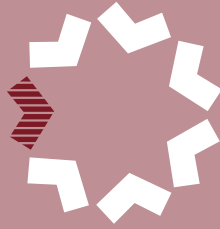


NATIONAL
COMPETITION
COUNCIL



ANNUAL REPORT



2011-12

Commonwealth of Australia 2012

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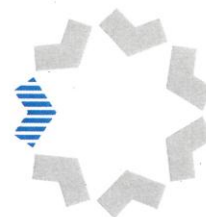
National Competition Council 2012, *Annual Report 2011-12*, Melbourne.

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

28 August 2012

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

Dear Treasurer

We are pleased to present you with the National Competition Council's annual report for the year ended 30 June 2012.

The report has been prepared in accordance with subsection 290 of the *Competition and Consumer Act 2010*.

Yours sincerely

David Crawford
President

Virginia Hickey
Councillor

Doug McTaggart
Councillor

Stephen King
Councillor

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Glossary and abbreviations

AASB	Australian Accounting Standards Board
ACCC	Australian Competition and Consumer Commission
ANAO	Australian National Audit Office
APLNG	Australia Pacific LNG Pty Limited
ARM Committee	Audit and Risk Management Committee (of the Council)
ASX	ASX Limited
ATSI	Aboriginal or Torres Strait Islander
BARA	Board of Airline Representatives of Australia Inc
CCA	<i>Competition and Consumer Act 2010</i> (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
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
DIT	Commonwealth Department of Infrastructure and Transport
DBCT	Dalrymple Bay Coal Terminal
ESCOSA	Essential Services Commission of South Australia
FMA Act	<i>Financial Management and Accountability Act 1997</i> (Cth)
FMOs	Finance Minister's Orders
FOI Act	<i>Freedom of Information Act 1982</i> (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)
IA	Infrastructure Australia
ICT	information and communications technology
IPART	Independent Pricing and Regulatory Tribunal of New South Wales
IPS	Information Publication Scheme
JUHI	Joint User Hydrant Installation (Sydney)
LCH	LCH.Cleartnet Limited
LNG	liquefied natural gas
National Access Regime	The generic access regime in Part IIIA of the <i>Competition and Consumer Act 2010</i> (Cth)
NCC	National Competition Council
NCP	National Competition Policy
NGL	National Gas Law
NTC	National Transport Commission
Part IIIA	Part IIIA of the <i>Competition and Consumer Act 2010</i> (Cth)
PC	Productivity Commission
<i>Pilbara Infrastructure v Tribunal</i>	<i>Pilbara Infrastructure Pty Ltd v Australian Competition Tribunal</i> [2011] FCAFC 58
PSS	Public Sector Superannuation Scheme
PSSap	PSS accumulation plan
QCA	Queensland Competition Authority
QCA Act	<i>Queensland Competition Authority Act 1997</i> (Qld)
SES	Senior Executive Service
TPA	<i>Trade Practices Act 1974</i> (Cth)
TPA Amendment Act	<i>Trade Practices Amendment (Infrastructure Access) Act 2010</i> (Cth)
Tribunal	Australian Competition Tribunal

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 2011-12 and also reports on the matters required by s 290(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 2011-12.

Chapter 2 reports on the work undertaken by the Council during 2011-12 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 290(2) of the CCA, and summarises the Council's performance against its key performance measures.

Chapter 3 discusses the Council's governance arrangements while chapter 4 contains the Council's audited financial statements for 2011-12.

A summary of the resources for the Council's 2011-12 outcome are tabulated on pages 38-39.

Compliance with the Department of the Prime Minister and Cabinet requirements for annual reports is shown on pages 53-57.

1 President's review

Maintaining the integrity of the National Access Regime

Among the important micro-economic reforms recommended by the Hilmer Committee¹ was the establishment of a new legal regime under which firms can be given a right of access to essential facilities when the provision of such a right meets certain public interest criteria. This is the genesis of the National Access Regime set out in Part IIIA of what is now the *Competition and Consumer Act 2010 (CCA)*.

The regime envisaged by the Hilmer Committee had several important characteristics. It was to have general application—applying to facilities in public and private ownership and across all sectors of the Australian economy. It was to contain safeguards for the legitimate interests of facility owners and users. And critically, it was to apply only to a “limited category of cases where access to the facility was essential to permit effective competition and declaration was in the public interest having regard to the significance of the industry to the national economy and the expected impact of effective competition in that industry on national competitiveness” (Hilmer Committee 1993, p xxxii).

The Hilmer Committee recognised that a decision to provide a right for third party access involved evaluation of important public interest considerations so should ultimately be a decision for a government, rather than a court, tribunal or other unelected body. However it also understood that the availability of a regime allowing regulated third party access may create pressures on a Minister to declare (or not declare) an essential facility to advance private interests. To avoid this, the Committee recommended that a Minister's ability to regulate (declare) a facility be limited by explicit legislative criteria and by a requirement that declaration be recommended by an independent and expert body—the National Competition Council (Hilmer Committee 1993, p 250).

While the National Access Regime as subsequently enacted includes a number of refinements, the critical Hilmer Committee recommendations were implemented.

Part IIIA of the CCA provides for a regime for regulated third party access where a service provided by a facility is declared by a designated decision-making Minister. Applications for declaration are made to the Council which conducts a transparent public evaluation of such applications against statutory declaration criteria before recommending to the Minister whether a service should be declared. The declaration criteria are set out later in this report in Box 2-1 (at page 6). The Council may only recommend that a Minister declare a service if it is satisfied that all of the declaration criteria are met.

On receipt of the Council's recommendation the Minister determines whether to declare the service. The Minister must have regard to the Council's recommendation and must also be satisfied that the statutory declaration criteria are met.

¹ Independent Committee of Inquiry into a National Competition Policy comprising Professor Frederick Hilmer, Mr Mark Rayner and Mr Geoffrey Taperell. The committee reported in 1993.

The statutory declaration criteria combined with the Council's consideration of declaration applications ensures that any decision to declare a service is made only after a transparent and objective assessment of each application.

Importantly, the declaration process requires the likely costs and benefits of access regulation to be examined. Such an examination is critical—where the benefits to the public from additional competition that might emerge as a result of the application of the National Access Regime (as opposed to the shift in economic rents between particular private parties) are minor and the complexity and costs of access regulation are high access regulation is unlikely to be warranted.

In this regard it is important to recall that the objectives of the National Access Regime do not focus on minimising price increases or economic rents or generally rebalancing the relative positions of parties to commercial negotiations. The declaration criteria, and the pricing principles and other factors the Australian Competition and Consumer Commission (ACCC) must take into account in determining an access dispute (see s 44X of the CCA) and the restrictions on such determinations (see s 44W), require a balancing of the interests of access seekers and service providers with a view to advancing the objects of Part IIIA (see s 44AA) and the CCA more broadly (see s 2).

Recourse to arbitration of access disputes where a service is declared may result in some moderation of prices and economic rents and limitation on a party's negotiating strength, but the principal benefits relate to the efficient use of and investment in infrastructure, greater competition in the markets where competition would otherwise be limited because a party needs access to a declared service on reasonable terms and conditions, and enhancement of the welfare of Australians. Where a regulator's involvement in an access dispute serves primarily to transfer economic rents between parties with little or no benefit to the public in terms of lowering the overall level of economic rents available, it is difficult to see how the objects of the regime are significantly advanced. Furthermore where the imposition of regulation involves a high degree of complexity² it may well be that the costs of regulation outweigh the benefits. In such situations declaration should not occur.

In its annual report for 2010-11 the Council expressed concern at two developments that it considered had the potential to undermine the operation of the National Access Regime as envisaged by the Hilmer Committee. These related to the nature of reviews of Ministerial declaration decisions by the Australian Competition Tribunal and calls for the process of transparent assessment of declaration applications to be side stepped.

Both these developments remain of concern to the Council.

² Much of the experience of regulation of access has involved disputes over prices for access in circumstances where the access requirements of users are relatively homogeneous, and has focussed on determining appropriate revenue caps for service providers. Where access disputes span a number of dimensions—price, service level and quality, timing of service provision, etc—which are critical for one or more of a range of potential access seekers with heterogeneous or conflicting requirements, the complexity of determining the terms and conditions of access is likely to be greater and require more than setting an overall revenue cap or reference prices and general access terms.

In relation to reviews of declaration decisions, the Council considers that judicial review would provide a more appropriate mechanism than the current merits review. As the Council noted in its 2010-11 annual report, judicial review would ensure that decisions on declaration applications are made fairly and in accord with law without putting the Tribunal in a position where its opinions on a range of public interest and other issues arising in the declaration process potentially override those of a (politically accountable) ministerial decision maker.

Side stepping the safeguards inherent in declaration process can lead to adverse outcomes. While earlier in the life of Part IIIA calls to side step the declaration process might have been an understandable response to justifiable frustration that some declaration applications were taking too long to determine, the CCA has now been amended to impose commercially meaningful time limits on the declaration process.³ Calls for services to be deemed to be declared, or for parties to be forced to lodge access undertakings with the ACCC, in many cases now appear to be calls for an expansion of the declaration process beyond the "limited category of cases" envisaged by the Hilmer Committee in order to satisfy private commercial interests.⁴ Similarly calls for services to be excluded from the application of the National Access Regime are often an effort to advance private interests ahead of the public interest inherent in the application of the declaration criteria. Inappropriate regulatory outcomes can impose substantial costs.

In the Council's view it is important that the Government reject efforts to side step the declaration process. The requirement that a declaration decision follows an assessment by the Council and is based on meeting objective criteria founded in sound economic principles is an important means of ensuring beneficial public policy outcomes. It may be that in some "clear cases" (perhaps gas and electricity transmission and distribution or water infrastructure) outcomes would be similar whether or not the statutory declaration requirements are followed. However, in other cases the processes and criteria for the declaration of services in the National Access Regime provide a means of resisting calls for regulatory outcomes that are not founded in the public interest.

High Court interpretation of provisions of Part IIIA

During the year under review the High Court considered the interpretation of provisions of Part IIIA in the context of appeals relating to declaration of Pilbara rail infrastructure.

³ These amendments have not been fully tested but the Council considers that the time limits and related provisions introduced in 2010 are likely to see declaration applications determined in commercially realistic time frames. For its part the Council is committed to meeting the time limits provided for in order to ensure its recommendations are made on a timely basis.

⁴ A similar concern arises when the voluntary access undertaking alternative to declaration available under Division 6 of Part IIIA is converted into a mandatory requirement or where state access regimes have not received certification and impose requirements that expand the scope of access regulation.

These proceedings and developments in the High Court are discussed in section 2 of this report (see pages 15-16). The High Court had not delivered its judgment at the time the Council prepared this report.

Of particular concern to the Council is the interpretation of declaration criterion (b). The Council made strong submissions to the High Court urging that Court to overturn the interpretation of criterion (b) adopted by the Full Court in *Pilbara Rail Infrastructure Pty Ltd v Australian Competition Tribunal* [2011] FCAFC 58.

As the Council explained in its 2010-11 annual report, the Council respectfully disagrees with the Full Court's "privately profitable" approach to criterion (b) and considers that such an approach is likely to make declaration impossible in circumstances where an absence of access is likely to result in inefficient investment in infrastructure, restricted competition in important dependent markets and where regulated access is likely to be in the national interest.

The Council trusts that the High Court will take the opportunity to interpret criterion (b) in a manner which will allow services to be declared where it is contrary to the broad public interest for a facility to be duplicated whether or not it may be privately profitable for some private parties to build another facility. Should the Court hold that such an interpretation is not available under the current legislative wording, then in the Council's view there will be an urgent need for the Commonwealth Government to consider legislative amendments to Part IIIA.

David Crawford
President

2 Regulated third party access to infrastructure services

Part IIIA of the *Competition and Consumer Act 2010 (CCA)* (formerly the *Trade Practices Act 1974*) establishes the National Access Regime. Under the regime an access seeker can gain access to services provided by nationally significant infrastructure that cannot be economically duplicated in circumstances where access would to promote competition in a dependent market.

Under the regime the Council considers applications relating to the declaration of services, ineligible service rulings and the certification of state and territory access regimes and makes 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 *Trade Practices Amendment (Infrastructure Access) Act 2010 (TPA Amendment Act)*, which took effect on 14 July 2010, introduced a number of changes to the National Access Regime. These included the removal of declaration criterion (d)⁵ and clarification of declaration criterion (e) (see Box 2-1 at page 6), provision for binding ‘no coverage’ rulings for new infrastructure and measures to improve the timeliness and administration of the declaration process.

Declaration of services

Access regulation under the National Access Regime is a two stage process. The first stage involves the Council considering 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—the access provider(s) and the access seeker(s)—try to reach commercial agreement on the terms and conditions of access. There is recourse to binding arbitration by the Australian Competition and Consumer Commission (**ACCC**) in the event that the parties 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 s 44G(2) (in respect of the Council) and s 44H(4) (in respect of the Minister) of the CCA. The declaration criteria are reproduced in Box 2-1.

⁵ Criterion (d) required that access be able to be provided without adversely affecting human health and safety. Such matters are more appropriately dealt with in arbitrating specific access disputes than in considering the scope of access regulation.

Box 2-1 Declaration criteria (sections 44G(2) and 44H(4) of the CCA)

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))**

(criterion d) [Repealed]

that access to the service is not already the subject of a regime for which a decision under section 44N that the regime is an effective access regime (certified) is in force (unless the designated Minister believes that there have been substantial modifications of that regime since it was certified under section 44N or of the relevant principles in the Competition Principles Agreement)
(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 transparent public consultation process. 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 final 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 (set out in s 44AA of the CCA).

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. The Tribunal has 180 days to make its

decision, and is limited to considering the material that was before the designated Minister or, in the case of a deemed decision, the material that was before the Council (unless the Tribunal requests additional information).

Once a service is declared, the negotiation and arbitration stage of the National Access Regime is enlivened. Any person seeking access to the service (not just the declaration applicant) has a right to negotiate with the provider of the declared service—it is expected that an access seeker will negotiate the terms and conditions of access directly 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 commercial resolution with minimal regulatory intervention.

Regulatory intervention occurs only in the event that an access seeker and service provider are unable to reach commercial agreement and an access dispute is notified (by either party) to the ACCC. The ACCC has broad scope to make orders to resolve an access dispute—although it must do so within the terms set out in Part IIIA including, in particular, the factors or safeguards to the rights of service providers and existing users (set out in s 44X of the CCA). Ultimately, if the ACCC is unable to arrive at access terms that appropriately recognise the interests of an infrastructure owner, then it does not have to require the provision of access to a declared service.

Providers of declared services to which an access seeker has rights under an ACCC arbitration determination are subject to a prohibition against preventing or hindering access to those services. Service providers are not required, however, to seek regulatory approval in relation to their day to day business decisions or their technology or investment choices, nor do access seekers have a veto in relation to these matters.

There is an exemption from access regulation available for services that would be provided by greenfields infrastructure. A person with a material interest in a proposed new infrastructure facility is able to apply to the Council for a service to be provided by that new facility to be ineligible for declaration. For the proposed service to be ineligible, and for the Council to recommend to the designated Minister that the service be found to be ineligible, one or more of the declaration criteria must not be satisfied. An ineligibility decision will apply for a period of at least 20 years.⁶

In addition, under the National Access Regime, a facility owner is able to provide an access undertaking to the ACCC setting out the terms on which access will be granted and there is also 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.

⁶ No applications for an ineligible service ruling have yet been made.

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 accord 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 declaration 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. The clause 6 principles require (in summary) consideration of:

- any factors limiting the scope of an effective access regime
- any interstate issues that arise from the state access regime
- an emphasis on determining access issues through commercial negotiation
- the regime's dispute resolution process, and
- regime 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 (other than Western Australia's electricity networks access regime which was certified on 17 July 2006).⁷ (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.)

⁷ In previous annual reports the Council incorrectly reported that the Western Australian electricity networks access regime is not certified.

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. Apart from Western Australia, whose electricity networks regime has been certified, no other government has lodged an application for certification of an energy regime and the Council does not anticipate that the CIRA commitment will be honoured.

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 and use and operation of 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.⁸

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 'greenfields' gas pipeline proposals.

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

⁸ 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).

The Council's work during 2011-12

At 1 July 2011 the only declaration matter not concluded was the application by Fortescue Metals Group Limited/The Pilbara Infrastructure Pty Ltd (**Fortescue**) for the declaration of certain services provided by iron ore railways in the Pilbara area of Western Australia. This matter has been the subject of considerable litigation over a long period—most recently the Council and Fortescue each made an application to the High Court of Australia for special leave to appeal the 4 May 2011 decision of the Full Court of the Federal Court. The applications for special leave were heard on 28 October 2011. Fortescue was granted special leave to appeal while the Council's applications were referred to the full bench of the High Court for determination. The Council sought and was granted leave to intervene in Fortescue's appeal. That appeal was heard by the High Court on 6-8 March 2012 and the decision reserved.

Early in 2011-12 the Commonwealth Minister took decisions on two applications for the certification of state access regimes for which the Council had provided recommendations during 2010-11. On 11 July 2011 the Dalrymple Bay Coal Terminal Access Regime was certified for 10 years and on 26 July 2011 the South Australian Rail Access Regime was certified also for 10 years. These matters were reported in the Council's previous annual report and are not discussed in this report.

During the year, the Council received two inter-related applications seeking the declaration of services provided by two facilities involved in jet fuel supply at Sydney airport. The Council also received an application under the NGL for a 15 year no-coverage determination in regard to a proposed gas pipeline in Queensland.

Table 2-1 below summarises the Council's work on declaration, certification and NGL matters during 2011-12, including key dates and outcomes. It also provides summary information on the two earlier declaration matters relating to access to certain Pilbara iron ore railways that are the subject of appeals to the High Court and for which judgment is reserved.

During the year the Council provided submissions to two public inquiries into matters that raise issues relevant to Part IIIA. These were a submission to the Productivity Commission draft report on the economic regulation of airport services (November 2011) and a submission to the review of the limited merits review regime in the National Electricity Law and the National Gas Law undertaken by Professor George Yarrow, the Hon. Michael Egan and Dr John Tamblyn (April 2012). Both submissions are available on the Council's website.

In addition, the Council secretariat continued its preliminary horizon studies of the sectors where it anticipates that third party access issues of the kind addressed under Part IIIA may emerge. Last year the Council considered issues relating to access to services provided by petroleum import terminals, water and wastewater networks, financial and equity market clearing and settlement systems, and carbon geo-sequestration and associated facilities, noting that it would monitor developments in these sectors. This year the Council secretariat looked at access to port services.

Table 2-1 The Council's third party access work in 2011-12: status at 30 June 2012**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)	<p>27 October 2008: Minister declared the service for 20 years expiring on 19 November 2028 (59 days)</p> <p>13 November 2008: Hamersley Iron Pty Ltd (an associated company of Rio Tinto) sought review of the Minister's decision in the Tribunal</p> <p>30 June 2010: the Tribunal set aside the Minister's decision to declare the service</p> <p>13 August 2010: Fortescue appealed the Tribunal's decision</p> <p>4 May 2011: Full Court dismissed the appeal</p> <p>31 May 2011: Fortescue applied for special leave to appeal the Full Court's decision to the High Court</p> <p>1 June 2011: The Council applied for special leave to appeal the Full Court's decision to the High Court</p> <p>28 October 2011: Fortescue granted special leave and the Council's applications referred to the full bench of the High Court for determination</p> <p>21 November 2011: The Council applied for leave to intervene in Fortescue's High Court proceedings</p> <p>6 March 2012: The Council granted leave to intervene in Fortescue's appeals</p> <p>6-8 March 2012: High Court heard appeals—judgment reserved</p>

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
Robe River railway	The Pilbara Infrastructure Pty Ltd	18 January 2008	29 August 2008 (224 days)	<p>27 October 2008: Minister declared the service for 20 years expiring on 19 November 2028 (59 days)</p> <p>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</p> <p>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</p> <p>13 August 2010: Rio Tinto appealed the Tribunal's decision</p> <p>4 May 2011: Full Court allowed the appeal and set aside the declaration</p> <p>31 May 2011: Fortescue applied for special leave to appeal the Full Court's decision to the High Court</p> <p>1 June 2011: The Council applied for special leave to appeal the Full Court's decision to the High Court</p> <p>28 October 2011: Fortescue granted special leave and the Council's applications referred to the full bench of the High Court for determination</p> <p>21 November 2011: The Council applied for leave to intervene in Fortescue's High Court proceedings</p> <p>6 March 2012: The Council granted leave to intervene in Fortescue's appeals</p> <p>6-8 March 2012: High Court heard appeals—judgment reserved</p>

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
Services provided by Caltex pipeline supplying jet fuel to Sydney airport	Board of Airline Representatives of Australia Inc	27 September 2011	14 March 2012 (169 days)	10 May 2012: Minister decided that the service provided by the Caltex Pipeline be not declared (56 days)
Services provided by the joint user hydrant installation for storage and distribution of jet fuel at Sydney airport	Board of Airline Representatives of Australia Inc	27 September 2011	14 March 2012 (169 days)	10 May 2012: Minister decided that the service provided by the Sydney joint user hydrant installation be not declared (56 days)

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
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)

Table 2-1 continued

National Gas Law 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
15 year no coverage determination for proposed gas pipeline	Australia Pacific LNG Gladstone Pipeline Pty Limited	2 May 2012	At 30 June 2012 the Council was yet to make its final recommendation to the Minister	

Declaration matters

Pilbara railways

The consideration of applications for the declaration of services provided by iron ore railways in the Pilbara area of Western Australia has a long history, most recently involving extensive litigation. In its 2010-11 annual report the Council outlined the key elements and outcomes of three judicial reviews determined by the Full Court. In particular, the Council noted the Full Court's interpretation of declaration criterion (b) and its concerns with that interpretation.

Criterion (b) provides that a service cannot be declared unless 'it would be uneconomical for anyone to develop another facility to provide the service'. The view of the Tribunal and the Council over a long period had been 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's decision was that this approach is 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])).

As outlined in its last annual report, 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. The Full Court's findings expressly state for example that it may be economic for someone to develop another facility to provide a 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.⁹

The Full Court's decision has implications beyond the consideration 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 for gas pipelines and no-coverage determinations for greenfield gas pipelines under the NGL. There are also likely to be implications for existing certified access regimes under s 44N of the CCA that incorporate criteria identical or similar to the

⁹ The Independent Committee of Inquiry into a National Competition Policy, known as the Hilmer Committee, reported in 1993.

declaration criteria in Part IIIA and there may be an impact on future applications for certification given the existence of almost identical language to criterion (b) in the CPA.

After considering the implications of the Full Court's decision for the public policy objectives underlying the operation of Part IIIA, the Council applied on 1 June 2011 to the High Court for special leave to appeal the decision of the Full Court. The application was referred to the full bench of the High Court for determination. This matter is still before the Court. Fortescue also made applications for special leave to appeal the Full Court's decision to the High Court and the Council sought to intervene in these proceedings. On 6 March 2012 the High Court granted leave for the Council to intervene in Fortescue's proceedings. The High Court heard the appeal on 6-8 March. It has reserved its decision.

During the course of the hearing, Fortescue sought leave to amend its notice of appeal to include a challenge to the Tribunal's overall approach to the reconsideration of the Minister's declaration decisions. Parties filed further submissions on this point and at 30 June 2012, the High Court was still considering this matter. If leave is granted, the High Court will also consider in these appeals the process undertaken by the Tribunal in reconsidering the Hamersley and Robe Railway declaration applications. The focus of the High Court would not be on the CCA in its current form, as the requisite provisions were amended in 2010, but the law as it stood in 2008 when the appeals commenced in the Tribunal.

Sydney airport jet fuel services

On 27 September 2011 the Board of Airline Representatives of Australia Inc (**BARA**) made two applications for the declaration of services provided by jet fuel supply infrastructure at Sydney airport. The applications were for declaration of:

- the Caltex pipeline—the service provided by the Caltex pipeline facility, which transports jet fuel from interconnection points with off-site jet fuel storage facilities at Port Botany to the Sydney airport Joint User Hydrant Facility (**JUHI**), and
- the Jet fuel storage and pipeline network / JUHI facility—the services provided by the jet fuel storage facility (including facilities for refuelling trucks) and jet fuel hydrant pipeline network facility provided by the JUHI at Sydney airport.

The applications sought declaration of the services for the purpose of providing jet fuel to international passenger and freight aircraft operating to or from Sydney airport. The Council¹⁰ invited written submissions on the applications from interested parties, receiving 14 submissions. As well as the submissions, the Applicant, Caltex and the Sydney JUHI Joint Venture each provided additional information.

¹⁰ The Council President, Mr David Crawford, is also the non-executive chairman of Perth Airport Pty Limited. In order to avoid any perceived conflict of interest, Mr Crawford took no part in the Council's consideration of these applications.

On 16 December 2011 the Council released draft recommendations on the applications—recommending that the services provided by the Caltex Pipeline and the JUHI not be declared. The Council invited written submissions on the draft recommendations, receiving submissions and commissioned reports from BARA, Caltex Australia, the Sydney JUHI Joint Venture, Cathay Pacific, Qantas and the International Air Transport Association. In addition, the Council received, after the close of the first round of submissions on 21 November 2011, submissions from Etihad Airways and United Airlines. The Council considered these submissions and reports and information on the operation of Sydney airport in finalising its recommendations.

On 15 March 2012 the Council provided its final recommendations to the designated Minister that the services be not declared. On 10 May 2012 the Minister decided that the service provided by the Caltex Pipeline and the service provided by the Sydney JUHI are not declared, consistent with the Council’s recommendation. In reaching these decisions the Minister determined that sections 44H(4)(a) and 44H(4)(f) were not satisfied by either application. The applicant did not appeal these decisions.

Certification matters

Two matters not finalised at 30 June 2011 were determined in 2011-12. Both were reported in detail in the Council’s 2010-11 annual report.

- On 11 July 2011, the Commonwealth Minister decided that Queensland’s Dalrymple Bay Coal Terminal Access Regime is an effective access regime and certified it for 10 years, consistent with the Council’s recommendation.
- On 26 July 2011 the Commonwealth Minister decided that the South Australian Rail Access Regime (applying to the services provided by most intrastate railways) is an effective access regime and certified it for 10 years, consistent with the Council’s recommendation.

Following these and previous certification decisions the current certification status of state and territory access regimes is as shown in Table 2-2 below.

Table 2-2 State and territory infrastructure access regimes and status at 30 June 2012

Jurisdiction	Scope of access regulation	Status of access regime at 30 June 2012
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

Table 2-2 continued

Jurisdiction	Scope of access regulation	Status of access regime at 30 June 2012
Victoria	Gas pipelines (National Gas (Victoria) Act 2008) Electricity networks (National Electricity (Victoria) Act 2005) Railways (Rail Corporations Act 1990) Grain handling and storage (Grain Handling and Storage Act 1995) Shipping channels (Port Management Act 1995)	Not certified: no application for certification Not certified: no application for certification Not certified: no application for certification 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. On 1 July 2010 the Port Services Act was re-named the Port Management Act (<i>Transport Legislation Amendment (Ports Integration) Act 2010</i>). The regime is repealed.
Queensland	Gas pipelines (Gas Pipelines Access Act 1998 /Queensland Competition Authority Act 1997) Electricity networks (Electricity-National Scheme (Queensland) Act 1997) Intrastate rail (Queensland Competition Authority Act 1997) Dalrymple Bay Coal Terminal (Queensland Competition Authority Act 1997)	Not certified: no application for certification Not certified: no application for certification Certified on 19 January 2011 Certified on 11 July 2011
South Australia	Gas pipelines (National Gas (South Australia) Act 2008) Electricity networks (National Electricity (South Australia) Act 1996) Railways (Railways (Operations and Access) Act 1997) Ports (Maritime Services (Access) Act 2000)	Not certified: no application for certification Not certified: no application for certification Certified on 26 July 2011 Certified on 9 May 2011
Western Australia	Gas pipelines (National Gas Access (WA) Act 2009) Electricity networks (Electricity Industry Act 2004) Railways (Railways (Access) Act 1998)	Not certified: no application for certification Certified on 17 July 2006 Certified on 11 February 2011
Tasmania	Gas pipelines (National Gas (Tasmania) Act 2008) Electricity networks (Electricity National Scheme (Tasmania) Act 1999)	Not certified: no application for certification Not certified: no application for certification

Table 2-2 continued

Jurisdiction	Scope of access regulation	Status of access regime at 30 June 2012
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: In previous annual reports the Council incorrectly reported that the Western Australian electricity networks access regime was not certified. The regime was certified on 17 July 2006.

National Gas Law matters

On 2 May 2012 the Council received an application under the NGL from Australia Pacific LNG Gladstone Pipeline Pty Limited, a wholly owned subsidiary of Australia Pacific LNG Pty Limited (**APLNG**), for a 15 year no-coverage determination for a proposed pipeline in Queensland, running from the Surat and Bowen basins to Curtis Island at Gladstone. If granted, the effect of such a determination is to exempt the pipeline from coverage under the NGL for 15 years from its commissioning.

The Council commenced public consultation on the application on 4 May 2012. In accord with the standard consultative procedure, the Council published a notice inviting interested parties to make submissions on the application by 25 May 2012. The Council received one submission on the application. On 19 June 2012, the Council released its draft recommendation that the Minister decide to make the no-coverage determination and invited interested parties to make further submissions. The Council anticipates making its final recommendation to the Minister within the statutory period of four months from the date of receipt of the application.

Submissions to public inquiries

Productivity Commission draft report on the economic regulation of airport services

On 20 September 2011, the Council made a submission in response to the Productivity Commission draft report on the economic regulation of airport services. (The Council had on 8 April 2011 made an initial submission to the Productivity Commission inquiry, which set out the history of the application of Part IIIA to airport services and addressed submissions made by the ACCC that airport services should be deemed to be declared.)¹¹

¹¹ These submissions were prepared by the Council Secretariat and approved by the Council. However, to avoid any perception of a conflict of interest, the Council President Mr David Crawford took no part in the Council's consideration of these matters. Mr Crawford is the chairman of the board of the company that operates Perth Airport.

The Council noted the Productivity Commission draft recommendation that the ACCC following publication of its price monitoring reports, have the power to issue a direction to an airport to 'show cause' why it should not be subject to a Part VIIA price inquiry. In the Council's view, such a process should occur only following a multi-year assessment of airport performance. Because a 'show cause' process prior to a price inquiry would require a formal exchange of views, the Council considered that it could reduce the risk of inappropriate regulation. Nonetheless, the Council also recognised the risk that a 'show cause' direction might lead to a price inquiry almost as a matter of course. It encouraged the Productivity Commission, in its final recommendation, to better explain the objectives of a 'show cause' process and how the Commission intends the process to operate. While ideally it would be preferable that responsibility for issuing a show cause notice and conducting any subsequent inquiry were separated, practically the Council thought the ACCC would be best placed to undertake both functions.

The Council agreed with the Productivity Commission draft recommendation that airport services should not be deemed to be declared. Given perceptions of delay and uncertainty in the declaration process (the claimed justification for deemed declaration), the Council observed that:

- the majority of declaration decisions to date have not been reviewed
- the 2010 amendments to Part IIIA (contained in the TPA Amendment Act) aimed at overcoming delay were yet untested, and
- rather than increasing regulatory certainty, deeming a service to be declared may indicate that third party access may be more readily achieved through lobbying and ad hoc interventions.

The Council also expressed the view that the consequences of the decision of the Full Court in *Pilbara Infrastructure v Tribunal*, which was then the subject of applications to the High Court for special leave to appeal, are of general application and any Government response should not be confined to any particular sector or type of service. (The Pilbara matter, particularly the impact of the Full Court's decision on criterion (b), is discussed earlier in this section.)

The Productivity Commission, in its final report released in March 2012 (PC 2012), found no indications that airports are inappropriately exercising their market power. Its recommendations relevant to the Council's responsibilities include that the Government should not introduce an airport-specific arbitration scheme activated by deemed declaration, mandatory codes of conduct or access undertakings (for surface transport operators).

Responding to the final report the Government agreed with the Commission's recommendations not to deem declaration or introduce mandatory codes of conduct, guidelines or Part IIIA access undertakings (www.infrastructure.gov.au/aviation/airport/airport_economic_regulation/response.aspx). The Government did not however support the 'show cause' recommendation, noting that the ACCC is already able to recommend

appropriate action where it has concerns arising from its monitoring program and that the access provisions in Part IIIA remain available.

Review of the limited merits review regime in the National Electricity Law and the National Gas Law

On 18 April 2012, the Council made a submission to the Review Panel for Review of Limited Merits Review Regime. This review was initiated by the Standing Council on Energy and Resources.

The Council's submission reiterated its view expressed in its 2010-11 annual report that judicial review of Ministerial decisions under Part IIIA is sufficient to ensure that decisions are made fairly and in accord with the law. The Council also responded to a paper by Professor Allan Fels AO entitled *The merits review provisions in the Australian Energy Laws* and to several views noted in Professor Fels' paper. The Council's core argument is that the key issue is not whether judicial review is an adequate replacement for merits review but whether the appropriate institutional arrangement is to provide two rounds of fact finding. Because reasonable minds can differ on the complex economic questions raised by the energy laws, the Council considers that it is preferable to have a single layer of fact finding, with judicial review available to ensure decisions are made correctly. There is no reason to expect that a Minister or the Australian Energy Regulator is any less able than the Tribunal to make decisions or that the Tribunal is any less susceptible to difficulty.

Horizon studies

Access to port services

Australia's ports play a critical role in the country's growth and in the prosperity and competitiveness of Australian business. This role is expected to continue with ports, and associated infrastructure and logistics, needing to expand and adapt to meet the anticipated ongoing growth in the nation's trade.

Ports are the subject of state or territory legislation with planning and investment defined by and determined within state and territory boundaries. As a part of the Australian Government's productivity reform agenda, Infrastructure Australia (IA) and the National Transport Commission (NTC) are working on the National Ports Strategy, intended to drive a coordinated approach to the planning and future investment in ports and, as such, provide for "the development of efficient, sustainable ports and related freight logistics"(IA and NTC 2010). The strategy has been endorsed by the Council of Australian Governments and an implementation plan is being developed (COAG 2011).

In developing the National Ports Strategy, it has been said that:

Improvements to ports and related logistics sectors can remove barriers and transaction costs to trade, increase competition and contestability, and provide important linkages to domestic and global value chains. Consequently, the performance [of] ports and land-side logistics chains are critical to facilitate

innovation, productivity gains and economic growth in Australia (IA and NTC 2010, p 5).

South Australia is the only jurisdiction with a generally applicable ports access regime. The regime, embodied in the *Maritime Services (Access) Act 2000 (SA)*, is certified under Part IIIA. The regime provides for access on fair commercial terms (with dispute resolution should access negotiations fail) to services provided at six commercial South Australian ports proclaimed by the Governor of South Australia. There is capacity to include other ports by means of declaration by regulation. The regime is administered and regulated by the Essential Services Commission of South Australia.

Queensland's Dalrymple Bay coal terminal (**DBCT**) at the port of Hay Point is a common user facility that provides coal handling services to coal miners in the Bowen Basin. The DBCT is subject to regulation under the *Queensland Competition Authority Act 1997 (Qld)* (**QCA Act**), an access undertaking accepted by the Queensland Competition Authority (**QCA**) and the safety regime established under the *Transport Infrastructure Act 1994 (Qld)* and the *Transport Operations (Marine Safety) Act 1994 (Qld)*. The access undertaking sets out the terms and conditions under which DBCT Management provides access to the terminal and addresses the process by which an access seeker negotiates access to the infrastructure and resolves any access disputes.

The Queensland Government obtained certification of the DBCT access regime in 2011 and the DBCT is the only Queensland port service subject to an access regime that is certified. There is however scope under the QCA Act to regulate other port facilities in the same way as the DBCT.

Other than the South Australian and DBCT regimes there is no other certified state access regime applying to Australian port services.¹² The fact that most port services are not subject to a certified regime means that declaration under the National Access Regime remains a potential avenue for access, depending on the particular port services the applicant seeks to be declared, although no person has yet applied for the declaration of a port service. Of course an access seeker must satisfy the five declaration criteria in s 44H(4) of the CCA (see Box 2-1 at page 6).

Any party considering an application for declaration needs to consider carefully the service(s) applied for. Declaration concerns access to services provided by a facility, not the facility itself. A potential access seeker needs to ensure an application for declaration clearly describes the relevant service(s), as the scope for declaring a service does not extend to something akin to the broadly defined "services at Port X". The Council considers that relevant services may include, together, alone or in part: channels; berths; bulk handling facilities; facilities for loading or unloading vessels; storage facilities on site or proximate to the port; and possibly even land adjacent to or necessary to provide access to port facilities or services.

¹² Victoria had a certified regime for access to commercial shipping channels leading into the Port of Melbourne. The certification of this regime lapsed in 2002 and the regime was repealed in 2011.

Significant Australian ports are generally either container or bulk commodity ports. Bulk commodity ports and container ports can be distinguished on the basis of geography/location, land access and availability, the level of integration in the supply chain and also the availability of associated critical infrastructure, such as land transportation via road or rail. They may also be distinguished by the (actual or potential) market or markets the port serves. While not pre-empting the merits of any application, the Council considers that the characteristics of, and services provided by, a bulk commodity port are likely to be more amenable to the principles supporting access under Part IIIA than are the characteristics and services of a container port.

Bulk commodity ports are more likely to be characterised by vertical integration of the supply chain and port than are container ports. Where this is an impediment to effective competition in upstream or downstream markets, the port service is likely to satisfy the declaration requirement that access promotes a material increase in competition in at least one dependent market. (Where vertical integration is not present there may still be competition issues but other regulatory solutions, such as price monitoring or price regulation, may be more appropriate than access via declaration.)

Services provided by bulk commodity ports may also be more likely to satisfy the requirement that access would not be contrary to the public interest (declaration criterion (f)). While public interest issues have a high degree of specificity to a particular application and the application's approach to the other declaration criteria (so are most appropriately considered in the context of a specific application) the extent to which access promotes competition will be important in considering whether criterion (f) is satisfied.

The outcomes of previous declaration applications provide some guidance on public interest questions that may be relevant for port services. In the case of the Pilbara rail matters (see page 15 above), an argument put to the Council, Minister and the Tribunal was that there would be disruption resulting from access to the railways by third parties which would have substantial costs. The Council, the Minister and the Tribunal considered that to the extent disruptions result, their nature and extent will depend on the extent to which access is taken up and that this is a matter that could be considered in respect of a specific access request. The Tribunal stated that in considering criterion (f) (public interest), it must consider the consequences of *access* and where there are consequences that are likely to occur they are to be considered under criterion (f) by "giving them weight that pays regard to their degree of likelihood".¹³ The Full Court supported this approach.

Given the characteristics and nature of a bulk commodity port, the Council considers that there is scope for a person seeking access to the services of a bulk commodity port to make a viable case that the facility/facilities providing the service(s) cannot be economically duplicated, as required by s 44H(4)(b) of the CCA (criterion (b)). However the Full Court's private profitability interpretation of criterion (b) in the case *Pilbara Infrastructure v Tribunal* (see the discussion on Pilbara railways at page 15), which states among other things 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, is

¹³ *In the Matter of Fortescue Metals Group Limited* [2010] A CompT 2, [1172]

likely to make it difficult to satisfy criterion (b) where ports export high value commodities such as iron ore. This would significantly reduce the availability of declaration for such ports. It is likely to be easier to demonstrate that it is not privately profitable to duplicate the port facility providing the service, and thereby satisfy criterion (b), in the case of ports that serve lower value commodities.

The Full Court's decision and the issue of the private profitability test for criterion (b) is the subject of appeals that have been heard by the High Court. While currently reserved, the High Court's decision will be important for the interpretation of criterion (b) and the Council expects to review its implications for ports and the satisfaction of the declaration criteria in due course.

The involvement of all Australian governments in the National Ports Strategy suggests that they anticipate further reforming the management, planning and regulation landscape for ports. Indeed the Western Australian Government is implementing its Ports Governance Review incorporating changes requiring the consolidation and restructuring of the state's existing port authorities and regulatory reform including the potential development of a state based third party access regime. The Council encourages competition and efficiency issues being included and considered in these reform processes.

Updates on previous studies

In its earlier horizon studies the Council looked at the potential for and possible issues relating to third party access in four areas: petroleum import terminal services, water and wastewater services, financial clearing and settlement services, and carbon geo-sequestration services. The Council considered that absent significant changes in market circumstances it was not necessary to further consider intervention in the petroleum industry via access regulation of services provided by petroleum import infrastructure.¹⁴ The Council indicated that it would maintain a 'watching brief' on the potential scope for contribution by Part IIIA in the other areas.

Water and wastewater services

As discussed in its previous annual report, the Council considers that demand for access is unlikely to arise until there is further structural reform of the water sector introducing greater contestability into elements of the supply chain.

Since the Council expressed this view, the Productivity Commission has published its final inquiry report into Australia's urban water sector (PC 2011). The Commission noted that the sector is characterised by conflicting objectives and unclear roles and responsibilities of governments, water utilities and regulators, and that this has led to inefficient allocation of water resources, misdirected investment, undue reliance on water restrictions and costly water conservation programs. It considered that the largest gains are likely to come initially from establishing clear objectives, improving the performance of institutions with respect

¹⁴ In December 2011 the ACCC reported that '[d]uring 2010–11, the amount of petrol imported by independent operators continued to increase. While still relatively small, these independent importers provide a competitive discipline on the larger players' (ACCC 2011, p xlvi).

to their roles and responsibilities, governance, regulation, competitive procurement of supply, and pricing, rather than trying to create a competitive market as in the electricity sector (PC 2011, p. xvi).

Access to urban water infrastructure services via declaration is likely to first require reforms directed to improving the prospect of competitive outcomes, including governance changes such as those identified by the Productivity Commission. Declaring water infrastructure services will not enhance competition in the urban water sector if other factors prevent the emergence of competition.

New South Wales has implemented access arrangements as part of the state's *Water Industry Competition Act 2006*. The Act establishes an access regime to permit private sector access to certain water infrastructure services and sewerage infrastructure services, allowing competition in the supply of water services and provision of sewerage services. A party may seek access to water industry infrastructure services by lodging a coverage declaration application with the Independent Pricing and Regulatory Tribunal of New South Wales (**IPART**) which makes a recommendation on the application to the Premier. In February 2012 Sydney Water submitted a third party access undertaking to IPART for approval under the water access regime. The undertaking, if accepted by IPART, will set the conditions of access to the services provided by Sydney Water's drinking supply network.

In Queensland water infrastructure services can be declared for access under Part 5 of the QCA Act although no services have been declared to date.

Securities clearing and settlement services

Clearing of securities trades involves the netting off of multiple transactions between parties by an interposed central clearing party. The central clearing party becomes party (by novation) to separate agreements with each of the buyer and seller. This process mitigates the risk of one party failing to honour its obligations because (among other things) the central clearing party requires collateral deposits from market participants. Settlement occurs after a transaction is cleared. It is the process through which legal title to a security is transferred in exchange for cash. At present, all securities clearing and settlement services in Australia are provided by subsidiaries of ASX Ltd (**ASX**). Trades through the ASX market are cleared by ASX Clear and settled by ASX Settlement. Clearing and settlement services for trades through non-ASX markets are offered by ASX Clear and ASX Settlement through the ASX trade acceptance service.

Chi-X Australia Pty Ltd (**Chi-X**) began operating a securities trading market in competition with the ASX on 31 October 2011. Trades by Chi-X are cleared and settled through the ASX Trade Acceptance Service. LCH.Clearnet Limited (**LCH**), a London-based central clearing party serving international exchanges and platforms and a range of over the counter markets, is currently seeking a licence to operate in Australia. LCH has contracted to provide clearing and settlement services to Financial and Energy Exchange, a new derivatives exchange that has applied for an Australian market licence. Chi-X is not locked into using the ASX trade acceptance service for the full five-year term of its contract so could potentially choose to acquire services from LCH, once LCH begins operating in Australia.

On 15 June 2012 the Australian Government established a consultative process to examine the ways that Australian financial regulators deploy their powers to ensure competition and stability in equity market clearing and settlement (Treasurer 2012). As part of this process the Government has issued a discussion paper outlining the potential implications of competition and possible policy responses to achieve the benefits of competition while managing any adverse consequences.

The discussion paper notes that competition has emerged among providers of trading, and to a lesser extent, clearing services around the world but that markets overwhelmingly continue to have a single settlement facility. Possible reasons for this are that there are advantages in having a single facility including for example more accurate whole of market record keeping from maintaining records in a single location because there is no requirement to aggregate records held in multiple facilities (Council of Financial Regulators 2012, p 5).

If settlement is a monopoly service (this possibility is recognised in the discussion paper) then there is some potential for the existing structure of the Australian market for the clearing and settlement of ASX securities to emerge as an issue for potential competitors. It is possible for example that the ASX (as the vertically integrated provider of a clearing service and the monopoly settlement service) might use its market power to foreclose competition in the market for clearing services. In this regard the paper discusses options for new providers of clearing services to obtain access to the ASX settlement service, including via the National Access Regime.

As the Council noted in its 2010-11 annual report, an application for the declaration of the ASX's settlement service may raise some legal issues.

A threshold legal question may arise as to whether a clearing and/or settlement service is a 'service provided by means of a facility' for the purposes of the definition of 'service in s 44B of the CCA. On the one hand, the Tribunal has indicated in obiter that a facility must be a physical asset and that a computer network may not be a facility. On the other hand, the definition of 'service' in s 44B includes: (c) a communications service or similar service'. While this question is appropriately considered in the context of public consultation on an application for declaration, the Council would be reluctant to reject an application on technical jurisdictional grounds if declaration might address the kind of competition issue that the National Access Regime is designed to address.

A further issue 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 noted in its 2010-11 annual report that the roles of ASIC and the Reserve Bank relate to market integrity and stability while problems relating to access to clearing or settlement services are arguably closer to the species of competition problem that the National Access Regime is designed to address, and that the ACCC is experienced in regulating.

The discussion paper also postulates some alternatives to Part IIIA for providing access to the ASX settlement service, including application of section 46 of the CCA, structural separation of the vertically integrated service provider, an industry specific access regime

and transitional arrangements such as deemed declaration and mandatory access undertakings.

Imposing regulated access rights where the declaration criteria in Part IIIA are not satisfied risks undermining incentives for investment and dynamic efficiency. It is important that access regulation be predicated on an informed decision made by an objective decision maker. In the declaration process envisaged by the Hilmer Committee, and as enacted by the Parliament, decisions are made by an elected Minister on the advice of an independent body after a public consultation process in which all interested parties are able to present their views. The Council is concerned that deeming declaration or mandating access arrangements, if the process omits the safeguards built into Part IIIA, may increase regulatory uncertainty. The risks in side stepping the safeguards in the National Access Regime are discussed further elsewhere in this annual report, including in the President's review.

Carbon geo-sequestration services

Carbon geo-sequestration 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. Australian governments are exploring CCS as a means of 'storing' greenhouse emissions so combating climate change.

In its horizon study work reported in 2010-11, the Council noted the potential for access regulation to be invoked in relation to CCS infrastructure such as pipelines, compressors and injection technology, and storage reservoirs. This is explicit, for example, in Commonwealth and Victorian Government legislation. The Commonwealth *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.¹⁵ Victoria has similarly legislated for specific access regime(s) via regulation, if necessary.

While the National Access Regime (or specific access regulation) is potentially available,¹⁶ the success of such regulation is likely to depend significantly on the establishment of clear proprietary rights in respect of CCS. Recent developments, such as the Australian Government's *National CO2 Infrastructure Plan* intended to focus on the identification and development of carbon dioxide storage sites proximate to emission sources and investigate options for transporting, injecting and storing carbon dioxide, may be a move in this direction (www.ret.gov.au/energy/clean/nco2infplan/Pages/default.aspx).

¹⁵ Explanatory memorandum, *Offshore Petroleum and Greenhouse Gas Storage Bill 2008 (Cth)*, at [235], p 41.

¹⁶ Whether the services of CCS infrastructure meet the criteria for declaration in Part IIIA of the CCA would need to be considered at the time an application is made to the Council.

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. The High Court judgment on the appeals by the Council and Fortescue against the Full Court decision regarding the declaration of various Pilbara iron ore railways is reserved. Given the High Court view will be a central element of the guide, the Council has delayed its work on updating the guides (and on updating the NGL guides where a similar question is relevant) until the judgment is available.

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:

- 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). Part C of the guide to the NGL was updated in July 2011 and Part D, concerning greenfields pipeline incentives was updated in March 2012. Minor revisions have been made to Part B of the guide and an updated version was made available in May 2012. The Council will further revise the guide following the High Court's decision in the Pilbara rail matters and will consolidate it as a single document.

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.

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.

During 2011-12 there were some 72 800 visits to the Council's website (2010-11: 11 300 visits over two months of available records).

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.¹⁷ During 2011-12 there were some 55 500 visits to the NCP website (2010-11: 52 600 visits).

During 2011-12, the Council discontinued its newsletter Accessible, considering its website to be a more effective means of providing information.

Reporting under section 290(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. In all cases the Council provided its recommendations to the Minister within the statutory timeframes.

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 of the CCA during the year.

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

As discussed in the President's review and elsewhere in this report, during 2010-11 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. The High Court heard appeals against the Full Court decision on 6-8 March 2012. At 30 June 2012 the decision of the High Court was reserved.

Impediments to the operation of Part IIIA

In its previous annual report the Council identified the role of the Tribunal and efforts to bypass the declaration process by 'deeming' services to be declared as areas of concern in

¹⁷ The Council delivered its final NCP assessment report in 2005 (see NCC 2005).

relation to the operation of Part IIIA. In the President's review in this annual report, the Council reiterates its concerns in these areas. In particular the Council considers that:

- the current merits review process creates unnecessary uncertainty because it creates a situation where the findings of the Tribunal on public interest and other issues arising in the declaration process potentially override those of a (politically accountable) ministerial decision maker: judicial review would reduce this uncertainty while ensuring decisions on declaration applications are made fairly and in accord with law
- deeming services to be declared or forcing parties to lodge access undertakings with the ACCC risk extending the declaration process beyond the "limited category of cases" envisaged by the Hilmer Committee increasing the prospect of inappropriate regulation, and
- excluding services from the application of Part IIIA can inappropriately advance private interests ahead of the public interest (inherent in applying the declaration criteria): whereas applying the process and criteria for the declaration of services in Part IIIA provide a means to resist calls for regulatory outcomes that seek to advance private commercial advantage.

Also in the President's review the Council outlines its concern that the approach to the construction of criterion (b) resulting from the Full Court's *Pilbara Infrastructure v Tribunal* decision is likely to preclude declaration where it would otherwise be warranted. For example, the Full Court approach could preclude declaration in circumstances where an absence of access is likely to result in inefficient investment in infrastructure and restricted competition in important dependent markets. This matter is discussed earlier in this report and in the Council's 2010-11 annual report. The High Court has heard an appeal against the Full Court decision—at 30 June 2012 the High Court's decision was reserved.

There has been some public commentary during the year under review that the declaration process in Part IIIA has not 'worked' because the process has taken too long or because few services have been declared.

The criticisms concerning the length of the declaration process generally focus on two declaration areas: the various Pilbara rail applications and the application by Virgin Blue for the declaration of certain services provided by Sydney airport. These matters took considerable time (indeed the Pilbara matters remain the subject of an appeal before the High Court). While the Council would not deny that frustration with the time taken is warranted, these matters pre-date reforms implemented in 2010 so do not represent how the Part IIIA process would operate today.

The 2010 reforms to the CCA imposed (among other things) a mandatory time limit on the Council and the Tribunal and a change to the form of merits review. Following these changes (see the TPA Amendment Act) both the Council and Tribunal must complete their work within 180 days (with scope for extension in certain circumstances). Together with the 60 days provided for the Minister's decision, these mandatory limits mean that a decision on a declaration application should take no longer than a maximum of 14 months (if there is a review) and much less time than that if there is no review.

The change to the form of merits review involved replacing the previous de novo review process with limited merits review, whereby the Tribunal is required to determine the review on the basis of the information submitted to the original decision maker. While the Tribunal can request additional information where it considers such information to be reasonable and appropriate for the purpose of making its decision, the requirement limiting the review to the information originally submitted will in the Council's view assist in reducing the ability for a party to 'game' the review to delay a decision.

There is no doubt that the usefulness of Part IIIA is significantly impeded if applications are not decided in commercially realistic timeframes. Accordingly, the Council makes considerable effort to meet its statutory obligations regarding timing of decisions on applications for declaration. It is confident that it would require extension of the 180 day period for making recommendations on declaration applications only in extraordinary circumstances. Indeed, for all recent applications (for the declaration of services, the certification of access regimes and coverage and no coverage under the NGL) the Council has delivered all but one recommendation within the statutory time periods. The one exception was the 12 May 2010 application for the certification of the Western Australian Rail Access Regime where an interested party raised new matters late in the public assessment process: the Council extended the consideration time to enable other interested parties to respond to the new matters raised. In this matter the Council made its recommendation on 13 December 2010.

The current CCA time limits arising from the 2010 amendments do not appear unreasonable. An application for declaration can raise some significant issues requiring considered evaluation and interested parties need a reasonable opportunity to respond appropriately to an application. Indeed some parties providing submissions on applications before the Council in 2011-12 commented on the need for sufficient time to prepare their material (including in relation to applications under the NGL where timing requirements for the different stages of the Council's consideration of an application are specified in the National Gas Rules). The Council acknowledges that the arrangements introduced in 2010 are yet to be fully tested but would caution strongly against side stepping the safeguards inherent in declaration process on the ground that earlier (pre-2010) matters took too long to resolve.

Similarly the Council would be concerned at any suggestion that the relatively few declarations might be interpreted as an indicator of the 'failure' of Part IIIA. As recognised by the Hilmer Committee it is preferable for access questions to be resolved via commercial agreement between a service provider and an access seeker(s). Declaration under Part IIIA (providing recourse to binding arbitration of an access dispute) is available where commercial agreement cannot be reached. The indicator for the success of Part IIIA is not therefore the number of applications that result in declaration but rather that there have been appropriate decisions on applications within a commercially meaningful time frame—that is, outcomes that are consistent with the Hilmer Committee view that declaration should apply in only a 'limited category of cases where access to the facility was essential to permit effective competition and declaration was in the public interest having

regard to the significance of the industry to the national economy and the expected impact of effective competition in that industry on national competitiveness.’

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

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 lead to efficient infrastructure outcomes. Where effective competition exists commercial decisions are more likely to give rise to efficient investment outcomes than a regulated outcome.

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 by allowing for binding arbitration of access disputes in relation to declared services. The regime encourages commercial negotiations over access terms.

The potential for access regulation to adversely impact infrastructure investment was central for the Hilmer Committee. Consistent with the Hilmer Committee view the objects of the National Access Regime are the promotion of the efficient use of and investment in infrastructure for the long term benefit of consumers and provision of a framework to encourage consistent access regulation across the economy. The statutory declaration criteria seek to ensure that access regulation is appropriate, applying as envisaged by the Hilmer Committee only to a ‘limited category of cases where access to the facility was essential to permit effective competition and declaration was in the public interest having regard to the significance of the industry to the national economy and the expected impact of effective competition in that industry on national competitiveness’ (Hilmer 1993, p xxxii).

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.

In considering applications for declaration the Council is concerned to apply the declaration criteria 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 directly on the issue of the effect of access regulation on infrastructure

investment. The Council acknowledges however that it is difficult to assess effects on investment outcomes where there are no obvious control groups or counterfactuals for comparison and where the demand for many infrastructure services is expanding rapidly.

The Council is aware that some service providers and potential service providers argue that access regulation (and/or the prospect of such regulation) discourages investment and consequently threatens benefits from investment that might flow to Australia. The Council cautions against placing too much weight on such statements. Deterring efficient infrastructure investment is to be avoided. But so is deterring wasteful and unnecessary investment in infrastructure. Where a lack of access results in the unnecessary duplication of facilities, finite resources are wasted. Moreover, at a time of high demand for engineering, construction and similar services, unnecessary duplication will draw scarce resources away from more efficient uses and drive up costs. Unnecessary investment also increases the overall costs base in an industry so increasing costs and reducing productivity and competitiveness. Noting that Part IIIA ensures that an access arrangement will provide an infrastructure owner with a risk-adjusted commercial return on their investment, and that the owner's legitimate interests are protected and their reasonably anticipated use of the infrastructure prioritised, the Council does not consider that the prospect of access discourages efficient investment.

Relevant to the discussion of investment outcomes are the provisions in the National Access Regime that enable a person with a material interest in a proposed new infrastructure facility to make an application to the Council for a service provided by the proposed facility to be 'ineligible' to be declared. Where such an application is granted (that is where the service does not satisfy at least one of the declaration criteria) the period of the decision is for at least 20 years. There is a similar provision in the NGL—providing the possibility of a 15 year no coverage 'greenfields' incentive for proposed gas pipelines where at least one of the pipeline coverage criteria is not met.

Implications for the future operation of Part IIIA

The decision of the Full Court in *Pilbara Infrastructure v Tribunal* discussed earlier in this report has significant implications for the operation of Part IIIA. The Council is required to apply the Full Court's approach to criterion (b). This has implications for a range of access processes. As well as declaration applications, it affects the consideration of applications for recommendations on ineligible services and for coverage/revocation of coverage decisions for gas pipelines and no-coverage determinations for greenfield gas pipelines under the NGL. There are also likely implications for certified access regimes under s 44N of the CCA and on future applications for certification given the existence of almost identical language to criterion (b) in the CPA.

The High Court has heard appeals against the Full Court's decision: at 30 June 2012 the High Court's judgment was reserved. The High Court's decision will determine the approach to the application of criterion (b) so will have significant bearing on the future operation of Part IIIA and other access mechanisms. The Council will report on the High Court decision when available, and will update its guides to the operation of Part IIIA and the NGL.

Summary of Council performance in 2011-12 against key performance indicators

The Council's performance in 2011-12 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 2011-12

Key performance indicator	2011-12 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 2011 there were no declaration applications before the Council. There were two inter-related new declaration applications during 2011-12. The Council considered the applications within the required timeframe. In the case of these applications the Minister decided not to declare the services, making his decisions within the 60 day decision period. The Council had recommended the applications 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 are made within 180 days. Recommendations meet the advice requirements of decision making Ministers.	At 1 July 2011 there were two certification matters not yet finalised. In each case the Council's final recommendation was before the Minister and provided to him within the required 180-day period. In each case the Minister decided to certify the regime consistent with the Council's recommendations, making his decision within the 60-day decision period. The Council received no new applications in 2011-12.
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 2011 there were no applications under the NGL before the Council. The Council received one new application under the NGL in 2011-12, which it had not finalised at 30 June 2012. The Council expects to provide its final recommendation to the Minister within the specified time period.

Table 2-3 continued

Key performance indicator	2011-12 target	Outcome
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. Decision taken to discontinue the bi-monthly newsletter <i>Accessible</i> , with the Council considering its website to be a better means of providing information.
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.
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 successfully sought leave to appeal the Full Court decision to the High Court, which has reserved its decision. Given the broad effect of the matter, the extent of the change from the pre-existing law, and the reserved decision, the Council took a decision to defer updating its guides until after the High Court decision is available. As an interim measure guides were annotated to warn that they do not fully reflect relevant legislative matters.

Table 2-3 continued

Key performance indicator	2011-12 target	Outcome
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 2011-12 annual report to the Treasurer by 31 August 2012. The Council's annual report will include a report on the National Access Regime as required by the CCA.

3 Governance and organisation

About the National Competition Council

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 applications for third party access to services provided by monopoly infrastructure under the National Access Regime in Part IIIA of the CCA and recommendations and decisions on applications made under the National Gas Law (**NGL**).¹⁸

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 infrastructure with monopoly characteristics. This facilitates economic growth, employment growth, efficient 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.

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 under the National Access Regime or an application under the NGL the Council publishes the application and then

¹⁸ The Council's third party access work is discussed in chapter 2.

consults with stakeholders by inviting submissions and providing public reports. The Council supports its access regulation function by way of publicly available 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 2011-12 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 analysis of financial performance

The Australian Government funds the Council through budget appropriations. The Council received \$2.809 million in 2011-12 (\$2.772 million in 2010-11).

The Council recorded an operating surplus of \$468 670 in 2011-12 (surplus of \$327 541 in 2010-11). In 2011-12 the Council's principal areas of expenditure were employee and related costs (61 per cent of total expenditure) and legal expenditure (16 per cent of total expenditure).

The Council's net assets as at 30 June 2012 were \$4.85 million (up from \$4.33 million at 30 June 2011).

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 \$7500 per coverage application and \$2000 per classification application. The Council received fees of \$7500 in 2011-12, which were remitted to the Official Public Account.

Table 3-1 summarises the financial resources used by the Council in 2011-12¹⁹ while Table 3-2 provides a summary of the resources used by the Council in performing its outcome in 2011-12 showing the variation against budget. The variation of approximately 18 per cent arose primarily because of lower than anticipated spending on legal and economic advisory services.

Table 3-1 National Competition Council resourcing 2011-12

	Available appropriations (\$'000)	Appropriations applied (\$'000)	Balance remaining (\$'000)
Agency appropriations			
Prior year appropriation	4649	40	4609
Current year appropriation	2850	2339	511
Total appropriation available	7499	2379	5120

Source: Portfolio Budget Statements 2011-12 and Financial Statements 2011-12.

¹⁹ See also the audited Financial Statements for 2011-12.

Table 3-2 Resourcing for the National Competition Council program 2011-12

	Budget \$'000	Appropriations applied (current year) \$'000	Variation \$'000
Program 1.1—National Competition Council			
Departmental outputs funded by appropriations	2850	2339	511
Average staffing level	12	11.47	

Source: Portfolio Budget Statements 2011-12 and Financial Statements 2011-12.

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 is responsible for its activities, consistent with the requirements of the CCA, with decisions being made at Council meetings (see Table 3-3 which shows meetings in 2011-12). Day to day management is undertaken by an executive team in the Council secretariat.

The Council is accountable for its decisions through the courts, tribunals, the Parliament and the Commonwealth Ombudsman.

National Competition Council structure

The Council comprises the President and up to four other councillors appointed by the Governor-General, with appointments 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 the Council's office at 200 Queen Street, Melbourne, Victoria.

The President and councillors

At 30 June 2012, the Council comprised four councillors, including a President. The councillors were David Crawford (President) (first appointed December 1998), Doug McTaggart (first appointed December 2000), Virginia Hickey (first appointed December 2003) and Stephen King (appointed in December 2011) (see Box 3-1). The councillors, including the President, are appointed until December 2012.

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.

In addition to serving as the Council President, Mr Crawford is the Non-Executive Chairman of Perth Airport Pty Limited (and related companies)—the operator of Perth Airport—having taken up that position in April 2000. He is a director of Clough Limited, an ASX listed engineering and construction service provider, having joined the board of Clough in May 2011. He is also Chair of the Board of Advisors of Curtin University's 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 Abooso 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 further three year terms. Dr McTaggart lives in Brisbane, Queensland.

Dr McTaggart recently retired as the Chief Executive of the Queensland Investment Corporation. He is a member of the Council of Australian Governments Reform Council, a member of the Queensland Independent Commission of Audit, and Chairman of the Queensland Public Service Commission. He is also a director of the listed Suncorp Group.

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.

Virginia Hickey

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

Ms Hickey is director of @ the Board Table, a corporate governance consulting business. She is also a board member of Medical Insurance Group Australia, SAFECOM and independent chairman of Bentleys SA. On 1 July 2012 Ms Hickey was appointed as a director of Public Transport Victoria.

Box 3-1 continued

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 chair of the Telecommunications Industry Ombudsman Council, chair of TransAdelaide, board member of Flinders Ports, 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 Competition and Consumer 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.

Stephen King

Professor Stephen King was appointed to the Council in December 2011, for a one year period.

Professor King is Professor of Economics at Monash University. He is also a part-time Member of the Economic Regulation Authority of WA and a Lay Member of the High Court of New Zealand.

Professor King's main areas of expertise are in competition economics, regulation and industrial organisation. His research has been published widely, including in major international economics journals.

From 2009-2011 Professor King was Dean of the Faculty of Business and Economics at Monash University. Prior to joining Monash University, Professor King was a Member of the Australian Competition and Consumer Commission. Before that he was a Professor of Economics at the University of Melbourne and a Professor of Management (Economics) at the Melbourne Business School.

Professor King was a member of the Victorian Infrastructure Planning Council between 2000 and 2002 and a member of the Executive Committee of the Prime Minister's Home Ownership Task Force in 2002-2003.

In 1985, Professor King received the University Medal from the Australian National University for his undergraduate studies in economics. He completed his PhD in economics from Harvard University in 1991. He is a Fellow of the Academy of Social Sciences in Australia.

National Competition Council meetings

During 2011-12 councillors met on four occasions, including twice by teleconference. In-face meetings were held in the Council's Melbourne office. Table 3-3 lists the dates of these meetings and councillors' attendance.

The Council schedules four meetings each year on approximately a quarterly basis. In addition the Council meets as required to consider current applications under Part IIIA or the NGL and to approve submissions to reviews and inquiries being undertaken by other bodies.

During 2011-12 councillors received a financial statement of the Council's expenditure against budget every month. They considered the Council's financial performance at every meeting. The Council also received a weekly record of significant correspondence which the secretariat had dealt with under the Council's direction.

Table 3-3 National Competition Council meetings, 2011-12

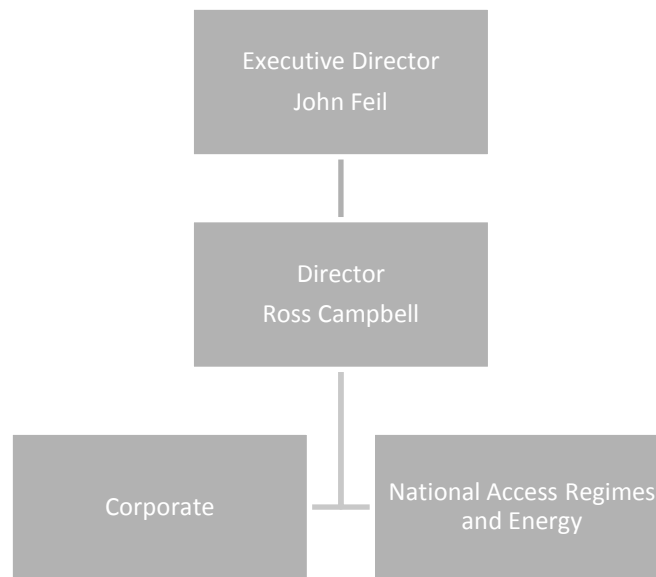
Meeting date	Attendance
29 August 2011	all councillors
15 December 2011	all councillors
13 March 2012	all councillors, except D Crawford (conflict of interest re main agenda item)
15 June 2012	all councillors

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 CCA permits the Council however to adopt decisions by circulation of papers. The Council does this where such a course 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. During 2011-12 there were no decisions adopted on the circulation of papers.

As well as chairing meetings of the Council, the President is also the Head of Agency for the purposes of ensuring the Council's compliance with the FMA Act and other Australian Public Service requirements. During 2011-12 the President attended the Council offices generally every month and between these attendances conducted regular telephone discussions with the Executive Director on the Council's work.

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 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 2012.

Figure 3-1 National Competition Council secretariat organisation chart, 30 June 2012

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, for policy and expenditure decisions and for establishing and maintaining appropriate ethical standards. The executive team met regularly, generally weekly, with secretariat staff during 2011-12 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 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. In the year under review, the ARM Committee comprised councillors Doug McTaggart (Chair) and Virginia Hickey.

The ARM Committee met twice during 2011-12. On 29 August 2011 the committee considered and recommended that the Council adopt the audited financial statements for 2010-11. The committee received a report from the Australian National Audit Office (**ANAO**) in relation to its audit of these financial statements. On 13 March 2012 the committee reviewed and updated the Council's policies governing risk management and fraud control.

Formal reviews

There were no reviews of access arrangements under the National Access Regime, the NGL or 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 2011-12 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 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 sought and obtained from the ACCC a statement as to the ACCC's appropriate management of the Council's finances.

The Council received audit clearance of its financial statements from the ANAO on 28 August 2012. The ANAO issued an unqualified audit report.

Assets management

Assets managed by the Council during 2011-12 were limited, comprising infrastructure plant and equipment (primarily computer equipment and multi-function devices and office furniture) and intangibles including computer software. During the year the Council commenced an arrangement with the Treasury under which the Council will use computer and related assets owned by the Treasury.

Activities undertaken in 2011-12 to provide assurance as to the validity and valuation of the assets held included a stocktake to confirm the location of assets, assessments of impairment, and a fair value assessment to ensure that the assets are recorded at their appropriate value in line with accounting standards.

Purchasing

The Council undertook purchasing in accord with the *Commonwealth Procurement Guidelines* (now Commonwealth Procurement Rules). The key elements of these guidelines are value for money, efficiency and effectiveness, accountability and transparency, ethics and industry development. The Council looks to achieve value for money outcomes by seeking wherever possible at least three quotations when purchasing services.

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 2011-12, the main services purchased were legal advisory services associated with the Council's third party access function, corporate and financial support services and information and communications technology (ICT) support services.

The Council occupies office premises under licence from the Australian Government Solicitor, which holds the head lease. The cost of the Council's accommodation in 2011-12 was \$128 760 (GST inclusive).

The ACCC is contracted to provide all financial and personnel services to the Council, and processed the Council's accounts during 2011-12. Expenditure on these services in 2011-12 was \$221 728 (GST inclusive).

In June 2012 the Council commenced an arrangement with the Treasury, whereby the Treasury will provide all of the Council's ICT requirements, and finalised its previous arrangements.

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 13 March 2012.

There were no instances of fraud or allegations of fraud in 2011-12.

Certificate of Fraud Measures

I certify that, as at 30 June 2012, the National Competition Council (**NCC**) had completed its fraud risk assessments and a fraud control plan. I 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 has taken all reasonable measures to minimise the incidence of fraud in the agency.



David Crawford
President

Our people

Staffing

At 30 June 2012 the Council's staffing of 11.47 full time equivalent persons comprised 7.47 full time equivalent secretariat staff and four councillors (including the Council President).

The secretariat staff comprised the Executive Director, one director, 4 legal counsel (Executive, levels 1-2) and 2 administrative staff (Administrative Service Officer, grades 3-6). All staff are employed on an ongoing basis (see Table 3-4). One staff member left the Council during 2011-12. The vacancy was not filled.

Table 3-4 Secretariat staff by gender and employment status, as at 30 June 2011 and 30 June 2012

Employment status	2011	2012
Female		
Full-time ongoing	2	1
Full-time non-ongoing	-	-
Part-time ongoing	3	3
Part-time non-ongoing	-	-
Male		
Full-time ongoing	4	4
Full-time non-ongoing	-	-
Part-time ongoing	-	-
Total	9	8

Staff terms and conditions

Terms and conditions for the Council's non Senior Executive Service (**SES**) staff are established by 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.

Terms and conditions for the Council's two SES staff are set by a determination under section 24(1) of the *Public Service Act 1999* made by the President of the Council.

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.

Remuneration paid to councillors is set by the Remuneration Tribunal.

Staff remuneration in 2011-12

Employee benefits (including leave entitlements and superannuation contributions) paid to councillors and secretariat staff in 2011-12 totalled \$1.44 million.

The Council does not operate performance pay arrangements and no secretariat staff member has a Commonwealth funded vehicle as part of their remuneration package.

The ranges of reportable salaries (excluding superannuation) paid in 2011-12 to Council secretariat staff are shown in Table 3-5. (SES remuneration showing reportable salary and superannuation outcomes is shown in Note 12B of the Council's financial statements in chapter 4).

Remuneration to councillors paid in 2011-12 was \$161 492 (see Note 11 of the Council's financial statements in chapter 4).

Table 3-5 Staff profile, Council secretariat, 30 June 2012

Level	Salary range (\$'000)	Female	Male	Total
Senior Executive Service, band 2	Up to 236		1	1
Senior Executive Service, band 1	Up to 148		1	1
Executive, levels 1 -2	93 – 131	2 ^a	2	4
Administrative Service Officer, grades 3-6	52 – 93	2 ^b	-	2
Total		4	4	8

^a Both staff members worked part time.

^b One staff member worked part time.

Staff 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.

The Council retained all of its legal counsel in 2011-12. One staff member working in an administrative position left the Council.

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 could 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 changes to work and agency priorities, staffing arrangements, accommodation, office policies, work health and safety, information technology and training. All staff are invited to attend meetings of the Council and have access to the minutes of Council meetings and the Council's policy and procedures documentation.

Workplace diversity

The Council continued to apply its *Workplace Diversity Plan* in 2011-12.

No workplace harassment was reported during 2011-12.

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 2012

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	2	-	-	-	-
Total	4	-	-	-	-

^a Non-English speaking background, first generation.

^b Non-English speaking background, second generation.

^c Aboriginal or Torres Strait Islander (ATSI).

Work health and safety

Following enactment of the *Work Health and Safety Act 2011* the Council reviewed its health and safety arrangements, adopting a new policy from 1 January 2012. The Council's policy provides a framework of principles and responsibilities for maintaining a safe and healthy working environment. Under the policy the Council's Executive Director has key responsibility for ensuring staff and visitor health and safety, and work health and safety is a standing agenda item at meetings of the Council and at secretariat staff meetings.

The Council offers various initiatives to assist the health, safety and welfare outcomes of its staff. These include access to screen based eyesight testing, review by an ergonomist of work stations and the flu vaccine. Staff members also have access annually to a health appraisal and advisory program and an employee assistance program.

The Council received no injury reports and is not aware of any notifiable incidents arising from the conduct of its work during 2011-12. There were no notices lodged under the *Work Health and Safety Act 2011* or its predecessor legislation during the year.

Freedom of information

Agencies subject to the *Freedom of Information Act 1982 (FOI Act)* are required to publish information to the public as part of the Information Publication Scheme (IPS). This requirement is in Part II of the FOI Act and has replaced the former requirement to publish a section 8 statement in the agency's annual report. Each agency must display on its website a plan showing what information it publishes in accord with the IPS requirements. The Council has published all required information on its website.

Changes to disability reporting in annual reports

Since 1994 Commonwealth departments and agencies have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the (then) Commonwealth Disability Strategy. In 2007-08 reporting on the employer role was transferred to the Australian Public Service Commission's *State of the Service Report* and the *APS Statistical Bulletin*. These reports are available at www.apsc.gov.au. From 2010-11, departments and agencies have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by a new National Disability Strategy which sets out a ten year national policy framework for improving life for Australians with disability, their families and carers. A high level report to track progress for people with a disability at a national level will be produced by the Standing Committee on Community, Housing and Disability Services to the Council of Australian Governments and will be available at www.fahcsia.gov.au. The Social Inclusion Measurement and Reporting Strategy agreed by the Australian Government in December 2009 will also include some reporting on disability matters in its regular *How Australia is Faring* report and, if appropriate, in strategic change indicators in agency annual reports. More detail on social inclusion matters can be found at www.socialinclusion.gov.au.

Advertising and market research

The Council made no payments during 2011-12 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 2011-12 totalled \$3 638 (GST inclusive). This expenditure was solely 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.

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. 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
- sensor lighting in the office premises
- uses LCD computer screens
- disposes of cartridges through a recycling outlet
- encourages staff to minimise their use of energy and paper

- disposes of mobile phones and batteries through a recycling outlet
- makes redundant equipment available to not for profit organisations where appropriate
- 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.

Grant programs

The Council does not award or administer grants.

Use of consultants

The Council purchases the services of specialist consultants when the required expertise is not available internally. In particular, the Council purchases legal advice to assist its work under Part IIIA of the CCA. It also purchases other specialist advice, in particular economic advice services and IT support services.

Prior to engaging consultants the Council takes into account the skills and resources required for the task, the skills available internally and the cost effectiveness of engaging external expertise. Legal and economic experts generally need to have specialist expertise, and there is also a requirement to avoid conflicts of interest. This can limit significantly the choices available to the Council.

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). The term of the panel will expire on 31 December 2012.

The Council entered no new consultancy contracts in 2011-12. At 1 July 2012 it had three continuing contracts for: the provision of legal advice services associated with its work on matters relating to the declaration of services provided by certain Pilbara iron ore railways; the provision of IT support services; and the provision of communications management advice.

During 2011-12 the Council commenced an arrangement under which its ICT requirements including support services are provided by the Treasury. Accordingly it concluded its previous ICT support consultancy.

Summary information on the Council's expenditure on consultancy contracts in 2011-12, providing a comparison with the preceding two financial years, is provided in Table 3-7. The bulk of the Council's expenditure in 2011-12 was for a contract for the provision of legal services directed to work on the Pilbara iron ore railways declaration matters.

Information on the value of the Council's contracts and consultancies is available on the AusTender website at www.tenders.gov.au. No contracts are exempt from AusTender.

Table 3-7 Summary of expenditure on all consultancy contracts in 2009-10, 2010-11 and 2011-12 (\$) (GST inclusive)

	2009-10	2010-11	2011-12
Legal (new)	12 842	2 670	-
Legal (ongoing)	1 708 867 ¹	339 449	406 112
Economic (new)	5 720	-	-
Economic (ongoing)	-	-	-
Communications (new)	-	-	-
Communications (ongoing)	15 069	5 190	660
ICT (new)	-	-	-
ICT (ongoing)	46 475	45 555	41 500
Human resources services (new)	16 500	-	-
Human resources services (ongoing)	-	-	-
Total	1 805 473	392 864	448 272

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

Annual report list of requirements

The following list shows this report's compliance with the requirements for annual reports for departments, executive agencies and FMA Act bodies.

Part of report	Description	Requirement	Page
Annual report administration	Letter of transmittal	Mandatory	iii
	Table of contents	Mandatory	v–vi
	About this report (structure and content compliance)		ix–xii
	Index	Mandatory	107–108
	Glossary	Mandatory	vii–viii
	Contact officer	Mandatory	ii
	Internet home address and address for report	Mandatory	ii
	Annual reporting requirements	Mandatory	53–57
Review by agency head	President's review	Mandatory	1–4
	Summary of significant issues and developments	Suggested	1–4
	Overview of agency's performance and financial results	Suggested	Not discussed
	Outlook for following year	Suggested	Not discussed
	Significant issues and developments in portfolio	Suggested if applicable	Not applicable
Agency overview	Overview description of agency	Mandatory	37
	Organisational structure: councillors		39–41
	Organisational structure: secretariat		42–43
	Outcome and program structure		37–38
	Role and functions		37
	Senior management structure		42–43
	Summary of resources used by outcome		38–39
	Vision and mission		37

Part of report	Description	Requirement	Page
	Where outcome and program structures differ from PBS/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reason for change	Mandatory	No variations
Report on performance	Review of performance during the year in relation to deliverables and KPIs, and their effectiveness in achieving the planned outcomes	Mandatory	34–36
	Actual performance in relation to deliverables and key performance indicators set out in PBS/PAES or other portfolio statements	Mandatory	34–36
	Where performance targets differ from the PBS/PAES, details of both former and new targets and reasons for the change	Mandatory	No variations
	Significant changes in nature of principal functions/services	Suggested	Not applicable
	If applicable to the outcomes, a report on performance of purchaser/provider arrangements	Suggested	Not applicable
	Factors, events or trends influencing agency performance	Suggested	Not applicable
	Contribution of risk management in achieving objectives	Suggested	Not discussed
	Information about relevant programs and progress in relation to the social inclusion strategic changes indicators	Mandatory – if applicable	Not applicable
	Performance against service charter customer service standards, complaints data, and the agency's response to complaints	Mandatory – if applicable	Not applicable
	Discussions and analysis of the agency's financial performance	Mandatory	38–39
	Discussion of any significant changes from the prior year or from budget	Suggested	Not applicable
	Agency resource statement and summary resources tables by outcomes	Mandatory	38–39

Part of report	Description	Requirement	Page
	Development since the end of the financial year that have affected or may significantly affect the agency's operations or financial results in the future	Mandatory	Not applicable
	Trend information	Mandatory	Not applicable
Corporate governance	Agency heads are required to certify that their agency complies with the Commonwealth Fraud Control Guidelines	Mandatory	46
	Statement of the main corporate governance practices in place	Mandatory	39–43
	Name of the senior executives and their responsibilities	Suggested	43
	Senior management committees and their roles	Suggested	43
	Corporate and operational planning and associated performance reporting and review	Suggested	Not discussed
	Approach adopted to identifying areas of significant financial or operational risk	Suggested	Not discussed
	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	Not discussed
	How the nature and amount of remuneration for SES officers is determined	Suggested	47, 91–93
	Financial management		44–46
	Risk management and fraud control		45–46
	Internal and external scrutiny		43–44
External scrutiny	Significant developments in external scrutiny	Mandatory	43–44
	Judicial decisions and decisions of administrative tribunals	Mandatory	44
	Reports by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman	Mandatory	44

Part of report	Description	Requirement	Page
Management of human resources	Assessment of effectiveness in managing and developing human resources to achieve agency objectives	Mandatory	46–49
	Workforce planning, staff turnover and retention	Suggested	46–49
	Impact and features of enterprise or collective agreements, individual flexibility arrangements, determinations common law contracts and AWAs	Suggested	47
	Training and development undertaken and its impact	Suggested	48
	Occupational health and safety performance	Suggested	49
	Statistics on staffing by: classification level , full/part time, gender location	Mandatory	46–47
	Enterprise or collective agreements, individual flexibility arrangements, determinations, common law contracts and AWAs	Mandatory	47
	Information on performance pay	Mandatory	47
Assessment management	Assessment of effectiveness of asset management	Mandatory – if applicable	45
Purchasing	Assessment of purchasing against core policies and principles	Mandatory	45
Consultants	The number of new consultancy services contracts let during the year	Mandatory	51–52
	The total actual expenditure on all new consultancy contracts let during the year	Mandatory	51–52
	The number of ongoing consultancy contracts that were active in the reporting year	Mandatory	51–52
	The total actual expenditure in the reporting year on the ongoing consultancy contracts	Mandatory	51–52
	Contracts in excess of \$100 000 that do not provide for the Auditor-General to have access to the contractor’s premises	Mandatory	Not applicable
Exempt contracts	Contracts in excess of \$10 000 exempt from AusTender	Mandatory	Not applicable

Part of report	Description	Requirement	Page
Disability Strategy	An assessment of the agency's performance in implementing the Commonwealth Disability Strategy	Mandatory	50
Financial statements	Audited financial statements	Mandatory	59–103
Other information	Occupational health and safety (section 74 of the <i>Occupational Health and Safety Act</i>)	Mandatory	49
	Freedom of information (subsection 8 of the <i>Freedom of Information Act 1982</i>)	Mandatory	49–50
	Advertising and market research (section 311A of the <i>Commonwealth Electoral Act 1918</i>) and statement on advertising campaigns	Mandatory	50
	Ecologically sustainable development and environmental performance (section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i>)	Mandatory	50–51
Other	Grant program	Mandatory	51
	Correction of material errors in previous annual report	Mandatory	Not applicable

4 Financial statements

Financial statements for the period ended 30 June 2012



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 2012, 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; Administered Schedule of Comprehensive Income; Administered Cash Flow Statement; and Notes comprising a Summary of Significant Accounting Policies and other explanatory information.

President's Responsibility 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 is necessary to enable the preparation of the financial statements that give a true and fair view and 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.

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 2012 and of its financial performance and cash flows for the year then ended.

Australian National Audit Office



Carla Jago

Executive Director

Delegate of the Auditor-General

Canberra

28 August 2012

National Competition Council

Level 21, 200 Queen Street Melbourne 3000 Australia
GPO Box 250 Melbourne 3001 Australia
Telephone 03 9981 1600 Facsimile 03 9981 1650
Website: www.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 2012 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

John Feil
Executive Director

28th August 2012

28 August 2012

NATIONAL COMPETITION COUNCIL
STATEMENT OF COMPREHENSIVE INCOME
for the period ended 30 June 2012

	Notes	2012 \$	2011 \$
EXPENSES			
Employee benefits	3A	1,442,567	1,440,209
Supplier	3B	897,601	940,810
Depreciation and amortisation	3C	24,314	87,667
Finance costs	3D	646	2,029
Write-down and impairment of assets	3E	1,797	2,879
Other expenses	3F	-	-
Total expenses		2,366,925	2,473,594
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Fees and fines	4A	-	-
Other revenue	4B	1,895	135
Total own-source revenue		1,895	135
Gains			
Other	4C	24,700	29,000
Total gains		24,700	29,000
Total own-source income		26,595	29,135
Net cost of (contribution by) services		2,340,330	2,444,459
Revenue from Government	4D	2,809,000	2,772,000
Surplus (Deficit) on continuing operations		468,670	327,541
Surplus (Deficit) attributable to the Australian Government		468,670	327,541
OTHER COMPREHENSIVE INCOME			
Changes in asset revaluation reserves		5,633	-
Total other comprehensive income		5,633	-
Total comprehensive income (loss)		474,303	327,541
Total comprehensive income (loss) attributable to the Australian Government		474,303	327,541

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

NATIONAL COMPETITION COUNCIL**BALANCE SHEET***as at 30 June 2012*

	Notes	2012 \$	2011 \$
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	39,871	22,525
Trade and other receivables	5B	5,130,622	4,687,653
Total financial assets		<u>5,170,493</u>	<u>4,710,178</u>
Non-Financial Assets			
Land and buildings	6A	40,527	51,616
Property, plant and equipment	6B,C	6,270	17,261
Intangibles	6D,E	-	1,308
Other	6F	51,344	9,006
Total non-financial assets		<u>98,141</u>	<u>79,191</u>
Total Assets		<u>5,268,634</u>	<u>4,789,369</u>
LIABILITIES			
Payables			
Suppliers	7A	25,518	98,670
Other payables	7B	34,796	32,447
Total payables		<u>60,314</u>	<u>131,117</u>
Provisions			
Employee provisions	8A	351,771	314,741
Other provisions	8B	10,127	12,392
Total provisions		<u>361,898</u>	<u>327,133</u>
Total liabilities		<u>422,212</u>	<u>458,250</u>
Net assets		<u>4,846,422</u>	<u>4,331,119</u>
EQUITY			
Parent Entity Interest			
Contributed equity		81,000	40,000
Reserves		228,066	222,433
Retained surplus (accumulated deficit)		4,537,356	4,068,686
Total parent entity interest		<u>4,846,422</u>	<u>4,331,119</u>
Total equity		<u>4,846,422</u>	<u>4,331,119</u>

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 2012

	Retained earnings		Asset revaluation reserve		Contributed Equity/Capital		Total equity	
	2012 \$	2011 \$	2012 \$	2011 \$	2012 \$	2011 \$	2012 \$	2011 \$
Opening balance								
Balance carried forward from previous period	4,068,686	3,741,145	222,433	222,433	40,000	-	4,331,119	3,963,578
Adjusted opening balance	4,068,686	3,741,145	222,433	222,433	40,000	-	4,331,119	3,963,578
Comprehensive income								
Other comprehensive income	-	-	5,633	-	-	-	5,633	-
Surplus (Deficit) for the period	468,670	327,541	-	-	-	-	468,670	327,541
Total comprehensive income	468,670	327,541	5,633	-	-	-	474,303	327,541
of which:								
Attributable to the Australian Government	468,670	327,541	5,633	-	-	-	474,303	327,541
Contributions by owners								
Appropriation (Departmental Capital Budget)	-	-	-	-	41,000	40,000	41,000	40,000
Sub-total transactions with owners	-	-	-	-	41,000	40,000	41,000	40,000
Closing balance as at 30 June	4,537,356	4,068,686	228,066	222,433	81,000	40,000	4,846,422	4,331,119
Closing balance attributable to the Australian Government	4,537,356	4,068,686	228,066	222,433	81,000	40,000	4,846,422	4,331,119

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

NATIONAL COMPETITION COUNCIL**CASH FLOW STATEMENT***for the period ended 30 June 2012*

	Notes	2012 \$	2011 \$
OPERATING ACTIVITIES			
Cash received			
Appropriations		2,339,000	2,341,000
Net GST received		117,963	81,645
Other		1,895	135
Total cash received		2,458,858	2,422,780
Cash used			
Employees		(1,403,189)	(1,388,345)
Suppliers		(1,078,323)	(1,003,181)
Other		-	-
Total cash used		(2,481,512)	(2,391,526)
Net cash (used by) from operating activities	9	(22,654)	31,254
FINANCING ACTIVITIES			
Cash received			
Contributed equity		40,000	-
Total cash received		40,000	-
Net cash (used by) financing activities		40,000	-
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		-	(42,367)
Total cash used		-	(42,367)
Net cash from (used by) investing activities		-	(42,367)
Net increase (decrease) in cash held		17,346	(11,113)
Cash and cash equivalents at the beginning of the reporting period		22,525	33,638
Cash and cash equivalents at the end of the reporting period	5A	39,871	22,525

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

NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS
as at 30 June 2012

BY TYPE	2012	2011
	\$	\$
Commitments receivable		
Net GST recoverable on commitments	81,951	111,096
Total commitments receivable	81,951	111,096
Commitments payable		
Other commitments		
Operating leases ¹	(382,272)	(511,321)
Contracts for IT Services ²	(55,572)	(25,387)
Other ³	(463,612)	(685,340)
Total other commitments payable	(901,456)	(1,222,048)
Net commitments by type	(819,505)	(1,110,952)
BY MATURITY		
Commitments receivable		
Other commitments receivable		
One year or less	37,982	34,197
From one to five years	43,969	76,899
Over five years	-	-
Total other commitments receivable	81,951	111,096
Commitments payable		
Operating lease commitments		
One year or less	(133,848)	(129,049)
From one to five years	(248,424)	(382,272)
Over five years	-	-
Total operating lease commitments payable	(382,272)	(511,321)
Other commitments		
One year or less	(283,952)	(247,115)
From one to five years	(235,232)	(463,612)
Over five years	-	-
Total other commitments payable	(519,184)	(710,727)
Net commitments by maturity	(819,505)	(1,110,952)

NB: Commitments are GST inclusive where relevant.

¹ Operating leases included are effectively non-cancellable.

² A new contract 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. Licence payments are subject to annual reviews to market.

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

NATIONAL COMPETITION COUNCIL
ADMINISTERED SCHEDULE OF COMPREHENSIVE INCOME

for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
EXPENSES			
Other expenses	21	-	-
Total expenses administered on behalf of Government		<u>-</u>	<u>-</u>
LESS:			
OWN-SOURCE INCOME			
Own-source revenue			
Non-taxation revenue			
Fees	22	7,500	-
Total non-taxation revenue		<u>7,500</u>	<u>-</u>
Total own-source revenue administered on behalf of Government		<u>7,500</u>	<u>-</u>
Gains			
Total own-source income administered on behalf of Government		<u>-</u>	<u>-</u>
Net cost of (contribution by) services		<u>(7,500)</u>	<u>-</u>
		2012	2011
		\$'000	\$'000
OTHER COMPREHENSIVE INCOME			
Total other comprehensive income		<u>-</u>	<u>-</u>

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

NATIONAL COMPETITION COUNCIL
ADMINISTERED CASH FLOW STATEMENT
for the period ended 30 June 2012

	Notes	2012 \$'000	2011 \$'000
OPERATING ACTIVITIES			
Cash received			
Fees		7,500	-
Total cash received		7,500	-
Net cash flows used by operating activities		7,500	-
Cash and cash equivalents at the beginning of the reporting period		-	-
Cash to Official Public Account for:			
- Appropriations		-	-
- Special Accounts		-	-
- Transfer to other entities (Finance - Whole of Government)		7,500	-
		7,500	-
Effect of exchange rate movements on cash and cash equivalents at the beginning of the reporting period		-	-
Cash and cash equivalents at the end of the reporting period		-	-

This schedule should be read in conjunction with the accompanying notes.

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Note 1: Summary of Significant Accounting Policies**1.1 Objectives of the National Competition Council**

The National Competition Council is an Australian Government controlled entity. The objective of 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 funding by Parliament for the Council's administration and programs.

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

The Council does not conduct administered activities, however, fines and penalties collected are returned to the Commonwealth as administered items.

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:

- a) Finance Minister's Orders (FMOs) for reporting periods ending on or after 1 July 2011; and
- b) 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 FMOs, 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 executor contracts 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 a judgement that has 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 reporting 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 sign-off date and are applicable to the current reporting period had a financial impact on the Council and are not expected to have a future financial impact on the Council.

Future Australian Accounting Standard Requirements

New standards, revised standards, interpretations and amending standards that were issued prior to the sign-off date and are applicable to the future reporting period are not expected to have a future 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 Council 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:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) 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 the 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*.

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

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.

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 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.

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 the end of the 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 be 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 has been calculated using the Australian Government short hand method as at 30 June 2012. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Council recognises a provision for termination when it has developed a detailed 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's administered schedules and notes.

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 leased 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 and 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 period.

- *Financial assets carried 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 carried 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's accounts immediately prior to the restructuring.

1.16 Property, Plant and EquipmentAsset 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
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 is 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:

	2012	2011
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 2012. 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 (2010-11: 3 years).

All software assets were assessed for indications of impairment as at 30 June 2012.

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.

1.20 Reporting of Administered Activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated below, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the entity for use by the Government rather than the entity is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance and Deregulation. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the entity on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

Note 2: Events After the Reporting Period

There was no subsequent event that had the potential to significantly affect the ongoing structure and financial activities of the Council.

Note 3: Expenses

	2012	2011
	\$	\$
Note 3A: Employee Benefits		
Wages and salaries	1,119,053	1,138,996
Superannuation:		
Defined contribution plans	57,321	59,901
Defined benefit plans	122,442	113,762
Leave and other entitlements	143,751	124,580
Other employee expenses	-	2,970
Total employee benefits	1,442,567	1,440,209
Note 3B: Suppliers		
Goods and services		
Legal expenses	369,193	312,017
Consultants and contracted services	227,545	223,592
Information technology and communications expenses	57,934	74,114
Travel expenses	53,889	62,609
Property operating expenses	13,834	39,141
Information management services	21,295	29,508
Employee related expenses	17,780	23,676
Other - Administration expenses	11,088	10,039
Total goods and services	772,558	774,696
Goods and services are made up of:		
Provision of goods – related entities	509	1,590
Provision of goods – external parties	17,249	23,040
Rendering of services – related entities	228,466	242,961
Rendering of services – external parties	526,334	507,105
Total goods and services	772,558	774,696
Other supplier expenses		
Operating lease rentals – related entities:		
Minimum lease payments	117,054	28,974
Operating lease rentals – external parties:		
Minimum lease payments	-	134,072
Workers compensation expenses	7,989	3,068
Total other supplier expenses	125,043	166,115
Total supplier expenses	897,601	940,810

	2012	2011
	\$	\$
<u>Note 3C: Depreciation and Amortisation</u>		
Depreciation:		
Property, plant and equipment	9,354	16,890
Leasehold improvements	13,652	68,636
Total depreciation	23,006	85,526
Amortisation:		
Intangibles	1,308	2,141
Total amortisation	1,308	2,141
Total depreciation and amortisation	24,314	87,667
 <u>Note 3D: Finance Costs</u>		
Unwinding of discount	646	2,029
Total finance costs	646	2,029
 <u>Note 3E: Write-Down and Impairment of Assets</u>		
Asset write-downs and impairments from:		
Impairment of property, plant and equipment	1,797	2,879
Total write-down and impairment of assets	1,797	2,879
 <u>Note 3F: Other Expenses</u>		
Transfers to the OPA	-	-
Total other expenses	-	-

Note 4: Income

	2012	2011
	\$	\$
OWN- SOURCE REVENUE		

Note 4A: Fees and Fines

Fees	-	-
Total fees and fines	<u>-</u>	<u>-</u>

Note 4B: Other Revenue

Court costs recovered	-	-
Other revenue - supplier expense refund	1,895	135
Total other revenue	<u>1,895</u>	<u>135</u>

GAINS**Note 4C: Other Gains**

Gain on payout of make good provision	-	5,000
Resources received free of charge	24,700	24,000
Total other gains	<u>24,700</u>	<u>29,000</u>

Note 4D: Revenue from Government***Appropriations:**

Departmental appropriations	2,809,000	2,772,000
Total revenue from Government	<u>2,809,000</u>	<u>2,772,000</u>

* The Council received \$Nil (2011: \$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

	2012	2011
	\$	\$
<u>Note 5A: Cash and Cash Equivalents</u>		

Cash on hand or on deposit	39,871	22,525
Total cash and cash equivalents	<u>39,871</u>	<u>22,525</u>

	2012 \$	2011 \$
Note 5B: Trade and Other Receivables		
Appropriations receivable:		
For existing programs	5,120,050	4,649,050
Total appropriations receivable	5,120,050	4,649,050
Other receivables:		
GST receivable from the Australian Taxation Office	10,572	38,603
Total other receivables	10,572	38,603
Total trade and other receivables (gross)	5,130,622	4,687,653
Less impairment allowance account:		
Goods and services	-	-
Other	-	-
Total impairment allowance account	-	-
Total trade and other receivables (net)	5,130,622	4,687,653
Receivables are expected to be recovered in:		
No more than 12 months	5,130,622	4,687,653
More than 12 months	-	-
Total trade and other receivables (net)	5,130,622	4,687,653
Receivables are aged as follows:		
Not overdue	5,130,622	4,687,653
Overdue by:		
0 to 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
Total receivables (gross)	5,130,622	4,687,653
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	-	-

Note 6: Non-Financial Assets

	2012	2011
	\$	\$
<u>Note 6A: Land and Buildings</u>		
Leasehold improvements:		
Fair value	40,527	54,609
Accumulated depreciation	-	(2,993)
Total leasehold improvements	40,527	51,616
Total land and buildings	40,527	51,616

No indicators of impairment were found for land and buildings.

Note 6B: Property, Plant and Equipment**Other property, plant and equipment:**

Fair value	6,270	31,452
Accumulated depreciation	-	(14,191)
Total other property, plant and equipment	6,270	17,261
Total property, plant and equipment	6,270	17,261

All revaluations are independent and are conducted in accordance with the revaluation policy stated at Note 1. On 30 June 2012 a full revaluation of property plant and equipment was carried out by the Australian Valuation Office.

Revaluation increment includes \$2,563 for leasehold improvements, \$160 for property, plant and equipment and \$2,911 for the reversal of makegood liability. No decrements were expensed (2011: \$0 expensed).

Impairments of \$1,797 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 (2011-12)

	Leasehold Improvements	Other property, plant & equipment	Total
	\$	\$	\$
As at 1 July 2011			
Gross book value	54,609	31,452	86,061
Accumulated depreciation and impairment	(2,993)	(14,191)	(17,184)
Net book value 1 July 2011	51,616	17,261	68,877
Additions	-	-	-
Revaluations and impairments recognised in other comprehensive income	2,563	160	2,723
Depreciation expense	(13,652)	(9,354)	(23,006)
Disposals:			
Other disposals (gross book value)	-	(22,601)	(22,601)
Other disposals (accumulated depreciation)	-	20,804	20,804
Net book value 30 June 2012	40,527	6,270	46,797
Net book value as of 30 June 2012 represented by:			
Gross book value	40,527	6,270	46,797
Accumulated depreciation	-	-	-
Net book value 30 June 2012	40,527	6,270	46,797

Note 6C (Cont'd): 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)
Net book value 30 June 2011	51,616	17,261	68,877

	2012	2011
	\$	\$
Note 6D: Intangibles		
Computer software:		
Purchased	-	6,424
Total computer software (gross)	-	6,424
Accumulated amortisation	-	(5,116)
Total computer software (net)	-	1,308
Total intangibles	-	1,308

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 (2011-12)

	Computer software purchased	Total
	\$	\$
As at 1 July 2011		
Gross book value	6,424	6,424
Accumulated amortisation and impairment	(5,116)	(5,116)
Net book value 1 July 2011	1,308	1,308
Additions	-	-
Amortisation	(1,308)	(1,308)
Net book value 30 June 2012	-	-
Net book value as of 30 June 2012 represented by:		
Gross book value	-	-
Accumulated amortisation and impairment	-	-
Net book value 30 June 2012	-	-

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

Note 6E (Cont'd): 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:		
By purchase	-	-
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)
Net book value 30 June 2011	1,308	1,308

	2012	2011
	\$	\$
Note 6F: Other Non-Financial Assets		
Prepayments	51,344	9,006
Total other non-financial assets	51,344	9,006
Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	51,344	9,006
More than 12 months	-	-
Total other non-financial assets	51,344	9,006

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

Note 7: Payables

	2012	2011
	\$	\$
Note 7A: Suppliers		
Trade creditors and accruals	25,518	98,670
Operating lease rentals	-	-
Total supplier payables	25,518	98,670
Supplier payables are expected to be settled within 12 months:		
Related entities	18,477	303
External parties	7,041	98,367
Total suppliers payables	25,518	98,670

Settlement was usually made within 30 days.

Note 7B : Other Payables

Wages and salaries	34,796	28,347
Superannuation	-	4,100
Total other payables	34,796	32,447
Total other payables are expected to be settled in:		
No more than 12 months	34,796	32,447
More than 12 months	-	-
Total other payables	34,796	32,447

Note 8: Provisions

	2012	2011
	\$	\$

Note 8A: Employee Provisions

Leave	351,771	314,741
Total employee provisions	351,771	314,741

Employee provisions are expected to be settled in:

No more than 12 months	231,059	235,206
More than 12 months	120,712	79,535
Total employee provisions	351,771	314,741

Note 8B: Other Provisions

Provision for restoration obligations	10,127	12,392
Total other provisions	10,127	12,392

Other provisions are expected to be settled in:

No more than 12 months	-	-
More than 12 months	10,127	12,392
Total other provisions	10,127	12,392

	Provision for restoration	Total
	\$	\$
Carrying amount 1 July 2011	12,392	12,392
Additional provisions made	-	-
Amounts used	-	-
Amounts reversed	(2,911)	(2,911)
Unwinding of discount or change in discount rate	646	646
Closing balance 30 June 2012	10,127	10,127

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

	2012	2011
	\$	\$
Reconciliation of cash and cash equivalents as per Balance Sheet to Cash Flow Statement		
Cash and cash equivalents as per:		
Cash flow statement	39,871	22,525
Balance sheet	39,871	22,525
Difference	<u>-</u>	<u>-</u>
Reconciliation of net cost of services to net cash from operating activities:		
Net cost of services	(2,340,330)	(2,444,459)
Add revenue from Government	2,809,000	2,772,000
Adjustments for non-cash items		
Depreciation / amortisation	24,314	87,667
Net write down of non-financial assets	1,797	2,879
Unwinding of discount	646	2,029
Writeback of make good provision	-	(5,000)
Changes in assets / liabilities		
(Increase) in net receivables	(441,968)	(487,517)
(Increase) in prepayments	(42,339)	(333)
Increase in employee provisions	37,029	43,188
(Decrease) / increase in supplier payables	(73,152)	52,125
Increase in other payable	2,349	8,675
Net cash (used by) / from operating activities	<u>(22,654)</u>	<u>31,254</u>

Note 10: Contingent Liabilities and Assets**Quantifiable Contingencies**

There were no quantifiable contingent assets as at 30 June 2012 (2011: \$Nil).

Unquantifiable Contingencies

At 30 June 2012, there was one matter before the courts involving the Council (2011: one). The High Court is hearing an appeal against a decision of the Full Court of the Federal Court in which the Council is present as an intervener. At 30 June 2012 the decision of the High Court was reserved. As an

intervener, the Council is highly unlikely to face an award of costs irrespective of the outcome of the proceeding. Should the Council be joined as a party, it may be required to pay costs in the event the decision is contrary to the Council's position.

Significant Remote Contingencies

The Council has no significant remote contingencies.

Note 11: Councillors Remuneration

	2012	2011
	No.	No.
The number of Councillors included in these figures are shown below in the relevant remuneration bands:		
\$0 to \$29,999	1	-
\$30,000 to \$59,999	2	3
\$60,000 to \$89,999	1	1
\$90,000 to \$119,999	-	-
\$120,000 to \$149,999	-	-
\$150,000 to \$179,999	-	-
\$180,000 to \$209,999	-	-
Total	4	4
	\$	\$
Total remuneration received or due and receivable by Councillors	161,492	171,083

Remuneration of senior executives is included in Note 12: Senior Executive Remuneration.

Note 12: Senior Executive Remuneration**Note 12A: Senior Executive Remuneration Expenses for the Reporting Period**

	2012	2011
	\$	\$
Short-term employee benefits:		
Salary	453,737	433,612
Annual leave accrued	28,598	47,948
Performance bonuses	-	-
Motor vehicle and other allowances	-	-
Total short-term employee benefits	482,335	481,560
Post-employment benefits:		
Superannuation	78,504	75,576
Total post-employment benefits	78,504	75,576
Other long-term benefits:		
Long-service leave	37,403	15,795
Total other long-term benefits	37,403	15,795
Termination benefits	-	-
Total employment benefits	598,242	572,931

Notes:

- Note 12A is prepared on an accrual basis (therefore the performance bonus expenses disclosed above may differ from the cash 'Bonus paid' in Note 12B).
- Note 12A excludes acting arrangements and part-year service where total remuneration expensed for a senior executive was less than \$150,000.

Note 12B: Average Annual Reportable Remuneration Paid to Substantive Senior Executives During the Reporting Period

Average annual reportable remuneration ¹	2012					
	Senior Executives No.	Reportable salary ² \$	Contributed superannuation ³ \$	Reportable allowances ⁴ \$	Bonus paid ⁵ \$	Total \$
Total remuneration (including part-time arrangements):						
less than \$150,000	-	-	-	-	-	-
\$150,000 to \$179,999	-	-	-	-	-	-
\$180,000 to \$209,999	-	-	-	-	-	-
\$210,000 to \$239,999	1	147,984	82,466	-	-	230,450
\$240,000 to \$269,999	-	-	-	-	-	-
\$270,000 to \$299,999	-	-	-	-	-	-
\$300,000 to \$329,999	1	235,760	66,030	-	-	301,790
\$330,000 to \$359,999	-	-	-	-	-	-
\$480,000 to \$509,999	-	-	-	-	-	-
Total	2					
Average annual reportable remuneration ¹	2011					
	Senior Executives No.	Reportable salary ² \$	Contributed superannuation ³ \$	Reportable allowances ⁴ \$	Bonus paid ⁵ \$	Total \$
Total remuneration (including part-time arrangements):						
less than \$150,000	-	-	-	-	-	-
\$150,000 to \$179,999	-	-	-	-	-	-
\$180,000 to \$209,999	-	-	-	-	-	-
\$210,000 to \$239,999	1	141,232	80,976	-	-	222,208
\$240,000 to \$269,999	-	-	-	-	-	-
\$270,000 to \$299,999	1	226,554	64,592	-	-	291,146
\$300,000 to \$329,999	-	-	-	-	-	-
\$330,000 to \$359,999	-	-	-	-	-	-
\$480,000 to \$509,999	-	-	-	-	-	-
Total	2					

Notes:

1. This table reports substantive senior executives who received remuneration during the reporting period. Each row is an averaged figure based on headcount for individuals in the band.
2. 'Reportable salary' includes the following:
 - a) gross payments (less any bonuses paid, which are separated out and disclosed in the 'bonus paid' column);
 - b) reportable fringe benefits (at the net amount prior to 'grossing up' to account for tax benefits); and
 - c) exempt foreign employment income.
3. The 'contributed superannuation' amount is the average actual superannuation contributions paid to senior executives in that reportable remuneration band during the reporting period, including any salary sacrificed amounts, as per the individuals' payslips.
4. 'Reportable allowances' are the average actual allowances paid as per the 'total allowances' line on individuals' payment summaries.
5. 'Bonus paid' represents average actual bonuses paid during the reporting period in that reportable remuneration band. The 'bonus paid' within a particular band may vary between financial years due to various factors such as individuals commencing with or leaving the entity during the financial year.
6. Various salary sacrifice arrangements were available to senior executives including superannuation, motor vehicle and expense payment fringe benefits. Salary sacrifice benefits are reported in the 'reportable salary' column, excluding salary sacrificed superannuation, which is reported in the 'contributed superannuation' column.

Note 12C: Other Highly Paid Staff

The Council had no employees with reportable remuneration of \$150,000 or more who were not required to be reported in Note 12B (2010-11 Nil).

Note 13: Remuneration to Auditors

2012	2011
\$	\$

Financial statement audit services were provided free of charge to the Council by the Australian National Audit Office (ANAO).

Fair value of the services provided

Financial statement audit services	24,700	24,000
Total	24,700	24,000

No other services were provided by the auditors of the financial statements.

Note 14: Financial Instruments

2012	2011
\$	\$

Note 14A: Categories of Financial Instruments**Financial Assets****Loans and receivables:**

Cash and cash equivalents	39,871	22,525
Trade and other receivables	-	-
Carrying amount of financial assets	39,871	22,525

Financial Liabilities**At amortised cost:**

Trade creditors	25,518	98,670
Carrying amount of financial liabilities	25,518	98,670

Note 14B: Net Income and Expense from Financial Assets

The Council received \$ Nil (2011: \$ Nil) net income/expense from financial assets.

Note 14C: Net Income and Expense from Financial Liabilities

The Council received \$ Nil (2011: \$ Nil) net income/expense from financial liabilities.

Note 14D: Fair Value of Financial Instruments

	Carrying amount 2012 \$	Fair value 2012 \$	Carrying amount 2011 \$	Fair value 2011 \$
Financial Assets				
Cash and cash equivalents	39,871	39,871	22,525	22,525
Trade and other receivables	-	-	-	-
Total	39,871	39,871	22,525	22,525
Financial Liabilities				
Trade creditors	25,518	25,518	98,670	98,670
Total	25,518	25,518	98,670	98,670

Note 14E: Credit Risk

The Council was exposed to minimal credit risk as loans and receivables were 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).

The Council held 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
	2012	2011	2012	2011
	\$	\$	\$	\$
Cash and cash equivalents	39,871	22,525	-	-
Trade and other receivables	-	-	-	-
Total	39,871	22,525	-	-

Ageing of financial assets that were past due but not impaired for 2012

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

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
	\$	\$	\$	\$	\$
Trade and other receivables	-	-	-	-	-
Total	-	-	-	-	-

Note 14F: Liquidity Risk

The Council's financial liabilities were payables. The exposure to liquidity risk was 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 from the Australian Government and the Council manages its budgeted funds to meet payments as they fall due. In addition, the Council has policies in place to ensure timely payments were made when due and has no past experience of default.

The Council has no derivative financial liabilities in either 2012 or 2011.

Note 14G: Market Risk

The Council holds basic financial instruments that do not expose the Council to certain market risks such as 'Currency risk' and 'Other price risk'.

Note 15: Financial Assets Reconciliation

		2012	2011
<u>Financial assets</u>	Notes		
Total financial assets as per balance sheet		5,170,493	4,710,178
Less: non-financial instrument components:			
Appropriations receivable	5B	5,120,050	4,649,050
Other receivables	5B	10,572	38,603
Total non-financial instrument components		5,130,622	4,687,653
Total financial assets as per financial instruments note		39,871	22,525

Note 16: Appropriations**Table A: Annual Appropriations ('Recoverable GST exclusive')**

	2012 Appropriations						Total appropriation	Appropriation applied in 2012 (current and prior years)	Variance ⁴
	Appropriation Act			FMA Act					
	Annual Appropriation	Appropriations reduced ¹	AFM ²	Section 30	Section 31	Section 32			
\$	\$	\$	\$	\$	\$	\$	\$	\$	
DEPARTMENTAL									
Ordinary annual services	2,850,000	-	-	-	1,895	-	2,851,895	2,379,000	472,895
Other services									
Equity	-	-	-	-	-	-	-	-	-
Loans	-	-	-	-	-	-	-	-	-
Total departmental	2,850,000	-	-	-	1,895	-	2,851,895	2,379,000	472,895

Notes:

1. Appropriations reduced under Appropriation Acts (Nos.1,3&5) 2011-12: sections 10, 11, and 12 and under Appropriation Acts (Nos.2,4&6) 2011-12: sections 12, 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 that 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 2012, there was no reduction in departmental and non-operating departmental appropriations.
2. Advance to the Finance Minister (AFM) - Appropriation Act (Nos. 1,3&5) 2011-12: section 13 and Appropriation Acts (Nos. 2,4&6) 2011-12: Section 15.
3. In 2011-12, there was no adjustment 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.
4. The variance between total annual appropriation available and total appropriation applied in 2012 relates to payments funded from unspent prior year appropriations.

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

	2011 Appropriations							Appropriation applied in 2011 (current and prior years) \$'000	Variance ⁴ \$'000
	Appropriation Act			FMA Act			Total appropriation \$'000		
	Annual Appropriation \$	Appropriations reduced ¹ \$	AFM ² \$	Section 30 \$	Section 31 \$	Section 32 \$			
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:

1. Appropriations reduced under Appropriation Acts (No. 1 & 3) 2010-11: sections 10, 11, 12 and 15 and under Appropriation Acts (No. 2&4) 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 appropriations.
2. Advance to the Finance Minister (AFM) - Appropriation Acts (No. 1&3) 2010-11: section 13 and Appropriation Acts (No. 2&4) 2010-11: section 15.
3. 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.
4. The variance between total annual appropriation available and total appropriation applied in 2011 relates to payments funded from unspent prior year appropriations.

Table B: Departmental and Administered Capital Budgets ('Recoverable GST exclusive')

	2012 Capital Budget Appropriations				Capital Budget Appropriations applied in 2012 (current and prior years)			Variance \$'000	
	<i>Appropriation Act</i>		<i>FMA Act</i>		Total Capital Budget Appropriations \$'000	Payments for non-financial assets ³ \$'000	Payments for other purposes \$'000		Total payments \$'000
	Annual Capital Budget \$'000	Appropriations reduced ² \$'000	Section 32 \$'000						
DEPARTMENTAL									
Ordinary annual services - Departmental Capital Budget ¹	41,000	-	-	41,000	-	-	-	41,000	

Notes:

1. Departmental and Administered Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Appropriations reduced under Appropriation Acts (No.1,3,5) 2011-12: sections 10, 11, 12 and 15 or via a determination by the Finance Minister.
3. Payments made on non-financial assets include purchases of assets, expenditure on assets which has been capitalised, costs incurred to make good an asset to its original condition, and the capital repayment component of finance leases.

Table B: Departmental and Administered Capital Budgets ('Recoverable GST exclusive')

	2011 Capital Budget Appropriations				Capital Budget Appropriations applied in 2011 (current and prior years)			Variance	
	<i>Appropriation Act</i>		<i>FMA Act</i>		Total Capital Budget Appropriations	Payments for non-financial assets ³	Payments for other purposes		Total payments
	Annual Capital Budget	Appropriations reduced ²	Section 32						
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000		\$'000
DEPARTMENTAL									
Ordinary annual services - Departmental Capital Budget ¹	40,000	-	-	40,000	-	-	-	40,000	

Notes:

1. Departmental and Administered Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts. For more information on ordinary annual services appropriations, please see Table A: Annual appropriations.
2. Appropriations reduced under Appropriation Acts (No.1,3,5) 2010-11: sections 10, 11, 12 and 15 or via a determination by the Finance Minister.
3. Payments made on non-financial assets include purchases of assets, expenditure on assets which has been capitalised, costs incurred to make good an asset to its original condition, and the capital repayment component of finance leases.

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

Authority	2012	2011
	\$'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
2009/10Appropriation Act2	-	-
2010/11 Appropriation Act 1	1,184,000	1,184,000
2010/11 Appropriation Act 1-Capital Budget (DCB) - Non Operating	-	40,000
2011/12 Appropriation Act 1	470,000	-
2011/12 Appropriation Act 1-Capital Budget (DCB) - Non Operating	41,000	-
Total	5,120,050	4,649,050

Note 17: Special Account

No special accounts were operated by the Council during 2011-12 (2010-11 nil).

Note 18: Reporting of Outcomes**Note 18A: Net Cost of Outcome Delivery**

	Outcome 1		Total	
	2012	2011	2012	2011
	\$	\$	\$	\$
Departmental				
Expenses	(2,366,925)	(2,473,594)	(2,366,925)	(2,473,594)
Own-source income	26,595	29,135	26,595	29,135
Administered				
Expenses	-	-	-	-
Own-source income	7,500	-	7,500	-
Net cost of outcome delivery	(2,332,830)	(2,444,459)	(2,332,830)	(2,444,459)

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 18B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcomes

Outcome 1	Outcome 1		Total	
	2012 \$	2011 \$	2012 \$	2011 \$
Expenses				
Employees	1,442,567	1,440,209	1,442,567	1,440,209
Suppliers	897,601	940,810	897,601	940,810
Depreciation & amortisation	24,314	87,667	24,314	87,667
Finance costs	646	2,029	646	2,029
Write-down and impairment of assets	1,797	2,879	1,797	2,879
Other expenses	-	-	-	-
Total	2,366,925	2,473,594	2,366,925	2,473,594
Income				
Income from government	2,809,000	2,772,000	2,809,000	2,772,000
Other income	1,895	135	1,895	135
Gains	24,700	29,000	24,700	29,000
Total	2,835,595	2,801,135	2,835,595	2,801,135
Assets				
Cash and cash equivalents	39,871	22,525	39,871	22,525
Trade and other receivables	5,130,622	4,687,653	5,130,622	4,687,653
Land and buildings	40,527	51,616	40,527	51,616
Property, plant and equipment	6,270	17,261	6,270	17,261
Intangibles	-	1,308	-	1,308
Other non-financial assets	51,344	9,006	51,344	9,006
Total	5,268,634	4,789,369	5,268,634	4,789,369
Liabilities				
Suppliers	25,518	98,670	25,518	98,670
Other payables	34,796	32,447	34,796	32,447
Employee provisions	351,771	314,741	351,771	314,741
Other provisions	10,127	12,392	10,127	12,392
Total	422,212	458,250	422,212	458,250

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 19: Compensation and Debt Relief

No compensation and debt relief payments were made by the Council during 2011-12 (2010-11 nil).

Note 20: Net Cash Appropriation Arrangements

	2012	2011
	\$	\$
Total comprehensive income (loss) less depreciation/amortisation expenses previously funded through revenue appropriations¹	449,989	239,874
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	<u>24,314</u>	<u>87,667</u>
Total comprehensive income - as per the Statement of Comprehensive Income	<u>474,303</u>	<u>327,541</u>

1. From 2010-11, the Government introduced net cash appropriation arrangements, where revenue appropriations for depreciation/amortisation expenses ceased. Entities now receive a separate capital budget provided through equity appropriations. Capital budgets are to be appropriated in the period when cash payment for capital expenditure is required.

Note 21: Administered – Expenses

	2012	2011
<u>Note 21: Other Expenses</u>		
	-	-
Total other expenses	<u>-</u>	<u>-</u>

Note 22: Administered – Income

	2012	2011
	\$	\$
OWN-SOURCE REVENUE		
<u>Note 22: Fees and Fines</u>		
Application fees	<u>7,500</u>	-
Total fees and fines	<u>7,500</u>	<u>-</u>

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Offshore Petroleum & Greenhouse Gas Storage Act 2010 (Vic)

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