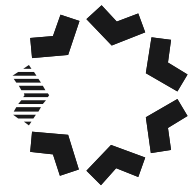


NATIONAL
COMPETITION
COUNCIL



**Governance guidelines
and administrative
procedures for Councillors**



NCC Policy Document

October 2009

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1 Introduction

This paper sets out the corporate governance framework for the National Competition Council (Council).

Corporate governance is the process by which an organisation is directed, controlled and held to account.

This paper focuses on the corporate governance responsibilities of the Council, and the structures and processes established to support these.

1.1 Outcome

The Council has a single Outcome which provides the basis for Parliament's appropriation of funds for the Council's activities.

The Outcome the Council seeks is:

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

2 Roles, powers and responsibilities

2.1 Governing laws

The Council is established under Part IIA of the Trade Practices Act 1974. Its functions are to carry out research and provide advice on matters referred to it by the Australian Government Treasurer and to perform any functions conferred on it by a law of the Commonwealth, a State or Territory.

Part IIA establishes the Council and governs the appointment of the President and Councillors. It also sets out the way in which the Council's functions are established and Council business is conducted.

In addition the Council has obligations under various other statutes, including in particular the Financial Management and Accountability (FMA) Act 1997, the Auditor-General Act 1997 and the Public Service Act 1999.

2.2 Role of the Council

The Council has roles under Part IIIA of the Trade Practices Act and under the National Gas Law and National Gas Rules.

Pursuant to Part IIIA of the Trade Practices Act, the Council is responsible for recommending to various responsible Ministers whether access to the services of particular infrastructure facilities should be "declared". Businesses can access declared services through the negotiate/arbitrate provisions of Part IIIA of the Trade Practices Act – with the ACCC as arbitrator. In addition, state and territory governments can develop access regimes for services within their jurisdictions. The Council has a role in assessing the effectiveness of these regimes against the TPA objects and clause 6 of the Competition Principles Agreement. Regimes assessed as effective become the sole route for access to the services covered by those regimes; declaration is not available.

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

2.3 Role of the Council President

The President is appointed by the Governor General on the advice of the Australian Government.

The President convenes Council meetings as required and presides at any Council meeting he attends. The President has a deliberative vote on any matter before the Council and has a casting vote if required.

The President is the principal spokesperson for the Council and generally media and other similar statements made on behalf of the Council will be in the President's name.

The President is the head of agency for the purposes of the Financial Management and Accountability Act (FMA Act) and the Public Service Act. Day to day responsibilities under these Acts are delegated to the Executive Director and other staff.

2.4 Role of Council Members

Council members are appointed to undertake certain statutory functions and to oversee the activities of the Council Secretariat.

Council members are appointed for the knowledge and experience in industry, commerce, economics, law, consumer protection or public administration.

Although the nomination and appointment process involves the concurrence of a majority of states and territories as well as consideration by the Australian Government, councillors are not appointed as representatives of particular states or territories or the Australian Government or other particular interests.

The following actions are reserved for the Council:

- (a) Exercise of statutory responsibilities under the Trade Practices Act, in particular the making of recommendations for declaration and certification under Part IIIA of the Trade Practices Act or coverage and other matters under the National Gas Law and National Gas Rules
- (b) Approving and reviewing the Council's:
 - Strategic Plan
 - Budget
 - Annual Report including the annual financial statement
- (c) Approving policies and frameworks for:
 - activities of the Council secretariat
 - risk management
 - legal / regulatory risk and compliance monitoring
 - internal control systems
- (d) Appointment of the Executive Director and plan for his/her succession and evaluation of the Executive Director's performance.

Council business is conducted in meetings involving all Councillors as far as is practical. The Council will meet at least quarterly with at least two of these meetings being held face to face.

Other meetings are convened as required to approve draft and final recommendations or decisions in relation to specific applications. These meetings are held on a face to face basis and by telephone conference.

Except in exceptional circumstances Council meeting papers will be circulated one week prior to Council meetings.

2.5 Audit and Risk Management Committee

The Council has established an Audit and Risk Management Committee (ARM Committee) as a sub-committee of the Council.

The role of the ARM committee is to oversee the financial reporting processes, audit functions, risk management and internal controls of the Council. The ARM committee will also:

- review policies in relation to fraud, privacy, handling of sensitive information and conflicts of interest, and the Council's risk management strategies, and
- review and monitor compliance with policies and codes of conduct in relation to ethical issues, fraud, privacy, handling sensitive information, conflicts of interest and other corporate governance issues.

The ARM committee will also oversee the Council's risk management plan.

Additional information on the operation of the ARM Committee is contained in *the Audit and Risk Management Committee Charter*.

2.6 Role of the Executive Director

The Executive Director conducts the day to day affairs of the Council. The Executive Director is assisted by the Director.

The President has delegated all administrative responsibilities and authorities to the Executive Director (except where the Executive Director is personally affected by a matter). Through the Executive Director, the Council employs staff needed to perform its functions.

A summary of the delegations from the President to the Executive Director and others is attached in Appendix C.

3 Disclosure and Conflicts of Interest

Disclosure and the potential for conflicts of interest represent a particular area of risk for the Council.

Section 29K of the Trade Practices Act requires the Disclosure of Interests by Councillors. That section provides –

- “(1) If a Councillor (except the Council President) is taking part, or is to take part, in the Council's consideration of a matter and the Councillor has or acquires any pecuniary interest that could conflict with the proper performance of his or her functions relating to the matter:
- (a) the Councillor must disclose the interest to the Council President; and
 - (b) the Councillor must not take part, or continue to take part, in the consideration of the matter if:
 - i. all of the persons concerned in the matter do not consent to the Councillor taking part in the consideration of the matter; or
 - ii. the Council President gives a direction to the member under the paragraph (2)(b).
- (2) If the Council President becomes aware that a Councillor is taking part, or is to take part, in the Council's consideration of a matter and that the Councillor has such an interest relating to the matter:
- (a) the Council President must cause the Councillor's interest to be disclosed to the persons concerned in the matter; or
 - (b) if the Council President considers that the Councillor should not take part or continue to take part in the consideration of the matter—the Council President must direct the Councillor accordingly.
- (3) The Council President must give the Minister written notice of all pecuniary interests that the Council President has or acquires in any business carried on in Australia or in any body corporate carrying on such business.”

These requirements and other matters relevant to the conduct of councillors have been incorporated into a Code of Conduct for Council Members and an associated Guide to Interpretation which are set out in Appendix B.

4 Remuneration and Travel

4.1 Remuneration

Under section 29F of the TPA Councillors are entitled to remuneration as determined by the Remuneration Tribunal. Councillors will be paid their remuneration on a fortnightly basis through the Council's payroll system by direct deposit to their nominated bank account(s).

The Council will pay superannuation contributions to a complying superannuation fund of choice. Alternatively, Councillors are entitled to join the Australian Government Employees Superannuation Trust (AGEST).

4.2 Travel expenses

Councillors will be issued with an NCC credit card and an NCC cab charge card to be used to meet reasonable travel expenses incurred in the course of Council business. Valid travel expenses include taxis, parking, phone calls home and meals, which may include a modest amount of alcoholic beverages, where appropriate. Credit card receipts should be forwarded to the President's executive assistant as soon as practicable following travel. The cards must not be used for personal or any other expenses other than valid Council travel expenses.

All travel and accommodation for Councillors to attend meetings will be booked by the secretariat. The choice of accommodation will normally be of four star standard. Councillors will normally pay for accommodation using their NCC credit card.

Councillors may seek reimbursement of cash payments for travel expenses, which cannot be paid by credit card, such as car parking. Councillors must provide details of reimbursable travel expenses to the President's executive assistant who will complete a travel claim form for the Councillor after each meeting. Items greater than \$25 will not be reimbursed without a receipt or tax invoice unless accompanied by a signed statement setting out the circumstances of the particular expense.

The Remuneration Tribunal has determined that Councillors are entitled to fly business class where available.

In accordance with government policy, any frequent flyer points earned on Council related business travel should be used for Council business purposes and not for private purposes.

4.3 Tax

Councillors are NCC office holders. The Council will deduct tax at the appropriate rate and issue a group certificate at the end of the year.

The Australian Taxation Office considers the travel allowances set by the Remuneration Tribunal to be "reasonable allowances", which means that income tax on the allowances is not payable by the recipient.

All allowances and reimbursements include GST. The Council can reclaim GST on payment of travel costs when the cost is paid directly by the Council or when the Council member is

reimbursed and attaches the relevant tax invoice to their claim form. To facilitate this Councillors should obtain Tax Invoices wherever possible and in any case when the expenditure exceeds \$55.

4.4 Queries

Queries about remuneration and travel arrangements for Councillors are handled by the EA to the Executive Director on 03 9285 7484 or the Director on 03 9285 7485.

Appendix A Code of Conduct for Council Members

1. Councillors must act honestly, ethically, in good faith and in the best interests of the Council as a whole.
2. A councillor has a duty to use due care and diligence in fulfilling the functions of office and exercising the powers attached to that office.
3. A councillor must use the powers of office for a proper purpose, in the best interests of the Council as a whole.
4. A councillor must not make improper use of information acquired as a councillor.
5. A councillor must not take improper advantage of the position of councillor.
6. A councillor must not allow personal interests, or the interests of any associated person or organisation, to influence the councillor's conduct and in particular the councillor's duty to act in the best interests of the Council.
7. A councillor has an obligation to be independent in judgement and actions and to take all reasonable steps to be satisfied as to the soundness of all decisions taken by the Council.
8. Confidential information received by a councillor in the course of the exercise of his or her duties remains the property of the party from which it was obtained and it is improper to disclose it, or allow it to be disclosed, unless that disclosure has been authorised by the Council, or the person from whom the information is provided, or is required by law.
9. A councillor should not engage in conduct likely to bring discredit upon the Council.
10. A councillor has an obligation, at all times, to comply with the spirit, as well as the letter, of the law and with the principles of this Code.

Adapted from: The Australian Institute of Company Directors Code of Conduct as adapted in the Rural Industries Research and Development Corporation Code of Conduct and that of the Australian Fisheries Management Agency.

Guidelines for the Interpretation of the Principles of the Code of Conduct for Council Members

The following guidelines are intended to assist councillors in complying with the core principles of the *Code of Conduct for Council Members*. They are not meant to be exhaustive and may be added to over time to address issues of importance as they arise.

Duties to the Council

1. Each councillor should endeavour to ensure that the functions of the Council have been specified clearly, are properly understood and are competently discharged in the interests of the Council.
2. A councillor should endeavour to ensure that the management of the Council Secretariat is competent and is devoting its best endeavours in the interests of the Council.
3. In evaluating the interests of the Council, a councillor should take into account the interests of the stakeholders as a whole, but recognise that the key stakeholders are the Federal, State and Territory Governments and the Australian community.

Duties to Stakeholders

4. Each councillor should endeavour to ensure that the Council is financially viable, properly managed and constantly improved so as to protect and enhance the interests of the stakeholders.
5. Fiduciary duty requires all councillors to make a contribution in the interests of the Council. Where obligations to other people or bodies preclude an independent position on an issue, the councillor should disclose the position. The matter should be disclosed to and resolved by the President, in conjunction with other councillors where appropriate, as required in the Council's policy on disclosure and treatment of interests.

Participation and information

6. A councillor should attend all Council meetings, but where the attendance at the meeting is not possible appropriate steps should be taken to obtain leave of absence.
7. A councillor must acquire knowledge about the business of the Council, the statutory and regulatory requirements affecting councillors in the discharge of their duties to the Council, and be aware of the physical, political and social environment in which it operates.
8. In order to be fully effective, a councillor needs access to all relevant information to be considered by the Council. In general, summary information and analyses should be sufficient unless there is serious doubt about the interpretation of source information. This information should be made available in sufficient time to allow proper consideration of all relevant issues. To that end:

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- (a) Councillors may seek access to any information they require through the Executive Director.
 - (b) If necessary a councillor may have to abstain from a decision on the basis that there has not been the time or information needed to consider the matter properly. Any abstention, and the reasons for it, should be included in the minutes.
 - (c) It may also be appropriate to move for deferment until proper information is available.
 9. A councillor should endeavour to ensure that systems and processes are established within the Council Secretariat to provide the Council, on a regular and timely basis, with necessary data to enable them to make reasoned judgment and so discharge their duties of care and diligence.
 10. A councillor should endeavour to ensure that relations between the Council and the auditors are open, unimpeded and constructive. Similarly, the auditors should have access to the Council, through the Audit and Risk Management Committee. A councillor should be satisfied that an appropriately constituted Audit and Risk Management Committee has been established and is operating effectively.
 11. A councillor should endeavour to ensure that the Council always complies with the law and strives for the highest standards of business and ethical conduct.

Conflicts of interest

12. The Trade Practices Act and the FMA Act prescribe councillors' duties to disclose their interests relevant to Council functions and not participate in decisions affecting their material personal interests.
13. The treatment of conflict of interest in the Code of Conduct for Council Members is wider than a strict statement of the applicable law. It is, however, a fair statement of the way in which councillors should act as a matter of propriety.
14. Declarations of interest
 - (a) Councillors should read these guidelines in conjunction with *Section 29K of the Trade Practices Act 1974*.
 - (b) A Councillor must disclose an interest whenever he or she considers there may be a potential conflict of interest, including having a material personal interest in a matter before the Council. A councillor who considers that he or she may have an interest in a matter to be discussed by the Council shall:
 - (i) disclose the existence and the nature of the interest; and
 - (ii) in the case of a material personal interest, leave the meeting while other councillors discuss the appropriate level of participation by that councillor in the consideration of the matter.

If a material personal interest is established in a matter for consideration, the councillor may not be present during the Council's consideration or decision.

- (c) A councillor who discloses a non-material interest may participate in the consideration of the relevant item but the councillor may choose to be absent or not participate in the consideration or decision on the item.

15. Types of interest

- (a) Material Personal Interest

A councillor must disclose a material personal interest in an item where they have a conflicting interest or duty that is significant enough to divide the councillor's loyalties. This would include an interest in or duty to another entity that interferes with the councillor's ability to bring independent judgement to bear, or where there would be a reasonable perception of such a conflicting interest. Material personal interest includes direct pecuniary interests where the councillors or their immediate family or business partner's business interests are affected and material non-pecuniary interests.

- (b) Non-material Interest

A councillor should disclose their interests where a person, company or organisation with which the councillor has an affiliation is affected by an item, either non-financially or financially. The Council may classify such interests as non-material. In so classifying the Council will satisfy itself that the point of benefit is far removed from a matter and does not disqualify the councillor from participation in the consideration of that matter.

Use of information

- 16. A councillor must not make improper use of information acquired by virtue of the councillor's position. This prohibition applies irrespective of whether the councillor would gain directly or indirectly a personal advantage or an advantage for any Associated Person/Organisation or might cause detriment to the Council.
- 17. A councillor should recognise the sensitivity of their position and should be especially careful not to disclose matters that are confidential to any outside parties unless the prior agreement of the Council or the outside party has been obtained, or the disclosure is required by law.

Statements on behalf of the Council

- 18. The President is the official spokesperson for the Council. Other council members should refrain from speaking on behalf of the Council.
- 19. On occasion councillors may be asked for comment by the media. Councillors should redirect such inquiries to the President or Executive Director.
- 20. Where councillors are to give speeches in other capacities on topics that may have some overlap with the Council's areas of interest, the Executive Director should be

advised of this in advance. On occasion it may be appropriate to undertake a disclaimer specifically advising that the views of the speaker are not necessarily those of the Council.

Professional integrity

21. A councillor must demonstrate the highest standards of professional and business ethics, and of personal integrity and honesty.
22. A councillor must identify the role they are fulfilling whenever they make a public comment. Generally public comment on Council matters is reserved to the President or in some cases the Executive Director.
23. A councillor must perform all duties diligently, impartially, conscientiously and in a civil manner, and only use the Council's resources for Council purposes.
24. A councillor must be prepared, if necessary, to express disagreement with colleagues.
25. The Council will decide matters by consensus whenever possible. Where necessary matters shall be decided by vote of the Council in accordance with the Trade Practices Act.
26. Unless agreed by the Council, councillors are not to be engaged in other capacities by the Council either directly or as consultants.
27. Conformance with staffing/workplace legislation and policies
 - (a) Councillors will conform with all legislation relevant to the Council. There are a number of pieces of workplace legislation that apply to the Council. In some cases the Council has developed specific policies for the workplace, many arising from responsibilities under specific legislation. Areas covered by these policies include conduct, occupational health and safety, equal employment opportunity, workplace diversity, security, and use of Council information and materials.
 - (b) The management of the Council will conform to all of these policies. Councillors will also conform to the policies to the extent that they apply to their own conduct and behaviour while working with the Council, on Council premises or while on Council business.

Appendix B Council meetings

Meeting schedule

The Council will meet as necessary to adequately oversee the operations of the Council. The Council will meet by telephone link and on a face to face basis.

The Council will agree on the timing and number of Council meetings for each calendar year in advance.

Meetings will be scheduled in accordance with Council operational and accountability requirements.

Agenda

The President and Executive Director are responsible for the agenda for each meeting. Councillors may propose items for inclusion in the agenda.

Late additions to the agenda will be permitted with the approval of the President.

Papers

The Executive Director will set a standard format for papers. The Executive Director will distribute the agenda, major papers and the previous meeting's draft minutes to councillors at least five days before each meeting.

Generally meeting papers will be distributed as e-mail attachments, although hard copies can be provided if required.

Papers are to:

- (a) be as short and concise as possible
- (b) deal with a single issue as far as is practical
- (c) focus on broader or "strategic" issues rather than detail
- (d) focus on what is being sought from the Council, including any required detailed analysis or evaluation of options
- (e) avoid comments and discussion that don't contribute to the issues/recommendations
- (f) be specific and clear in the recommendations
- (g) include or refer to other papers with an argument or supporting material for the recommendations
- (h) avoid use of pejorative (emotive) language and
- (i) use active voice rather than passive.

Confidentiality

Papers and minutes for Council meetings are “Council in Confidence”. The Council will not disclose these other than as required under the *Freedom of Information Act 1982* or by court order.

Councillors and staff attending Council meetings will maintain the confidentiality of discussions and papers.

Declaration of interests

Councillors will disclose interests at meetings in accordance with the procedures set out under “Conflicts of interest”.

Council discussion

The Council will seek to be as open as possible in its consideration of matters within the bounds of ensuring full and frank discussion of issues. The Council may invite Council Secretariat staff to attend meetings to provide input on significant issues. The Executive Director and Director will usually attend Council meetings.

Decisions

The Council will make decisions by consensus. If that is not possible, any councillor may seek a vote on a matter, and voting will be in accordance with the provisions set out in the Trade Practices Act.

Decisions, and key considerations for significant matters, will be recorded in the minutes of the meeting.

Appendix C : Summary of Delegations

Act/Instrument	Delegate(s)
<p>Public Service Act/Employee Collective Agreement:</p> <p>All roles and responsibilities (except responsibility for dismissing employees)</p> <p>Responsibility for dismissing employees (other than Executive Director or Director)</p>	<p>Executive Director / Director</p> <p>Executive Director</p>
<p>FMA Act:</p> <p>The Finance Minister delegates responsibility for financial matters to the President. There are sub-delegations to the Executive Director, Director, ACCC Finance staff (who undertake financial administration on behalf of the Council) and to NCC corporate services staff.</p>	<p>Executive Director, Director</p> <p>ACCC CFO, ACCC Director Finance and Services</p> <p>ACCC Financial accountant</p> <p>NCC Corporate services staff</p>

No delegation may be exercised by a delegate where the delegate is the beneficiary of, or similarly affected by, a decision.