completed two new contracts for the provision of legal services, with total expenditure of $20 843 and commenced and completed one new contract for the provision of human resources services (legal officer specialist recruitment services) with expenditure totalling $47 513. Of the new contracts in 2008-09, three had expenditure exceeding $10 000.

Table 3-8 provides expenditure information on all of the Council's ongoing and new contracts in 2008-09, providing a comparison with the preceding two financial years. Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website www.tenders.gov.au.

Table 3-8 Summary of expenditure on all consultancy contracts in 2006-07, 2007-08 and 2008-09 ($) (includes GST)

	2006-07	2007-08	2008-09
Legal (new)	5 383	253 749	20 843
Legal (ongoing)	882 679	445 691	521 704
Economic (new)	-	10 499	128 972
Economic (ongoing)	56 765	-	-
Communications (new)	-	-	-
Communications (ongoing)	13 270	18 027	14 194
ICT (new)	-	75 990	-
ICT (ongoing)	-	-	63 895
Human resources services (new)	-	46 088	47 513
Human resources services (ongoing)	-	-	-
Total	958 097	850 044	797 121

Table 3-9 provides information on contracts with expenditure exceeding $10 000 let in 2008-09.

Table 3-9 Consultancy contract services of $10 000 or more let during 2008-09 (includes GST)

Consultant name	Description of service	Contract price ($)	Selection process	Justification
Australian Government Solicitor	Legal services relating to the Council's work under Part IIIA of the TPA	15 805	Panel	Need for professional skills
Castalia Strategic Advisors Pty Ltd	Economic advisory services relating to the Council's work under Part IIIA of the TPA	128 972	Direct sourcing	Skill currently unavailable within the agency
Hudson Global Resources	Human resources services (legal officer recruitment)	47 513	Direct sourcing	Skills currently unavailable within agency

Annual reporting requirements and aids to access

Information contained in this annual report is provided in accordance with:

- s74 of the Occupational Health and Safety Act 1991
- the Public Service Act 1999
- s8 of the Freedom of Information Act 1982
- s29(O) of the Trade Practices Act 1974
- the guidelines issued by the Department of the Prime Minister and Cabinet.

For inquiries or comments concerning this report or any other Council publications, please contact:

Executive Director
National Competition Council
GPO Box 250
Melbourne VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477

Email: info@ncc.gov.au.

Information on the National Competition Council can be found on the internet at www.ncc.gov.au.

This annual report is available at www.ncc.gov.au.

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4 Financial statements

Financial statements for the period ended 30 June 2009

INDEPENDENT AUDITOR'S REPORT

To the Treasurer

Scope

I have audited the accompanying financial statements of the National Competition Council (the Council) for the year ended 30 June 2009, which comprise: a Statement by the Council President and Executive Director; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; and Notes to and forming part of the Financial Statements, including a Summary of Significant Accounting Policies.

The Responsibility of the Council's President for the Financial Statements

The Council's President is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards (which include the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial

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statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Council's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Council's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Council's President, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial statements of the National Competition Council:

(a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997,* including the Australian Accounting Standards; and

(b) give a true and fair view of the matters required by the Finance Minister's Orders including the National Competition Council's financial position as at 30 June 2009 and its financial performance and cash flows for the year then ended.

Australian National Audit Office

John Jones

Engagement Executive

Delegate of the Auditor-General

Canberra

28 August 2009

National Competition Council
Level 9, 128 Exhibition Street Melbourne 3000 Australia
GPO Box 250B Melbourne 3001 Australia
Telephone 03 9285 7474 Facsimile 03 9285 7477

Office of Council President

NATIONAL COMPETITION COUNCIL
STATEMENT BY THE COUNCIL PRESIDENT AND THE EXECUTIVE DIRECTOR

In our opinion, the attached financial statements for the year ended 30 June 2009 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders under the *Financial Management and Accountability Act 1997*, as amended.

David Crawford
President

Dated: 28 AUG 2009

John Feil
Executive Director

Dated: 28 AUG 2009

NATIONAL COMPETITION COUNCIL
INCOME STATEMENT
for the period ended 30 June 2009

		2009	2008
		$	$
INCOME			
Revenue			
Revenue from Government	3A	**2,781,000**	4,006,000
Other revenue	3B	**207,523**	125,690
Total Revenue		**2,988,523**	4,131,690
Gains			
Other gains	3C	**22,280**	23,800
Total Gains		**22,280**	23,800
Total Income		**3,010,803**	4,155,490
EXPENSES			
Employee benefits	4A	**1,266,549**	1,286,145
Suppliers	4B	**1,422,787**	1,438,581
Depreciation and amortisation	4C	**35,748**	107,435
Write-down and impairment of assets	4D	**1,170**	-
Total Expenses		**2,726,254**	2,832,161
Surplus (Deficit)		**284,549**	1,323,329
Surplus/(Deficit) attributable to the Australian Government		**284,549**	1,323,329

The above statement should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
BALANCE SHEET
as at 30 June 2009

		2009	2008
		$	$
ASSETS			
Financial assets			
Cash and cash equivalents	5A	**55,785**	92,047
Trade and other receivables	5B	**4,505,697**	4,058,527
Total financial assets		**4,561,482**	4,150,574
Non-financial assets			
Buildings - Leasehold improvements	6A,C	**69,837**	62,246
Infrastructure, plant and equipment	6B,C	**63,541**	42,950
Intangibles	6D	**5,591**	-
Other non-financial assets	6E	**14,985**	5,337
Total non-financial assets		**153,954**	110,533
Total Assets		**4,715,436**	4,261,107
LIABILITIES			
Payables			
Suppliers	7A	**262,677**	173,273
Other payables	7B	**7,798**	4,338
Total payables		**270,475**	177,611
Provisions			
Employee provisions	8A	**281,694**	244,264
Other provisions	8B	**29,743**	20,000
Total provisions		**311,437**	264,264
Total Liabilities		**581,912**	441,875
Net Assets		**4,133,524**	3,819,232
EQUITY			
Reserves		**208,750**	179,007
Retained Surplus (Accumulated deficit)		**3,924,774**	3,640,225
Total Equity		**4,133,524**	3,819,232
Current Assets		**4,576,467**	4,155,911
Non-Current Assets		**138,969**	105,196
Current Liabilities		**479,275**	385,804
Non-Current Liabilities		**102,637**	56,071

The above statement should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
STATEMENT OF CHANGES IN EQUITY
for year ended 30 June 2009

	Retained Earnings		Asset Revaluation Reserves		Total Equity	
	2009	2008	**2009**	2008	**2009**	2008
	$	$	**$**	$	**$**	$
Opening Balance						
Balance carried forward from previous period	**3 ,640,225**	2,316,896	**179,007**	115,133	**3,819,232**	2,432,029
Adjustment for errors	**-**	-	**-**	-	**-**	-
Adjustment for changes in accounting policy	**-**	-	**-**	-	**-**	-
Adjusted Opening Balance	**3,640,225**	2,316,896	**179,007**	115,133	**3,819,232**	2,432,029
Income and Expenses						
Income and expenses recognised directly in equity						
Revaluation adjustment [1]	**-**	-	**29,743**	63,874	**29,743**	63,874
Sub-total income and expenses recognised directly in equity	**-**	-	**29,743**	63,874	**29,743**	63,874
Surplus (Deficit) for the period	**284,549**	1,323,329	**-**	-	**284,549**	1,323,329
Total income and expenses	**284,549**	1,323,329	**29,743**	63,874	**314,292**	1,387,203
of which:						
attributable to the Australian Government	**284,549**	1,323,329	**29,743**	63,874	**314,292**	1,387,203
Transactions with Owners						
Distributions to owners	**-**	-	**-**	-	**-**	-
Contributions by Owners						
Appropriation (equity injection)	**-**	-	**-**	-	**-**	-
Sub-total Transactions with Owners	**-**	-	**-**	-	**-**	-
Closing Balance at 30 June	**3,924,774**	3,640,225	**208,750**	179,007	**4,133,524**	3,819,232

[1] Makegood asset revaluation

The above statement should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
CASH FLOW STATEMENT
for the period ended 30 June 2009

		2009	2008
		$	$
OPERATING ACTIVITIES			
Cash received			
Goods and services		**207,523**	125,759
Appropriations		**2,340,000**	2,585,000
Net GST received		**132,062**	139,263
Total cash received		**2,679,585**	2,850,022
Cash used			
Employees		**1,229,119**	1,349,602
Suppliers		**1,445,780**	1,410,846
Total cash used		**2,674,899**	2,760,448
Net cash from or (used by) operating activities	9	**4,686**	89,574
INVESTING ACTIVITIES			
Cash used			
Purchase of infrastructure, plant & equipment		**34,524**	19,734
Purchase of intangibles, IT Software		**6,424**	
Total cash used		**40,948**	19,734
Net cash from or (used by) investing activities		**(40,948)**	(19,734)
Net increase / (decrease) in cash held		**(36,262)**	69,840
Cash and cash equivalents at the beginning of the reporting period		**92,047**	22,207
Cash and cash equivalents at the end of the reporting period	**5A**	**55,785**	92,047

The above statement should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS
as at 30 June 2009

	2009	2008
	$	$
BY TYPE		
Commitments receivable		
GST recoverable	**69,159**	64,652
Total commitments receivable	**69,159**	64,652
Other commitments		
Other commitments[1]	**419,380**	197,670
Operating leases[2]	**341,372**	513,506
Total other commitments	**760,752**	711,176
Net commitments by type	**691,593**	646,524
BY MATURITY		
Commitments receivable		
GST recoverable		
One year or less	**35,088**	33,618
From one to five years	**34,071**	31,034
Over five years	**-**	-
Total commitments receivable	**69,159**	64,652
Commitments payable		
Operating lease commitments		
One year or less	**180,376**	172,134
From one to five years	**160,997**	341,372
Over five years	**-**	-
Total operating lease commitments	**341,373**	513,506
Other commitments		
One year or less	**205,580**	197,670
From one to five years	**213,800**	-
Over five years	**-**	-
Total other commitments	**419,380**	197,670
Net commitments by maturity	**691,594**	646,524

NB: Commitments are GST inclusive where relevant.

Reference:

[1] Agreement for the provision of financial processing and accounting services. The agreement is for the period 1 July 2009 to 30 June 2011.

[2] Operating leases included are effectively non-cancellable and comprise:

Lease for office accommodation.

The current lease expires on 9 May 2011. There is no option to renew for a further term. Lease payments are subject to annual increases of 5% per annum.

The above schedule should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
SCHEDULE OF CONTINGENCIES
as at 30 June 2009

Contingent Assets	**Claims for damages or costs**		**TOTAL**	
	2009	2008	**2009**	2008
	$	$	**$**	$
Balance from previous period	**-**	125,000	**-**	125,000
New	**-**	-	**-**	-
Re-measurement	**-**	-	**-**	-
Assets recognized	**-**	(125,000)	**-**	(125,000)
Expired	**-**	-	**-**	-
Total Contingent Assets	**-**	-	**-**	-
Contingent Liabilities	**Claims for damages or costs**		**TOTAL**	
	2009	2008	**2009**	2008
	$	$	**$**	$
Balance from previous period	**-**	-	**-**	-
New	**-**	-	**-**	-
Re-measurement	**-**	-	**-**	-
Liabilities recognized	**-**	-	**-**	-
Obligations expired	**-**	-	**-**	-
Total Contingent Liabilities	**-**	-	**-**	-
Net contingent assets (liabilities)			**-**	-

The above schedule should be read in conjunction with the accompanying notes.

NATIONAL COMPETITION COUNCIL
INDEX TO THE NOTES OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Note

1. Summary of Significant Accounting Policies

2. Events after Balance Sheet Date

3. Income

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Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the National Competition Council

The National Competition Council is an Australian Government controlled entity. The objective of National Competition Council is to oversight and assist the implementation of the National Competition Policy and related reform programs outlined in frameworks developed and agreed by all Australian Governments.

The Agency is structured to meet one outcome:

Outcome 1: The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community.

The Council's activities contributing toward this outcome are classified as Departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Council in its own right.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2009

Departmental activities are identified under one Output.

Output Group 1.1: Advice provided to Governments on infrastructure access issues.

The National Competition Council does not conduct any administered activities.

The continued existence of the Agency in its present form and with its present programs is dependent on Government policy and on continuing appropriations by Parliament for the National Competition Council's administration and programs.

1.2 Basis of Preparation of the Financial Report

The financial statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are a general purpose financial report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2008; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest dollar unless otherwise specified.

Unless alternative treatment is specifically required by an accounting standard or the FMO, assets and liabilities are recognised in the balance sheet when and only when it is probable that future economic benefits will flow to the entity or a future sacrifice of economic benefits will be required and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under Agreements Equally Proportionately Unperformed are not recognised unless required by an accounting standard. Liabilities and assets that are unrecognised are reported in the schedule of commitments and the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the income statement when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, the Council has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of Leasehold Improvements has been taken to be the market value of similar properties as determined by an independent valuer.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Changes in Australian Accounting Standards

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards are applicable to the current reporting period:

(These changes have no material impact but will effect the disclosure presented in future financial reports).

AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards (June 2007)

AASB 3 Business Combinations (December 2007)

AASB 5 Non-current Assets Held for Sale and Discontinued Operations

AASB 7 Financial Instruments: Disclosures

AASB 101 Presentation of Financial Statements (Dec 2007)

AASB 114 Segment Reporting

AASB 116 Property, Plant and Equipment

AASB 127 Consolidated and Separate Financial Statements (Dec 2007)

AASB 137 Provisions, Contingent Liabilities and Contingent Assets

AASB 139 Financial Instruments: Recognition and Measurement

AASB 1004 Contributions

AASB 1048 Interpretation and Application of Standards

AASB 1049 Whole of Government and General Government Sector Financial Reporting

AASB 1050 Administered Items

AASB 1051 Land Under Roads

AASB 1052 Disaggregated Disclosures

AASB 2007-2 Amendments to Australian Accounting Standards arising from AASB Interpretation 12 [AASB 1, AASB 117, AASB 118, AASB 120, AASB 121, AASB 127, AASB 131 & AASB 139]

AASB 2007-9 Amendments to Australian Accounting Standards arising from the Review of AASs 27, 29 and 31 [AASB 3, AASB 5, AASB 8, AASB 101, AASB 114, AASB 116, AASB 127 & AASB 137]

AASB 2008-10 Amendments to Australian Accounting Standards - Reclassification of Financial Assets

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

AASB 2008-12 Amendments to Australian Accounting Standards - Reclassification of Financial Assets - Effective Date and Transition [AASB 7, AASB 139 & AASB 2008-10]

AASB 2009-3 Amendments to Australian Accounting Standards - Embedded Derivatives [AASB 139 & Interpretation 9]

Interp 4 Determining whether an Arrangement contains a Lease

Interp 12 Service Concession Arrangements (Feb 2007)

Interp 13 Customer Loyalty Programmes

Interp 14 AASB 119 - The Limit on a Defined Benefit Asset, Minimum Funding Requirements and their Interaction

Interp 129 Service Concession Arrangements: Disclosures

Future Australian Accounting Standard requirements

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

AASB 1 First-time Adoption of Australian Equivalents to International Financial Reporting Standards (May 2009)

AASB 3 Business Combinations (Mar 2008)

AASB 8 Operating Segments

AASB 101 Presentation of Financial Statements (Sep 2007)

AASB 123 Borrowing Costs

AASB 127 Consolidated and Separate Financial Statements (Mar 2008)

AASB 1039 Concise Financial Reports

AASB 2007-3 Amendments to Australian Accounting Standards arising from AASB 8 [AASB 5, AASB 6, AASB 102, AASB 107, AASB 119, AASB 127, AASB 134, AASB 136, AASB 1023 & AASB 1038]

AASB 2007-6 Amendments to Australian Accounting Standards arising from AASB 123 [AASB 1, AASB 101, AASB 107, AASB 111, AASB 116 & AASB 138 and Interpretations 1 & 12]

AASB 2007-8 Amendments to Australian Accounting Standards arising from AASB 101

AASB 2007-10 Further Amendments to Australian Accounting Standards arising from AASB 101

AASB 2008-1 Amendments to Australian Accounting Standard - Share-based Payments: Vesting Conditions and Cancellations [AASB 2]

AASB 2008-2 Amendments to Australian Accounting Standards - Puttable Financial Instruments and Obligations arising on Liquidation [AASB 7, AASB 101, AASB 132, AASB 139 & Interpretation 2]

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

AASB 2008-3 Amendments to Australian Accounting Standards arising from AASB 3 and AASB 127 [AASBs 1, 2, 4, 5, 7, 101, 107, 112, 114, 116, 121, 128, 131, 132, 133, 134, 136, 137, 138 & 139 and Interpretations 9 & 107]

AASB 2008-5 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 7, 101, 102, 107, 108, 110, 116, 118, 119, 120, 123, 127, 128, 129, 131, 132, 134, 136, 138, 139, 140, 141, 1023 & 1038]

AASB 2008-6 Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 1 & AASB 5]

AASB 2008-7 Amendments to Australian Accounting Standards - Cost of an Investment in a Subsidiary, Jointly Controlled Entity or Associate [AASB 1, AASB 118, AASB 121, AASB 127 & AASB 136]

AASB 2008-8 Amendments to Australian Accounting Standards - Eligible Hedged Items [AASB 139]

AASB 2008-9 Amendments to AASB 1049 for Consistency with AASB 101

AASB 2008-11 Amendments to Australian Accounting Standard - Business Combinations Among Not-for-Profit Entities [AASB 3]

AASB 2008-13 Amendments to Australian Accounting Standards arising from AASB Interpretation 17 - Distributions of Non-cash Assets to Owners [AASB 5 & AASB 110]

AASB 2009-1 Amendments to Australian Accounting Standards - Borrowing Costs of Not-for-Profit Public Sector Entities [AASB 1, AASB 111 & AASB 123]

AASB 2009-2 Amendments to Australian Accounting Standards - Improving Disclosures about Financial Instruments [AASB 4, AASB 7, AASB 1023 & AASB 1038]

AASB 2009-4 Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 2 and AASB 138 and AASB Interpretations 9 & 16]

AASB 2009-5 Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project [AASB 5, 8, 101, 107, 117, 118, 136 & 139]

Interp 1 Changes in Existing Decommissioning, Restoration and Similar Liabilities

Interp 12 Service Concession Arrangements (June 2007)

Interp 15 Agreements for the Construction of Real Estate

Interp 16 Hedges of a Net Investment in a Foreign Operation

Interp 17 Distributions of Non-cash Assets to Owners

Interp 18 Transfers of Assets from Customers

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental output appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue when the agency gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Resources Received Free of Charge

Resourced received free of charge are recognised as revenue when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements (Refer Note 1.7).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Other types of Revenue

Revenue from the sale of goods is recognised when:

the risks and rewards of ownership have been transferred to the buyer;

the seller retains no managerial involvement nor effective control over the goods;

the revenue and transaction costs incurred can be reliably measured; and

it is probable that the economic benefits associated with the transaction will flow to the Entity.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and

the probable economic benefits with the transaction will flow to the Entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at balance date. Allowances are made when collectability of the debt is no longer probable.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7)

Resources received free of charge are recorded as either revenue or gains depending on their nature.

Sale of Assets

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in contributed equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Australian Government Agency or Authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

Other distributions to owners

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2008-09 the Council made no such distributions.

1.8 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Council is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Council's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The Liability for Long service Leave has been calculated using the Australian Government short hand method. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Council recognises a provision for termination when it has developed a detailed plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

Staff of the Council are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the Financial Statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported by the Department of Finance and Deregulation as an administered item.

The Council makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Council's employees. The Council accounts for the contributions as if they were contributions to defined contribution plans.

From 1 July 2005, new employees are eligible to join the PSSap Scheme.

The liability for superannuation recognised as at 30 June 2009 represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Borrowing costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash and cash equivalents includes notes and coins held and any deposits in bank accounts with an original maturity of 3 months or less that are readily convertable to known amounts of cash and subject to insignificant risk of changes in value. Cash is recognised at its nominal amount.

1.12 Financial assets

The Council classifies its financial assets in the following categories:

- financial assets as 'at fair value through profit or loss'
- 'held-to-maturity investments',
- 'available-for-sale' financial assets, and
- 'loans and receivables'.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition.

Financial assets are recognised and derecognised upon trade date.

Effective interest method

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets at fair value through profit or loss.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Financial assets at fair value through profit or loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- has been acquired principally for the purpose of selling in the near future;
- is a part of an identified portfolio of financial instruments that the agency manages together and has a recent actual pattern of short-term profit-taking; or
- is a derivative that is not designated and effective as a hedging instrument.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

Available-for-sale financial assets

Available-for-sale financial assets are non-derivatives that are either designated in this category or not classified in any of the other categories. They are included in non-current assets unless management intends to dispose of the asset within 12 months of the balance sheet date.

Available-for-sale financial assets are recorded at fair value. Gains and losses arising from changes in fair value are recognised directly in the reserves (equity) with the exception of impairment losses. Interest is calculated using the effective interest method and foreign exchange gains and losses on monetary assets are recognised directly in profit or loss. Where the asset is disposed of or is determined to be impaired, part or all of the cumulative gain or loss previously recognised in the reserve is included in profit for the period.

Where a reliable fair value cannot be established for unlisted investments in equity instruments cost is used. The Council has no such instruments.

Held-to-maturity investments

Non-derivative financial assets with fixed or determinable payments and fixed maturity dates that the group has the positive intent and ability to hold to maturity are classified as held-to-maturity investments. Held-to-maturity investments are recorded at amortised cost using the effective interest method less impairment, with revenue recognised on an effective yield basis.

Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments that are not quoted in an active market are classified as 'loans and receivables'. They are included in current assets, except for maturities greater than 12 months after the balance sheet date. These are classified as non current assets. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Impairment of financial assets

Financial assets are assessed for impairment at each balance date.

- *Financial assets held at amortised cost* - If there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Income Statement.
- *Available for sale financial assets* - If there is objective evidence that an impairment loss on an available for sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to the Income Statement.
- *Available for sale financial assets (held at cost)* - If there is objective evidence that an impairment loss has been incurred the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows discounted at the current market rate for similar assets.

1.13 Financial Liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities.

Financial liabilities are recognised and derecognised upon 'trade date'.

Financial liabilities at fair value through profit or loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other financial liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

Supplier and other payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

1.14 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote.

1.15 Financial Guarantee Contracts

Financial guarantee contracts are accounted for in accordance with AASB 139 *Financial Instruments: Recognition and Measurement*. They are not treated as a contingent liability, as they are regarded as financial instruments outside the scope of AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*.

1.16 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

1.17 Property, Plant and Equipment

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than $2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Council where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Council's leasehold improvements with a corresponding provision for the 'makegood' recognised.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Revaluations

Fair value of each class of assets are determined as shown below:

Asset Class	Fair value measured at:
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through the operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation and Amortisation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Council using, in all cases, the straight line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

Asset Class	**2009**	2008
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 7 years	3 to 7 years

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Impairment

All assets were assessed for impairment at 30 June 2009. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's liability to generate future cash flows, and the asset would be replaced if the Council was deprived of the asset, its value in use is taken to be its depreciated replacement cost.

1.18 Intangibles

The Council's intangibles comprise internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of Council's software are 3 years (2007-08: 3 years).

All software assets are assessed for indications of impairment as at 30 June 2009.

1.19 Inventories

The Council provides the bulk of its publications free of charge which means the publications do not have a realisable value. As a result of this, the Council expenses the cost of publications as incurred.

1.20 Taxation/ Competitive Neutrality

The Council is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

Competitive Neutrality

The Council provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Note 2: Events after the Balance Sheet Date

No events have occurred after the balance date that would have an impact on the financial position of the Council.

Note 3: Income

	2009	2008
	$	$
Revenue		
Note 3A: Revenue from Government		
Appropriations		
Departmental outputs	**2,781,000**	4,006,000
Total revenue from Government	**2,781,000**	4,006,000
Note 3B: Other revenue		
Other revenue	**207,523**	125,690
Total other revenue	**207,523**	125,690
Gains		
Note 3C: Other gains		
Resources received free of charge	**22,280**	23,800
	22,280	23,800

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the period ended 30 June 2009

Note 4: Expenses

	2009	2008
	$	$
Note 4A: Employee benefits		
Wages and salaries	**998,955**	1,004,533
Superannuation		
Defined contribution plans	**39,463**	26,755
Defined benefit plans	**120,668**	148,519
Leave and other entitlements	**107,463**	76,513
Separation and redundancies	**-**	29,825
Total employee benefits	**1,266,549**	1,286,145
Note 4B: Suppliers		
Provision of goods - related entities	**545**	-
Provision of Goods - external parties	**26,868**	25,147
Rendering of Services - related entities	**253,170**	320,007
Rendering of services - external parties	**981,665**	958,835
Operating lease rentals - related entities:		
Minimum lease payments	**-**	-
Operating lease rentals - external parties:		
Minimum lease payments	**156,617**	130,233
Workers compensation premiums	**3,922**	4,360
Total supplier expenses	**1,422,787**	1,438,581
Note 4C: Depreciation and amortisation		
Depreciation:		
Infrastructure, plant and equipment	**12,763**	7,615
Amortisation:		
Leasehold improvements	**22,152**	99,820
Intangibles	**833**	-
Total amortization	**22,985**	99,820
Total depreciation and amortisation	**35,748**	107,435
Note 4D: Write down and impairment of assets		
Asset Write-Downs from		
Impairment of property, plant & equipment	**1,170**	-
Total write-down and impairment of assets	**1,170**	-

NATIONAL COMPETITION COUNCIL
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for the period ended 30 June 2009

Note 5: Financial Assets

	2009	2008
	$	$
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	**55,785**	92,047
Total cash and cash equivalents	**55,785**	92,047
Note 5B: Trade and other receivables		
Goods and services - related entities	**-**	-
Goods and services - external parties	**-**	-
Total receivables for goods and services	**-**	-
Appropriations receivable:		
for existing outputs	**4,464,000**	4,023,000
for additional outputs	**-**	-
Total appropriations receivable	**4,464,000**	4,023,000
GST receivable from the Australian Taxation Office	**39,298**	28,873
Other Receivables	**2,399**	6,654
Total trade and other receivables (gross)	**4,505,697**	4,058,527
Less impairment allowance account:		
Goods and services	**-**	-
Other	**-**	-
Total trade and other receivables (net)	**4,505,697**	4,058,527
Receivables are represented by:		
Current	**4,505,697**	4,058,527
Non-current	**-**	-
Total trade and other receivables (net)	**4,505,697**	4,058,527

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	2009	2008
	$	$
Receivables are aged as follows:		
Not overdue	**4,505,697**	4,058,527
Overdue by:		
Less than 30 days	**-**	-
31 to 60 days	**-**	-
61 to 90 days	**-**	-
More than 90 days	**-**	-
Total receivables (gross)	**4,505,697**	4,058,527
The impairment allowance account is aged as follows:		
Not overdue	**-**	-
Overdue by:		
Less than 30 days	**-**	-
30 to 60 days	**-**	-
61 to 90 days	**-**	-
More than 90 days	**-**	-
Total impairment allowance account	**-**	-

Reconciliation of the impairment allowance account:

Movements in relation to 2009

	Goods and services	Other receivables	Total
	2009	**2009**	**2009**
	$'000	**$'000**	**$'000**
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/decrease recognised in net surplus	-	-	-
Closing balance	-	-	-

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Movements in relation to 2008

	Goods and services	Other receivables	Total
	2008	2008	2008
	$'000	$'000	$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/decrease recognised in net surplus	-	-	-
Closing balance	-	-	-

Note 6: Non-Financial Assets

	2009	2008
	$	$
Note 6A: Buildings		
Leasehold improvements		
Fair Value	**95,092**	74,527
Accumulated amortisation	**(25,255)**	(12,281)
Accumulated impairment losses	**-**	-
Total Leasehold Improvements (non-current)	**69,837**	62,246

No indicators of impairment were found for buildings.

NATIONAL COMPETITION COUNCIL
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	2009	2008
	$	$
Note 6B: Infrastructure, plant and equipment		
Infrastructure, plant and equipment		
Fair Value	76,818	43,794
Accumulated depreciation	(13,277)	(844)
Accumulated impairment losses	-	-
Total infrastructure, plant and equipment (non-current)	63,541	42,950

All revaluations are independent and conducted in accordance with the revaluation policy stated at Note 1.17.

Revaluations were conducted in 2007-08 by Preston Rowe Paterson NSW Pty Ltd.

No indicators of impairment were found for infrastructure, plant and equipment.

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Note 6C: Analysis of Property, Plant, and Equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2008-09)

	Leasehold improvements	Infrastructure plant and equipment	Total
	$	$	$
As at 1 July 2008			
Gross book value	**74,527**	**43,794**	**118,321**
Accumulated depreciation/amortisation	**(12,281)**	**(844)**	**(13,125)**
Net book value 1 July 2008	**62,246**	**42,950**	**105,196**
Additions			
by purchase		**34,524**	**34,524**
Revaluations and impairments through equity	**29,743**		**29,743**
Revaluations recognised in the operating result			**-**
Impairments recognised in the operating result			**-**
Reversal of impairments recognised in the operating result			**-**
Reclassification			**-**
Assets held for sale or in a disposal group held for sale			**-**
Depreciation/amortisation expense	**(22,152)**	**(12,433)**	**(34,585)**
Disposals:		**(1,500)**	
Other disposals			
Other disposals (gross book value)			-
Other disposals (accumulated depreciation)			-
Net book value 30 June 2009	**69,837**	**63,541**	**134,878**
Net book value as of 30 June 2009 represented by:			
Gross book value	**95,092**	**76,818**	**171,910**
Accumulated depreciation/amortisation and impairment	**(25,255)**	**(13,277)**	**(38,532)**
	69,837	**63,541**	**133,378**

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Table B – Reconciliation of the opening and closing balances of property, plant and equipment (2007-08)

	Leasehold improvements	Infrastructure plant and equipment	Total
	$	$	$
As at 1 July 2007			
Gross book value	112,426	100,237	212,663
Accumulated depreciation/amortisation	(15,709)	(79,931)	(95,640)
Net book value 1 July 2007	96,717	20,306	117,023
Additions			
by purchase	-	19,734	19,734
Revaluations and impairments through equity	65,349	10,525	75,874
Revaluations recognised in the operating result	-	-	-
Impairments recognised in the operating result	-	-	-
Reversal of impairments recognised in the operating result	-	-	-
Reclassification	-	-	-
Assets held for sale or in a disposal group held for sale	-	-	-
Depreciation/amortisation expense	(99,820)	(7,615)	(107,435)
Disposals:			
Other disposals			
Other disposals (gross book value)	-	(6,330)	(6,330)
Other disposals (accumulated depreciation)	-	6,330	6,330
Net book value 30 June 2008	62,246	42,950	105,196
Net book value as of 30 June 2008 represented by:			
Gross book value	74,527	43,794	118,321
Accumulated depreciation/amortisation and impairment	(12,281)	(844)	(13,125)
	62,246	42,950	105,196

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	2009	2008
	$	$
Note 6D: Intangibles		
Computer Software at cost:		
Internally developed – in progress	**-**	-
Purchased – in use	**6,424**	-
Total Computer Software	**6,424**	-
Accumulated amortisation	**(833)**	-
Accumulated impairment losses	**-**	-
Total intangibles (non-current)	**5,591**	-

No indicators of impairment were found for intangible assets.

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Table A – Reconciliation of the opening and closing balances of intangibles (2008-09)

	Computer Software Purchased	Total
	$	$
As at 1 July 2008		
Gross book value	-	-
Accumulated depreciation/amortisation	-	-
Net book value 1 July 2008	-	-
Additions		
by purchase	**6,424**	**6,424**
Revaluations and impairments through equity		-
Revaluations recognised in the operating result		-
Impairments recognised in the operating result		-
Reversal of impairments recognised in the operating result		-
Reclassification		-
Assets held for sale or in a disposal group held for sale		-
Amortisation	**(833)**	**(833)**
Disposals:		
Other disposals		
Other disposals (gross book value)		-
Other disposals (accumulated depreciation)		-
Net book value 30 June 2009	**5,591**	**5,591**
Net book value as at 30 June 2009 represented by:		
Gross book value	**6,424**	**6,424**
Accumulated depreciation/amortisation and impairment	**(833)**	**(833)**
	5,591	**5,591**

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Table B – Reconciliation of the opening and closing balances of intangibles (2007-08)

Item	Computer Software Purchased	Total
	$	$
As at 1 July 2007		
Gross book value	-	-
Accumulated depreciation/amortisation	-	-
Net book value 1 July 2007	-	-
Additions		
by purchase	-	-
Revaluations and impairments through equity	-	-
Revaluations recognised in the operating result	-	-
Impairments recognised in the operating result	-	-
Reversal of impairments recognised in the operating result	-	-
Reclassification	-	-
Assets held for sale or in a disposal group held for sale	-	-
Amortisation	-	-
Disposals:		
Other disposals		
Other disposals (gross book value)	-	-
Other disposals (accumulated depreciation)	-	-
Net book value 30 June 2008	-	-
Net book value as at 30 June 2008 represented by:		
Gross book value	-	-
Accumulated depreciation/amortisation and impairment	-	-
	-	-

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	2009	2008
	$	$
Note 6E: Other non-financial assets		
Prepayments	**14,985**	5,337
Total other non-financial assets	**14,985**	5,337
Other non-financial assets are represented by:		
Current	**14,985**	5,337
Non-current	**-**	-
Total other non-financial assets	**14,985**	5,337

Note 7: Payables

	2009	2008
	$	$
Note 7A: Suppliers		
Trade creditors	**262,677**	173,273
Total supplier payables	**262,677**	173,273
Supplier payables - related entities are represented by:		
Current	**990**	-
Non-current	**-**	-
Supplier payables - external parties are represented by:		
Current	**261,687**	173,273
Non-current	**-**	
Total supplier payables	**262,677**	173,273

Settlement is usually made net of 30 days.

Note 7B: Other Payables		
Operating Lease payment increases	**7,580**	4,338
GST Payable	**218**	
Total other payables	**7,798**	4,338

NATIONAL COMPETITION COUNCIL
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Note 8: Provisions

	2009	2008
	$	$
Note 8A: Employee provisions		
Salaries and wages	**16,357**	10,574
Leave	**262,737**	232,136
Superannuation	**2,600**	1,553
Total employee provisions	**281,694**	244,264

Employee provisions are represented by:		
Current	**215,392**	209,270
Non-current	**66,302**	34,994
Total employee provisions	**281,694**	244,264

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of the reporting date. Employee provisions expected to be settled in twelve months from the reporting date are $106,868 (2008: $118,262), and in excess of one year $174,826 (2008: $126,002).

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	2009	2008
	$	$
Note 8B: Other provisions		
Provision for restoration	**29,743**	20,000
Total other provisions	**29,743**	20,000
Other provisions are represented by:		
Current	-	-
Non-current	**29,743**	20,000
Total other provisions	**29,743**	20,000

	Provision for restoration	**Total**
	$	$
Carrying amount 1 July 2008	**20,000**	8,000
Additional provisions made	**9,743**	12,000
Amounts used	**-**	-
Amounts reversed	**-**	-
Unwinding of discount or change in discount rate	**-**	-
Closing balance 30 June 2009	**29,743**	20,000

The Council currently has an agreement for the leasing of premises which requires the Council to restore the premises to the original condition at the conclusion of the lease. The Agency has made a provision to reflect the present value of this obligation.

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Note 9: Cash Flow Reconciliation

	2009	2008
	$	$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Report cash and cash equivalents as per:		
Cash Flow Statement	**55,785**	92,047
Balance Sheet	**55,785**	92,047
Difference	**-**	-
Reconciliation of operating results to net cash from operating activities:		
Operating result	**284,549**	1,323,329
Depreciation / amortisation	**35,748**	107,435
Net write down of non-financial assets	**1,170**	-
(Increase) / decrease in net receivables	**(447,170)**	(1,429,426)
(Increase) / decrease in prepayments	**(9,648)**	(3,169)
Increase / (decrease) in employee provisions	**37,430**	(56,803)
Increase / (decrease) in supplier payables	**92,864**	148,208
Increase / (decrease) in other provisions	**9,743**	
Net cash from / (used by) operating activities	**4,686**	89,574

Note 10: Contingent Liabilities and Assets

Quantifiable Contingencies

There were no quantifiable contingent liabilities as at 30 June 2009 (2008: $nil).

There were no quantifiable contingent assets as at 30 June 2009 (2008: $nil)

Unquantifiable Contingencies

As at 30 June 2009, the Council had no matters before the courts (2008: 4 matters). Costs have been awarded to the Council in respect of a matter concluded during the year, however the amount to be recovered is unquantifiable as at 30 June 2009.

NATIONAL COMPETITION COUNCIL
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Note 11: Senior Executive Remuneration

	2009	2008
	Number	Number
The number of executives who received or were due to receive total remuneration of $130,000 or more:		
$160,000 to $174,999	**-**	-
$190,000 to $204,999	**-**	-
$205,000 to $219,999	**-**	1
$220,000 to $234,999	**1**	-
$235,000 to $249,999	**-**	-
$265,000 to $279,999	**-**	1
$280,000 to $294,999	**1**	-
Total	**2**	2

The aggregate of total remuneration of senior executives shown above.	**$520,557**	$478,674
The aggregate of separation and redundancy/termination benefit payments during the year to the executives shown above.	**-**	**-**

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Note 12: Councillors Remuneration

The Councillors during the year were:

President:	David Crawford
Councillors:	Virginia Hickey
	Doug McTaggart
	Rod Sims

The number of councillors who received or were due to receive remuneration are shown in the following bands:

	2009	2008
	Number	Number
$15,000 to $29,999	**-**	-
$30,000 to $44,999	**3**	3
$45,000 to $59,999	**-**	1
$60,000 to $74,999	**1**	-
	4	4

The aggregate amounts of total remuneration of Councillors shown above.	**$159,006**	$152,615

Note 13: Remuneration of Auditors

	2009	2008
	$	$
Financial statement audit services are provided free of charge to the Council by the Australian National Audit Office (ANAO).		
The fair value of the services provided was:	**22,280**	23,800

No other services were provided by the Auditor-General.

NATIONAL COMPETITION COUNCIL
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Note 14: Financial Instruments

	2009	2008
	$	$
Note 14A: Categories of financial instruments		
Loans and receivables		
Loans and receivables		
Cash and cash equivalents	**55,785**	92,047
Trade and Other Receivables	**2,399**	6,654
Carrying amount of financial assets	**58,184**	98,701
Financial Liabilities		
At amortised cost:		
Trade creditors	**262,677**	177,611
Carrying amount of financial liabilities	**262,677**	177,611

Note 14B: Net income and expense from financial assets

The Council received/incurred $nil (2008:$nil) in income and expenses from financial assets and financial liabilities.

Note 14C: Fair value of financial instruments

	Carrying amount 2009 $	**Fair value 2009 $**	Carrying amount 2008 $	Fair value 2008 $
Financial Assets				
Cash & cash equivalents	**55,785**	**55,785**	92,047	92,047
Trade & Other Receivables	**2,399**	**2,399**	6,654	6,654
Total Financial Assets	**58,184**	**58,184**	98,701	98,701
Financial Liabilities				
Payables - Suppliers	**262,677**	**262,677**	177,611	177,611
Total Financial Liabilities	**262,677**	**262,677**	177,611	177,611

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Note 14D: Credit risk

The Council is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2009: $4,505,479 and 2008: $4,058,527).

The Council holds no collateral to mitigate against credit risk.

Credit quality of financial instruments not past due or individually determined as impaired

	Not Past Due Nor Impaired 2009 $	Not Past Due Nor Impaired 2008 $	**Past due or impaired 2009 $**	Past due or impaired 2008 $
Loans and receivables				
Cash and cash equivalents	**55,785**	92,047	**-**	-
Trade and other receivables	**2,399**	6,654	**-**	-
Total	**58,184**	98,701	**-**	-

Ageing of financial assets that are past due but not impaired for 2009

	0 to 30 days $	**31 to 60 days $**	**61 to 90 days $**	**90+ days $**	**Total $**
Loans and receivables					
Trade and other receivables	-	-	-	-	-
Total	-	-	-	-	-

Ageing of financial assets that are past due but not impaired for 2008

	0 to 30 days $	31 to 60 days $	61 to 90 days $	90+ days $	Total $
Loans and receivables					
Trade and other receivables	**-**	**-**	**-**	**-**	**-**
Total	**-**	**-**	**-**	**-**	**-**

NATIONAL COMPETITION COUNCIL
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Note 14E: Liquidity risk

The Council's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Council will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities:

	On demand 2009 $	**within 1 year 2009 $**	**1 to 5 years 2009 $**	**> 5 years 2009 $**	**Total 2009 $**
Other Liabilities					
Payables - Suppliers	**-**	**262,677**	**-**	**-**	**262,677**
Other payables	**-**	**1,206**	**6,592**	**-**	**7,798**
Total	**-**	**263,883**	**6,592**	**-**	**270,475**

	On demand 2008 $	within 1 year 2008 $	1 to 5 years 2008 $	> 5 years 2008 $	Total 2008 $
Other Liabilities					
Payables - Suppliers		**173,273**	**-**	**-**	**173,273**
Other payables		**1,077**	**3,261**	**-**	**4,338**
Total		**174,350**	**3,261**	**-**	**177,611**

Note 14F: Market risk

The Council holds basic financial instruments that do not expose the Council to certain market risks. The Council is not exposed to 'Currency risk', 'Interest rate risk' or 'Other price risk'.

NATIONAL COMPETITION COUNCIL
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Note 15: Appropriations

Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

Particulars	Departmental Outputs	
	2009	2008
	$	$
Balance carried from previous period (*Appropriation Acts*)	**4,143,920**	2,651,298
Appropriation Act:		
Appropriation Act (No.1) 2008-09 as passed	**2,781,000**	4,025,000
Appropriation Act (No.3) 2008-09 as passed	**-**	-
Appropriation Act (No.5) 2008-09 as passed	**-**	-
Other annual appropriation acts as passed	**-**	-
Departmental appropriations reduced (*Appropriation Act* section 10)	**-**	(19,000)
Advance to the Finance Minister (*Appropriation Act* section 14)	**-**	-
FMA Act:		
Repayments to the Commonwealth (*FMA Act* section 30)	**5,381**	3,629
Appropriations to take account of recoverable GST (*FMA Act* section 30A)	**142,487**	141,035
Relevant Agency receipts (*FMA Act* section 31)	**207,523**	125,759
Adjustments of appropriations on change of Agency function (*FMA Act* section 32)	**-**	-
Total appropriations available for payments	**7,280,311**	6,927,721
Cash payments made during the year (GST inclusive)	**(2,721,228)**	(2,783,801)
Appropriations credited to Special Accounts (GST exclusive)	**-**	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	**4,559,083**	4,143,920
Cash at bank and on hand	**55,785**	92,047
Departmental appropriations receivable	**4,464,000**	4,023,000
GST receivable from ATO	**39,298**	28,873
Adjustments under section 101.13 of the Finance Ministers' Orders not reflected above	**-**	-
Total as at 30 June	**4,559,083**	4,143,920

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Departmental and non-operating appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament. The amount of the reduction determined under Appropriation Act (No. 1) of 2008-09 was: $nil (2007-08 $19,000).

Note 16: Special Accounts

Services for other Governments & Non-Agency Bodies Account

The Council has a Services for other Government & Non-Agency Bodies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997* (FMA Act). For the years ended 30 June 2009 and 2008 the account had a nil balance and there were no transactions debited or credited to it.

The purpose of the Services for other Government & Non-Agency Bodies Special Account is for expenditure in connection with services performed on behalf of other Governments and bodies that are not Agencies under the FMA Act.

Other Trust Monies Account

The Council has an Other Trust Monies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997*. For the years ended 30 June 2009 and 2008 the account had a nil balance and there were no transactions debited or credited to the account.

The purpose of the Other Trust Monies Special Account is for the receipt of monies temporaril held on trust or otherwise for the benefit of a person other than the Australian Government.

Note 17: Compensation and Debt Relief

No Acts of Grace payments were made during the reporting period (2008: No payments made).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2008: No waivers made).

No ex-gratia payments were made during the reporting period (2008: No payments made).

No payments were made under the 'Defective Administration Scheme' during the reporting period (2008: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2008: No payments made).

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Note 18: Reporting of Outcomes

The National Competition Council attributes its Outcome to its single Output on the basis of identifiable actual costs. The Council has a single Output in 2009 and had two Outputs in 2008.

Note 18A: Net Cost of Outcome Delivery

	Outcome 1		Total	
	2009	2008	**2009**	2008
	$	$	**$**	$
Expenses				
Departmental	**2,726,254**	2,832,161	**2,726,254**	2,832,161
Total expenses	**2,726,254**	2,832,161	**2,726,254**	2,832,161
Costs recovered from provision of goods and services to the non government sector				
Departmental			**-**	-
Total costs recovered	**-**	-	**-**	-
Other external revenues				
Departmental	**229,803**	149,490	**229,803**	149,490
Total other external revenues	**229,803**	149,490	**229,803**	149,490
Net cost/(contribution) of outcome	**2,496,451**	2,682,671	**2,496,451**	2,682,671

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

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Note 18B: Major Classes of Departmental Income and Expenses by Output Groups and Outputs

Outcome 1	**Output 1.1**		**Output 1.2**		**Total**	
	2009	2008	**2009**	2008	**2009**	2008
	$	$	**$**	$	**$**	$
Departmental expenses						
Employees	**1,266,549**	1,221,837	**-**	64,307	**1,266,549**	1,286,144
Suppliers	**1,422,787**	1,366,652	**-**	71,929	**1,422,787**	1,438,581
Depreciation & amortisation	**35,748**	107,435	**-**	-	**35,748**	107,435
Finance costs	**-**	-	**-**	-	**-**	-
Losses from asset sales	**-**	-	**-**	-	**-**	-
Write-down and impairment of assets	**1,170**	-	**-**	-	**1,170**	-
Other expenses			**-**	-	**-**	-
Total departmental expenses	**2,726,254**	2,695,924	**-**	136,237	**2,726,254**	2,832,161
Funded by:						
Departmental income						
Revenue from government	**2,781,000**	3,805,700	**-**	200,300	**2,781,000**	4,006,000
Sale of goods and services	**207,523**	125,690	**-**	-	**207,523**	125,690
Other non-taxation revenues	**-**		**-**	-		-
Gains	**22,280**	23,800	**-**	-	**22,280**	23,800
Total departmental income	**3,010,803**	3,955,190	**-**	200,300	**3,010,803**	4,155,490

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

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Note 18C: Major Classes of Departmental Assets and Liabilities by Outcomes

	Outcome 1		Total	
	2009	2008	**2009**	2008
	$	$	**$**	$
Departmental assets				
Cash and cash equivalents	**55,785**	92,047	**55,785**	92,047
Trade and other receivables	**4,505,697**	4,058,527	**4,505,697**	4,058,527
Leasehold Improvements	**69,837**	62,246	**69,837**	62,246
Infrastructure, plant and equipment	**63,541**	42,950	**63,541**	42,950
Intangibles	**5,591**	-	**5,591**	-
Inventories			**-**	-
Other non-financial assets	**14,985**	5,337	**14,985**	5,337
Total departmental assets	**4,715,436**	4,261,107	**4,715,436**	4,261,107
Departmental liabilities				
Grants				
Subsidies				
Personal Benefits				
Suppliers	**262,677**	173,273	**262,677**	173,273
Other payables	**7,798**	4,338	**7,798**	4,338
Loans			**-**	-
Leases			**-**	-
Other interest bearing liabilities			**-**	-
Employee provisions	**281,694**	244,264	**281,694**	244,264
Other provisions	**29,743**	20,000	**29,743**	20,000
Total departmental liabilities	**581,912**	441,875	**581,912**	441,875

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