NATIONAL
COMPETITION
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2010–11

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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) 9981 1600.

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Office of
Council President

29 August 2011

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

Dear Treasurer

In accordance with section 29O of the *Competition and Consumer Act 2010* the National Competition Council is pleased to present you with its sixteenth annual report covering the Council's operations for the year 2010-11.

Yours sincerely

David Crawford
David Crawford
President

Doug McTaggart
Councillor

Virginia Hickey
Councillor

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Abbreviations

AASB	Australian Accounting Standards Board
ACCC	Australian Competition and Consumer Commission
ANAO	Australian National Audit Office
ARM Committee	Audit and Risk Management Committee (of the Council)
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited
ATSI	Aboriginal or Torres Strait Islander
BHPB	BHP Billiton Iron Ore Pty Ltd
CCA	*Competition and Consumer Act 2010* (Cth)
CCS	Carbon capture and storage
Chi-X	Chi-X Australia Pty Ltd
CIRA	Competition and Infrastructure Reform Agreement of 10 February 2006
clause 6 principles	The principles set out in clauses 6(2) to 6(5) of the Competition Principles Agreement
COAG	Council of Australian Governments
Council	National Competition Council (see also NCC)
CPA	Competition Principles Agreement
CQCN	Central Queensland coal rail network comprising the Blackwater, Goonyella, Moura and Newlands railway facilities in Queensland
criterion (a)	Sections 44G(2)(a) and 44H(4)(a) of the CCA
criterion (b)	Sections 44G(2)(b) and 44H(4)(b) of the CCA
criterion (c)	Sections 44G(2)(c) and 44H(4)(c) of the CCA
criterion (e)	Sections 44G(2)(e) and 44H(4)(e) of the CCA
criterion (f)	Sections 44G(2)(f) and 44H(4)(f) of the CCA
CSS	Commonwealth Superannuation Scheme
DBCT	Dalrymple Bay Coal Terminal
DEETYA	Commonwealth Department of Education, Employment, Training and Youth Affairs
DRET	Commonwealth Department of Resources, Energy and Tourism
ESC	Essential Services Commission (of Victoria)
ESCOSA	Essential Services Commission of South Australia
FMA Act	*Financial Management and Accountability Act 1997(*Cth)
FMOs	Finance Minister's Orders
FOI Act	*Freedom of Information Act 1982* (Cth)

Fortescue	Fortescue Metals Group Limited/The Pilbara Infrastructure Pty Ltd
Full Court	Full Court of the Federal Court of Australia
GST	Goods and Services Tax
Hilmer Committee	Independent Committee of Inquiry into a National Competition Policy (Chairman: Professor F. Hilmer)
ICT	information and communications technology
IPS	Information Publication Scheme
National Access Regime	The generic access regime in Part IIIA of the *Competition and Consumer Act 2010* (Cth)
NCC	National Competition Council
NCP	National Competition Policy
NGL	National Gas Law
Pacific National	Pacific National Pty Limited
Part IIIA	Part IIIA of the *Competition and Consumer Act 2010* (Cth)
PC	Productivity Commission
Pilbara Infrastructure v Tribunal	*Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2011] FCAFC 58
PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
QCA	Queensland Competition Authority
QCA Act	*Queensland Competition Authority Act 1997* (Qld)
QR National	QR National Limited
QRL	Queensland Rail Limited
Queensland Rail Access Regime	The third party access regime established under Part 5 of the *Queensland Competition Authority Act 1997* (Qld) and the *Queensland Competition Authority Regulation 2007*
Re Australian Union of Students	*Re Application for Review of the decision by the Commonwealth Treasurer; Ex parte Australian Union of Students* (1997) 147 ALR 458; [1997] ACompT 1
Re Services Sydney	*Re Services Sydney Pty Limited* [2005] ACompT 7
RHI	Roy Hill Infrastructure Pty Ltd
Rio	Rio Tinto Limited
ROA Act	*Railways (Operations and Access Act) 1997* (SA)
Services Sydney	Services Sydney Pty Ltd
SES	Senior Executive Service
South Australian Ports Access Regime	The third party access regime established under the *Maritime Services (Access) Act 2000* (SA)
TPA	*Trade Practices Act 1974* (Cth)

TPA Amendment Act	*Trade Practices Amendment (Infrastructure Access) Act 2010* (Cth)
Tribunal	Australian Competition Tribunal
UT3	QR Network's 2010 Access Undertaking approved by the Queensland Competition Authority on 1 October 2010
Western Australian Rail Access Regime	The third party access regime established under the *Railways (Access) Act 1998* (WA) and the R*ailways (Access) Code 2000*
WICA Access Regime	New South Wales access regime for water industry infrastructure services established under the *Water Industry Competition Act 2006* (NSW)

About this report

The role of the National Competition Council (**Council**) is to make recommendations concerning access to infrastructure services under the National Access Regime prescribed in Part IIIA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and recommendations and decisions under the National Gas Law (**NGL**) contained in the Schedule to the *National Gas (South Australia) Act 2008*.

National Competition Council Outcome

Competition in markets that are dependent on access to nationally significant monopoly infrastructure, through recommendations and decisions promoting the efficient operation of, use of and investment in infrastructure

This annual report covers the Council's work during 2010-11 and also reports on the matters required by s 29O(2) of the CCA. These matters are:

- the time taken by the Council to make a recommendation on any application under s 44F (applications for a recommendation on the declaration of a service), 44M (applications for a recommendation on the certification of a state or territory access regime as an effective access regime) or 44 NA (applications for extension of a decision that a state or territory regime is an effective access regime) of the CCA
- any court or Tribunal decision interpreting the definition of 'service' (an exclusion from declaration to do with production processes) or any of the criteria for declaration in s 44H(4) of the CCA
- any matter the Council considers has impeded the operation of Part IIIA from delivering efficient access outcomes
- any evidence of the benefits arising from the access (arbitration) determinations of the Australian Competition and Consumer Commission
- any evidence of the costs of, or disincentives for, investment in the infrastructure providing declared services
- any implications for the operation of Part IIIA in the future.

Chapter 1 provides the President's review of significant events and actions relevant to the Council during 2010-11.

Chapter 2 reports on the work undertaken by the Council during 2010-11 in its role of making recommendations to Ministers on applications for declaration and certification and on matters pursuant to the NGL. The chapter also reports on the National Access Regime as required by s 29O(2) of the CCA, and summarises the Council's performance against its key performance measures.

Chapter 3 provides an overview of the Council's governance arrangements while chapter 4 contains the Council's audited financial statements for 2010-11.

Summary resources for the Council's 2010-11 outcome are tabulated on page 47.

Compliance with the Department of the Prime Minister and Cabinet requirements for annual reports is shown on pages 65-66.

1 President's review

Gatekeeping access regulation

The National Competition Council's principal role is to advise on the scope of regulation of access to infrastructure under the National Access Regime. The Council provides decision-making Commonwealth Ministers, and on occasion State Premiers and Chief Ministers, with objective assessments of the need for, and costs and benefits of, regulatory interventions to facilitate third party access. The Council provides an independent and objective assessment of whether the criteria for imposition of access regulation are met in any particular case and thus acts as an advisory 'gatekeeper' on the extent of access regulation in Australia.

The Council undertakes a similar role in relation to natural gas pipelines under the National Gas Law (**NGL**). The Council advises on which pipelines should be covered under the NGL, classifies pipelines (as either transmission or distribution pipelines) and determines whether covered pipelines are to be subject to *light regulation* (which imposes obligations very similar to those applicable to declared services under the National Access Regime) or *full regulation* (which requires submission of an access arrangement for approval by the Australian Energy Regulator).

In relation to gas pipelines and access regulation more generally the Council is also responsible for considering applications for exemptions which preclude the coverage of pipelines or the declaration of services, thus shutting the gate to regulation for specified periods.

In addition to recommending on specific applications, the Council is also charged with reporting on the operation of Part IIIA generally including identifying impediments to Part IIIA delivering efficient access outcomes (see s 29O of the *Competition and Consumer Act 2010* (**CCA**)).

The introduction of access regulation and the Council's gatekeeper role is a product of the Independent Committee of Inquiry into a National Competition Policy chaired by Professor Fred Hilmer (known as the **Hilmer Committee**). In its 1993 report, the Hilmer Committee recommended the establishment of a new legal regime under which firms could, in certain circumstances, be given a right of access to services provided by infrastructure facilities and proposed that the Council be charged with advising on whether particular services should be declared and as a result potentially made subject to access regulation (Independent Committee of Inquiry 1993). The regime proposed by the Hilmer Committee was implemented in the form of the National Access Regime which provides for regulation of access to infrastructure in order to allow the development of competition in dependent markets and avoid the waste of scarce resources on unnecessary (and economically undesirable) duplication of facilities.

The Hilmer Committee noted that a decision to provide a right of access rested on an evaluation of important public interest considerations and considered that the ultimate

decision to provide an access right should be one for Government, rather than a court, tribunal or other unelected body (Independent Committee of Inquiry 1993, p 250). At the same time the Hilmer Committee cautioned that the existence of a broad discretionary regime may create pressures on the Minister to declare an essential facility to advance private interests,[1] so recommended that the Minister's discretion be limited by explicit declaration criteria and a requirement that any application for declaration be subject to a recommendation from the Council.

As a result, applications for declaration of services only come before a decision-making Minister by way of a transparent and rigorous public consultation process leading to a recommendation from the Council. The Council is only able to recommend in favour of declaration where it is affirmatively satisfied that the declaration criteria set out in the CCA (see Box 2-1 on p 8) are met. To declare a service the decision-making Minister is also required to be satisfied that these criteria are met, and even then the Minister has discretion not to declare the service.[2] The declaration criteria and the Council's gatekeeping role is an important means of ensuring access regulation is appropriately confined.

In the Council's experience the gatekeeper arrangements implemented on the recommendation of the Hilmer Committee have generally stood the test of time.

However, there are two increasingly significant challenges to the operation of the gatekeeping arrangements envisaged by the Hilmer Committee. First, the roles of the Council as the principal advisor on the scope of access regulation and the Minister as decision-maker have increasingly been overtaken by decisions of the Australian Competition Tribunal (**Tribunal**). Second, increasingly frequent calls for measures to side step the declaration process have lead to an increased risk that political pressure will become the mechanism for determining the scope of access regulation in place of the process set out in the statute. In the Council's view both these developments are undesirable.

The role of the Australian Competition Tribunal

Administrative decisions should be properly made and appropriate review mechanisms should ensure decision makers, and those advising them, adopt fair and reasonable processes and make their decisions in accordance with the law. However, the role of the Tribunal in reviewing declaration decisions goes significantly further.

Under the CCA, the Tribunal stands in the shoes of the Minister and remakes his or her decision. A party seeking review by the Tribunal need not demonstrate any error on the part of the Minister in making his or her decision or on the part of the Council in making its recommendation. Further, while amendments were recently made to Part IIIA to limit new evidence being put to the Tribunal, it remains to be seen how effective these amendments

1 The Council observes that as well as political pressures for declaration, pressures against declaration can also arise in the cause of private interests.

2 There is no parallel discretion enabling declaration where the criteria are not met.

will be in practice. Even if they are effective in reducing the amount of new material brought before the Tribunal (particularly information and arguments that were not, but could or should have been, provided to the Council and the Minister), in a *de novo* rehearing the Minister's decision may be overturned simply because the Tribunal came to a different view of the same facts considered by the Minister. This rehearing process has some adverse consequences. First, it encourages reviews. Parties seeking review have little to lose from having a second 'roll of the dice' in the hope that they will get a different result. Second, it encourages gaming and forum shopping and adds to uncertainty.

Having the Tribunal undertake the same enquiry as the Council and Minister, in a quasi-court setting, unnecessarily delays the determination of a declaration application. More fundamentally, bearing in mind that the assessment of an application for declaration against the criteria is inherently a matter of judgment and discretion, *de novo* rehearing by the Tribunal undermines the basis, as envisioned by the Hilmer Committee, for having declaration decisions made by an elected member of the Government acting on independent advice.

The Tribunal does not add value to the declaration process when it simply substitutes its own view of the facts to prevail over that of a Minister acting on comprehensive advice. Similarly the Tribunal adds little value when it reaches a different view of the proper legal construction of statutory provisions as it is not a judicial body. Questions of legal construction are properly matters for determination by a Court, rather than administrative decision makers such as the Minister or the Tribunal.

It appears to the Council that, compared to conventional judicial review, the review role of the Tribunal is of little benefit while it significantly exacerbates cost, uncertainty and delay. The Council considers that judicial review by the Federal Court is a preferable form of oversight. It would ensure declaration decisions are made fairly and in accordance with the law without substituting for the judgement of a well advised and politically accountable ministerial decision maker.

Judicial review also allows for the merits of a declaration decision to be reviewed where the decision making Minister took into account matters that should not have been considered, or failed to take into account matters that should have been addressed and where the decision falls outside what might be concluded by a reasonable decision maker. In the Council's opinion judicial review provides a more than adequate means of redress when a Minister's decision or the Council's advice is faulty in law, procedurally unfair or manifestly unreasonable.

Deeming declaration

A second challenge to the gatekeeping role of the Council and Ministers arises from increasingly frequent calls to side step the checks and balances of the declaration process by deeming certain services to be declared or directly imposing access regulation.

The Hilmer Committee envisaged the National Access Regime as having general application with the declaration process providing the mechanism for determining when a right to access should arise. It expressly rejected industry-specific access regimes in favour of a legal framework that was national in scope and operation (Independent Committee of Inquiry 1993, p 248).

The National Access Regime applies across Australia and to all sectors of the economy other than communications services (which are dealt with in Part XIC of the CCA) and those services which are subject to approved access undertakings or certified state or territory access regimes. Within the National Access Regime the declaration criteria and the process for considering declaration applications provide a mechanism for ensuring that the establishment of a right to access serves the overall Australian national interest, and that the interests of society in developing competitive markets and achieving the efficient delivery of infrastructure services are properly balanced against the need for efficient investment.

In recent times there have been calls for access to particular services to be directly regulated or made subject to the National Access Regime by deeming them to have been declared.

Some of these calls appear to be exactly the advancement of private interests that the Hilmer Committee warned against. These calls seek to expand the scope of access regulation beyond that which is available if the declaration criteria must be satisfied. They should be received with considerable scepticism.

Other calls appear to be a response to the perceived delay associated with the declaration process. However, the CCA requires that declaration decisions be made within eight months except in exceptional circumstances (six months for the Council recommendation and two months for a Ministerial decision, although a rehearing by the Tribunal can add to this).[3] When dealing with nationally significant infrastructure a period of eight months is not a significant delay. Infrastructure access issues that warrant regulatory intervention are not sudden or transient phenomena. To the extent that timeliness in making declaration decisions remains an issue, this requires a general response (including streamlining the process as discussed above) rather than the adoption of ad hoc measures to bypass the process in particular cases.

Where the declaration process is bypassed there is limited basis for confidence that the relevant declaration criteria have been considered, let alone met. As a result there can be no assurance that access regulation is being applied to services in circumstances where:

- access will materially promote competition in any market

[3] The CCA provides that the Tribunal should complete its review within six months. The Tribunal is yet to review a declaration decision under the new arrangements.

- regulated services are provided by infrastructure than cannot be economically duplicated and is nationally significant, and
- access regulation is not contrary to the public interest.

Pilbara Rail — the Full Court decision

On 4 May 2011 the Full Court of the Federal Court of Australia (**Full Court**) delivered its judgment on various review proceedings relating to the Tribunal's decisions on declaration of the Hamersley and Robe River railways operated by Rio Tinto (*Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal* [2011] FCAFC 58) (***Pilbara Infrastructure v Tribunal***).

While developments in 2010-11 in relation to access to various Pilbara railways, including the Full Court's decision, are discussed in more detail in chapter 2 of this report, it is important to highlight a part of the Full Court's decision here.

A critical element of the Full Court's decision concerns the construction of declaration criterion (b). Criterion (b) addresses whether it is uneconomical for anyone to develop another facility to provide the service for which declaration is sought.

The Full Court held that criterion (b) 'requires consideration of the possibility of someone in the market place, whether by reason of circumstances specific to itself or otherwise, being able to develop a similar facility' (*Pilbara Infrastructure v Tribunal*, [59]). The Full Court said that

> [i]f an examination of the facts shows there is such a person, whoever that might be, and whatever the person's circumstances, then regulatory interference in the interplay of market forces is not warranted ... (*Pilbara Infrastructure v Tribunal*, [86]).

On this approach criterion (b) seeks to identify an individual who might profitably build a duplicate facility and where such a person can be identified the criterion cannot be satisfied.

The Full Court's approach contrasts with and overturns the approach to criterion (b) that the Council, decision-making Ministers and the Tribunal have all adopted since at least 1999, in which criterion (b) was seen as being concerned with whether a facility exhibits natural monopoly characteristics such that it would be uneconomical—from the point of view of Australian society as a whole—for the facility to be duplicated.

This has significant impacts for the Council and Minister's application of criterion (b) and also for coverage (and revocation of coverage) decisions under the NGL. The decision may also have an impact on decision making under state and territory access regimes.

The Council respectfully disagrees with the Full Court on this point.

In the Council's view, the Full Court's approach to criterion (b) substantially and inappropriately narrows the prospect that criterion (b) can ever be satisfied. When the Full Court's approach to criterion (b) is viewed alongside the evidence of private profitability accepted by the Tribunal, the scope for the Council or Minister to be satisfied that criterion (b) is met appears to be extremely limited. The Council and Minister will almost always face competing project evaluations from declaration applicants and service providers, and it will be very difficult to be affirmatively satisfied that this criterion is met, except perhaps where no facility, including the existing one, is profitable or where a facility serves marginal economic activity. It is highly unlikely that declaration will be available where a facility is part of a supply chain associated with the sale of high value resources such as iron ore or coal. This may see resources stranded or force the inefficient development of duplicate facilities.

The Council is also concerned at the Full Court's findings that Part IIIA is not concerned with economic waste resulting from the unnecessary duplication of facilities and that it focuses on private commercial interests, rather than those of Australian society as a whole. The Council believes this is inconsistent with the Hilmer Committee's focus on enhancing community welfare and the policy intent of the resulting reforms, particularly the enactment of the National Access Regime.

The Council has sought special leave to appeal the Full Court's decision to the High Court.

David Crawford
President

2 National Access Regime and the National Gas Law

Part IIIA of the *Competition and Consumer Act 2010* (**CCA**) establishes the National Access Regime. This provides a mechanism by which an access seeker, whose attempts at commercial negotiation have failed, can gain access to services provided by nationally significant infrastructure that cannot be economically duplicated and where access is necessary for competition in a dependent market.

The Council's roles under the National Access Regime are to consider applications relating to the declaration of services and the certification of state and territory access regimes and make recommendations to designated Ministers. The Council has a similar role under the National Gas Law (**NGL**) whereby it makes recommendations to relevant Minister(s) on the coverage (regulation) of natural gas pipeline systems.

The genesis of the National Access Regime can be traced to the 1993 report by the Independent Committee of Inquiry into a National Competition Policy (known as the **Hilmer Committee**). The Hilmer Committee said that:

> [a]s a general rule, the law imposes no duty on one firm to do business with another. The efficient operation of a market economy relies on the general freedom of an owner of property and/or supplier of services to choose when and with whom to conduct business dealings and on what terms and conditions. This is an important and fundamental principle based on notions of private property and freedom to contract, and one not to be disturbed lightly.
>
> The law has long recognised that this freedom may require qualification on public interest grounds in some circumstances, particularly where a form of monopoly is involved (Independent Committee of Inquiry 1993, p 242).

The Hilmer Committee identified a need to regulate where 'introducing competition requires that competitors be assured of access to certain facilities that cannot be duplicated economically' (Independent Committee of Inquiry 1993, xxxi). It recommended the establishment of a new legal regime that creates a right of access in prescribed circumstances. Under the regime recommended by the Hilmer Committee access to the services of facilities would be available on fair and reasonable terms and conditions, while the interests of the facility owner would be safeguarded.

The National Access Regime was introduced in 1995 following state, territory and Commonwealth consultation about the recommendations in the report by the Hilmer Committee. The provisions relating to declaration substantially reflect the Committee's recommendations. Although Part IIIA did not initially have an explicit objects clause, s 44AA was inserted in 2006 providing that:

The objects of this Part are to:

(a) promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and

(b) provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.

Declaration of services

Access regulation by declaration under the National Access Regime involves two stages. The first stage is declaration, where the Council considers applications seeking the declaration of a service (or services) before making a recommendation to the designated Minister. The second stage is a negotiate/arbitrate process, where the parties seek to reach commercial agreement on the terms and conditions of access, with recourse to binding arbitration by the Australian Competition and Consumer Commission (**ACCC**) in the event that they are unable to reach agreement.

The Council cannot recommend that a service be declared, and the Minister cannot declare a service, unless satisfied in respect of all of the declaration criteria set out in ss 44G(2) (in respect of the Council) and 44H(4) (in respect of the Minister) of the CCA. The declaration criteria are reproduced in Box 2-1.

Box 2-1 Declaration criteria

that access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service (**criterion (a)**)

that it would be uneconomical for anyone to develop another facility to provide the service (**criterion (b)**)

that the facility is of national significance, having regard to:

the size of the facility or

the importance of the facility to constitutional trade or commerce, or

the importance of the facility to the national economy (**criterion (c)**)

[Repealed]

that access to the service is not already the subject of an access regime that has been certified as effective under section 44N of the CCA (unless the Council considers that there have been substantial modifications of that regime since it was certified under section 44N) (**criterion (e)**), and

that access (or increased access) to the service would not be contrary to the public interest (**criterion (f)**).

In making its recommendation, the Council undertakes a process of public consultation. This usually involves:

- publishing the application and seeking initial submissions from the asset owners and other interested parties
- publishing a draft recommendation setting out the Council's assessment of the application in terms of the declaration criteria and other relevant considerations
- seeking further submissions on the draft recommendation and
- preparing a final recommendation.

Upon receipt of the Council's recommendation, the designated Minister must decide whether or not to declare the service, applying the same declaration criteria as the Council. By creating jurisdictional requirements for Council recommendations and ministerial decisions, the declaration criteria ensure that access regulation is applied only in situations where it is likely to enhance competition and economic efficiency and is in the public interest, in keeping with the objects of Part IIIA.

The Council is required to make its recommendation to the designated Minister within 180 days from receipt of an application. If the designated Minister does not make and publish a decision within 60 days of receiving the Council's recommendation, the designated Minister is deemed to have decided not to declare the service. Parties with standing may apply to the Australian Competition Tribunal (**Tribunal**) for merits review of the Ministerial decision within 21 days after publication of that decision. Following commencement of the *Trade Practices Amendment (Infrastructure Access) Act 2010* (Cth) (**TPA Amendment Act**), the Tribunal has 180 days to make its decision. The TPA Amendment Act also limits the material to be considered by the Tribunal to the material that was before the designated Minister or, in the case of deemed decisions, the material before the Council, unless additional information is requested by the Tribunal. (Prior to the commencement of the TPA Amendment Act the ability of parties to present new evidence to the Tribunal was not restricted and the introduction of extensive new evidence and arguments was commonplace.)

Once a service is declared, the negotiation and arbitration stage of the National Access Regime is enlivened. Declaration creates a right for any person seeking access to the service (not just the declaration applicant) to negotiate with the service provider. If commercial negotiations are unsuccessful, then the access dispute may be arbitrated by the ACCC. This 'light handed' regulatory approach is intended to encourage the commercial resolution of access issues, with minimal regulatory intervention. The process incorporates protections for the legitimate interests of service providers, thus maintaining incentives for efficient investment.

Part IIIA also provides for a facility owner to provide an access undertaking to the ACCC setting out the terms on which access will be granted and a process by which a state or territory access regime can be 'certified' as effective. An access undertaking accepted by the ACCC or a state or territory access regime certified as effective will apply to the services provided by the relevant facility to the exclusion of declaration.

Certification of access regimes

Applications for the certification of state or territory access regimes are made to the Council by the responsible Minister of the state or territory, usually the Premier or Chief Minister. The Council is then responsible for making a recommendation to the Commonwealth Minister as to whether the state or territory access regime is effective. In making a certification recommendation, the Council must consider the application against the principles in clauses 6(2) to 6(5) of the Competition Principles Agreement (**CPA**) (**clause 6 principles**), treating each clause 6 principle as a guideline rather than a binding rule. The Council must also have regard to the objects of Part IIIA set out in s 44AA of the CCA and must not consider any other matters (see generally s 44M of the CCA). The Commonwealth Minister in making his or her decision is subject to the same requirements as the Council in making its recommendation (see s 44N).

As is the case with declaration applications, the Council is required to make its certification recommendation to the Commonwealth Minister within 180 days from receipt of an application and the Minister must make and publish a decision within 60 days of receiving the Council's recommendation. In contrast to declaration, however, if the Commonwealth Minister does not make and publish his or her certification decision within 60 days, he or she is deemed to have made a decision in accordance with the Council's recommendation.

The certification process provides a high-level assurance that a state or territory access regime that will apply to the exclusion of the National Access Regime reflects similar principles to the regime it displaces. However, the certification process is not an assessment of the operation of a state or territory access regime or whether an access regime is 'optimal'. While parties sometimes raise concerns about specific outcomes under access regimes, these are not issues to be addressed in the process of considering whether or not a regime should be certified. The CCA requires the Council and the Commonwealth Minister to focus on an access regime's consistency with the clause 6 principles and objects of Part IIIA when considering effectiveness. The clause 6 principles do not require an assessment of outcomes; in fact, they specifically state that the Council must not consider arbitrations or decisions made under an access regime (CPA clause 6(3A)(a)). Rather than a consideration of the operation of an access regime, the clause 6 principles (in summary) require identification of:

- the factors limiting the scope of an effective access regime
- any interstate issues that arise from the access regime
- an emphasis on determining access issues through commercial negotiation
- the regime's dispute resolution process, and
- objects clauses and processes consistent with those of Part IIIA.

Under the 2006 Competition and Infrastructure Reform Agreement (**CIRA**), the states and territories agreed to submit their existing access regimes for certification by the end of December 2010. Arising from the CIRA, the Council received applications within the agreed

time in relation to all existing access regimes, except the Victorian rail access regime and the regimes relating to transmission and distribution of energy.

The Council understands the Victorian rail access regime remains under consideration by the Victorian Government. (Under the CIRA, Victoria was also to seek certification of its grain handling and storage and shipping channels access regimes. These two regimes have ceased to operate.

Under the Australian Energy Market Agreement, the Commonwealth and the states and territories agreed to take all reasonable measures to ensure that the regimes relating to gas and electricity infrastructure access are certified. Coordinated and concurrent applications were to have been made by 1 January 2007 in relation to electricity regimes and 1 July 2007 for gas regimes. Notwithstanding these commitments, the Council has received no applications for certification in respect of state and territory electricity and gas access regimes.

The Council understands that some jurisdictions have expressed concern at the requirement for certification of the gas and electricity access regimes. In part at least, this concern appears to be based on a misapprehension regarding the requirements for certification. There appears to be a mistaken belief that a fresh certification application would be required whenever the gas or electricity rules are amended. Certification involves a high level assessment against a set of broad principles, and changes to rules made in accordance with processes that are set out in a certified access regime does not necessarily give rise to a requirement for recertification of the regime.

The reluctance to submit the gas and electricity access regimes for certification also appears to reflect a belief that services covered by these regimes are unlikely to be able to be declared in any event. While it is unlikely that a service would be declared where upstream or downstream markets are effectively competitive, it is impossible to rule out declaration applications being made. Given the emphasis on regulatory certainty evident in the genesis of both the gas and electricity access regimes, it is difficult to understand the rationale for allowing potentially competing regulatory claims to emerge, when obtaining certification would largely eliminate such a prospect.

The National Gas Law

The NGL was developed to reform the governance arrangements for the regulation of natural gas pipeline services in Australia. Broadly speaking, the governance reforms seek to separate high level policy direction, economic regulation, rule making and rule enforcement. They are intended to operate so as to encourage efficient investment in gas infrastructure, streamline the rule change process and increase transparency in gas markets.

The NGL is set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA) which commenced on 1 July 2008. It is applied as a law of South Australia by that Act, and as a law

of other jurisdictions by their Application Acts.[4] Central to the NGL is the national gas objective set out in s 23. It states:

> The objective of this Law is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

The Council's role under the NGL is similar to its role under Part IIIA of the CCA. The Council makes recommendations to relevant Minister(s) on the coverage (regulation) of natural gas pipeline systems. In addition, under the NGL, the Council also:

- decides the form of regulation of natural gas pipeline systems (ie, light or full regulation)
- classifies pipelines as transmission or distribution pipelines, and
- recommends in relation to certain exemptions for 'greenfield' gas pipeline developments.

Under the NGL the Council is subject to a time limit, generally of four months, for making its recommendations and determinations.

The Council's work on declaration, certification and National Gas Law matters during 2010-11

At the commencement of 2010-11, the Council had two declaration matters, two certification matters and no NGL matters on hand. The Council received three new applications for the certification of state access regimes during 2010-11. It received no new declaration applications or applications under the NGL.

As outlined in the Council's Strategic Plan for 2010-15, the Council secretariat commenced work on a series of preliminary horizon studies of sectors where it anticipates that third party access issues of the kind addressed under Part IIIA may emerge. These studies are considering access to petroleum import terminal services, water and wastewater networks, financial and equity market clearing and settlement systems, and carbon geo-sequestration and associated facilities. The aim of the horizon studies is to identify possible emerging issues in these industries which may be relevant to Part IIIA, rather than to propose that access regulation be implemented in these industries or to prompt declaration applications. Initially these horizon studies are involving desktop research based on publicly available

[4] See *National Gas (Queensland) Act 2008* (Qld); *National Gas (New South Wales) Act 2008* (NSW); *National Gas (ACT) Act 2008* (ACT); *National Gas (Victoria) Act 2008* (Vic); *National Gas (Tasmania) Act 2008* (Tas); *National Gas (Northern Territory) Act 2008* (NT); *Australian Energy Market Act 2004* (Cth). Western Australia applied the NGL in its jurisdiction on 1 January 2010 under the *National Gas Access (WA) Act 2009* (WA).

information, including studies conducted by other bodies such as the ACCC and the Productivity Commission.

Table 2-1 below summarises the Council's work on declaration and certification matters during 2010-11, including key dates. It also provides summary information on two earlier declaration matters relating to access to certain Pilbara iron ore railways that were enlivened during 2010-11 as a consequence of appeals against decisions of the Tribunal.

Table 2-1 The Council's third party access work in 2010-11: status at 30 June 2011

Declaration applications

Service the subject of the application	Applicant	Date of application	Date of Council final recommendation and days elapsed since application	Date of Minister's decision, days elapsed since final recommendation, any subsequent events
Hamersley rail network	The Pilbara Infrastructure Pty Ltd	16 November 2007	29 August 2008 (287 days)	27 October 2008: Minister declared the service for 20 years expiring on 19 November 2028 (59 days) 13 November 2008: Hamersley Iron Pty Ltd (an associated company of Rio Tinto) sought review of the Minister's decision in the Tribunal 30 June 2010: the Tribunal set aside the Minister's decision to declare the service 13 August 2010: Fortescue appealed the Tribunal's decision 4 May 2011: Full Court dismissed the appeal The Council and Fortescue have applied for special leave to appeal the Full Court's decision to the High Court.
Robe River Railway	The Pilbara Infrastructure Pty Ltd	18 January 2008	29 August 2008 (224 days)	27 October 2008: Minister declared the service for 20 years expiring on 19 November 2028 (59 days) 13 November 2008: Robe River Mining Co Pty Ltd (an associated company of Rio Tinto) sought review of the Minister's decision in the Tribunal 30 June 2010: the Tribunal varied the Minister's decision to declare the service for 20 years, so that it be declared for 10 years expiring on 19 November 2018

Table 2-1 continued

Service the subject of the application	Applicant	Date of application	Date of Council final recommendation and days elapsed since application	Date of Minister's decision, days elapsed since final recommendation, any subsequent events
				13 August 2010: Rio Tinto appealed the Tribunal's decision 4 May 2011: Full Court allowed the appeal and set aside the declaration The Council and Fortescue have applied for special leave to appeal the Full Court's decision to the High Court.
Herbert River cane railway	North Queensland Bio-Energy Corporation Ltd	22 March 2010	Final recommendation 16 July 2010 (116 days)	Minister did not make a decision within the 60-day period so was deemed to have decided not to declare the service.
Queensland coal rail network (comprising four services provided by the Blackwater, Goonyella, Moura and Newlands coal railway facilities)	Pacific National Pty Ltd	19 May 2010	Draft recommendation 14 September 2010 Applicant withdrew application 13 October 2010	Not applicable

Certification applications

Subject of the application	Applicant	Date of application	Date of Council final recommendation and elapsed days	Date of Minister's decision, days elapsed since final recommendation, any subsequent events
Western Australian Rail Access Regime	Premier of Western Australia, the Hon Colin Barnett MLA	12 May 2010	Final recommendation 14 December 2010 (216 days)	11 February 2011: Minister certified the regime as effective for five years (59 days)

Table 2-1 continued

Subject of the application	Applicant	Date of application	Date of Council final recommendation and elapsed days	Date of Minister's decision, days elapsed since final recommendation, any subsequent events
Queensland Rail Access Regime	Premier of Queensland, the Hon Anna Bligh MP	17 June 2010	Final recommendation 22 November 2010 (158 days)	19 January 2011: Minister certified the regime as effective for 10 years (58 days)
South Australian Ports Access Regime	Premier of South Australia, the Hon Mike Rann MP	15 October 2010	Final recommendation 10 March 2011 (146 days)	9 May 2011: Minister certified the regime as effective for 10 years (60 days)
Dalrymple Bay Coal Terminal Access Regime	Premier of Queensland, the Hon Anna Bligh MP	16 December 2010	Final recommendation 10 May 2011 (145 days)	11 July 2011: Minister certified the regime as effective for 10 years (60 days)
South Australian Rail Access Regime	Premier of South Australia, the Hon Mike Rann MP	29 December 2010	Final recommendation 27 May 2011 (149 days)	26 July 2011: Minister certified the regime as effective for 10 years (60 days)

Declaration matters

Pilbara railways

In August 2010, Rio Tinto Limited (**Rio**) and Fortescue Metals Group Limited/The Pilbara Infrastructure Pty Ltd (**Fortescue**) commenced judicial reviews in the Full Court of the Federal Court of Australia (**Full Court**) of the Australian Competition Tribunal's (**Tribunal**) 30 June 2010 decisions on the applications for declaration of railways in the Pilbara.

Rio challenged the Tribunal's declaration of its Robe River Railway and Fortescue challenged several aspects of the decisions concerning both the Robe River Railway and the Hamersley rail network.

The Council sought and was granted leave to intervene in the Full Court proceedings to allow it to address specific matters of statutory interpretation and public importance. BHP Billiton Iron Ore Pty Ltd (**BHPB**) also applied successfully to be joined as a party to the proceedings. BHPB did not, however, seek a review of the Tribunal's decision to uphold the Minister's declaration of its Goldsworthy Railway.

In brief, the three judicial review proceedings in the Full Court were as follows.

- Fortescue challenged the Tribunal's decision to set aside the Treasurer's declaration of the Hamersley rail network. Fortescue, having the benefit of favourable findings by the Tribunal in relation to criteria (a) and (b), challenged the Tribunal's approach to the assessment of the public interest under criterion (f), primarily on the basis that the Tribunal did not appreciate the implications of the two-stage process of declaration and access prescribed in Part IIIA. Fortescue also claimed that the Tribunal's findings contained reviewable errors, including a breach of natural justice.
- Fortescue challenged the decision of the Tribunal to vary the period of the Treasurer's declaration of the Robe River Railway from 20 years to 10 years arguing that it was unreasonable for the Tribunal to come to that view having regard to its findings on criterion (f).
- Rio appealed the decision of the Tribunal not to set aside, in its entirety, the Treasurer's declaration of the Robe River Railway, primarily on the basis that the Tribunal erred in the proper construction of criterion (b) of the CCA.

The Full Court's findings impact, in particular, on the interpretation of criteria (b) and (f).

The Full Court found the Tribunal's approach to the interpretation and application of criterion (f) to be correct. It was, therefore, open to the Tribunal to conclude that criterion (f) was only satisfied until 2018 in respect of the Robe River Railway and correct to thereby limit the period of declaration (by 10 years) to that date (*Pilbara Infrastructure v Tribunal*, [117]).

Criterion (b) provides that a service cannot be declared unless 'it would be uneconomical for anyone to develop another facility to provide the service'. It has long been the view of the Tribunal and the Council that criterion (b) is directed to what is economically efficient from the perspective of society as a whole (ie a social benefit/natural monopoly test). However, the Full Court found this approach inconsistent with the text of Part IIIA, its legislative intent and its extrinsic materials.

The Full Court found that criterion (b) requires consideration of a private profitability test. If it can be shown that there is someone, whomever that may be, who might profitably build another facility to provide the service concerned, then regulation should not impose or interfere in the interplay of those market forces and criterion (b) will not be satisfied (*Pilbara Infrastructure v Tribunal*, [86]).

In applying this test of private profitability, the Full Court found that criterion (b) was not satisfied in respect of either the Hamersley rail network or the Robe River Railway and accordingly it overturned the declaration of the Robe River Railway (*Pilbara Infrastructure v Tribunal*, [137]).

The Council considers that the Full Court's findings on criterion (b) are likely to significantly narrow the circumstances and situations in which criterion (b) can be satisfied. For example, the Full Court's findings expressly state that it may be economic for someone to develop another facility to provide the service, where the provision of that service is cross-subsidised from other profit sources. Such a situation could be expected to arise in relation to high value commodities, such as iron ore or coal, and may result in the stranding of resources and/or force the development of duplicate facilities. In many cases, this would be inefficient and wasteful of society's resources. The Council considers this is inconsistent with the legislative intent of the National Access Regime and the genesis of Part IIIA as recommended by the Hilmer Committee.

The Full Court's decision also has implications beyond the consideration of criterion (b) in respect of declaration applications. It will affect the consideration of applications for recommendations on ineligible services under Division 2AA of Part IIIA of the CCA as well as coverage/revocation of coverage decisions and no–coverage rulings for greenfield pipelines under the NGL. The Full Court's interpretation of criterion (b) is also likely to have implications for existing certified access regimes under s 44N of the CCA that incorporate criteria identical or similar to the declaration criteria in Part IIIA and may also impact on applications for certification given the existence of almost identical language to criterion (b) in the CPA.

Having considered the implications of the Full Court's decision for the public policy objectives underlying the operation of Part IIIA, the Council has applied to the High Court for special leave to appeal the decision of the Full Court. Fortescue has also made applications for special leave to appeal the Full Court's decision to the High Court and the Council has sought to intervene in these proceedings. These applications are yet to be considered by the High Court.

Herbert River cane railway

North Queensland Bio-Energy Corporation Ltd applied to the Council for a recommendation that the below rail service provided by means of the narrow gauge cane railway owned by Sucrogen (Herbert) Pty Ltd in the Herbert River district of northern Queensland be declared.

The Council issued its draft recommendation on 1 June 2010, proposing that the service should not be declared. In its 16 July 2010 final recommendation the Council maintained its view that the service should not declared. The Council was not satisfied that the service was nationally significant (criterion (c)) or that access would not be contrary to the public interest (criterion (f)). Regarding the public interest, the Council was of the view that access might be contrary to the public interest because the anticipated ongoing costs from access regulation appeared likely to exceed the anticipated benefits, particularly given declaration appeared unlikely to result in any consequential increase in output of sugar cane in the Herbert River district. In considering national significance, the Council found that while the size of the cane railway was extensive having regard to its overall track length (more than 500 kilometres), its greatest reach was only 60 kilometres and the facility's contribution to Australian sugar production and exports was only modest.

The designated Minister did not make a decision on this matter within the statutory period of 60 days. As such, the designated Minister was deemed by s 44H(9) of the then *Trade Practices Act 1974* (Cth) (**TPA**) to have decided not to declare the service and to have published that decision. The applicant did not seek review of the deemed decision by the Tribunal.

QR National's central Queensland coal rail network

This matter was considered in parallel with the application for certification of the Queensland Rail Access Regime (see page 21).

The Council, in its 14 September 2010 draft recommendation, proposed to recommend that the services provided by the central Queensland coal rail network (**CQCN**), comprising the Goonyella, Moura, Blackwater and Newlands rail systems operated by a subsidiary of QR National, not be declared. The Council was not satisfied that the services were not subject to an effective access regime and that access would not be contrary to the public interest. As a matter of discretion, the Council considered that the public interest would be best served by not declaring the services. On 13 October 2010, the applicant (Pacific National Pty Ltd) withdrew the applications for declaration of each of the four systems that make up the CQCN. The Council did not make a final recommendation.

Certification matters

Western Australian Rail Access Regime

The Premier of Western Australia applied to the Council for a recommendation that the Commonwealth Minister certify the Western Australian Rail Access Regime as an effective access regime.

The Western Australian Rail Access Regime covers the 5000 kilometres of rail track (standard and narrow gauge) and associated infrastructure in the south-west of Western Australia and includes the urban (predominantly passenger) network and the non-urban freight network. The regime also covers the Cloudbreak to Port Hedland railway owned and operated by Fortescue (through The Infrastructure Pty Ltd) in the Pilbara.

At the time this application was made, the TPA provided that the Council use its best endeavours to make a recommendation within six months, with provision for extension in exceptional circumstances. The Council did not make its final recommendation within six months for reasons outlined below.

The Council's preliminary view, in its draft recommendation, was that the regime satisfied the necessary requirements. The Council proposed that it be certified until 31 December 2015. In response to the draft recommendation Roy Hill Infrastructure Pty Ltd (**RHI**) raised a number of new issues. In particular, RHI drew attention to the increasing range of different approaches to access regulation of railways in Western Australia. The Council considered that interested parties should have an opportunity to respond to the matters raised by RHI so called for further submissions. While this was an extraordinary step, the Council considered it was prudent and necessary in this instance given the presentation of new information and factors for consideration. After notifying the Commonwealth Minister that it would not be able to make its recommendation within six months, the Council made its final recommendation on 13 December 2010. The Council reversed its draft recommendation, concluding that the Western Australian Rail Access Regime was not consistent with the second limb of the objects of Part IIIA, as it did not provide a framework and guiding principles to encourage a consistent approach to railway access regulation in Western Australia.

The Commonwealth Minister decided to certify the regime for a period of five years. The Minister approached the interpretation of the second limb of the objects clause differently from the Council. The Minister was of the view that the words 'in each industry' in the second limb of the objects clause refer to consistency across different industries, rather than within the Western Australian rail industry itself. The Council considers that both interpretations are open and that, depending on the circumstances of a particular application for certification, either interpretation (or both of them) may be relevant.

Queensland Rail Access Regime

The Council continued and concluded its consideration of the application for certification of the Queensland Rail Access Regime during 2010-11.[5] The regime comprises: the *Queensland Competition Authority Act 1997* (Qld) (**QCA Act**), *Queensland Competition Authority Regulation 2007* (Qld); provisions of the *Transport Infrastructure Act 1994* (Qld) which deal with the organisational governance arrangements for QR National Limited; the rail safety regime established in the *Transport (Rail Safety Act) 2010* (Qld); and QR Network's 2010 Access Undertaking approved by the Queensland Competition Authority (**QCA**) on 1 October 2010 (**UT3**).

The Queensland Rail Access Regime applies to the rail transport services provided by the CQCN and to the rail transport services provided by infrastructure for which Queensland Rail Limited (**QRL**) is the railway manager. These services are declared under the QCA Act for 10 years until 8 September 2020 (unless revoked earlier). The QCA is the independent regulatory body responsible for administering the regime.

During the Council's consideration of the certification application, the structure of the Queensland rail industry changed significantly. QR Limited, a Queensland Government-owned corporation, was the major provider of rail services in Queensland and the owner and operator (through its wholly-owned subsidiary QR Network Pty Ltd) of the CQCN. In the second half of 2010 the Queensland Government separated QR Limited's coal and freight business from its passenger service business and transferred the passenger service business to QRL. The coal and freight business was publicly listed as QR National Limited (**QR National**), a vertically integrated rail company that holds a long-term lease over the CQCN.

Many of the critical issues that arose in relation to the certification application were also relevant to Pacific National's concurrent declaration applications (particularly in relation to criterion (e) which precludes declaration where the services are subject to an effective access regime). Accordingly, the Council determined to consider the certification application in parallel with the declaration applications and, where appropriate, to use a common process. Rather than asking parties to make multiple submissions, the Council considered submissions made on one application on the basis that they were made in relation to the other applications.

After lodging the application for certification in June 2010, the Queensland Government introduced several amendments to the legislation comprising the Queensland Rail Access Regime. The amendments took effect on 8 September 2010 and, among other things, they addressed a number of provisions in the QCA Act that may have been barriers to

[5] The amendments made to Part IIIA by the TPA Amendment Act do not apply to the Council's consideration of the Queensland Rail Access Regime because the Queensland Government's application was made prior to those amendments taking effect on 14 July 2010. References in this section of this annual report to the CCA or Part IIIA in relation to the Queensland Rail Access Regime should be read as the legislation that was in effect on 17 June 2010 (the date of the application).

certification. These included: removing the ability to declare a service by regulation (which did not require a transparent assessment against the access criteria), leaving the Ministerial declaration process (which requires an assessment of the access criteria and a recommendation from the QCA) as the only pathway for the declaration of services; removing the 'candidate service' requirement for declarations;[6] removing the Queensland Government's ability to exclude services from coverage under the regime; removing the provisions relating to deemed Ministerial declaration decisions; and clarifying the access criteria to achieve a better alignment with the declaration criteria in Part IIIA of the CCA.

In response to concerns raised by access seekers, the Queensland Government also implemented amendments to the Queensland Rail Access Regime which: enhanced the ring fencing arrangements; introduced explicit prohibitions on unfair differentiation by service providers both during negotiations with access seekers and in the provision of access for users of declared services; strengthened the investigative powers of the QCA; and introduced new corporate governance requirements for QR National and its related bodies corporate. In addition, UT3 incorporated the amendments required by the QCA to strengthen its non-discrimination provisions and ring-fencing requirements, introduce annual audits of compliance, and impose additional reporting obligations.

In the context of the public listing of QR National, Pacific National submitted that the Council should adopt a broad interpretation of what constitutes an 'effective access regime'. Pacific National submitted that for the Queensland Rail Access Regime to be certified as effective it must prevent QR National from treating its downstream business differently from its rivals, and that in the context of the privatisation of QR National as a vertically integrated rail operator, the regime cannot be effective. The Queensland Government submitted that the issue of whether or not QR National is vertically integrated was not relevant to certification under the clause 6 principles and that the Queensland Rail Access Regime met the requirements for certification.

In its draft recommendation of 14 September 2010, the Council accepted that the amendments to the Queensland Rail Access Regime, together with UT3, had strengthened the regime's operation. While the structure of QR National was relevant to the context in which the Council made its recommendation, the Council concluded that the CCA did not allow for the broad approach to considering a certification application argued by Pacific National. The process of certification does not involve an assessment of whether an access regime is 'optimal'. Rather, the CCA requires the Council to consider only whether an access regime addresses the principles set out in clause 6 of the CPA and accords with the objects of Part IIIA of the CCA. On that basis the Council reached a preliminary view that the Queensland Rail Access Regime should be certified as effective.

[6] The 'candidate service' requirement limited declaration to services provided by public facilities and to privately owned facilities that the Ministers had declared to provide 'candidate services'. Now all services as defined in s 72 of the QCA Act, whether provided by public or private facilities, may be considered for declaration.

Following the release of the Council's draft recommendation on the certification application, Pacific National withdrew its declaration applications on 13 October 2010. Pacific National stated that it was satisfied with the strengthening of UT3 and with the legislative changes to the Queensland Rail Access Regime implemented by the Queensland Government.

The Council's final recommendation to the Commonwealth Minister was that the Queensland Rail Access Regime be certified for a period of 10 years. On 19 January 2011 the Commonwealth Minister published his decision to certify the Queensland Rail Access Regime as effective for 10 years, consistent with the Council's final recommendation.

South Australian Ports Access Regime

The Premier of South Australia applied to the Council for a recommendation that the Commonwealth Minister certify the South Australian Ports Access Regime as an effective access regime. The regime, established under the *Maritime Services (Access) Act 2000* (SA), covers services at the proclaimed ports of Port Adelaide, Port Giles, Wallaroo, Port Pirie, Port Lincoln and Thevenard.

The Council's final recommendation was that the regime be certified for a period of 10 years. The regime satisfied all of the requirements for certification.

The Commonwealth Minister on 9 May 2011 certified the regime for 10 years, consistent with the Council's recommendation.

Dalrymple Bay Coal Terminal Access Regime

The Premier of Queensland applied to the Council on 16 December 2010 for a recommendation that the Commonwealth Minister certify the access regime applying to the Dalrymple Bay Coal Terminal (**DBCT**) as an effective access regime.

The DBCT Access Regime is derived from the same core legislation as the Queensland Rail Access Regime (see above). Accordingly, the Council's assessment of the DBCT Access Regime drew significantly on its assessment of the Queensland Rail Access Regime. A significant difference between the two regimes is that DBCT Management Pty Ltd, the DBCT service provider, is not vertically integrated and does not compete with access seekers. The narrower scope for competition issues to arise in respect of the DBCT may explain why neither of the parties who made submissions on this matter considered that the DBCT Access Regime should not be certified. The Council agreed that the regime met the requirements for certification.

Although it did not argue against certification, Asciano Ltd submitted that the regime should include protection of users' commercial information that may be provided to QR National through QR Network as holder of the lease over the Goonyella rail network, and that certification should lapse if the service provider became vertically integrated in future. In

considering this matter the Council noted that the Queensland Rail Access Regime (applying to the Goonyella network) imposes adequate information protections and the DBCT Access Regime provides an appropriate level of comfort such that an integrated service provider would be prevented from treating its related businesses more favourably than those of its competitors.

On 11 July 2011, the Commonwealth Minister decided that the DBCT Access Regime is an effective access regime and certified it for 10 years, consistent with the Council's recommendation.

South Australian Rail Access Regime

The South Australian Rail Access Regime applies to services provided by the majority of intrastate railways in the state. The regime, set out in the *Railways (Operations and Access) Act 1997* (SA) (**ROA Act**), allows for access applications for above and below rail services provided by the railways covered by it. It provides a framework for access seekers to negotiate access arrangements with railway owners and operators, and dispute resolution mechanisms to address situations where terms of access are not agreed. The regime places a preference on commercially negotiated outcomes. Railway operators are obliged to negotiate in good faith with access seekers, and also to furnish information about access, both generally and in response to specific information requests. Disputes are first sought to be resolved by conciliation through the Essential Services Commission of South Australia (**ESCOSA**). Remaining disputes are resolved by arbitration.

Having considered the application and submissions from interested parties, the key issue identified in the Council's draft recommendation (16 March 2011) was that the regime did not provide for access rights to lapse after a defined period unless periodically reviewed and subsequently extended, a principle for effectiveness under the CPA. The Council considered that the regime otherwise addressed the clause 6 principles.

In its draft recommendation the Council proposed to certify the regime for a shortened period of five years. It considered this course would address the absence of a mechanism for periodic review of covered services as, if the regime was to continue to be certified after five years, it would have to be re-submitted for certification, providing a de facto review of access rights. The Council indicated that if the South Australian Government were to address the review issue before the Council finalised its recommendation, then it would likely recommend certification for 10 years.

In response to the draft recommendation, the South Australian Minister for Transport wrote to the Council stating that he would promote amendments to the ROA Act to insert a review mechanism along the lines of one contained in the South Australian ports access regime. This provides that the ESCOSA must review the access regime every five years, and the regime lapses unless this occurs. Subsequently the South Australian Government advised the Council that the Cabinet had resolved to pursue the amendments proposed by the Minister for Transport.

The Council accepted these measures as appropriate and decided to recommend that the regime be certified for 10 years. On 26 July 2011 the Commonwealth Minister published his decision to certify the regime for 10 years, consistent with the Council's recommendation.

National Gas Law matters

The Council received no new applications under the NGL in 2010-11. There were no outstanding matters for consideration or determination under the NGL in this period.

Horizon studies

Access to petroleum import terminal services

The price of petrol is a matter of considerable interest to most Australians and has been subject to varying levels of regulation and oversight over many years. The Council has undertaken research of publicly available material to gain a better understanding of the nature of the industry and to ascertain whether there are facilities in the petrol supply chain that appear to constitute 'bottlenecks' to which access or increased access may be necessary to enhance competition in a dependent petrol market.

Access to import infrastructure, including ports, berths, terminals, storage and pipelines, is important to fostering competition in downstream petroleum markets (ie wholesaling and retailing). However, the Council considers that, because of increasing demand for refined imports and the availability of Australian-grade products from overseas refineries, access to infrastructure has not been an insuperable barrier to the growth of independent imports and the ability of independent suppliers to compete with the four refiner-marketers (BP, Caltex, Mobil and Shell). The Council stresses that in coming to this view it has not had the benefit of submissions from interested parties. The Council has no predisposition either for or against declaration. Should an application for declaration be made, the Council will assess it on its merits under the Council's public consultation process, taking account of all submissions received.

ACCC and ACIL Tasman reports

In 2007, amid concerns about divergence between international benchmark prices and Australian retail petrol prices, the ACCC undertook an inquiry into the price of unleaded petrol, publishing its report in December that year. The ACCC was then directed to monitor petrol prices for a further three years, reporting annually until December 2010. In response to one recommendation in the ACCC's 2007 report, ACIL Tasman produced an audit report for the Commonwealth Department of Resources, Energy and Tourism (**DRET**) of petroleum import infrastructure. ACIL Tasman's report and the four ACCC reports provide a detailed perspective of the Australian petroleum industry over a period of four years. The Council has drawn heavily on these reports in its assessment of potential access issues.

The importance of import terminals

The Council has focused on petroleum terminal facilities providing wholesale supply services.

Viable independent importers require cost effective access to import infrastructure and, as imports are the marginal source of supply, viable independent importers are an important discipline on the broader market (see ACCC 2010, pp 65 and 117).

Fuel terminals were described by the ACCC as playing:

> an important role in the petrol supply chain by providing storage facilities and a hub for the distribution of fuel to downstream wholesale or retail customers. Their strategic importance means access to terminals is an essential aspect of a company's ability to supply its customer base.
>
> Most terminals are owned and operated by the refiner-marketers. Some key terminals are independently owned. As it is more difficult to establish an independent presence in the industry without access to a terminal, the availability of spare capacity at terminals can influence the extent to which independent wholesale and retail operators can effectively compete against the refiner-marketers (ACCC 2010, p 34).

Access to import terminal infrastructure

In its 2007 report, the ACCC said that competition in wholesale petrol markets in Australia was not fully effective due to the substantial impediments to independent imports including lack of adequate access to import terminal infrastructure. It said that import terminal capacity (in 2007) was 'unlikely to support a large-scale national petrol importing operation' and recommended a comprehensive audit of import terminal capacity (ACCC 2007, pp 199-200 and 214).

Subsequent reports suggest that the problem identified by the ACCC in 2007 has abated.

In its report for DRET (which arose from the ACCC's 2007 recommendation of a comprehensive audit), ACIL Tasman considered that:

> on the whole, the current operating environment and access arrangements for import terminals do not impose a material barrier or constraint to competition for importers of petroleum products. This conclusion is drawn on the basis of:
>
> - availability of petroleum products from overseas refineries that meet Australian fuel specifications
> - the existence of spare capacity that already either exists in most markets or will shortly be in place with committed investments
> - the availability of access to, or leasing of, import terminals (including those not owned by refiner marketers) on commercial terms

- terminal charging strategies are applied consistently to all terminal users (ACIL Tasman 2009, p 148, footnote omitted).

ACIL Tasman said that exceptions 'may apply from time to time where constraints or bottlenecks exist in maritime or terminal operations' (ACIL Tasman 2009, p 148). The Council considers that declaration under Part IIIA may not be the most appropriate means of addressing such short term or transient constraints should any arise. In any case, the ACCC's 2010 report would suggest that the exceptions identified by ACIL Tasman are unlikely to apply in the present climate. The ACCC found that independent wholesalers or retailers may be able to import petrol to some independently owned terminals that appear to have spare capacity (ACCC 2010, p 36). Further, the ACCC said that, although the refiner-marketers account for a significant share of imports, independent wholesalers' share of total imports 'has more than doubled to over 10 per cent in the past two years' and noted that significant obstacles, including access to import infrastructure, 'are unlikely to discourage imports if prospective margins are sufficiently strong' (ACCC 2010, pp 271-2). Most significantly for the purposes of this horizon study, the ACCC found that:

> [a]t present, the capacity to import by firms such as Gull, United and Neumann is credible enough to suggest that at the margin they can be an important source of competitive discipline in the market. These companies have demonstrated that they have access to sources of fuel, adequate import infrastructure and have a ready-made customer base (ACCC 2010, p 271).

Current conclusions

Access to import infrastructure is necessary to promote competition in downstream petroleum markets. However, in light of the findings of the ACCC and ACIL Tasman set out above, it is not clear that there is a need to consider further intervention in the petrol industry in the form of access regulation of import terminal infrastructure. With demand for imports of refined petroleum products likely to continue to grow, the Council does not expect to see a reversal in the expansion of independent importers' market share in the short to medium term.

The Council's view is highly dependent upon current market circumstances. Circumstances that might affect the Council's view include, for example, a major industry restructure, the raising of regulatory barriers to independent importers and wholesalers or a significant and long term disruption to the supply of Australian-grade petroleum products. In the absence of developments such as these, the Council does not intend to devote further particular attention to this sector.

Access to water and wastewater services

In recent years, unpredictable rainfall patterns across much of Australia and the pressures of population growth in capital cities have drawn attention to the need for governments and citizens to adopt new strategies for addressing how water is supplied, used and recycled. There are a number of innovative arrangements for providing water and wastewater

services that have the potential to address water shortages and to improve efficiencies. These include schemes to augment potable water supplies through water recycling (such as stormwater harvesting) and indirect-potable re-use, and treating sewage to supply customers for horticultural, recreational and industrial purposes. While there is only a small number of these types of schemes currently operating in Australia, their existence indicates that there is a demand for innovative water and wastewater services and that there are businesses potentially interesting in supplying such services if they are likely to be profitable.

New water and wastewater service providers who wish to compete with incumbent water businesses will usually require access to natural monopoly water infrastructure services. Generally speaking, the natural monopoly elements of the water supply chain are the water and sewerage pipeline transportation networks and some large storage facilities. The other elements of the supply chain, such as water procurement, sewage collection and treatment, and retail services, are potentially competitive and are unlikely to exhibit natural monopoly characteristics. The ability of new entrants to gain access to natural monopoly water infrastructure services is a likely precondition for effective competition in the potentially competitive segments of the water supply chain. However, as third party access to water infrastructure services is a relatively new issue, the level and nature of any demand for access that may be sought is presently uncertain.

Before considering the potential value of access under Part IIIA, there are several barriers to efficiency that will likely first require action if there are to be sufficient incentives for new water and wastewater service providers to enter the market. The Productivity Commission observed in its April 2011 report (PC 2011) that Australia's urban water sector is diverse with varying institutional, structural, governance and regulatory arrangements across jurisdictions and between urban and regional areas. There has been some reform to the structural arrangements of the sector in the last 20 years, with a move towards vertical separation of the supply chain in metropolitan areas, some aggregation of small utilities in regional areas, and the corporatisation of utilities. As noted by the Productivity Commission there is a strong need for further reform, with conflicting priorities and unclear roles and responsibilities of institutions contributing to inefficient allocation of water resources, inefficient investment, and undue reliance on water restrictions and conservation.

The Productivity Commission's draft conclusion is that efficiency gains are most likely to come initially from improving the performance of institutions regarding governance, regulation, and procurement of water supply and pricing, rather than by trying to create a competitive market as in the energy sector. To this end, the Productivity Commission has indicated support for universal priority reforms to promote efficiency gains in the water sector, including: clarifying the overarching policy objective; ensuring that procurement, pricing and regulatory frameworks are aligned with the overarching policy objective; implementing best practice arrangements for policymaking and regulatory bodies and for utilities; and introducing performance monitoring of utilities and monitoring progress on reform.

In addition to these universal priority reforms, the Productivity Commission is also contemplating several potential structural reforms for large metropolitan water systems and for smaller regional systems, to be considered on a case-by-case basis given the differences across and within jurisdictions. Structural reform may enhance competition if it involves vertical or horizontal separation of different functions in the supply chain to introduce contestability for services such as bulk water supply and wastewater treatment. Because third party access issues are more likely to arise when there are vertically integrated entities, access issues will be less significant if there is structural reform through the vertical and horizontal separation of various elements in the supply chain.

Until reforms of the nature being contemplated by the Productivity Commission are implemented, the Council expects that demand for third party access to water infrastructure services is likely to remain at the margin. In the longer term, the Council anticipates that access to water infrastructure services may be sought to enable competition in activities such as the supply of bulk water services (from different classes of water and from different sources) and the provision of wastewater treatment services, including the production of recycled water for mostly non-potable uses. The Council considers that Part IIIA has the potential to address some of the access issues that may arise in relation to water infrastructure services to enhance competition and contestability. Access via Part IIIA has been sought on two occasions in relation to water infrastructure services, with declaration occurring in one case (see Box 2-2 below). Based on the conclusions of the Tribunal in *Re Services Sydney Pty Ltd* [2005] ACompT 7 (***Re Services Sydney***), some water infrastructure services, such as bulk transmission and reticulation networks, are likely to meet the criteria for declaration.

Box 2-2 Application of Part IIIA to water infrastructure services

In 2004 the Council received an application from Services Sydney Pty Ltd (**Services Sydney**) for a recommendation to declare certain services provided by Sydney Water's sewerage reticulation network in the Sydney metropolitan area. Services Sydney intended to compete with Sydney Water as a provider of sewage collection services. The Council recommended to the decision-making Minister, the Premier of New South Wales, that the six sewage interconnection and transportation services provided by Sydney Water as part of Sydney Water's Bondi, Malabar and North Head reticulation networks be declared for 50 years. As the Premier did not publish a decision within 60 days of receiving the Council's recommendation, he was deemed to have decided not to declare the services. Services Sydney sought review of the Premier's deemed decision by the Tribunal and on 21 December 2005 the Tribunal handed down its decision in *Re Services Sydney* setting aside the Premier's deemed decision and declaring the services for 50 years. The declaration has since been revoked as a consequence of the certification of the state's water industry access regime (discussed below).

Also in 2004, Lakes R Us Pty Ltd applied to the Council for a recommendation to declare the water storage and transportation services provided by Snowy Hydro Ltd and the State Water Corporation. In January 2006 the acting Premier of New South Wales, on the Council's recommendation, decided that the services should not be declared on the basis that he was not satisfied that declaration would promote competition in a dependent market (criterion (a)) and was not satisfied that declaration would not be contrary to the public interest (criterion (f)). Lakes R Us applied to the Tribunal for a review of the Premier's decision but subsequently withdrew its application.

In the Council's view, section 44G(2)(c) of the CCA, which requires that a facility be of national significance, may be an obstacle to declaration in some situations. While the threshold for a facility to be of national significance will allow for declaration of urban water infrastructure services in larger metropolitan centres (subject to the other declaration criteria being met) it may preclude, or create doubt as to, the application of Part IIIA in smaller centres or to parts of larger facilities. In such cases, a state-based access regime for water infrastructure services (if one exists in the relevant jurisdiction) may be necessary to provide an alternative pathway for access.

At present, NSW is the only state with an access regime for water industry infrastructure. Following the declaration made by the Tribunal in *Re Services Sydney* the NSW Government developed the *Water Industry Competition Act 2006* (NSW) and associated regulation (**WICA Access Regime**). The WICA Access Regime applies to the areas of operation of Sydney Water and Hunter Water although other areas may be added by the Premier. The services currently declared are the sewerage services provided through Sydney Water's Bondi, Malabar and North Head reticulation networks. These services are the same services that were declared in *Re Services Sydney*. In August 2009 the Commonwealth Minister, acting on the Council's recommendation, certified the WICA Access Regime as an effective access regime for 10 years. Consequently, the services covered by the WICA Access Regime cannot be declared under Part IIIA. Following the certification of the WICA Access Regime, the NSW Premier, acting on the Council's recommendation, revoked the declaration made in *Re Services Sydney* in October 2009.

In Queensland there is scope for water infrastructure services to be declared under Part 5 of the QCA Act, although no water infrastructure services have been declared to date.

In Victoria, the Essential Services Commission (**ESC**) at the request of the Government conducted an inquiry into developing a state-based access regime for water and sewerage infrastructure services. The ESC supported the development of an access regime covering the entire state and applying to natural monopoly water infrastructure facilities (ESC 2009). The ESC considered that a Victorian water access regime should apply in particular to urban and rural water and sewage transport services provided by main (trunk) and reticulation pipes including services (such as storage and metering) that are subsidiary but inseparable to providing transport services, and to services provided by large storages such as dams and reservoirs. The ESC saw value in identifying specific infrastructure services that meet the declaration criteria and declaring them upon the commencement of a regime, to improve certainty for access seekers and service providers and to minimise the time and costs associated with obtaining access.

These developments suggest that demand for third party access to water infrastructure services is still in its infancy. Indeed, the development of state-based water access regimes (with the exception of the WICA Access Regime) remains at an embryonic stage. While the potential exists for third parties to seek access to urban water infrastructure services under Part IIIA of the CCA, the Council is of the view that demand for access is unlikely to arise until there is further structural reform of the water sector (in line with the Productivity

Commission's recommendations) introducing greater contestability into elements of the supply chain.

Mindful of the matters currently under consideration by the Productivity Commission, the Council will continue to examine the scope for further contribution by Part IIIA in the water sector.

Access to the services of financial and equity market clearing and settlement systems

The year 2010-11 saw a number of key events in an ongoing process leading towards competition in Australia for exchange market services for trading in listed securities. On 31 March 2010 the Government announced its support for the introduction of competition between exchange markets, and in principle support for the application for an Australian market licence under the *Corporations Act* by Chi-X Australia Pty Ltd (**Chi-X**). Previously ASX Ltd (**ASX**) was the sole holder of a market licence and the sole supplier of equity listing, trading, clearing and settlement services. Chi-X was granted a market licence on 5 May 2011, and has announced plans to begin providing a trading service in October 2011.

The emergence of new alternative market operators that compete with incumbent stock exchanges is an international trend. However in order to compete effectively new operators appear to need access to settlement services and possibly also clearing services. Direct users of real-time exchange market services, such as brokers and other financial institutions, may also require access to settlement services, and possibly also clearing services.

In Australia, ASX offers clearing and settlement services to users of its exchange market services through its subsidiaries ASX Clear and ASX Settlement. ASX currently integrates these businesses vertically with its exchange market service.

Following Government support for the introduction of competition in the exchange market sector and the granting of an Australian market licence to Chi-X, ASX began selling a 'trade acceptance service', under which ASX 'accepts' trades executed on non-ASX markets, and uses CHESS to clear the trades through ASX Clear and settle them through ASX Settlement. Chi-X plans to utilise the ASX trade acceptance service to clear and settle trades executed on its market.

The Council is aware of concerns that access to ASX's clearing and/or settlement services may be necessary for Chi-X (and potentially others) to compete effectively with ASX in the market exchange sector. The Council is aware of concerns raised by new entrants seeking to obtain market data from ASX.

In November 2010 the Australian Securities and Investments Commission (**ASIC**) conducted public consultation regarding the evolution of the Australian equity market as part of the process of developing new market integrity rules that addressed the introduction of competing exchange markets (ASIC 2010). In a submission to ASIC, the ACCC stated it had

concerns over whether the introduction of competition would be successful in the absence of access regulation, and noted the presence of Part IIIA of the CCA as a potential remedy (ACCC 2011). The ACCC submission stated:

> Over the past 12 months the ACCC has been monitoring negotiations between ASX and Chi-X for access to ASX's clearing and settlement services.
> ...
> The ACCC is also aware of concerns about difficulties faced by new entrants accessing ASX's market data
> ...
> Even in the event that an access seeker decided to accept an unsatisfactory offer of access from ASX, simply so as to have an agreement, the ACCC considers it is likely that competition concerns would remain regarding those terms of access and the impact they have on the achievement of the anticipated benefits of competition between financial market operators.
> ...
> The ACCC is of the view that sufficient concerns have been raised in the lead-up to the introduction of competition to ASX's trade execution platform to warrant careful consideration of the need for access regulation to those of ASX;s monopoly services that are not intended to be opened up to competition. This would require close examination and consideration of which services are likely to be 'essential' for ... competition. For example, it seems clear that access to settlement services is essential for third parties to compete against ASX (ACCC 2011, p 4).

In the absence of an application for declaration it is inappropriate for the Council to assess whether any of ASX's clearing, settlement or data provision services meet the criteria for declaration. However it is clear that such a declaration application would present a number of novel legal issues.

A threshold issue would be whether such services constitute a 'service provided by means of a facility' within the meaning of Part IIIA, and therefore whether such services fall within the scope of the National Access Regime. Previous comments by the Tribunal may cast doubt upon whether a computer network can constitute a 'facility' under Part IIIA, or whether a 'facility' must consist entirely of physical assets.

In *Re Application for Review of the Decision by the Commonwealth Treasurer; Ex parte Australian Union of Students* (1997) 147 ALR 458; [1997] ACompT 1 (***Re Australian Union of Students***), the applicant sought declaration of an 'Austudy Payroll Deduction Service', under which money would be deducted from the Austudy payments to students wishing to be a part of a proposed 'Australian Union of Students' by the then Department of Education, Employment, Training and Youth Affairs (**DEETYA**). The applicant specified DEETYA's computer system as the relevant 'facility' under Part IIIA. The Tribunal, in the first Part IIIA case brought before it, said:

> there is real doubt whether the applicant's alleged service is a 'service' within the meaning of the Act. Whether such a computer network can constitute a

> 'facility' for the purposes of Part IIIA is also open to question. However, the Tribunal does not find it necessary to decide these questions (*Re Australian Union of Students* at ALR, p 466).

In *Re Sydney International Airport* (2000) 56 FLR 10; [2000] ACompT 1 the Tribunal stated that 'a facility for the purposes of the Act is a physical asset (or set of assets) essential for service provision and which also exhibits the features of a natural monopoly' (*Re Sydney International Airport*, [82]). These statements by the Tribunal may support an argument that clearing, settlement or market data provision services are not 'services' under Part IIIA of the CCA.

However, the statement that a computer network *may* not constitute a 'facility' in *Re Australian Union of Students* was speculative in nature and was not a factor in the Tribunal's determination of this application. Similarly, the above-quoted statement in *Re Sydney International Airport* that a Part IIIA facility is a 'physical asset (or set of assets)' was not made in the course of deciding that a non-physical asset, otherwise submitted to constitute a 'facility', was in fact not so. Rather, the issue being considered by the Tribunal at that part of its decision was the distinction between the market for the service and the market in which competition was said to be promoted.

The Council also notes that the definition of 'service' in s 44B of the CCA states that it 'includes ... (c) a communications service or similar service'. It is difficult to see how a communications service would not be provided, at least in part, by means of computer facilities or in part by intangible facilities.

It appears to the Council that the question of whether clearing or settlement services could constitute 'service[s] provided by means of a facility' within the meaning of Part IIIA is not settled as a matter of law. Where the matter is open to question, the Council considers the appropriate approach would be to consider which construction would best promote the objects of Part IIIA set out in s 44AA of the CCA, and the objects of the CCA set out in s 2. This consideration is appropriately considered in the context of a particular application. Further, the Council is reluctant to reject applications on the basis of technical jurisdictional arguments, pre-empting full consideration and the opportunity for public comment, where there is a prima facie case that declaration may address the kind of competition issue that Part IIIA was designed to address.

A further legal issue is the appropriate interaction between the CCA and other legislation that may be relevant to access to clearing and settlement services, such as the *Corporations Act 2001*, the *Reserve Bank Act 1959*, and the *Payment Systems (Regulation) Act 1998*. ASIC, Treasury and the Reserve Bank each have a role in regulating clearing and settlement services, and a question that may need to be addressed by the Council in considering any application for declaration for clearing or settlement services is whether, even if the other legal requirements for declaration are met, it is appropriate for the ACCC to regulate access, instead of or in addition to other bodies such as ASIC or the Reserve Bank of Australia. The Council could only consider this in the context of an application. There appears to be,

however, a reasonable argument that ASIC's focus in creating market rules is to maintain the integrity of the market, while the Reserve Bank of Australia's focus in regulating payment systems (and access to them) seems to be to ensure the stability of the payments sector and the financial system generally. Problems relating to access to clearing or settlement services are arguably closer to the species of competition problem that Part IIIA of the CCA is designed to address, and that the ACCC is experienced in regulating.

Clearing and particularly settlement services are areas that may give rise to access issues of the type addressed by Part IIIA, although to date most access requirements appear to have been resolved by way of commercial negotiations. In the Council's view commercial negotiations are generally a preferable means of determining access terms and conditions (including prices). Even where such negotiations are hard fought such a process is likely to produce outcomes that better reflect commercial requirements of the various parties than a regulated impost. Nevertheless the Council will continue to observe developments in this sector and work with other regulatory and similar bodies as appropriate.

Access to the services of carbon geo-sequestration facilities

Geosequestration or carbon capture and storage (**CCS**) is the process whereby carbon dioxide (or another greenhouse gas) is captured at production sources (such as power stations), transported (typically by pipeline) and injected into deep underground or undersea geological formations (such as saline aquifers, non-mineable coal seams and depleted oil and gas reserves) for long term storage.

CCS is of significant interest given climate change. The development, deployment and expansion of CCS could play a crucial and invaluable role in combating climate change. It is one of the options the Australian Government and states and territories are exploring in the bid to reduce local and international greenhouse gas emissions. Technology, site suitability and project viability aside, the development and commercialisation of CCS is affected by government policy, such as the current proposed carbon tax and, more generally, uncertainty surrounding the regulatory environment for CCS, including the potential for third party access.

While it was agreed at the Council of Australian Governments' meeting on 2 October 2008 to implement nationally consistent regulation of CCS, to date this has not occurred. In November 2008, the Australian Government regulated CCS activities in Commonwealth offshore waters with the passage of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cth). CCS legislation also exists in Victoria, Queensland and South Australia.[7] New South Wales has implemented a bill to regulate CCS. Western Australia already has project specific legislation[8] in place and has stated that it intends to introduce legislation to regulate CCS generally.

[7] *Greenhouse Gas Geological Sequestration Act 2008* (Vic), *Offshore Petroleum & Greenhouse Gas Storage Act* 2010 (Vic), *Petroleum Act 2000* (SA) and *Greenhouse Gas Storage Act 2009* (Qld).

[8] *Barrow Island Act 2003* (WA).

Third party access in respect of CCS is uncertain and remains open to specific regulation or the potential application of the National Access Regime in Part IIIA of the CCA. The Council considers it likely that third party access issues could arise in respect of CCS and the potential exists for access to be sought not only to the infrastructure (for example, pipelines, compressors and injection technology), but also to the storage reservoirs themselves. The Council notes the Australian Government's indication that the National Access Regime in Part IIIA may be used for third party access, but its application to CCS infrastructure will depend on the particular circumstances and characteristics of a specific project. Accordingly, in the Commonwealth sphere, the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* provides that if Part IIIA does not apply to injection and storage infrastructure, then the Australian Government may create a specialised third party access regime by regulation.[9] Victoria has adopted a similar approach in legislating for specific access regime(s) via regulation, if necessary.

Until clear proprietary rights in respect of CCS (and the various stages a CCS project encompasses) are established and a regulatory regime (whether national or otherwise) is cemented, the issue of third party access will continue to be live and uncertain. Whether a CCS project meets the criteria for declaration in Part IIIA of the CCA will need to be considered at the time an application is made to the Council.

The Council will continue to monitor and examine developments in CCS, including its regulation, to assess the potential contribution and application of the National Access Regime to CCS.

Assistance to the Council's stakeholders

Guides to declaration and certification

The Council publishes guides to declaration and certification on its website (www.ncc.gov.au) and provides a printed copy of the guides upon request.

The Council is in the process of updating its guides to reflect recent legislative changes and other developments, in particular those resulting from the TPA Amendment Act and the decisions of the Tribunal and the Full Court regarding the declaration of various Pilbara iron ore railways. The Council has noted on its website that until the guides have been updated there is a risk that some parts of the guides may not reflect these recent amendments or represent the Council's current approach to particular issues.

Guide to the National Gas Law

The Council publishes a guide to its roles and functions under the NGL in four parts:

[9] Explanatory memorandum, Offshore Petroleum and Greenhouse Gas Storage Bill 2008 (Cth), at [235], p 41.

- Part A – Overview
- Part B – Coverage (including pipeline classification)
- Part C – Light regulation
- Part D – Greenfields pipeline incentives

In May 2011 the Council updated Part A of the guide to the NGL by making minor modifications to reflect the renaming of the *Trade Practices Act 1974* (Cth) to the *Competition and Consumer Act 2010* (Cth). The Council is in the process of reviewing the other parts of the guide to the NGL, which were last updated in February 2010.

Guidance on making applications and submissions

The Council publishes a template for parties to use when making an application for the declaration of a service and a guide for making an application for certification of a state or territory access regime. The Council also publishes a guide to making a submission on a 15 year no-coverage application and a guide to making a submission on an application for light regulation of covered pipelines.

Accessible newsletter

The Council continues to publish its bi-monthly newsletter *Accessible*. It published six editions of the newsletter during 2010-11, in August 2010, October 2010, December 2010, February 2011, April 2011 and June 2011. The newsletter is emailed to interested parties who subscribe and is available on the Council's website.

Websites

The Council's website contains information on the Council's responsibilities and roles concerning third party access to infrastructure under both the CCA 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 recorded use data for the period May to June 2011. This showed some 11 300 visits to the website during this period.

The Council has a second website incorporating 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 under the program and the outcomes of the Council's regular assessments of progress.[10] During 2010-11 there were some 52 600 visits to the NCP website.

Reporting under section 29O(2) of the Competition and Consumer Act 2010

The Council's performance in meeting legislative timeframes

The times taken for the Council to make its recommendations are set out in Table 2-1 on pages 14-16.

With one exception the Council provided its recommendations to the Minister within the required timeframes. In the case of the Western Australian Rail Access Regime certification, the Council extended the time for consideration beyond the best endeavours timeframe that then applied to allow parties to make submissions on a new issue that only arose after publication of the draft recommendation.

Court or Tribunal decisions interpreting the definition of 'service' or the declaration criteria

There were no decisions addressing the definition of 'service' in Part IIIA during the year.

As discussed in the President's review and elsewhere in this report, during the year the Full Court issued a decision that substantially altered the interpretation of criterion (b) of the declaration criteria that had until then been adopted by the Tribunal and the Council.

That decision is the subject of applications for special leave to appeal to the High Court.

Legislative and case law developments relating to the Council's work

There were a number of legislative developments during 2010-11 relevant to the Councils' work.

On 1 January 2011, the *Trade Practices Act 1974* (Cth) was renamed the *Competition and Consumer Act 2010* (Cth).

The TPA Amendment Act, which was discussed in last year's annual report, took effect on 14 July 2010. The TPA Amendment Act removed declaration criterion (d) in ss 44G(2)(d) and 44H(4)(d), 'that access to the service can be provided without undue risk to human health or safety', and amended declaration criterion (e) in ss 44G(2)(e) and 44H(4)(e) by clarifying that the test for an 'effective access regime' is that the regime be certified. The TPA Amendment Act also introduced, among other changes, binding time limits of 180 days for

[10] The Council delivered its final NCP report in 2005 (see NCC 2005).

decision makers, reforms to the Council's administrative processes, and provision for binding 'no coverage' rulings for new infrastructure.

Impediments to the operation of Part IIIA

In the President's review the Council identified the role of the Tribunal and efforts to bypass the declaration process as areas of concern in relation to the operation of Part IIIA. The Council also noted its concern at the approach to the construction of criterion (b) resulting from the Full Court's *Pilbara Infrastructure v Tribunal* decision.

In addition to these issues, the timeliness of decisions on applications for declaration remains a concern for the Council. Unless applications are decided in commercially realistic timeframes, the operation of Part IIIA is significantly impeded.

At this stage the Council is confident that it will meet the requirement to make its recommendation within the 180 day statutory time limit and that it will require extension to this time limit only in extraordinary circumstances.

The Tribunal has yet to undertake a review of a declaration decision since the new time limit and provisions governing the introduction of new evidence came into force.

Evidence of benefits from the Australian Competition and Consumer Commission arbitration determinations

The ACCC was not required to undertake any access arbitrations in respect of services declared under Part IIIA during the year.

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

The potential for access regulation to adversely impact infrastructure investment was top-of-mind for the Hilmer Committee. Similarly, in considering applications for declaration the Council has been concerned to apply the declaration criteria so as to avoid overreach and in a consistent manner to reduce any effects that uncertainty might otherwise have on investment.

The Council is not aware of any new evidence that bears on the issue of the effect of access regulation on infrastructure investment. However, the Council accepts that such analysis is difficult without obvious control groups or counterfactuals for comparison and in a time where the demand for many infrastructure services is expanding rapidly.

The objects of the National Access Regime set efficient investment as a goal. Clearly deterring efficient infrastructure investment is to be avoided. So however is wasteful and unnecessary investment in infrastructure. Where a lack of access requires unnecessary duplication of facilities, finite resources are wasted. Further in a time of heightened demand for engineering, construction and similar services, unnecessary duplication draws these scarce resources away from efficient uses and drives up costs. Unnecessary investment also

increases the overall costs base in an industry. While this may be of limited concern in the short term, in the longer term, and especially when end-product demand levels out, unnecessary investment will increase costs and reduce competitiveness.

Where infrastructure services are supplied in a competitive market environment, it is reasonable to assume that the level and timing of further infrastructure investment will reflect the combination of various market actors' assessment of future demand and supply and give rise to efficient outcomes. At the very least, where there are effective competition drivers there is strong reason to doubt that a regulated outcome will yield more efficient results than a market outcome. Where effective competition exists commercial decisions are likely to give rise to reasonably efficient outcomes.

However, where infrastructure services are provided in an unregulated monopoly environment, market solutions cannot be relied upon to produce efficient infrastructure investment. In such situations the National Access Regime operates to promote efficient infrastructure investment in two ways. Most directly it allows for arbitration of access disputes in relation to declared services. The regime also encourages commercial negotiations over access terms.

The National Access Regime does not prevent parties making a commercial decision to invest in infrastructure, even where a service is declared. Where access to existing facilities is available on reasonable (and if necessary regulated) terms it is much more likely that such investment will represent an efficient use of resources than when such investments occur because access is otherwise foreclosed and investors have no option but to bypass a monopoly facility. Where access is not otherwise available on a fair and reasonable basis there is no basis to presume that planned or even actual infrastructure investment is efficient.

Implications for the future operation of Part IIIA

As discussed earlier in this report, the decision of the Full Court in *Pilbara Infrastructure v Tribunal* has significant implications for the operation of Part IIIA. The Council is required to apply the Full Court's approach to criterion (b).

As noted earlier, Fortescue and the Council have sought special leave to appeal the Full Court's decisions to the High Court.

Table 2-2 State and territory infrastructure access regimes and status at 30 June 2011

Jurisdiction	Scope of access regulation	Status of access regime at 30 June 2011
New South Wales	Gas pipelines (National Gas (New South Wales) Act 2008)	Not certified: no application for certification
	Electricity networks (National Electricity (New South Wales) Act 1997)	Not certified: no application for certification
	Water and wastewater infrastructure (Water Industry Competition Act 2006)	Certified on 13 August 2009
Victoria	Gas pipelines (National Gas (Victoria) Act 2008)	Not certified: no application for certification
	Electricity networks (National Electricity (Victoria) Act 2005)	Not certified: no application for certification
	Railways (Rail Corporations Act 1990)	Not certified: no application for certification
	Grain handling and storage (Grain Handling and Storage Act 1995)	Minister determined that the grain handling and storage facilities at the Port of Melbourne, the Port of Geelong and the Port of Portland ceased to be significant infrastructure facilities on 1 October 2009. Regime to be repealed.
	Shipping channels (Port Management Act 1995)	Not certified: no application for certification. On 1 July 2010 the Port Services Act was re-named the Port Management Act (Transport Legislation Amendment (Ports Integration) Act 2010). Facilities are not declared so regime is inoperative.
Queensland	Gas pipelines (Gas Pipelines Access Act 1998 /Queensland Competition Authority Act 1997)	Not certified: no application for certification
	Electricity networks (Electricity-National Scheme (Queensland) Act 1997)	Not certified: no application for certification
	Intrastate rail (Queensland Competition Authority Act 1997)	Certified on 19 January 2011
	Dalrymple Bay Coal Terminal (Queensland Competition Authority Act 1997)	Certified on 11 July 2011
South Australia	Gas pipelines (National Gas (South Australia) Act 2008)	Not certified: no application for certification
	Electricity networks (National Electricity (South Australia) Act 1996)	Not certified: no application for certification
	Railways (Railways (Operations and Access) Act 1997)	Certified on 26 July 2011
	Ports (Maritime Services (Access) Act 2000)	Certified on 9 May 2011

Table 2-2 continued

Jurisdiction	Scope of access regulation	Status of access regime at 30 June 2010
Western Australia	Gas pipelines (National Gas Access (WA) Act 2009	Not certified: no application for certification
	Electricity networks (Electricity Industry Act 2004)	Not certified: no application for certification
	Railways (Railways (Access) Act 1998)	Certified on 11 February 2011
Tasmania	Gas pipelines (National Gas (Tasmania) Act 2008)	Not certified: no application for certification
	Electricity networks (Electricity National Scheme (Tasmania) Act 1999)	Not certified: no application for certification
Northern Territory	Gas pipelines (National Gas (Northern Territory) Act 2008)	Not certified: no application for certification
	Electricity networks (Electricity Networks (Third party Access) Act 2003)	Not certified: no application for certification
ACT	Gas pipelines (National Gas (ACT) Act 2008)	Not certified: no application for certification
	Electricity networks (Electricity (National Scheme) Act 1997)	Not certified: no application for certification

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.

Summary of Council performance in 2010-11 against key performance indicators

The Council's performance in 2010-11 in meeting its key performance indicators (set out in the Treasury Portfolio Budget Statements) is summarised in Table 2-3 below.

Table 2-3 Summary of National Competition Council output performance indicators, targets and performance 2010-11

Key performance indicator	2010-11 target	Outcome
Recommendations on applications for the declaration of services provided by monopoly facilities made within statutory time limits (consideration period of 180 days) and meet advice requirements of Ministers.	Recommendations on applications made on or after 14 July 2010 are made within 180 days. (Prior to this the Council was required to use its best endeavours to make recommendations on applications within four months.) Recommendations meet the advice requirements of decision making Ministers.	At 1 July 2010 there were two declaration applications before the Council, both of which were finalised in 2010-11. There were no new declaration applications during 2010-11. One application was withdrawn by the applicant and the Council did not proceed to a final recommendation. The Council considered the other application within the required timeframe. In the case of this application the Minister was deemed to have declined to declare the service on the expiry of the 60 day decision period. The Council had recommended the application be declined.
Recommendations on applications for the certification of state and territory access regimes made within statutory time limits (consideration period of 180 days) and meet advice requirements of Ministers.	Recommendations on applications made on or after 14 July 2010 are made within 180 days. (Prior to this the Council was required to use its best endeavours to make recommendations on applications within six months.) Recommendations meet the advice requirements of decision making Ministers.	At 1 July 2010 there were two certification matters before the Council. The Council received three new applications for certification in 2010-11. With the exception of one matter, the Council considered each application within the required timeframe. In the case of WA Rail Access Regime, novel and relevant issues were presented to the Council only after publication of its draft recommendation. A supplementary round of submissions was required late in the consideration period to ensure that these new issues could be properly considered.

Table 2-3 continued

Key performance indicator	2010-11 target	Outcome
		In all but one matter the Minister agreed with the Council's recommendations. The Council recommended that the WA Rail Access Regime should not be certified. The Parliamentary Secretary to the Treasurer decided to certify the WA Rail Access Regime as an effective access regime for a period of five years.
Recommendations and decisions under the NGL are made within specified time limits and recommendations under the NGL meet the advice requirements of Ministers.	Recommendations and decisions are made within statutory time limits. Recommendations meet the advice requirements of decision making Ministers.	At 1 July 2010 there were no applications under the NGL before the Council. The Council received no new applications under the NGL in 2010-11.
Council website provides accessible information on all access regulation matters for which the NCC is responsible.	Council website holds all documents relevant to the Council's functions.	Guides to declaration and certification and all Council functions under the NGL maintained on the Council's website. Guidance on making applications and submissions maintained on the Council's website. Electronic newsletter 'Accessible' providing information on the Council's activities published every two months, forwarded to parties who have indicated interest and published on the Council's website.
Up to date and informative guidelines on all of the Council's areas of responsibility maintained on the Council's website.	Guides to all aspects of the National Access Regime and the Council's responsibilities under the NGL are available. Guides are updated within 30 days of relevant decisions or developments in case law.	Guides to declaration and certification and all Council functions under the NGL are available on the Council's website. In some cases the updating of guides to reflect case law developments has been deferred where relevant matters have been appealed or further appealed. In these cases the published guide is annotated to reflect that the information it contains is subject to further development and that further legal proceedings are in train.

Table 2-3 continued

Key performance indicator	2010-11 target	Outcome
Case law developments, legislative amendments and developments in the Council's processes or policies are reflected in the Council's information resources within 30 days.	Case law developments, legislative amendments and developments in Council processes or policies are reflected in Council information resources within 30 days.	On 4 May 2011 the Full Court reinterpreted a key criterion for declaration under the CCA, with implications for most of the Council's functions under the CCA and the NGL. The Council sought leave to appeal the Full Court decision. Given the broad effect of the decision, the extent of the change from the pre-existing law, and the application for leave, updating the Council's guides took longer than 30 days. As an interim measure guides were annotated to warn that they do not fully reflect the Full Court decision.
The Council's annual report to the Parliament includes a comprehensive report that meets the requirements of s29O(2) and is provided within 60 days of the end of the financial year.	The Council annual report provides comprehensive information on the National Access Regime and NGL, addresses all matters required under section 29O(2) of the CCA and is provided within the required timeframe.	The Council will provide its 2010-11 annual report to the Treasurer by 31 August 2011. The Council's annual report will include a report on the National Access Regime as required by the CCA.

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 *Competition and Consumer Act 2010* (**CCA**).

The Council's role is to carry out research into and provide 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 CCA (declaration and certification) and recommendations and decisions under the National Gas Law (**NGL**).[11]

The Council's Strategic Plan for 2010–2015, which is available on the Council's website, was published in October 2010.

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 program

The Council has a single outcome with one contributing program. The Council's outcome is competition in markets that are dependent on access to nationally significant monopoly infrastructure, through recommendations and decisions promoting the efficient operation of, use of and investment in infrastructure.

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

The Council's program objective is to provide advice to governments on the design and coverage of infrastructure access regimes and to make decisions on the form of regulation of gas pipelines. The Council 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, all available on the Council's website.

The indicators for assessing the Council's performance along with the targets and summary information on the Council's work in 2010-11 against those targets are set out in chapter 2 of this annual report (see Table 2.3). Chapter 2 also contains the Council's report to the Australian Parliament on the operation of the National Access Regime, which is required under section 29O(2) of the CCA.

Summary of financial performance and resources used

Funded by government appropriation totalling $2.772 million in 2010-11, the Council recorded an operating surplus of $327 540. The Council's principal areas of expenditure in 2010-11 were employee costs (57 per cent of total expenditure) and legal expenditure (14 per cent of total expenditure).

By comparison, in 2009-10, the Council recorded an operating deficit of almost $50 000. In that year the Council incurred significant legal expenses associated with its participation in reviews by the Australian Competition Tribunal (**Tribunal**) of the Treasurer's decisions on four Pilbara railway declaration applications.

The Council's net assets as at 30 June 2011 were $4.33 million (up from $3.96 million in 2010).

Table 3-1 summarises the financial resources used by the Council in 2010-11[12] while Table 3-2 provides a summary of the resources used by the Council in performing its outcome in 2010-11 showing the variation against budget. The variation was approximately 12 per cent.

As shown in Table 3.2, at 30 June 2011 the Council's staffing level (including secretariat staff and councillors) was 12.3 full time equivalent persons. The Council's staffing level was unchanged from the previous financial year.

[12] See also the audited Financial Statements for 2010-11.

Table 3-1 National Competition Council resourcing 2010-11

	Actual available appropriations ($'000)	Payments made ($'000)	Balance remaining ($'000)
Agency appropriations			
Prior year appropriation	4178	-	4178
Appropriations reduced	-	-	-
Actual current year appropriation	2812	2341	471
Other agency revenue	-	-	-
Total appropriation available	6950	2341	4649

Source: Portfolio Budget Statements 2010-11 and Financial Statements 2010-11.

Table 3-2 Resourcing for the National Competition Council program, 2010-11

	Budget 2010-11 $'000	Actual expenses 2010-11 $'000	Variation $'000
Program 1.1—National Competition Council			
Departmental outputs funded by appropriations	2812	2474	338
Average staffing level	12	12.3	

Source: Portfolio Budget Statements 2010-11 and Financial Statements 2010-11.

Office location

On 14 April 2011 the Council relocated to new premises at 200 Queen Street. The Council is now located in secure premises in a part of a floor in a tenancy occupied by the Australian Government Solicitor. The new location provides more suitable office accommodation for the Council. The relocation occurred at the time of expiry of the Council's previous lease.

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 is 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.

Parties making applications under the NGL must pay a fee for applications regarding the access regulation (coverage) of natural gas pipelines and decisions on the classification of pipelines. The fee is $7 500 per access application and $2 000 per classification application.

The Council is responsible for its activities, consistent with the requirements of the CCA. Decisions during 2010-11 were made at Council meetings (see Table 3-3) with day to day management 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 supported by a majority of state and territory governments. Part IIA of the CCA specifies the processes for appointing councillors, conducting Council meetings and disclosing interests by councillors. The Council is supported by a small secretariat located in Melbourne. At 30 June 2011 the secretariat comprised 9 staff (8.3 full time equivalents).

The President and councillors

At 30 June 2011, the Council comprised three councillors, including a President. The councillors were David Crawford (President) (first appointed December 1998), Doug McTaggart (first appointed December 2000), and Virginia Hickey (first appointed December 2003) (see Box 3-1). The councillors, including the President, had been reappointed for a three year term from 18 December 2009.

Following his appointment as chair of the ACCC, Rod Sims, who was a councillor during 2010-11, resigned with effect 30 June 2011. Mr Sims was first appointed to the Council in December 2003. Mr Sims made a significant contribution to the work of the Council over several years, and the Council wishes him well in his new role.

Councillors are drawn from across Australia and different industry and community sectors to provide a range of skills and experience. They 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 oversee the Council's governance arrangements, including financial supervision.

Box 3-1 Councillor profiles

David Crawford - President

David Crawford was reappointed as the President of the National Competition Council for a period of three years in December 2009, having been President since December 2006 and 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 and HRZ Wheats Pty Ltd.

Mr Crawford is a non-Executive director of Clough Limited, Canola Breeders Western Australia 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. Mr Crawford was previously the corporate affairs director of Wesfarmers Limited, managing director of Western Collieries Ltd, chief operating officer of Ranger Minerals NL, managing director of Abosso Goldfields Ltd and Executive Chairman of Export Grains Centre Ltd. 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, a management committee member of both educational and service organisations and director/chairman of a number of companies across various 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.

Doug McTaggart

Doug McTaggart was appointed as a councillor in December 2000. He was reappointed in December 2003, December 2006 and again in December 2009 for a further three year term.

Dr McTaggart lives in Brisbane, Queensland. Dr McTaggart is the Chief Executive of the Queensland Investment Corporation. 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

Rod Sims was appointed as a councillor in December 2003. He was reappointed in December 2006 and again in December 2009 for a further three year term. Mr Sims is also a director of Port Jackson Partners Limited, the chair of InfraCo Asia based in Singapore, Chairman of the NSW Independent Pricing and Regulatory Tribunal, and a director of Ingeus Limited.

From 1996 to 2003, Mr Sims was the chair of the NSW Rail Infrastructure Corporation and later chair of the State Rail Authority. He was a member of the panel that undertook the review of Australia's energy policy for the Council of Australian Governments in 2002.

Box 3-1 continued

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 was appointed as a councillor in December 2003. She was reappointed in December 2006 and again in December 2009 for a further three year term.

Ms Hickey is director of @ the Board Table, a corporate governance consulting business. She is also a board member of Flinders Ports, SAFECOM and the Medical Insurance Group Australia.

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 the Chair of the Telecommunications Industry Ombudsman Council, Chair of TransAdelaide, 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 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 2010-11 councillors met on nine occasions, including seven times by teleconference. In-face meetings were held in the Council's Melbourne office.

The number and timing of meetings in 2010-11 were determined largely on the basis of the Council's work priorities. Table 3-3 lists the dates of the meetings in 2010-11 and councillors' attendance.

Table 3-3 National Competition Council meetings, 2010-11

Meeting date	Attendance
14 July 2010	all councillors
16 August 2010	all councillors
27 August 2010	all councillors
8 September 2010	all councillors, except R Sims (conflict of interest)
13 September 2010	all councillors, except R Sims (conflict of interest)
8 November 2010	all councillors, except R Sims (conflict of interest)
10 March 2011	all councillors
10 May 2011	all councillors
20 May 2011	all councillors

Councillors received (at meetings or out of session) a monthly financial statement of the Council's performance against budget. They considered the Council's financial performance against budget at every meeting.

The *Trade Practices Amendment (Infrastructure Access) Act 2010*, proclaimed on 14 July 2010, introduced the capacity to resolve matters upon the circulation of papers where all councillors indicate in writing that they support a resolution.

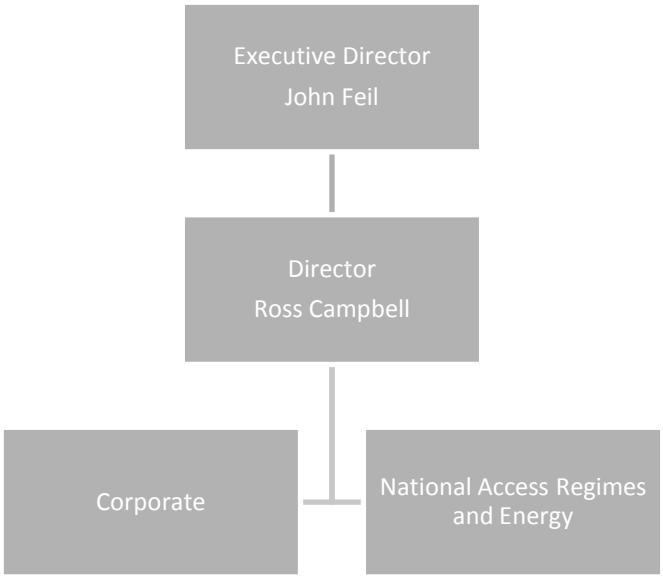
As a general principle the Council takes decisions during a face to face meeting and/or a teleconference, these being environments in which Councillors can communicate as a group and make decisions collectively. The Council adopts decisions by circulation of papers where this enables timely decision making and where unanimous agreement is anticipated, or where a matter has been the subject of previous consideration in a face-to-face meeting and/or teleconference. Councillors remain free to request a meeting or teleconference.

During 2010-11 the Council determined two matters unanimously by circulation of papers. On 13 December 2010, the Council agreed to a final recommendation relating to the application from the Premier of Western Australia seeking certification of the state's rail access regime. The Council had previously discussed this matter at its meetings of 16 August 2010 (draft recommendation) and 8 November 2010 (most elements of the final recommendation). On 24 December 2010 the Council agreed to a draft recommendation relating to the application from the Premier of South Australia seeking certification of the state's ports access regime. The Council subsequently considered the final recommendation on this application at its meeting on 10 March 2011.

The secretariat

The secretariat provides advice and analysis at the councillors' direction on competition matters, primarily matters related to Part IIIA of the CCA and the regulation of natural gas pipelines under the NGL. The secretariat 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 3-1 depicts the structure of the secretariat at 30 June 2011.

Figure 3-1 National Competition Council secretariat organisation chart, 30 June 2011



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, generally weekly, with secretariat staff during 2010-11 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 (**ARM 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 ARM Committee advises on the Council's financial statements, governance, risk management, fraud control and business continuity planning. At 30 June 2011 the Audit and Risk Management Committee comprised councillors Doug McTaggart (Chair) and Virginia Hickey.

The ARM Committee met twice during 2010-11. On 27 August 2010 the committee considered and recommended that the Council adopt the audited financial statements for 2009-10. The committee received a report from the Australian National Audit Office (**ANAO**)

in relation to its audit of these financial statements. On 10 May 2011 the committee reviewed and updated the Council's policies governing risk management and fraud control.

Formal reviews

The *Trade Practices Amendment (Infrastructure Access) Act 2010* was passed on 24 June 2010 and came into effect on 14 July 2010. The *Trade Practices Act 1974* was renamed the *Competition and Consumer Act 2010* on 1 January 2011.

There were no reviews of access arrangements under the NGL and the National Electricity Law.

Legal mechanisms for reviewing National Competition Council decisions

Under both Part IIIA of the CCA 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 a state premier or a territory chief minister. The Tribunal is the review body for decisions on declaration, certification and coverage/revocation of coverage except that under the NGL, the review 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 2010-11 by the Australian Government Ombudsman or by a parliamentary committee, and no decisions by administrative tribunals involved the Council.

Engagement with stakeholders

The Council's third party access work requires it to engage with interested parties through a public consultation process. The Council maintains a website to assist this purpose. The Council also produces a bi-monthly newsletter. The Council has a second website, located at www.ncp.ncc.gov.au, which holds historical documents on the Council's work on the former National Competition Policy (**NCP**). The Council's work in assisting stakeholders is discussed in chapter 2.

Financial management

The Council's financial management 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 worked 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 29 August 2011. The ANAO issued an unqualified audit report.

Outsourced services

The Council undertook 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 available on the AusTender website www.tenders.gov.au.

During 2010-11, the Council purchased the following services (see also the discussion under Use of consultants):

- legal advice (and associated economic advice)
- communications advice
- employee assistance program
- information and communications technology (**ICT**)
- finance and accounting
- printing of Council annual report
- payroll and human resource management
- website and information technology support
- 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 2010-11.

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 including business continuity and fraud control policy the outcome of which was endorsed by the ARM Committee at its meeting on 10 May 2011.

There were no instances of fraud or allegations of fraud in 2010-11.

Certificate of Fraud Measures

I certify that, as at 30 June 2011, 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 agency and comply with the *Commonwealth fraud control guidelines - March 2011*.

David Crawford
President

Managing our people

Staffing

At 30 June 2011 the Council's staffing level was 11.3. This comprised 8.3 full time equivalent secretariat staff and three councillors (including the Council President). As noted previously Rod Sims resigned as a councillor with effect 30 June 2011. All secretariat staff were located at the Council's office at 200 Queen 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). All staff are employed on an ongoing basis (see Table 3-4). There was no change in secretariat staffing during 2010-11.

Table 3-4 Secretariat staff by gender and employment status, as at 30 June 2010 and 30 June 2011

Employment status	2010	2011
Female		
Full-time ongoing	2	2
Full-time non-ongoing	-	-
Part-time ongoing	3	3
Part-time non-ongoing	-	-
Male		
Full-time ongoing	3	4
Full-time non-ongoing	1	-
Part-time ongoing	-	-
Total	9	9

Collective agreement

Non Senior Executive Service (**SES**) staff are employed under an employee collective agreement. The Council developed the agreement via a consultative process involving all staff, who endorsed the agreement. The Council's employee collective agreement was approved by the Workplace Authority on 30 June 2009, with effect from 7 July 2009. The nominal expiry date is 30 June 2012. The collective agreement is published on the Council's website.

Remuneration (including leave entitlements and superannuation contributions) paid to Council secretariat staff in 2010-11 totalled $1.13 million, comprising $573 000 for SES staff and $697 000 for non SES staff. Remuneration to councillors was approximately $170 000. The range of the salaries paid in 2010-11 to staff in the Council secretariat is shown in Table 3-5.

Table 3-5 Staff profile, Council secretariat, 30 June 2011

Level	Salary range ($'000)	Female	Male	Total
Senior Executive Service, band 2	Up to 296		1	1
Senior Executive Service, band 1	Up to 227		1	1
Executive, levels 1 -2	90 - 126	2[a]	2	4
Administrative Service Officer, grades 3-6	49 - 90	3[b]	-	3
Total		5	4	9

[a] Two staff members worked part time.

[b] One staff member worked part time

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. The Council's collective agreement incorporates several flexibility arrangements, including flexible attendance hours and the option of work offsite. The collective agreement also provides a capacity for the President to supplement the terms and conditions of an individual employee following consultation with the employee.

The Council makes salary sacrifice arrangements available. It does not operate performance pay arrangements.

No secretariat staff member has a Commonwealth funded vehicle as part of their remuneration package.

Learning and development

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.

The Council's key objectives in providing study assistance are to assist staff to continue to develop skills relevant to the Council's work and to encourage staff retention. In particular, the Council ensures that its legal counsel retain appropriate qualifications and continue to develop their expertise in competition law.

Staff also participated in short courses directed to skill and professional development, and attended conferences and seminars on issues associated with third party access and competition law, which are directly relevant to the Council's work.

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.

Because the Council is a small agency located in a single office, all Council staff were able to meet 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. They also have access to the Council's policy and procedures documentation.

Equity and social inclusion

National Disability Strategy

The Council notes the National Disability Strategy endorsed by the Council of Australian Governments in February 2011, recognising the broad goal of the strategy to improve the lives of people with disabilities. While the Council's work does not impact directly on people with disabilities, the Council seeks to ensure that its processes – in particular its public consultation and its recruitment activity – do not discriminate against any group within the community. The Council's publications are available electronically, and are provided in hard copy form upon request free of charge. In addition, the Council has developed its workplace, including office facilities and workstations, with the aim of reducing barriers to access.

Social inclusion

The Council's outcome does not have an impact on the Australian Government's social inclusion priority groups.

Workplace diversity

The Council continued to apply its *Workplace Diversity Plan* in 2010-11. No workplace harassment was reported during 2010-11.

A number of secretariat staff identified themselves as members of an equal employment opportunity group (see Table 3-6).

Table 3-6 Staff by equal employment opportunity group at 30 June 2011

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	-	-	-	-
Total	5	-	-	-	-

[a] Non-English speaking background, first generation.

[b] Non-English speaking background, second generation.

[c] Aboriginal or Torres Strait Islander (ATSI).

Occupational health and safety

During 2010-11, 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.

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 injury or incident reports during 2010-11. 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

Following reform of the *Freedom of Information Act 1982* (**FOI Act**) the Council established an Information Publication Scheme (**IPS**). The Council has published all required information (s 8 of the FOI Act) on its website including an agency plan of how the Council will satisfy its information publication obligations and information about the Council's structure and operations. Information was published on the Council website by 1 May 2011.

The Council did not receive any requests for the release of documents under the FOI Act during 2010-11 and has had no requests in recent years. Should the Council receive any requests, it proposes to publish the information requested and provided it in a disclosure log on its website.

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 NCP 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 NCP program.
- Council recommendations on applications for declaration of services for third party access and the certification of access regimes. The designated Ministers' decisions on these applications are published on the Council's website. The Council makes its recommendation and reasons publicly available after the Minister's decision is published. 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

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 and access 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 NCP 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 NCP
- media releases
- issues papers, draft reports and final reports on other reviews referred to the Council, and
- documents relating to the operation of the Council.

These documents are usually available in both hard copy and electronic form. The Council places as much material as possible on its websites (www.ncc.gov.au and www.ncp.ncc.gov.au). Documents, publications and speeches can be obtained directly from

the Council. Documents relevant to the Council's former NCP 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 FOI Act to documents in the possession of the Council should apply in writing to:

Freedom of Information Officer
National Competition Council
GPO Box 250
Melbourne VIC 3001

Telephone enquiries should be directed to the Freedom of Information Officer on 03 9981 1600 between 9.00 am and 5.00 pm, Monday to Friday or emailed to foi@ncc.gov.au.

The Freedom of Information Officer is authorised under section 23 of the FOI Act to grant or refuse requests for access to documents. In accordance with section 54 of the FOI Act, an applicant may apply to the Executive Director seeking an internal review of a decision to refuse a request.

If access is granted, then the Council will provide copies of documents after receiving payment of relevant charges if any. Alternatively, applicants may arrange to inspect documents at the Council's office at 200 Queen Street, Melbourne, between 9.00 am and 5.00 pm, Monday to Friday. Further information including on costs can be found on the Council's website.

Advertising and market research

The Council made no payments during 2010-11 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 2010-11 totalled $4 348. This expenditure was for the purpose of advising arrangements for public consultation regarding the Council's consideration of third party access matters in line with the Council's statutory obligations under the CCA .

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
- recycles paper and cardboard products including pulping of classified waste
- recycles waste products
- uses tap flow restrictors to reduce water use
- sensor lighting in the new office premises
- 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), use natural light whenever possible 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
- implements measures to reduce its reliance on paper files.

The Council buys goods and services in accord with the Australian Government's environmental purchasing guide.

The Council consumed an estimated 8.7 per cent less energy (pro-rated for the period from 18 June 2010 until its move to new premises on 14 April 2011) compared to the same period in the previous financial year. It is not possible to provide a direct comparison of full year on year energy use. Following the Council's move, all energy reporting for the premises it now occupies is undertaken by the Australian Government Solicitor, which holds the Head Lease for the premises.

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 has a panel of five legal services providers, comprising Allens Arthur Robinson, the Australian Government Solicitor, Clayton Utz, Gilbert + Tobin and DLA Piper selected using an open tender process (notified on AusTender). 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) generally using a select tendering process. Economic experts are generally required to have specialist 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.

During 2010-11 the Council entered and finalised one small legal services consultancy contract (expenditure $2670). There were three ongoing consultancy contracts active in 2010-11, involving total expenditure of $390 195. The bulk of Council's consultancy expenditure was for legal services directed to the Council's third party access work.

Information on the Council's actual expenditure on consultancy contracts in 2010-11, providing a comparison with the preceding two financial years, is summarised in Table 3-7. Information on the value of the Council's contracts and consultancies is available on the AusTender website at www.tenders.gov.au.

Table 3-7 Summary of expenditure on all consultancy contracts in 2008-09, 2009-10 and 2010-11 ($) (includes GST)

	2008-09	2009-10	2010-11
Legal (new)	20 843	12 842	2670
Legal (ongoing)	521 704	1 708 867[1]	339 449
Economic (new)	128 972	5 720	-
Economic (ongoing)	-	-	-
Communications (new)	-	-	-
Communications (ongoing)	14 194	15 069	5 190
ICT (new)	-	-	-
ICT (ongoing)	63 895	46 475	45 555
Human resources services (new)	47 513	16 500	-
Human resources services (ongoing)	-	-	-
Total	797 121	1 805 473	392 864

[1] Includes economic and expert witness costs associated with legal services contracts.

Annual reporting requirements and aids to access

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

- s 74 of the *Occupational Health and Safety Act 1991*

- the *Public Service Act 1999*
- s 8 of the *Freedom of Information Act 1982*
- s 29O of the *Competition and Consumer Act 2010*
- 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) 9981 1600
Facsimile (03) 9981 1650

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 2011

Australian National
Audit Office

INDEPENDENT AUDITOR'S REPORT

To the Treasurer

I have audited the accompanying financial statements of the National Competition Council for the year ended 30 June 2011, which comprise: a Statement by the President and Executive Director; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Asset Additions; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

Responsibility of the Council President for the Financial Statements

The President of the National Competition Council is responsible for the preparation of financial statements that give a true and fair view in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards, and for such internal control as the President of the National Competition Council determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

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 about 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 statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the National Competition Council's preparation of the financial statements that give a true and fair view 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 National Competition Council's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the President of the National Competition Council, 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.

GPO Box 707 CANBERRA ACT 2601
19 National Circuit BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

Independence

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

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 2011 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office

John Jones

Executive Director

Delegate of the Auditor-General

Canberra

29 August 2011

National Competition Council
Level 21 / 200 Queen Street Melbourne VIC 3000 Australia
GPO Box 250 Melbourne VIC 3001 Australia
Telephone: (03) 9981 1600 Email: info@ncc.gov.au

Office of
Council President

NATIONAL COMPETITION COUNCIL
STATEMENT BY THE PRESIDENT AND EXECUTIVE DIRECTOR

In our opinion, the attached financial statements for the year ended 30 June 2011 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.

David Crawford
President

29th August 2011

John Feil
Executive Director

29 August 2011

NATIONAL COMPETITION COUNCIL
STATEMENT OF COMPREHENSIVE INCOME
for the period ended 30 June 2011

	Notes	**2011 $**	2010 $
EXPENSES			
Employee benefits	3A	**1,440,209**	1,295,148
Supplier expenses	3B	**940,811**	2,272,221
Depreciation and amortisation	3C	**87,667**	56,173
Finance costs	3D	**2,029**	2,281
Write-down and impairment of assets	3E	**2,879**	3,881
Other	3F	**-**	7,910
Total expenses		**2,473,595**	3,637,614
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Fees and fines	4A	**-**	7,500
Other	4B	**135**	750,985
Total own-source revenue		**135**	758,485
Gains			
Other	4C	**29,000**	23,500
Total gains		**29,000**	23,500
Total own-source income		**29,135**	781,985
Net cost of (contribution by) services		**2,444,460**	2,855,629
Revenue from Government	4D	**2,772,000**	2,806,000
Surplus (Deficit) on continuing operations		**327,540**	(49,629)
Surplus (Deficit) attributable to the Australian Government		**327,540**	(49,629)
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		**-**	13,683
Total other comprehensive income		**-**	13,683
Total comprehensive income (loss)		**327,540**	(35,946)
Total comprehensive income (loss) attributable to the Australian Government		**327,540**	(35,946)

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

NATIONAL COMPETITION COUNCIL
BALANCE SHEET
as at 30 June 2011

	Notes	2011 $	2010 $
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	**22,525**	33,638
Trade and other receivables	5B	**4,687,653**	4,200,137
Total financial assets		**4,710,178**	4,233,775
Non-Financial Assets			
Land and buildings	6A	**51,616**	65,643
Property, plant and equipment	6B,C	**17,261**	37,029
Intangibles	6D,E	**1,308**	3,450
Other	6F	**9,006**	8,673
Total non-financial assets		**79,191**	114,795
Total Assets		**4,789,369**	4,348,570
LIABILITIES			
Payables			
Suppliers	7A	**98,670**	46,545
Other	7B	**32,447**	23,772
Total payables		**131,117**	70,317
Provisions			
Employee provisions	8A	**314,742**	271,554
Other	8B	**12,392**	43,121
Total provisions		**327,134**	314,675
Total liabilities		**458,251**	384,992
Net assets		**4,331,118**	3,963,578
EQUITY			
Parent Entity Interest			
Contributed equity		**40,000**	-
Reserves		**222,433**	222,433
Retained surplus (accumulated deficit)		**4,068,685**	3,741,145
Total parent entity interest		**4,331,118**	3,963,578
Total equity		**4,331,118**	3,963,578

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

NATIONAL COMPETITION COUNCIL
STATEMENT OF CHANGES IN EQUITY
for the period ended 30 June 2011

	Retained earnings		Asset revaluation reserve		Contributed Equity/Capital		Total equity	
	2011	2010	**2011**	2010	**2011**	2010	2011	2010
	$	$	**$**	$	**$**	$	$	$
Opening balance								
Balance carried forward from previous period	**3,741,145**	3,924,774	**222,433**	208,750	**-**	-	3,963,578	4,133,524
Adjustment for errors	**-**	-	**-**	-	**-**	-	-	-
Adjustment for changes in accounting policies	**-**	-	**-**	-	**-**	-	-	-
Adjusted opening balance	**3,741,145**	3,924,774	**222,433**	208,750	**-**	-	3,963,578	4,133,524
Comprehensive income								
Other comprehensive income	**-**	-	**-**	13,683	**-**	-	-	13,683
Surplus (Deficit) for the period	**327,540**	(49,629)			**-**	-	327,540	(49,629)
Total comprehensive income	**327,540**	(49,629)	**-**	13,683	**-**	-	327,540	(35,946)
of which:								
Attributable to the Australian Government	**327,540**	(49,629)	**-**	13,683	**-**	-	327,540	(35,946)
Transactions with owners								
Distributions to owners								
Returns of capital:								
Reduction in prior year appropriations	**-**	(134,000)	**-**	-	**-**	-	-	(134,000)
Contributions by owners								
Appropriation (equity injection)	**-**	-	**-**	-	**-**	-	-	-
Appropriation (Departmental Capital Budget)	**-**	-	**-**	-	**40,000**		40,000	-
Sub-total transactions with owners	**-**	(134,000)	**-**	-	**40,000**	-	40,000	(134,000)
Closing balance as at 30 June	**4,068,685**	3,741,145	**222,433**	222,433	**40,000**	-	4,331,118	3,963,578
Closing balance attributable to the Australian Government	**4,068,685**	3,741,145	222,433	222,433	**40,000**	-	4,331,118	3,963,578

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

NATIONAL COMPETITION COUNCIL
CASH FLOW STATEMENT
for the period ended 30 June 2011

	Notes	2011 $	2010 $
OPERATING ACTIVITIES			
Cash received			
Appropriations		**2,341,000**	3,707,950
Net GST received		**81,645**	240,228
Other		**135**	758,543
Total cash received		**2,422,780**	4,706,721
Cash used			
Employees		**(1,388,345)**	(1,281,516)
Suppliers		**(1,003,181)**	(2,687,015)
Other		**-**	(757,910)
Total cash used		**(2,391,526)**	(4,726,441)
Net cash from (used by) operating activities	9	**31,254**	(19,720)
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		**(42,367)**	(2,427)
Total cash used		**(42,367)**	(2,427)
Net cash from (used by) investing activities		**(42,367)**	(2,427)
Net increase (decrease) in cash held		**(11,113)**	(22,147)
Cash and cash equivalents at the beginning of the reporting period		**33,638**	55,785
Cash and cash equivalents at the end of the reporting period	5A	**22,525**	33,638

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

NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS
as at 30 June 2011

	2011	2010
BY TYPE	**$**	$
Commitments receivable		
Net GST recoverable on commitments	**111,096**	36,530
Total commitments receivable	**111,096**	36,530
Commitments payable		
Other commitments		
Operating leases [1]	**(511,321)**	(162,087)
Contracts for IT Services [2]	**(25,387)**	(25,958)
Other [3]	**(685,340)**	(213,800)
Total other commitments	**(1,222,048)**	(401,845)
Net commitments by type	**(1,110,952)**	(365,315)
BY MATURITY		
Commitments receivable		
Other commitments receivable		
One year or less	**34,197**	36,530
From one to five years	**76,899**	-
Over five years	**-**	-
Total other commitments receivable	**111,096**	36,530
Commitments payable		
Operating lease commitments		
One year or less	**(129,049)**	(162,087)
From one to five years	**(382,272)**	-
Over five years	**-**	-
Total operating lease commitments	**(511,321)**	(162,087)
Other commitments		
One year or less	**(247,115)**	(239,758)
From one to five years	**(463,612)**	-
Over five years	**-**	-
Total other commitments	**(710,727)**	(239,758)
Net commitments by maturity	**(1,110,952)**	(365,315)

NB: Commitments are GST inclusive where relevant.

[1] Operating leases included are effectively non-cancellable.

[2] Various contracts of the provision of IT services

[3] Agreement for the provision of financial processing and accounting services. The agreement is for the period 1/7/11 to 30/6/14.

Licence for office accommodation.

The current licence expires on 4 April 2015. There is an option to renew for a further term of 21 months and 28 days to the 31st January 2017. Lease payments are subject to annual reviews to market.

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

NATIONAL COMPETITION COUNCIL
SCHEDULE OF ASSET ADDITIONS
for the period ended 30 June 2011

The following non-financial non-current assets were added in 2010-11:

	Leasehold improvements	Other property, plant & equipment	Intangibles	Total
	$	$	$	$
Additions funded in the current year				
By purchase - appropriation ordinary annual services				
Departmental capital budget	**40,000**	**-**	**-**	**40,000**
Ordinary operating costs	**2,367**	**-**	**-**	**2,367**
By purchase - appropriation other services				
Equity injections	**-**	**-**	**-**	**-**
By purchase - donated funds	**-**	**-**	**-**	**-**
By purchase – other	**-**	**-**	**-**	**-**
Assets received as gifts/donations	**-**	**-**	**-**	**-**
From acquisition of entities or operations (including restructuring)	**-**	**-**	**-**	**-**
Total funded additions funded in the current year	**42,367**	**-**	**-**	**42,367**
Additions recognised in 2010-11 - to be funded in future years				
Make-good	**12,242**	**-**	**-**	**12,242**
Other	**-**	**-**	**-**	**-**
Total future years/unfunded additions	**12,242**	**-**	**-**	**12,242**
Total additions	**54,609**	**-**	**-**	**54,609**

The following non-financial non-current assets were added in 2009-10:

	Buildings	Other property, plant & equipment	Intangibles	Total
	$	$	$	$
Additions funded in the current year				
By purchase - appropriation ordinary annual services		2,427		2,427
Departmental capital budget	-	-	-	-
Ordinary operating costs	-	-	-	-
By purchase - appropriation other services				
Equity injections	-		-	
By purchase - donated funds	-	-	-	-
By purchase - other	-	-	-	-
Assets received as gifts/donations	-	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-	-
Total funded additions funded in the current year	-	2,427	-	2,427
Additions recognised in 2010-11 - to be funded in future years				
Make-good	-	-	-	-
Other	-	-	-	-
Total future years/unfunded additions	-	-	-	-
Total additions	-	2,427	-	2,427

Table of Contents – Notes

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 the National Competition Council is to provide advice to Governments and make decisions on infrastructure access and issues that accord with statutory requirements (including time limits) and good regulatory practice, and ensuring that advice meets the advice requirements of decision making Ministers, such that Australia achieves a consistent approach to access regulation that promotes the efficient operation of, use of and investment in infrastructure thereby promoting effective competition.

The Council is structured to meet one outcome:

Outcome 1: Competition in markets that are dependent on access to nationally significant monopoly infrastructure, through recommendations and decisions promoting the efficient operation of, use of and investment in infrastructure.

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

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.

The Council does not conduct any administered activities.

1.2 Basis of Preparation of the Financial Statements

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

The Financial Statements have been prepared in accordance with:

- Finance Minister's Orders (or FMO) for reporting periods ending on or after 1 July 2010; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities 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 statements are presented in Australian dollars and values are rounded to the nearest dollar unless otherwise specified.

Unless an 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 Council 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 or the schedule of contingencies.

Unless alternative treatment is specifically required by an accounting standard, income and expenses are recognised in the statement of comprehensive income 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.

No accounting assumptions and 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 New 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.

No new standards, revised standards, interpretations and amending standards that were issued prior to the signing of the statement by the President and Executive Director and are applicable to the current reporting period had a material financial impact on the Council and are not expected to have a future material financial impact on the Council.

Future Australian Accounting Standard Requirements

New standards, revised standards, interpretations and amending standards that were issued prior to the signing of the statement by the President and Executive Director applicable to the future reporting period are not expected to have a future material financial impact on the Council.

1.5 Revenue

Revenue from the sale of goods is recognised when:

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

b) the agency retains no managerial involvement or effective control over the goods;

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

d) it is probable that the economic benefits associated with the transaction will flow to the Council.

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 associated with the transaction will flow to the Council.

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 end of reporting period. Allowances are made when collectability of the debt is no longer probable.

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement.*

Revenue from Government

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the Council 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

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

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).

Parental Leave Payments Scheme

The Council offsets amounts received under Parental Leave Payments Scheme (for payment to employees) by amounts paid to employees under that scheme, because these transactions are only incidental to the main revenue-generating activities of the Council. Amount received by the Council not yet paid to employees would be presented gross as cash and a liability (payable). No payments under this scheme were received by the council during 2010-11.

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.

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

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 entity or authority as a consequence of a restructuring of administrative arrangements (Refer to Note 1.7).

Sale of Assets

Gains from disposal of assets are 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) and Departmental Capital Budgets (DCBs) 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.

1.8 Employee Benefits

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of end of reporting period 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.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

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 at the estimated salary rates that will applied at the time the leave is taken, 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, as at 30 June 2011, have been calculated using the Australian Government short hand method. The estimate of 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 formal plan for the terminations and has informed those employees affected that it will carry out the terminations.

Superannuation

The Council's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap), Hostplus, BT and Unisuper. The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and the other superannuation plans are defined contribution schemes.

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 employees' superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Council accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 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 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.

Where an 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 is recognised at its nominal amount. Cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash and subject to insignificant risk of changes in value.

1.12 Financial Assets

The Council classifies its financial assets as 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 that are recognised at fair value through profit or loss.

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'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Interest is recognised by applying the effective interest rate.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting periods.

- *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 statement of comprehensive income.
- *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. These 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 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).

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 asset or liability in respect of which the amount cannot be reliably

measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

1.15 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 income 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.

1.16 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 'make good' 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 'make good' recognised.

Revaluations

Fair values for each class of asset 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 in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit 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.

Depreciation and amortisation rates (useful lives), residual values 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 rates applying to each class of depreciable asset are based on the following useful lives:

	2011	2010
Leasehold improvements	Lease term	Lease term
Plant and Equipment	3 to 7 years	3 to 7 years
Computer Software	3 years	3 years

Impairment

All assets were assessed for impairment at 30 June 2011. 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 ability to generate future cash flows, and the asset would be replaced if the Council were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use or disposal.

1.17 Intangibles

The Council's intangibles comprise purchased 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 the Council's software are 3 years (2009-10: 3 years).

All software assets were assessed for indications of impairment as at 30 June 2011.

1.18 Inventories

The Council provides all 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.

1.19 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:

a) where the amount of GST incurred is not recoverable from the Australian Taxation Office; and

b) for receivables and payables.

Competitive Neutrality

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

Note 2: Events After the Reporting Period

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

Note 3: Expenses

	2011	2010
	$	$
Note 3A: Employee Benefits		
Wages and salaries	**1,138,996**	1,048,595
Superannuation:		
Defined contribution plans	**59,901**	46,452
Defined benefit plans	**113,762**	108,593
Leave and other entitlements	**124,580**	91,295
Other employee expenses	**2,970**	213
Total employee benefits	**1,440,209**	1,295,148

	2011	2010
	$	$
Note 3B: Suppliers		
Goods and services		
Legal expenses	**312,017**	1,564,201
Consultants and contracted services	**223,592**	235,030
Information technology and communications expenses	**74,114**	79,236
Travel expenses	**62,609**	97,871
Property operating expenses	**39,141**	41,805
Information management services	**29,508**	38,024
Employee related expenses	**23,676**	32,459
Other - Administration expenses	**10,039**	24,188
Total goods and services	**774,696**	2,112,814
Goods and services are made up of:		
Provision of goods – related entities	**1,590**	1,536
Provision of goods – external parties	**23,040**	23,886
Rendering of services – related entities	**242,961**	233,080
Rendering of services – external parties	**507,105**	1,854,312
Total goods and services	**774,696**	2,112,814
Other supplier expenses		
Operating lease rentals – related parties:		
Minimum lease payments	**28,974**	-
Operating lease rentals – external parties:		
Minimum lease payments	**134,073**	156,358
Workers compensation expenses	**3,068**	3,049
Total other supplier expenses	**166,115**	159,407
Total supplier expenses	**940,811**	2,272,221

	2011	2010
	$	$
Note 3C: Depreciation and Amortisation		
Depreciation:		
Property, plant and equipment	**16,890**	15,889
Leasehold improvements	**68,636**	38,143
Total depreciation	**85,526**	54,032
Amortisation:		
Intangibles	**2,141**	2,141
Total amortisation	**2,141**	2,141
Total depreciation and amortisation	**87,667**	56,173

Note 3D: Finance Costs		
Unwinding of discount	**2,029**	2,281
Total finance costs	**2,029**	2,281

Note 3E: Write-Down and Impairment of Assets		
Asset write-downs and impairments from:		
Impairment of property, plant and equipment	**2,879**	3,881
Total write-down and impairment of assets	**2,879**	3,881

Note 3F: Other Expenses		
Transfers to the OPA	**-**	7,910
Total other expenses	**-**	7,910

Note 4: Income

	2011	2010
REVENUE	**$**	$
Note 4A: Fees and Fines		
Fees	**-**	7,500
Total fees and fines	**-**	7,500

	2011	2010
	$	$
Note 4B: Other Revenue		
Court costs recovered	-	750,000
Other revenue - Supplier Expense refund	**135**	985
Total other revenue	**135**	750,985

GAINS

Note 4C: Other Gains		
Gain on payout of Make Good Provision	**5,000**	-
Resources received free of charge	**24,000**	23,500
Total other gains	**29,000**	23,500

REVENUE FROM GOVERNMENT

Note 4D: Revenue from Government*		
Appropriations:		
Departmental appropriation	**2,772,000**	2,806,000
Total revenue from Government	**2,772,000**	2,806,000

* The entity received $Nil (2010: $Nil) under the Paid Parental Leave Scheme; these amounts were offset against the amounts paid to employees in the Statement of Comprehensive Income.

Note 5: Financial Assets

	2011	2010
	$	$
Note 5A: Cash and Cash Equivalents		
Cash on hand or on deposit	**22,525**	33,638
Total cash and cash equivalents	**22,525**	33,638

	2011 $	2010 $
Note 5B: Trade and Other Receivables		
Appropriations receivable:		
For existing programs	**4,649,050**	4,178,050
Total appropriations receivable	**4,649,050**	4,178,050
Other receivables:		
GST receivable from the Australian Taxation Office	**38,603**	22,087
Other	**-**	-
Total other receivables	**38,603**	22,087
Total trade and other receivables (gross)	**4,687,653**	4,200,137
Less impairment allowance account:		
Goods and services	**-**	-
Other	**-**	-
Total impairment allowance account	**-**	-
Total trade and other receivables (net)	**4,687,653**	4,200,137
Receivables are expected to be recovered in:		
No more than 12 months	**4,687,653**	4,200,137
More than 12 months	-	-
Total trade and other receivables (net)	**4,687,653**	4,200,137
Receivables are aged as follows:		
Not overdue	**4,687,653**	4,200,137
Overdue by:		
0 to 30 days	**-**	-
31 to 60 days	**-**	-
61 to 90 days	**-**	-
More than 90 days	**-**	-
Total receivables (gross)	**4,687,653**	4,200,137
The impairment allowance account is aged as follows:		
Not overdue	**-**	-
Overdue by:		
0 to 30 days	**-**	-
31 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 2011

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

Movements in relation to 2010

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

Note 6: Non-Financial Assets

	2011	2010
	$	**$**
Note 6A: Land and Buildings		
Leasehold improvements:		
Fair value	**54,609**	65,643
Accumulated depreciation	**(2,993)**	-
Total leasehold improvements	**51,616**	65,643
Total land and buildings	**51,616**	65,643

No indicators of impairment were found for land and buildings.

	2011	2010
	$	$
Note 6B: Property, Plant and Equipment		
Other property, plant and equipment:		
Fair value	**31,452**	37,080
Accumulated depreciation	**(14,191)**	(51)
Total other property, plant and equipment	**17,261**	37,029
Total property, plant and equipment	**17,261**	37,029

All revaluations are independent and in accordance with the revaluation policy stated at Note 1.

A revaluation increment of $Nil for leasehold improvements (2010: increment of $33,949). No decrements were expensed (2010: $0 expensed).

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

No property, plant or equipment is expected to be sold or disposed of within the next 12 months.

Note 6C: Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2010-11)

	Leasehold Improvements	Other property, plant & equipment	Total
	$	$	$
As at 1 July 2010			
Gross book value	**65,643**	**37,080**	**102,723**
Accumulated depreciation and impairment	-	**(51)**	**(51)**
Net book value 1 July 2010	**65,643**	**37,029**	**102,672**
Additions*	**54,609**	-	**54,609**
Revaluations and impairments recognised in other comprehensive income	-	-	-
Depreciation expense	**(68,636)**	**(16,889)**	**(85,525)**
Disposals:			
Other disposals (gross book value)	**(65,643)**	**(5,628)**	**(71,271)**
Other disposals (accumulated depreciation)	**65,643**	**2,749**	**68,392**
Net book value 30 June 2011	**51,616**	**17,261**	**68,877**
Net book value as of 30 June 2011 represented by:			
Gross book value	**54,609**	**31,452**	**86,061**
Accumulated depreciation	**(2,993)**	**(14,191)**	**(17,184)**
	51,616	**17,261**	**68,877**

* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

Note 6C (Cont'd): Reconciliation of the Opening and Closing Balances of Property, Property, Plant and Equipment (2009-10)

	Leasehold Improvements	Other property, plant & equipment	Total
	$	$	$
As at 1 July 2009			
Gross book value	95,092	76,818	171,910
Accumulated depreciation and impairment	(25,255)	(13,277)	(38,532)
Net book value 1 July 2009	69,837	63,541	133,378
Additions*	-	2,427	2,427
Revaluations and impairments recognised in other comprehensive income	33,949	(9,169)	24,780
Depreciation expense	(38,143)	(15,889)	(54,032)
Disposals:			
Other	-	(3,881)	(3,881)
Net book value 30 June 2010	65,643	37,029	102,672
Net book value as of 30 June 2010 represented by:			
Gross book value	65,643	37,080	102,723
Accumulated depreciation	-	(51)	(51)
	65,643	37,029	102,672

* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

	2011	2010
	$	**$**
Note 6D: Intangibles		
Computer software:		
Purchased	**6,424**	6,424
Total computer software (gross)	**6,424**	6,424
Accumulated amortisation	**(5,116)**	(2,974)
Total computer software (net)	**1,308**	3,450
Total intangibles	**1,308**	3,450

No indicators of impairment were found for intangible assets.

No intangibles are expected to be sold or disposed of within the next 12 months.

Note 6E: Reconciliation of the Opening and Closing Balances of Intangibles (2010-11)

	Computer software purchased	Total
	$	$
As at 1 July 2010		
Gross book value	**6,424**	**6,424**
Accumulated amortisation and impairment	**(2,974)**	**(2,974)**
Net book value 1 July 2010	**3,450**	**3,450**
Additions *	-	-
Amortisation	**(2,141)**	**(2,141)**
Net book value 30 June 2011	**1,308**	**1,308**
Net book value as of 30 June 2011 represented by:		
Gross book value	**6,424**	**6,424**
Accumulated amortisation and impairment	**(5,116)**	**(5,116)**
	1,308	**1,308**

* Disaggregated additions information are disclosed in the Schedule of Asset Additions.

Note E (Cont'd): Reconciliation of the Opening and Closing Balances of Intangibles (2009-10)

	Computer software purchased	Total
	$	$
As at 1 July 2009		
Gross book value	6,424	6,424
Accumulated amortisation and impairment	(833)	(833)
Net book value 1 July 2009	5,591	5,591
Additions:		
By purchase	-	-
Amortisation	(2,141)	(2,141)
Net book value 30 June 2010	3,450	3,450
Net book value as of 30 June 2010 represented by:		
Gross book value	6,424	6,424
Accumulated amortisation and impairment	(2,974)	(2,974)
	3,450	3,450

	2011	2010
	$	**$**
Note 6F: Other Non-Financial Assets		
Prepayments	**9,006**	8,673
Total other non-financial assets	**9,006**	8,673

No indicators of impairment were found for other non-financial assets.

Total other non-financial assets - are expected to be recovered in:

No more than 12 months	**9,006**	8,673
More than 12 months	-	-
Total other non-financial assets	**9,006**	8,673

Note 7: Payables

	2011	2010
	$	$
Note 7A: Suppliers		
Trade creditors and accruals	**98,670**	39,953
Operating lease rentals	-	6,592
Total supplier payables	**98,670**	46,545
Supplier payables are expected to be settled within 12 months:		
Related entities	**303**	17,132
External parties	**98,367**	29,413
Total supplier payables	**98,670**	46,545

Settlement is usually made within 30 days.

Note 7B: Other Payables		
Salaries and wages	**28,347**	20,603
Superannuation	**4,100**	3,169
Total other payables	**32,447**	23,772
Total other payables are expected to be settled in:		
No more than 12 months	**32,447**	23,772
More than 12 months	-	-
Total other payables	**32,447**	23,772

Note 8: Provisions

	2011	2010
	$	$
Note 8A: Employee Provisions		
Leave	**314,742**	271,554
Total employee provisions	**314,742**	271,554
Employee provisions are expected to be settled in:		
No more than 12 months	**235,207**	193,182
More than 12 months	**79,535**	78,372
Total employee provisions	**314,742**	271,554

	2011	2010
	$	$
Note 8B: Other Provisions		
Provision for restoration obligations	**12,392**	43,121
Total other provisions	**12,392**	43,121
Other provisions are expected to be settled in:		
No more than 12 months	-	43,121
More than 12 months	**12,392**	-
Total other provisions	**12,392**	43,121

	Provision for restoration	**Total**
	$	**$**
Carrying amount 1 July 2010	**43,121**	**43,121**
Additional provisions made	**12,242**	**12,242**
Amounts used	**(40,000)**	**(40,000)**
Amounts reversed	**(5,000)**	**(5,000)**
Unwinding of discount or change in discount rate	**2,029**	**2,029**
Closing balance 2011	**12,392**	**12,392**

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

Note 9: Cash Flow Reconciliation

	2011	2010
	$	$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	**22,525**	33,638
Balance sheet	**22,525**	33,638
Difference	-	-
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	**(2,444,460)**	(2,855,629)
Add revenue from Government	**2,772,000**	2,806,000
Adjustments for non-cash items		
Depreciation / amortisation	**87,667**	56,173
Net write down of non-financial assets	**2,879**	3,881
Unwinding of discount	**2,029**	2,281
Writeback of make good provision	**(5,000)**	-
Changes in assets / liabilities		
(Increase) / decrease in net receivables	**(487,517)**	171,560
(Increase) / decrease in prepayments	**(333)**	6,312
Increase / (decrease) in employee provisions	**43,189**	8,817
Increase / (decrease) in supplier payables	**52,125**	(223,930)
Increase / (decrease) in other payable	**8,675**	4,815
Increase / (decrease) in other provisions	-	-
Net cash from (used by) operating activities	**31,254**	(19,720)

Note 10: Contingent Liabilities and Assets

Quantifiable Contingencies

There were no quantifiable contingent assets as at 30 June 2011 (2010: $Nil).

Unquantifiable Contingencies

At 30 June 2011, the Council had one matter before the courts (2010: Nil). The Council has sought special leave to appeal a decision of the Full Court of the Federal Court to the High Court of Australia. At the 30th June 2011 there was no decision on the application for special leave. Should the High Court grant leave, the costs or disbursements are estimated to be $180,000 (2010: $Nil)

Significant Remote Contingencies

The Council has no significant remote contingencies.

Note 11: Senior Executive Remuneration

Note 11A: Senior Executive Remuneration Expense for the Reporting Period

	2011	2010
	$	$
Short-term employee benefits:		
Salary	**433,612**	425,078
Annual leave accrued	**47,948**	29,377
Performance bonuses	-	-
Other major categories	-	136
Total short-term employee benefits	**481,560**	454,591
Post-employment benefits:		
Superannuation	**75,576**	72,406
Total post-employment benefits	**75,576**	72,406
Other long-term benefits:		
Long-service leave	**15,795**	13,702
Total other long-term benefits	**15,795**	13,702
Termination benefits	-	-
Total	**572,931**	540,699

Notes:

1. Note 11A was prepared on an accrual basis (so the performance bonus expenses disclosed above differ from the cash 'Bonus paid' in Note 11B).

2. Note 11A excludes acting arrangements and part-year service where remuneration expensed was less than $150,000.

Note 11B: Average Annual Remuneration Packages and Bonus Paid for Substantive Senior Executives as at the end of the Reporting Period

	as at 30 June 2011					as at 30 June 2010			
		Fixed elements			Bonus paid[2]		Fixed elements		
Fixed Elements and Bonus Paid[1]	Senior Executives	Salary	Allowances	Total		Senior Executives	Salary	Allowances	Total
	No.	$	$	$	$	No.	$	$	$
Total remuneration (including part-time arrangements):									
less than $150,000	-	-	-	-	-	-	-	-	-
$150,000 to $179,999	-	-	-	-	-	-	-	-	-
$180,000 to $209,999	**1**	**187,838**	-	**187,838**	-	1	180,440	-	180,440
$210,000 to $239,999	-	-	-	-	-	-	-	-	
$240,000 to $269,999	**1**	**256,118**	-	**256,118**	-	1	246,031	-	246,031
$270,000 to $299,999	-	-	-	-	-	-	-	-	
	-	-	-	-	-	-	-	-	
Total	**2**					2			

Notes:

1. This table reports on substantive senior executives who are employed by the entity as at the end of the reporting period. Fixed elements are based on the employment agreement of each individual - each row represents an average annualised figure (based on headcount) for the individuals in that remuneration package band (i.e. the 'Total' column).

2. Represents average actual bonuses paid during the reporting period. The 'Bonus paid' is excluded from the 'Total' calculation, (for the purpose of determining remuneration package bands). The 'Bonus paid' within a particular band may vary between financial years due to factors such as individuals commencing with or leaving the entity during the financial year.

Variable Elements:

With the exception of performance bonuses, variable elements are not included in the 'Fixed Elements and Bonus Paid' table above. The following variable elements are available as part of senior executives' remuneration package:

(a) Performance bonuses are not paid by the Council.

(b) On average senior executives are entitled to the following leave entitlements:

- Annual Leave (AL): entitled to 20 days (2010: 20 days) each full year worked (pro-rata for part-time SES);
- Personal Leave (PL): entitled to 20 days (2010: 20 days) or part-time equivalent;
- Long Service Leave (LSL): in accordance with Long Service Leave (Commonwealth Employees) Act 1976;

(c) Senior executives are members of one of the following superannuation funds:

- Commonwealth Superannuation Scheme (CSS): this scheme is closed to new members, and employer contributions currently average 28.3 per cent (2010: 24 per cent) (including productivity component). More information on CSS can be found at http://www.css.gov.au;
- Public Sector Superannuation Scheme (PSS): this scheme is closed to new members, with current employer contributions set at 15.4 per cent (2010: 15.4 per cent) (including productivity component). More information on PSS can be found at http://www.pss.gov.au

(d) Variable allowances are not paid by the Council.

(e) Various salary sacrifice arrangements are available to senior executives including super, motor vehicle and expense payment fringe benefits.

Note 17C: Other Highly Paid Staff

During the reporting period there were nil (2010: $ Nil) employees whose salary plus performance bonus was $150,000.

Note 12: Remuneration of Auditors

	2011	2010
	$	$
Financial statement audit services were provided free of charge to the Council.		
The fair value of the services provided was:	**24,000**	23,500
	24,000	23,500

No other services were provided by the Auditor-General.

Note13: Financial Instruments

	2011	2010
	$	$
Note 13A: Categories of Financial Instruments		
Financial Assets		
Loans and receivables:		
Cash and cash equivalents	**22,525**	33,638
Trade and other receivables	-	-
Carrying amount of financial assets	**22,525**	33,638
Financial Liabilities		
At amortised cost:		
Trade creditors	**98,670**	39,953
Carrying amount of financial liabilities	**98,670**	39,953

Note 13B: Net Income and Expense from Financial Assets

The Council received $ Nil (2010:$ Nil) net income/expense from financial assets.

Note 13C: Net Income and Expense from Financial Liabilities

The Council received $ Nil (2010:$ Nil) net income/expense from financial liabilities.

Note 13D: Fair Value of Financial Instruments

	Carrying amount 2011	**Fair value 2011**	Carrying amount 2010	Fair value 2010
	$	**$**	$	$
Financial Assets				
Cash and cash equivalents	**22,525**	**22,525**	33,638	33,638
Trade and other receivables	**-**	**-**	-	-
Total	**22,525**	**22,525**	33,638	33,638
Financial Liabilities				
Trade creditors	**98,670**	**98,670**	39,953	39,953
Total	**98,670**	**98,670**	39,953	39,953

Note 13E: 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 (2011:$Nil and 2010: $ Nil).

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	Not past due nor impaired	**Past due or impaired**	Past due or impaired
	2011	2010	**2011**	2010
	$	$	**$**	$
Loans and receivables:				
Cash and cash equivalents	**22,525**	33,638	**33,638**	33,638
Trade and other receivables	-	-	-	-
Total	**22,525**	33,638	**33,638**	33,638

Ageing of financial assets that were past due but not impaired for 2011

	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 were past due but not impaired for 2010

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

Note 13F: 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 Council has no derivative financial liabilities in both the current and prior year.

Note 13G: 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'.

Note 14: Appropriations

Table A: Annual Appropriations ('Recoverable GST exclusive')

	2011 Appropriations							Appropriation applied in 2011 (current and prior years)	Variance [d]
	Appropriation Act			*FMA Act*			Total appropriation		
	Annual Appropriation	Appropriations reduced[a]	AFM[b]	Section 30	Section 31	Section 32			
	$	$	$'	$	$	$	$'000	$'000	$'000
DEPARTMENTAL									
Ordinary annual services	**2,812,000**	-	-		**135**	-	**2,812,135**	**2,342,364**	**469,771**
Other services									
Equity		-	-	-	-	-	**-**	**-**	**-**
Loans	**-**	-	-	-	-	-	**-**	-	-
Total departmental	**2,812,000**	-	-	-	**135**	-	**2,812,135**	**2,342,364**	**469,771**

Notes:

(a) Appropriations reduced under Appropriation Acts (No. 1,3,5) 2010-11: sections 10, 11, 12 and 15 and under Appropriation Acts (No. 2,4,6) 2010-11: sections 12,13, 14 and 17. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental 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. In 2011, there was no reduction in departmental and non-operating departmental approproations.

(b) Advance to the Finance Minister (AFM) - Appropriation Acts (No. 1,3,5) 2010-11: section 13 and Appropriation Acts (No. 2,4,6) 2010-11: section 15.

(c) In 2010-11, there were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period. (d) The variance between total annual appropriation available and total appropriation applied in 2011 relates to departmental capital budget appropriation

(d) The variance between total annual appropriation available and total appropriation applied in 2011 relates to payments funded from unspent prior year appropriations.

Table A: Annual Appropriations ('Recoverable GST exclusive') continued

	2010 Appropriations								Appropriation applied in 2010 (current and prior years)	Variance [d]
	Appropriation Act				*FMA Act*			Total appropriation		
	Annual Appropriation	Appropriations reduced[a]	AFM[b]	Section 14 (Act No. 1)	Section 30	Section 31	Section 32			
	$	$	$	$	$'000	$'000	$'000	$'000	$'000	$'000
DEPARTMENTAL										
Ordinary annual services	2,825,000	(19,000)	-	-	2,874	750,000	-	3,558,874	4,481,751	(922,877)
Other services										
Equity	-	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-	-
Previous years' outputs	-	-	-	-	-	-	-	-	-	-
Total departmental	2,825,000	(19,000)	-	-	2,874	750,000	-	3,558,874	4,481,751	(922,877)

Notes:

(a) Appropriations reduced under Appropriation Acts (No. 1,3) 2009-10: sections 10, 11 and 12 and under Appropriation Acts (No. 2,4) 2009-10: sections 13 and 14. Departmental appropriations do not lapse at financial year-end. However, the responsible Minister may decide that part or all of a departmental 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. On 29th June 2010, the Finance Minister determined a reduction in departmental appropriations following a request by the Treasurer. The amount of the reduction determined under Appropriation Act No 12009-10 was:$19,000.

(b) Advance to the Finance Minister (AFM) - Appropriation Acts (No. 1,3) 2009-10: section 13 and Appropriation Acts (No. 2,4) 2009-10: section 15.

(c) In 2009-2010, there were no adjustments that met the recognition criteria of a formal addition or reduction in revenue (in accordance with FMO Div 101) but at law the appropriations had not been amended before the end of the reporting period.

(d) The variance between total annual appropriation available and total appropriation applied in 2011 relates to payments funded from unspent prior year appropriations.

Table B: Unspent Departmental Annual Appropriations ('Recoverable GST exclusive')

Authority	**2011**	2010
	$'000	$'000
2005/06 Appropriation Act 1	407,050	407,050
2006/07 Appropriation Act 1	1,156,000	1,156,000
2007/08 Appropriation Act 1	1,421,000	1,421,000
2008/09 Appropriation Act1	441,000	441,000
200910Appropriation Act2	-	753,000
2010/11 Appropriation Act 1	1,184,000	-
2010/11 Appropriation Act 1-Capital Budget (DCB) - Non Operating	40,000	-
Total	**4,649,050**	4,178,050

Note 15: Special Accounts

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*.

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

The account was abolished by Financial Management and Accountability Determination 2010/13 with effect from 19th October 2010.

For the years ended 30 June 2011 and 2010 the account had a nil balance and there were no transactions debited or credited to the account.

Note 16: Compensation and Debt Relief

	2011	2010
	$	**$**
Compensation and Debt Relief - Departmental		
No 'Act of Grace' expenses were incurred during the reporting period (2010: No expenses).	**-**	-
No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the Financial Management and Accountability Act 1997.(2010: No waivers)	**-**	-
No payments were provided under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme during the reporting period. (2010: No payments)	**-**	-
No ex-gratia payments were provided for during the reporting period. (2010: No payments).	**-**	-
No payments were provided in special circumstances relating to APS employment pursuant to section 73 of the Public Service Act 1999 (PS Act) during the reporting period. (2010: No payments).	**-**	-

Note 17: Reporting of Outcomes

Note 17A: Net Cost of Outcome Delivery

	Outcome 1		Total	
	2011	2010	**2011**	2010
	$	$	**$**	$
Expenses				
Departmental	**2,473,595**	3,637,614	**2,473,595**	3,637,614
Total	**2,473,595**	3,637,614	**2,473,595**	3,637,614
Income from non-government sector				
Departmental				
Activities subject to cost recovery	-	-	-	-
Other	-	-	-	-
Total departmental	-	-	-	-
Total	-	-	-	-
Other own-source income				
Departmental	**29,135**	781,985	**29,135**	781,985
Total	**29,135**	781,985	**29,135**	781,985
Net cost/(contribution) of outcome delivery	**2,444,460**	2,855,629	**2,444,460**	2,855,629

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

Note 17B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcomes

Outcome 1	Outcome 1		Total	
	2011	2010	**2011**	2010
	$	$	**$**	$
Departmental expenses				
Employees	**1,440,209**	1,295,148	**1,440,209**	1,295,148
Suppliers	**940,811**	2,272,221	**940,811**	2,272,221
Depreciation & amortisation	**87,667**	56,173	**87,667**	56,173
Finance costs	**2,029**	2,281	**2,029**	2,281
Write-down and impairment of assets	**2,879**	3,881	**2,879**	3,881
Other expenses	-	7,910	-	7,910
Total	**2,473,595**	3,637,614	**2,473,595**	3,637,614
Departmental income				
Revenue from government	**2,772,000**	2,806,000	**2,772,000**	2,806,000
Other income	**135**	758,485	**135**	758,485
Gains	**29,000**	23,500	**29,000**	23,500
Total	**2,801,135**	3,587,985	**2,801,135**	3,587,985
Departmental assets				
Cash and cash equivalents	**22,525**	33,638	**22,525**	33,638
Trade and other receivables	**4,687,653**	4,200,137	**4,687,653**	4,200,137
Land and buildings	**51,616**	65,643	**51,616**	65,643
Property, plant and equipment	**17,261**	37,029	**17,261**	37,029
Intangibles	**1,308**	3,450	**1,308**	3,450
Other non-financial assets	**9,006**	8,673	**9,006**	8,673
Total	**4,789,369**	4,348,570	**4,789,369**	4,348,570
Departmental liabilities				
Suppliers	**98,670**	46,545	**98,670**	46,545
Other payables	**32,447**	23,772	**32,447**	23,772
Employee provisions	**314,742**	271,554	**314,742**	271,554
Other provisions	**12,392**	43,121	**12,392**	43,121
Total	**458,251**	384,992	**458,251**	384,992

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

Note 18: Comprehensive Income (Loss) Attributable to the entity

	2011	2010
	$'000	$'000
Total Comprehensive Income (loss) Attributable to the entity		
Total comprehensive income (loss) attributable to the Australian Government[1]	**327,540**	(35,946)
Plus: non-appropriated expenses		
Depreciation and amortisation expenses	**87,667**	-
Total comprehensive income (loss) attributable to the entity	**415,207**	(35,946)

1. As per the Statement of Comprehensive Income.

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National Gas Access (WA) Act 2009 (WA)

Offshore Petroleum and Greenhouse Gas Storage Act 2006 (Cth)

Offshore Petroleum & Greenhouse Gas Storage Act 2010 (Vic)

Payment Systems (Regulation) Act 1998 (Cth)

Petroleum Act 2000 (SA)

Queensland Competition Authority Act 1997 (Qld)

Queensland Competition Authority Regulation 2007 (Qld)

Railways (Operations and Access) Act 1997 (SA)

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Trade Practices Amendment (Infrastructure Access) Act 2010 (Cth)

Transport Infrastructure Act 1994 (Qld)

Transport (Rail Safety) Act 2010 (Qld)

Water Industry Competition Act 2006 (NSW)

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