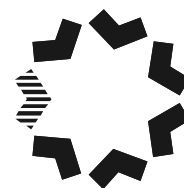


NATIONAL
COMPETITION
COUNCIL



Strategic Plan 2010-2015



October 2010

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1 Introduction

1.1 The National Competition Council (NCC) is an independent statutory agency established by s29A of the *Trade Practices Act 1974* (TPA). Its functions and powers are set out in s29B of the TPA (see Appendix A).

1.2 The NCC's principal activities are:

- making recommendations¹ in relation to applications for the declaration of services provided by monopoly infrastructure
- making recommendations in relation to applications for the certification of the effectiveness of state and territory access regimes
- making recommendations in relation to applications for services to be declared as ineligible services and thus exempt for declaration under Part IIIA for a period of at least 20 years²
- making recommendations under the National Gas Law (NGL) and National Gas Rules (NGR) relating to coverage of natural gas pipelines
- making recommendations under the NGL in relation to applications for greenfields pipeline incentives (including 15 year no-coverage determinations)
- determining the classification of natural gas pipelines and deciding the form of regulation of a pipeline in relation to applications for a light regulation determination, and
- reporting on matters required by section 29O(2) of the TPA including:
 - Court and Australian Competition Tribunal decisions interpreting various matters
 - impediments to the operation of Part IIIA of the TPA delivering efficient access outcomes
 - evidence of the benefits arising from Australian Competition and Consumer Commission (ACCC) access arbitration determinations
 - evidence of the costs of, or disincentives for investment in infrastructure used to provide declared services
 - implications for the operation of Part IIIA in the future.

¹ NCC recommendations are provided to different Ministers in different circumstances. A table summarising which Minister is responsible for particular recommendations is contained in Appendix B.

² Provision for a designated Minister to declare a service to be an ineligible service on the recommendation of the NCC was introduced in *the Trade Practices (Infrastructure Access) Amendment Act 2010* which came into force on 14 July 2010.

2 Governance and organisation

2.1 The NCC is made up of a President and up to four other Councillors. The President and Councillors are appointed by the Governor-General for their expertise or experience in industry, commerce, economics, law, consumer protection or public administration. Appointments to the NCC are made on the recommendation of the Commonwealth Government which must be supported by a majority of the states and territories.

2.2 The Council comprises:³

- David Crawford – President
- Virginia Hickey, Rod Sims and Doug McTaggart – Councillors.

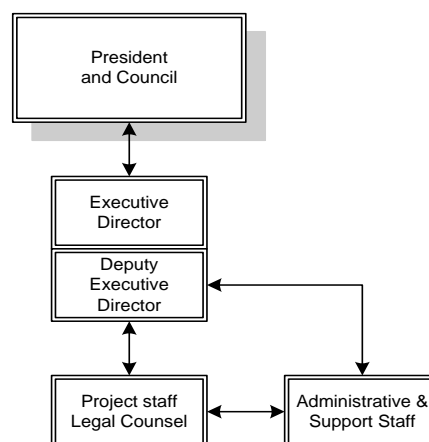
2.3 The President and Councillors serve on a part-time basis.

Secretariat

2.4 The day to day activities of the NCC are undertaken by a staff secretariat based in Melbourne. The Secretariat is lead by an Executive Director and a Deputy Executive Director working with a dedicated group of legal counsel, economists and other professional and support staff. The Secretariat has a staff complement of up to nine full time equivalents. In addition the NCC engages external solicitors, barristers and consultants from time to time as required.

2.5 The Secretariat has an adaptable organisation structure which is broadly described in Figure 1.

Figure 1: Organisation Chart



³ A list of Council Members and associated biographies is available on the NCC's website – www.ncc.gov.au.

3 Outcome and performance information

3.1 The outcome to which the NCC's activities are directed is set out in the annual *Portfolio Budget Statements*.⁴ The current outcome is:

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

3.2 The *Portfolio Budget Statements* also set out the NCC's key performance indicators (KPIs). These are:

- recommendations on declaration applications made within statutory time guidelines⁵ and meet advice requirements of Ministers
- recommendations on certification applications made within statutory time guidelines and meet advice requirements of Ministers
- recommendations and decisions under the NGL made within statutory time guidelines and recommendations meet advice requirements of Ministers
- accessible information on all access regulation matters for which the NCC is responsible is provided on the NCC website
- up-to-date and informative guidelines on all the NCC's areas of responsibility are maintained on the NCC website
- case law developments, legislative amendments and developments in the NCC's processes or policies are reflected in the NCC's information resources within 30 days
- the NCC's Annual Report to the Parliament includes a comprehensive report that reports against the NCC's KPIs and meets the requirements of section 290(2) of the TPA and is provided within 60 days of the end of the financial year.

3.3 The NCC expects this outcome and the associated KPIs to endure for the period of this Strategic Plan.

⁴ The NCC is a *Financial Management and Accountability Act 1997* agency within the Treasury Portfolio.

⁵ A summary of the statutory timeframes for various NCC recommendations and decisions is included in Appendix B.

4 Changes impacting the NCC's strategies

- 4.1 The NCC's strategies are keyed to carrying out its statutory and related functions. Many of those functions require the NCC to engage in careful analysis of complex legal, economic and business issues. As such its functions can present ongoing challenges.
- 4.2 Amendments to the TPA and NGL/NGR have also introduced changes to which the NCC must respond. In particular these changes have reinforced the need for the NCC to undertake its work in a timely fashion so that its recommendations and decisions are presented in commercially realistic timeframes.
- 4.3 In addition to the ongoing challenges presented by the subject matter of its work, the NCC faces a number of specific issues which require strategic responses. These include:
- an unpredictable and highly variable workload
 - the need to anticipate emerging issues likely to have an impact on the NCC's work
 - succession planning for senior secretariat staff positions, and
 - maintaining value for money delivery of the NCC's outputs.

5 Strategies 2010–2015

Access regulation

- 5.1 The NCC's work in relation to regulation of third party access is driven by applications for the declaration of services, certification of state or territory access regimes, ineligible services designation and under the NGL. The timing and number of such applications is largely determined by factors outside the NCC's influence. Accordingly, the estimates provided below are based on past experience and a degree of intuition.
- 5.2 In the period 2010 to 2015 the NCC expects to receive between one and four applications for declaration in each year.
- 5.3 It is not possible to predict the number of applications in relation to ineligible services the NCC may receive.
- 5.4 The NCC also intends to undertake a series of initial *horizon studies* of sectors where it anticipates third party access issues of the kind addressed under Part IIIA of the TPA may emerge. Initially these studies will consider:
- access to water and waste water networks
 - access to financial and equity market clearance and settlement systems
 - access to fuel refining storage and distribution facilities, and
 - access to carbon geosequestration and associated facilities.
- These studies will be undertaken as other activities permit.
- 5.5 The NCC also expects to receive up to three new applications for certification of state and territory access regimes between 2010 and 2015. These are in addition to the applications for the certification of rail access regimes in Western Australia and Queensland which were under consideration at the time this plan was adopted. The NCC expects these new applications to be clustered in late 2010 and 2011, given the commitment by states under the Competition and Infrastructure Reform Agreement 2006 to submit their access regimes for certification by the end of 2010.
- 5.6 It is unclear whether the NCC will receive previously anticipated applications for the certification of access regimes implemented under co-operative arrangements for regulation of the electricity and gas sectors.
- 5.7 Under the NGL the Council expects to receive:
- one or two applications for a light regulation determination in 2011 and 2012 and few applications in subsequent years

- two to four applications for 15 year no coverage determinations in 2010 and 2011 and sporadic greenfield incentive applications in later years, and
 - few, if any, applications for coverage of natural gas pipelines and one or two applications for the revocation of coverage in the period 2010 to 2015.
- 5.8 It is critical that the NCC maintain the quality and timeliness of its recommendations and decisions.
- 5.9 To achieve these aims the NCC will:
- ensure recommendations and decisions are made objectively and in accord with the relevant statutory provisions
 - maintain transparency in its deliberative processes
 - further standardise its processes and procedures
 - maintain Council meeting arrangements that give priority to timely decision making
 - wherever possible, seek to be consistent and predictable, and
 - meet statutory time limits, except in exceptional circumstances.

Communications

- 5.10 The NCC will continue to ensure businesses, policy makers and the wider community are accurately informed about access regulation. The NCC will also ensure its recommendations and decisions, and the reasons for these, are clearly communicated.
- 5.11 To achieve these aims, the NCC will:
- maintain its emphasis on the use of its website and email as the principal means of communication with the public and interested parties
 - continue to publish its bi-monthly electronic newsletter *Accessible*
 - review its communications strategy and resources (the NCC will maintain its existing working relationships with professional external communications advisors until a review is completed)
 - maintain a suite of electronically available guides, templates and other information materials
 - prepare a guideline for making applications in respect of ineligible services by the end of 2010.

Human resources and organisation capability

5.12 The NCC will continue to ensure that it has access to personnel with the knowledge, skills and experience necessary to carry out its statutory and other functions.

5.13 To achieve this the NCC will:

- continue to offer flexible working arrangements
- maintain appropriate remuneration levels and other workplace arrangements
- further develop mutually beneficial relationships with other organisations
- develop staff to meet ongoing and new demands
- develop appropriate recruitment and succession plans in advance of expected staff changes
- maintain a safe workplace, and
- continue to make available an Employee Assistance Programme for all staff.

Technology

5.14 The NCC will ensure it has access to technology that supports the quality and timeliness of its work and the productivity of its staff.

Finance and administration

5.15 The NCC will ensure it:

- maintains appropriate financial controls
- meets all applicable statutory and similar obligations.

5.16 The NCC will continually seek to ensure its activities are carried out in an efficient and cost effective manner.

5.17 To achieve these aims, the NCC will:

- explore— and as appropriate implement—opportunities to enhance the cost effectiveness of its office accommodation arrangements by co-locating with another Commonwealth agency, with any change by mid 2011 to coincide with the end of the NCC's current office lease
- continue to outsource accounting and human resources administration services for the period of this strategic plan, and
- participate in whole of government purchasing and similar arrangements wherever possible.

Appendix A — Functions and powers of the National Competition Council (s29B of the *Trade Practices Act 1974*)

(1) The [Council](#)'s functions include:

- (a) carrying out research into matters referred to the [Council](#) by the Minister; and
- (b) providing advice on matters referred to the [Council](#) by the Minister.

(2) The [Council](#) may:

- (a) perform any function conferred on it by a [law of the Commonwealth](#), or of a State or [Territory](#); and
- (b) exercise any power:
 - (i) conferred by that law to facilitate the performance of that function; or
 - (ii) necessary or convenient to permit the performance of that function.

(2A) The [Council](#) must not, under subsection (2):

- (a) perform a function conferred on it by a law of a State or [Territory](#); or
- (b) exercise a power that is so conferred;

unless the conferral of the function or power is in accordance with the [Competition Principles Agreement](#).

(2B) Subsection (2) does not [apply](#) to a State/Territory energy law.

Note: Section 29BA provides that a State/Territory energy law may confer functions or powers, or impose duties, on the [Council](#).

(3) In performing its functions, the [Council](#) may co-operate with a department, [body](#) or [authority of the Commonwealth](#), of a State or of a [Territory](#).

Appendix B – Decision making Ministers and time limits for NCC recommendations and decisions

Type of application	Decision maker	Standard Period ⁶ for NCC recommendation or decision	Standard Period for relevant Minister to make decision
<i>Trade Practices Act 1974</i>			
Declaration of a service	Where service provider is State/Territory body: responsible Minister of that State/Territory. Otherwise: Commonwealth Minister	180 days	60 days, otherwise deemed to have decided not to declare
Certification of a state or territory access regime	Commonwealth Minister	180 days	60 days, otherwise deemed to have followed NCC recommendation
Service ineligible for declaration	Where service provider is state/territory body: responsible Minister of that state/territory. Otherwise: Commonwealth Minister	180 days	60 days, otherwise deemed to have followed NCC recommendation
<i>National Gas Law</i>			
Coverage (or coverage revocation) of a gas pipeline	Transmission pipelines: Commonwealth Minister, except if located within, or most closely associated with, WA or SA: then responsible Minister of that state	4 months	20 business days
	Distribution pipelines: Responsible Minister of state/territory the pipeline is located within, or most closely associated with		
Light regulation of a gas pipeline (and revocation thereof)	NCC	4 months	N/A
15 year no-coverage determination	Transmission pipelines: Commonwealth Minister, except if located within, or most closely associated with, WA or SA: then responsible Minister of that state	4 months	30 business days
	Distribution: Responsible Minister of state/territory the pipeline is located within, or most closely associated with		
Price regulation exemption for international pipeline	Commonwealth Minister	30 business days	10 business days
Gas pipeline reclassification	NCC	4 months	N/A

⁶ Standard periods may be extended in some circumstances and by various “stop-the-clock” provisions when additional information is sought or public consultation commenced.