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The National Competition Council
The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Australian Government and state and territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

Information on the National Competition Council, its publications and its current work program can be found on the internet at www.ncc.gov.au or by contacting NCC Communications on (03) 9285 7474.

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Office of
Council President

30 August 2006

The Honourable Peter Costello MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

In accordance with section 29O of the *Trade Practices Act 1974* the National Competition Council is pleased to present you with its eleventh annual report covering the Council's operations for the year 2005-06.

Yours sincerely

David Crawford
Acting President

Doug McTaggart
Councillor

Rod Sims
Councillor

Virginia Hickey
Councillor

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Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
AER	Australian Energy Regulator
AGL	The Australian Gas Light Company
ANAO	Australian National Audit Office
BHPBIO	BHP Billiton Iron Ore
COAG	Council of Australian Governments
DBP	Dampier Bunbury Pipeline
DSE	Department of Sustainability and Environment (Victoria)
FMG	Fortescue Metals Group Ltd
GTE	Government trading enterprise
MCE	Ministerial Council on Energy
MJA	Marsden Jacob Associates
NCC	National Competition Council
NCP	National Competition Policy
NWC	National Water Commission
OECD	Organisation for Economic Cooperation and Development
OHS	Occupational health and safety
PC	Productivity Commission
SACL	Sydney Airport Corporation Limited

President's review

Regulating bottleneck infrastructure

> *'In some markets the introduction of effective competition requires competitors to have access to facilities which exhibit natural monopoly characteristics, and hence cannot be duplicated economically.' (*Independent Committee of Inquiry into Competition Policy in Australia 1993, p. 239)

Some infrastructure facilities exhibit natural monopoly characteristics, in that they cannot be economically duplicated. If they also occupy a strategic (bottleneck) position, then other businesses may need to share in their use (have access) if the other businesses are to compete effectively in dependent markets. A business wishing to provide rail services, for example, needs access to rail tracks. To compete effectively in the retailing of gas a business needs access to pipelines to transport gas to customers.

Australia's national access regime — in part IIIA of the *Trade Practices Act 1974* — was established in 1995 to support the negotiation of access between infrastructure owners and access seekers. Part IIIA seeks to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting competition in dependent markets. Its application as a national regime is intended to encourage a consistent approach to access regulation across industries.

Because the regime is designed for bottleneck infrastructure only, it has a mechanism to identify the services that should be regulated. That mechanism — the declaration process — involves the National Competition Council considering applications for declaration against the part IIIA criteria and recommending to the relevant decision making Minister. The criteria require the Council to test, among other things, that an application for a declaration recommendation relates to a natural monopoly and that the grant of access will promote competition in at least one other market and is not contrary to the overall public interest. Importantly, access regulation is *not* about promoting competition per se, where this would reduce the return to the nation.

Declaration is 'light-handed' access regulation, designed according to the Independent Committee of Inquiry (Hilmer) report's negotiate/arbitrate model. If a Minister 'declares' a service, then third parties have a legally enforceable right to negotiate with the service provider for access on commercial terms and conditions. Where commercial negotiation fails,

arbitration by the Australian Competition and Consumer Commission (ACCC) is available to resolve disputes. (Part IIIA ensures that regulated access prices safeguard asset owners from being forced to supply services at less than efficient cost.) The Australian Competition Tribunal has said 'the purpose of an access declaration is to unlock a bottleneck so that competition can be promoted in a market other than the market for the service' (Virgin Blue Airlines [2005] ACompT 5 at 107). The Tribunal's view is that 'the availability of a binding dispute resolution process provides an incentive for parties to negotiate in a realistic, practical and positive manner in an attempt to resolve differences which affect, and have a real impact on, their daily commercial activities' (Virgin Blue Airlines [2005] ACompT 5 at 604).

The declaration process provides transparency and accountability. The Council considers applications for the declaration of a service via a public process, before recommending to the relevant designated Minister. The Minister's decision and reasoning is made public and the Council's recommendation becomes public at the time of the Minister's decision. (If however the Minister makes no decision within 60 days of receiving the Council's recommendation, then there is deemed to be a decision that the service is not declared and there is no statement of reasons from the Minister). Parties may seek review of the Minister's decision or of a deemed decision not to declare, which under current arrangements is via a de novo rehearing by the Australian Competition Tribunal. (Governments have agreed to amend this process so that while merits review of a Minister's decision is retained such reviews must be based on material that was available to the decision maker.)

Part IIIA also provides two alternatives to declaration. State and territory governments can seek certification of their own access regimes as effective. Where they make application for certification, the Council assesses the effectiveness of the regime against the guiding principles in clause 6 of the intergovernmental Competition Principles Agreement. Declaration is not then available for services covered by an effective access regime. Accordingly, in recommending certification, the Council looks to ensure that the state or territory regime will deliver similar scope for third party access that would be available under part IIIA. Part IIIA also provides for an individual infrastructure owner to seek ACCC approval of its proposed access arrangements (an undertaking) and gain protection from declaration.

There is no denying that the issue part IIIA confronts – access to significant infrastructure – is complex. It involves, for example, sensitive issues associated with long-term investment, both in bottleneck infrastructure and activities in markets that rely on that infrastructure. Asset owners must be able to earn a commercial return on their infrastructure investments, or they won't continue to invest. But they are not entitled to a monopoly return from restricting competition in dependent markets. What is important, and what is the focus of part IIIA, is to balance, on a case by case basis, the interests of asset owners and users while keeping an eye on the public interest prize of maximising the economy's productive capacity—by promoting the conditions for competition in markets that rely on bottleneck infrastructure.

Access regulation is justified where it advances the public interest while minimising restrictions on competition, at least cost. Risk that may arise from regulation is an important element of cost. Increased regulatory certainty should be the goal. It is important, however, to distinguish this goal from permissive regulation agendas that are directed more to regulatory acquiescence to one party or other's interests.

Regulatory certainty is enhanced by setting clear and non conflicting objectives for regulation, establishing workable timetables for decision making, allowing for transparent and objective decision making processes and establishing appropriate appeal/review rights that develop the law and practice in an area of regulation. Care needs to be taken to distinguish between processes that deliver regulatory certainty and processes that reduce the effectiveness of regulation that serves the public interest. The public interest is diminished where objectives are slanted to particular interests, unworkable timetables are set and proposals are not able to be properly scrutinised, decision making is uninformed, unnecessarily subjective and secret, or where appeals are allowed to unjustifiably delay regulatory processes.

After a little over 10 years since part IIIA was enacted, Australia has now had considerable experience in the application of access regulation according to a common framework.

In the electricity industry, the ACCC has approved an undertaking for the transmission and distribution infrastructure forming the National Electricity Market. The Western Australian and Northern Territory electricity access regimes have been certified. In the gas industry, relevant state and territory governments have implemented the National Gas Code and sought certification of their individual arrangements. Most of these arrangements have been certified.

There have been many applications for declaration in rail transport. While no declarations have occurred, many applicants subsequently negotiated the access (or increased access) they originally sought. In several cases the applications have stimulated the development of state and territory rail infrastructure access regimes.

Following the application brought by Fortescue Metals Group for access to the services of rail lines owned by BHP Billiton Iron Ore, where the May 2006 deemed decision of the Australian Treasurer was to not declare,[1] the Western Australian Government indicated it would develop a state access regime for rail haulage services. This will be an important test for the Western Australian Government. At present, Fortescue Metals Group has no way of moving its ore from its mine site near Mindy Mindy. It is not feasible for it to build a whole new railway to move its Mindy Mindy ore. Without a viable

1 The Australian Treasurer's deemed decision is currently the subject of a review by the Australian Competition Tribunal.

haulage regime, either the tenement will be stranded and not developed, or Fortescue Metals Group will have to sell to one of the two incumbent miners.

Australia's major airports were brought under the aegis of the *Airports Act 1996* and part IIIA as they were privatised. International air-freight handling related services at Sydney and Melbourne airports and airside services at Sydney Airport have been declared. In the water services industry, there have been two applications for a recommendation for declaration. The sewage reticulation network and interconnection of new trunk main sewers to Sydney Water's network was declared in December 2005. There has been some activity in ports, with Victoria's access regime for commercial shipping channels certified as effective in 1997. Access to telecommunications, postal and financial payments clearing systems is regulated outside part IIIA.

Overall, since the enactment of part IIIA, the Council has considered 29 applications for a recommendation for the declaration of a service,[2] 18 applications for a recommendation for the certification of a state/territory access regime and 32 applications for the coverage or the revocation of coverage of a gas pipeline under the National Gas Code. Most National Gas Code applications have been for revocation of coverage. There have been many decisions to revoke coverage, largely reflecting the increase in competition that has occurred as the gas industry has developed.

The Australian Government has recently legislated to refine the operation of part IIIA.[3] For the Council's processes, the legislation: clarifies that the Council should be affirmatively satisfied that declaration will lead to a material increase in competition; sets a 'best endeavours' timeframe of four months for recommending on declaration and certification applications; and extends the annual reporting obligations for access matters, including reporting on (1) the time taken for recommendations, (2) judicial decisions interpreting the definition of service and the criteria for declaration and (3) matters that the Council considers have impeded the operation of part IIIA from delivering efficient outcomes. This annual report discusses matters arising from the applications that were 'live' in 2005-06.

The Council's public process — generally it provides an issues paper and draft recommendation for public comment prior to finalising its recommendation — together with the complexity of most access matters, has meant that the Council has tended to take much longer than four months to recommend on applications. The Council has developed a template for applications for declaration that is designed to assist applicants explain their application and provide all relevant supporting evidence at an early stage. This template, which is available on the Council's website, should expedite consideration of applications. Implementation of the Council of Australian Governments agreed change to the review process so that it will consider only the evidence that was before the regulator making the original decision will also assist by

2 17 applicants have made a total of 29 applications.

3 Trade Practices Amendment (National Access Regime) Act 2006, enacted 10 August 2006.

encouraging parties to put forward all relevant information in a timely fashion and to make their best case from the start of the process. The change, by increasing the incentive for parties to provide all relevant information at the decision making stage (rather than withholding it for a review), should improve timeliness, certainty and accountability.

There is another aspect of the declaration process where the Council advocates change. At present, where a decision maker does not determine an application within 60 days of receiving the Council's recommendation, he or she is deemed to have made a decision to not declare. Where there is a deemed no declaration, as in the recent Services Sydney and Fortescue Metals Group applications, there is no statement of reasons to explain that outcome. The Council considers that a better approach in the case of a deemed decision would be for the decision maker to be deemed to have accepted the Council's recommendation, rather than to have declined an application in all cases as at present. Such an approach would avoid the prospect of appeals against decisions for which there are no reasons, which would be the case where the Council had recommended declaration yet the application is deemed to be declined.

Alternatives to Australia's current approach to third party access have little appeal. If there is no access, then competition in markets that depend on the infrastructure will be compromised. Those markets will become stagnant and costs will rise. Alternatively, Australia could duplicate a considerable amount of its infrastructure. But most infrastructure facilities are million, if not billion, dollar investments, and investment in a second facility to do what the first one could have done can be very wasteful. It is true that many vertically integrated asset owners do not want to share the use of their infrastructure, but it is sometimes in Australia's interests that they do!

A1 Access to infrastructure (output 1)

A1.1 The National Access Regime

Under the 1995 National Competition Policy (NCP), all Australian governments agreed to a regime for third party access to services provided by infrastructure facilities where:

- it would not be economically feasible to duplicate the facility, that is the facility has natural monopoly characteristics
- access to the service is necessary to permit effective competition in a downstream or upstream market
- the facility is of national significance, having regard to the size of the facility, its importance to constitutional trade or commerce, or its importance to the national economy, and
- the safe use of the facility by the person seeking access can be assured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

The Australian Government established the national access regime via part IIIA of the *Trade Practices Act 1974*. The national regime is a mechanism that is available when attempts at commercially negotiated access fail. It provides a legal avenue (via the Trade Practices Act) through which a party (a business or individual or other organisation) can share the use of infrastructure services owned by another party on commercial terms and conditions. The national regime leaves room for state or territory access regimes to take its place, where those regimes are certified by the Council as effective (that is, where the state/territory regime matches the core criteria of the national regime).

The objective of access regulation is to promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided. This involves maximising as far as possible the productive capacity of the whole economy, by achieving enhanced market competition and continued investment in the infrastructure and in the sectors that depend on the infrastructure. In short, the national access regime seeks to achieve the best balance of the interests of asset owners/operators, users of the service and consumers.

The rationale for access regulation is that the owners of significant infrastructure facilities commonly have substantial market power that they can exploit. If the business that owns or operates the infrastructure does not also have interests in upstream or downstream markets, then the public policy issue is one of dealing with any monopoly behaviour that has an influence on competition in another market. (An access regime is one although not the only means of restraining prices and maintaining output in these situations.[4]) If a business that operates essential infrastructure also has interests in upstream or downstream markets, then as well as the incentive to charge monopolistic prices to users of its infrastructure it might also discriminate against its competitors, offering them access only on inferior terms and conditions, or even denying them access.

Clause 6 of the Competition Principles Agreement sets out the principles that underpin Australia's access arrangements. It specifies that access arrangements should:

- encourage commercial negotiation between access seekers and the service provider
- provide for an enforceable right to negotiate access
- have an independent dispute resolution mechanism, and
- recognise the infrastructure owner/operator's interests, the costs of access, economic efficiency and the benefit to the public from competitive markets.

Under the national regime a party seeking access may apply for the relevant government Minister to 'declare' a service. The Trade Practices Act defines a service that is potentially subject to declaration to include the use of an infrastructure facility such as a road or railway line, handling or transporting things such as goods or people and a communications service or similar service. Services do not include the supply of goods or the use of intellectual property or the use of a production process, except to the extent that the production process is an integral but subsidiary part of the service.

When an application is made, the Council considers the matter against the Trade Practices Act criteria and recommends to the designated Minister whether the service to which access is sought should be declared or not declared. If the designated Minister makes a decision to declare the service, then access seekers acquire a legal right to negotiate access with the service provider. If necessary, the Australian Competition and Consumer Commission (ACCC), through arbitration, will determine the request for access.

[4] In principle there are also other means, such as direct monitoring and control of prices and service standards.

Declaration is precluded where there is an available state or territory access regime that is certified by the Council as effective. Declaration is also precluded where a service provider has offered an undertaking on the terms and conditions for access that is approved by the ACCC.

Part IIIA of the Trade Practices Act 1974

Part IIIA of the Trade Practices Act establishes principles to facilitate competitive outcomes in markets that rely on natural monopoly infrastructure. It sets out:

- the conditions under which businesses have a right of access to services provided by certain infrastructure facilities, and
- the roles and responsibilities of the government bodies that administer the access regime.

Part IIIA provides a regulatory framework for access negotiation supported by credible dispute resolution procedures. It sets out three pathways for access to infrastructure services:

1. *Declaration (and arbitration).* A business that wants access to a particular infrastructure service can apply to have the service 'declared'. The Council considers each application against the criteria in part IIIA then makes a recommendation to the relevant decision maker, including on the period of any declaration. If the service is declared, then the business and the infrastructure operator try to negotiate terms and conditions of access. If they fail to reach agreement, then they determine the terms and conditions through legally binding arbitration.

2. *Certified (effective) regimes.* Following a recommendation from the Council, the designated Minister can certify an access regime as being effective. As directed by the legislation, the Council considers applications for the certification of access regimes against the clause 6 principles, assessing whether the regime has an appropriate framework to promote competitive outcomes. Because certification removes the entitlement to seek a recommendation for declaration, the Council seeks to ensure that state access regimes provide a viable (if different) pathway to access. Where there is an 'effective' access regime, a business seeking access must use that regime.

3. *Undertakings.* Infrastructure operators can make a formal undertaking to the ACCC, setting out the terms and conditions on which they will provide access to their services. An undertaking may be submitted in relation to existing or proposed infrastructure. If accepted, an undertaking is legally binding, so other businesses can use it to gain access. The services covered by an undertaking are immune from declaration.

The Council uses a public process to assess applications for declaration and certification. The Council's approach in general has been to seek public input via an issues paper and draft report before finalising its recommendation to the designated Minister who determines the application. For declaration applications, the Commonwealth Minister is the designated decision maker unless the service provider is a state or territory body, in which case the responsible Minister of the state or territory is the designated decision maker. Regarding certification, the responsible state or territory Minister makes application to the Council for a recommendation to the Commonwealth Minister, who determines the matter.

Upon receiving a recommendation from the Council, the designated Minister must publish a declaration or a decision not to declare a service, and give reasons for the decision. If the designated Minister does not publish within 60 days after receiving the Council's recommendation, then he or she is taken, at the end of the 60-day period, to have decided not to declare the service and to have published that decision not to declare the service. Under the Trade Practices Act, the Council's recommendation and supporting reasoning is published at the time that the designated Minister determines the matter.

To assist participants, in December 2002, the Council published a guide to part IIIA (available on request from the Council or on its website at www.ncc.gov.au) that: discusses the rationale for access and provides an overview of the pathways to access under part IIIA and information on the declaration and certification pathways (NCC 2002). The Council has also prepared an application template for parties making applications for declaration. The template assists applicants to provide the information that the Council will need to assess the application against the part IIIA criteria. Using the template will facilitate the process of considering the application. The template is available on the Council's website.

Services that are potentially subject to declaration are defined to include the use of an infrastructure facility such as a road or railway line, the handling or transporting of things such as goods or people and a communications service or similar service. Services do not include the supply of goods or the use of intellectual property or the use of a production process, except to the extent that the production process is an integral but subsidiary part of the service.

A party who applies for a recommendation for declaration or the relevant service provider may seek a review by the Australian Competition Tribunal of a Minister's decision to not declare or declare a service. Similarly, the responsible Minister of the state or territory who applied for a recommendation that an access regime is an effective regime may apply for a review of the Commonwealth Minister's decision. Under current arrangements, such reviews are a de novo rehearing of the matter, with the Tribunal having the powers of the designated Minister. The de novo process considers the matter afresh, and sometimes parties raise arguments and evidence before the Tribunal that they did not put to the Council or decision maker. All declaration decisions to date have been appealed to the Australian Competition Tribunal, although some applications have been later withdrawn.

Proposed changes to part IIIA relevant to the Council's work

As part of its commitment to review legislation that restricts competition (clause 5 of the Competition Principles Agreement) the Australian Government asked the Productivity Commission to review the national access regime. The Productivity Commission report, released in September 2002, supported retention of the regime but made 33 recommendations aimed at improving its operation (PC 2001). These recommendations proposed changes to clarify the regime's objectives and scope, encourage efficient investment in new infrastructure, strengthen incentives for commercial negotiation and improve the certainty and transparency of regulatory processes.

The Australian Government endorsed the majority of the Productivity Commission recommendations and legislated in August 2006 to give effect to its approach (Trade Practices Amendment (National Access Regime) Act 2006). The major implications for the Council's processes are as follows.

- The 'promote competition' declaration threshold is amended to reinforce that declaration is granted only where the expected increase in competition in upstream or downstream markets is not trivial. (Historically, the Council's approach has been to ensure that it is affirmatively satisfied that declaration would lead to non-trivial enhancement of competition before it recommends declaration.)

- There are non-binding time limits to various processes under part IIIA. The Council has four months for assessing an application for declaration and recommending to the designated Minister that a service be declared or not declared and six months for assessing an application for certification of a state or territory access regime and making a recommendation that the regime is or is not an effective regime.

- There are legislative provisions inviting public input on declaration and certification applications where it is reasonable and practical for the Council to undertake such consultation. There are also legislative obligations to publish the reasons for recommendations and decisions. (Historically, the Council has considered applications for declaration and certification via a public process and published its recommendations and the supporting reasoning when the decision maker determines an application.)

- There is an obligation on the Council to report annually on the operation and effects of the national access regime. The report is to cover: the time taken to make a recommendation on any application; any court or Tribunal decision interpreting paragraph (f) of the definition of 'service' or the matters relevant to declaring a service; any matter that has impeded the operation of part IIIA from delivering efficient access outcomes; any evidence of benefits from arbitration determinations by the ACCC; any evidence of the costs of, or disincentives for, investment

in the infrastructure providing the declared service; and any implications for the operation of part IIIA in the future.

At its meeting on 10 February 2006, the Council of Australian Governments (COAG) also signed the Competition and Infrastructure Reform Agreement. COAG's objective was to provide for a simpler and consistent national system of economic regulation for nationally-significant infrastructure, so reducing regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure and supporting the efficient use of infrastructure. Among other things this agreement provides that:

- all third-party access regimes include objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure
- all access regimes include consistent principles for determining access prices that among other things generate revenue at least sufficient to meet the efficient costs of providing access and include a return on investment commensurate with regulatory and commercial risks, and
- where merits review of regulatory decisions is provided for, the review is to be limited to the information submitted to the regulator.

These decisions are to be implemented via amendment of the Competition Principles Agreement and the Trade Practices Act (COAG 2006a).

Gas access regulation

The National Third Party Access Regime for Natural Gas Pipelines is an industry-specific regime for third party access to natural gas transmission and distribution pipelines. A key element is the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code).

The National Gas Code was developed by the Gas Reform Task Force, a working group comprising the Australian Government and all state and territory governments, the gas pipeline industry, gas producers and retailers, gas users, regulators and the Council. Governments agreed to implement the National Gas Code under the 1997 Natural Gas Pipelines Access Agreement. In that year, the Council conducted an assessment of the National Gas Code and found the generic framework to be the basis for an effective access regime under part IIIA of the Trade Practices Act.

Each state and territory has implemented the national gas access regime by incorporating the National Gas Code in its own gas access law.[5] The specific

[5] The 'lead' legislation is the *Gas Pipelines Access (South Australia) Act 1997* of South Australia. Schedules to that Act constitute the Gas Pipelines Access Law and National Third Party Access Code for Natural Gas Pipeline Systems. This is applied by each state and territory, except Western Australia which has enacted a slightly revised version. The law is also applied by the Commonwealth, principally by the *Gas Pipelines Access (Commonwealth) Act 1998*.

gas access regimes in New South Wales, Victoria, Western Australia, South Australia, Tasmania, the Australian Capital Territory and the Northern Territory have all been certified as effective access regimes under part IIIA of the Trade Practices Act. The Parliamentary Secretary to the Australian Treasurer has determined that the gas access regime in Queensland is not an effective regime (consistent with the Council's recommendation), noting the Council's finding that there are deficiencies in regulatory processes concerning four major transmission pipelines in the state.

Governments jointly agreed on a schedule of gas transmission systems and distribution systems that they considered passed the tests for coverage and were to be covered at the commencement of the National Gas Code. The operators of the covered pipelines had to submit an access arrangement to an independent regulator for approval. An access arrangement sets out the terms and conditions of access, including reference tariffs for reference services (benchmark prices for services likely to be sought by a significant part of the market). The independent regulator undertakes a public consultation process in deciding whether to approve a proposed access arrangement, and may require amendments. Third parties can gain access to reference services on the terms and conditions set out in the access arrangement. Parties are free, however, to negotiate around the reference tariffs.

At inception the National Gas Code covered 24 transmission pipeline systems and 14 distribution networks. At 30 June 2006 there were 13 regulated transmission pipeline systems and 11 regulated distribution networks.[6]

Under the National Gas Code, the Council's role comprises:

- advising relevant Ministers on whether particular gas pipelines should be covered under the National Gas Code (including whether coverage of covered pipelines should be revoked), and
- advising the designated Australian Government Minister whether state government applications of the code should be certified as effective under the Trade Practices Act.

To recommend coverage, the Council must be satisfied that:

- access to services provided by means of the pipeline would promote competition in at least one market, other than for the services provided by means of the pipeline
- it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the pipeline

6 In some cases, parts of the system or network are covered and parts are not covered.

- access to the services provided by means of the pipeline can be provided without undue risk to human health or safety, and

- access to the services provided by means of the pipeline would not be contrary to the public interest.

When it receives an application for coverage or revocation of coverage, the Council must publish a notice describing the application and requesting public submissions, prepare a draft recommendation on the application (providing a copy of the draft recommendation to the service provider and other parties on request) and, after considering submissions on the draft recommendation, make a recommendation on the application to the coverage decision maker At the same time the Council's recommendation becomes publicly available. There are specified time limits for the Council's process, with scope for extensions.

The coverage decision maker must make a decision on coverage or revocation of coverage within 21 days of receipt of the Council's recommendation although the period for decision making can be extended. Decisions on coverage or revocation of coverage are subject to review by the relevant appeals body, in most cases the Australian Competition Tribunal.

Table A1.1 lists the decision makers, and the regulatory and appellate bodies under the National Gas Code. The Australian Energy Regulator (AER) performs economic regulation of the wholesale electricity market and electricity transmission networks in the National Electricity Market. It is also to be the designated regulator for gas transmission pipelines in all states and territories (except Western Australia) and for transmission and distribution pipelines in the Northern Territory, a function that has been undertaken to date by the ACCC. The enabling legislation to transfer the ACCC's current functions in this area to the AER is yet to be enacted.

Table A1.1: National Gas Code: decision makers, regulatory and appellate bodies

Transmission pipelines

Jurisdiction	*Coverage decision maker*	*Appeals decision maker*	*Regulator*	*Appeals regulator*
New South Wales	Commonwealth Minister: Hon. Ian Macfarlane (Minister for Industry)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Victoria	Commonwealth Minister: Hon. Ian Macfarlane (Minister for Industry)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Queensland	Commonwealth Minister: Hon. Ian Macfarlane (Minister for Industry)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Western Australia	Minister for Energy (WA): (Hon. Francis Logan)	Western Australian Gas Review Board	Economic Regulation Authority	Western Australian Gas Review Board
South Australia	Minister for Energy (SA) (Hon. Patrick Conlon)	Administrative & Disciplinary Division of the District Court (SA)	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Tasmania	Commonwealth Minister: Hon. Ian Macfarlane (Minister for Industry)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Australian Capital Territory	Commonwealth Minister: Hon. Ian Macfarlane (Minister for Industry)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal
Northern Territory	Minister for Mines and Energy (NT) (Hon. Konstantine Vatskalis)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal

Notes: 1. Where the matter is cross-jurisdictional the coverage decision maker is the Commonwealth Minister.

2. The Australian Energy Regulator (AER) is to be the designated regulator for gas transmission pipelines in all states and territories (except Western Australia) and for transmission and distribution pipelines in the Northern Territory. The enabling legislation to transfer the ACCC's current functions in this area to the AER has yet to be enacted.

Distribution pipelines

Jurisdiction	*Coverage decision maker*	*Appeals decision maker*	*Regulator*	*Appeals regulator*
New South Wales	Minister for Energy and Utilities (NSW): (Hon. Frank Sartor)	Australian Competition Tribunal	Independent Pricing and Regulatory Tribunal of New South Wales	Australian Competition Tribunal
Victoria	Minister for Energy Industries and Resources (Victoria): (Hon. Theo Theophanous)	Australian Competition Tribunal	Essential Services Commission	Appeal panel of three appointed by the Treasurer (Victoria)
Queensland	Minister for Energy (Qld): (Hon. John Mickel)	Australian Competition Tribunal	Queensland Competition Authority	Queensland Gas Appeals Tribunal
Western Australia	Minister for Energy (WA): (Hon. Francis Logan)	Western Australian Gas Review Board	ACCC/Economic Regulation Authority	Western Australian Gas Review Board
South Australia	Minister for Energy (SA): (Hon. Patrick Conlon)	Administrative and Disciplinary Division of the District Court (South Australia)	Essential Services Commission of South Australia	Australian Competition Tribunal
Tasmania	Minister for Infrastructure, Energy and Resources (Tasmania): (Hon. Bryan Green)	Australian Competition Tribunal	Government Prices Oversight Commission	Australian Competition Tribunal
Australian Capital Territory	Chief Minister (ACT): (Hon. Jon Stanhope)	Australian Competition Tribunal	Independent Competition and Regulatory Commission	Australian Competition Tribunal
Northern Territory	Minister for Mines and Energy (NT): (Hon. Konstantine Vatskalis)	Australian Competition Tribunal	ACCC/Australian Energy Regulator	Australian Competition Tribunal

Note: Where the matter is cross-jurisdictional the regulator is determined by having regard to the scheme participant with which the pipeline is most closely connected.

Recent changes to gas access regulation relevant to the Council's work

Following a review of national gas access regulation by the Productivity Commission (PC 2004), the Ministerial Council on Energy (MCE) agreed to amend the National Gas Code to:

- introduce a new objects clause to clarify the National Gas Code's objectives
- align the scope of the National Gas Code with the national access regime in part IIIA of the Trade Practices Act
- introduce a light handed regulatory option for covered pipelines based on ring fencing and information disclosure, and
- implement new incentives to investment in new pipeline infrastructure (MCE 2006).

The new objects clause will provide that the objective of gas regulation will be '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'. (There is to be a similar new objects clause for the National Electricity Law.)

The scope of gas regulation will be clarified (and aligned with the national access regime in part IIIA). The MCE endorsed amendment of the pipeline coverage criteria so that a material increase in competition in a dependent market is required for a recommendation/decision that a pipeline be covered. It noted that this change should ensure that only pipelines with substantial market power will meet the test for coverage. The MCE decided that the role of advisor on coverage matters should remain with the Council, noting the desirability of consistency with the national access regime.

Following from the recommendation by the Productivity Commission review of national gas access regulation that gas access regulation provide greater incentive mechanisms for new pipeline developments (greenfields pipelines), the MCE proposed two new mechanisms for providing upfront exemptions from access regulation. Legislation giving effect to the two mechanisms has been enacted.[7]

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[7] The *Gas Pipelines Access (Greenfields Pipeline Incentives) Amendment Act 2006* inserts a new Part 3A in relation to greenfields pipeline incentives into Schedule 1 of the *Gas Pipelines Access (South Australia) Act 1997*. States and territories apply the South Australian Act within their jurisdiction. The Act applies to the offshore area principally by the Commonwealth *Gas Pipelines Access (Commonwealth) Act 1998*.

- The primary mechanism is an ability for a party intending to develop a greenfields pipeline to obtain an upfront ruling on whether or not full regulation under the gas access regime should apply to a new pipeline. If the relevant Minister is satisfied that a pipeline project does not meet the pipeline coverage criteria, it will be granted a full exemption from gas access regulation for 15 years (called a binding no-coverage ruling).

- The second mechanism provides for new transmission pipelines bringing foreign natural gas to Australian markets to be exempt from price regulation for 15 years (called a price regulation exemption). Under such an exemption, the pipeline would be subject to a number of other obligations including non-discriminatory pricing, prohibitions on preventing or hindering access, dispute resolution on non-price matters and transparency obligations.

Both mechanisms involve prior competition and public interest assessment by the National Competition Council, which makes a recommendation to the decision making Minister. The purpose of this prior assessment of whether regulation is necessary in the first 15 years of operation, and the requirement that international pipelines granted a price regulation exemption continue to be subject to obligations to prevent the abuse of market power, is to provide a safeguard for the interests of users.

There have been consequential amendments to the Trade Practices Act to overcome risks to declaration and certification associated with the greenfields pipeline incentives. The effect of these amendments is to ensure the incentives operate as governments had intended.

- To ensure the greenfield incentives are not compromised via declaration of a service provided by a pipeline subject to a binding no-coverage ruling or price regulation exemption, the Council is prohibited from recommending, and the Commonwealth Minister from making, such a declaration.

- Similarly, to ensure that the certification of state and territory gas access regimes is not compromised by their provision for greenfields pipeline incentives, the Council and the responsible Commonwealth Minister respectively must disregard the application of Part 3A of Schedule 1 of the Gas Pipelines Access (South Australia) Act. Recommendations and decisions as to whether there is an effective access regime in relation to a declaration decision are subject to the same provision.

A1.2 The Council's third party access work in 2005-06

In this section, the Council reports on the third party access matters that were 'live' during 2005-06, describing the recommendation and outcome (where the matter was finalised during the year). The summary information on 2005-06 matters, including data on the time taken to reach recommendations and decisions, is contained in tables A1.2 (declaration), A1.3 (certification) and A1.4 (National Gas Code).

As it has done in previous annual reports, the Council has also provided summary histories of all declaration, certification and National Gas Code matters that have come before it since the enactment of part IIIA. These histories are contained in tables A1.5 (declaration), A1.6 (certification) and A1.7 (National Gas Code).

A copy of each access application and relevant documents (issues papers, draft and final reports and participants' submissions), excluding confidential material, is available on the Council's web site at www.ncc.gov.au.

Declaration activities

There were four declaration applications ongoing at 30 June 2005 on which work continued during the reporting year. The Council received no new applications for declaration during 2005-06. The four ongoing matters were (in chronological order of receipt):

- the Virgin Blue Airlines Pty Ltd application for declaration of airside services at Sydney Airport
- the Services Sydney Pty Ltd application for declaration of sewage transport and interconnection services provided by Sydney Water
- the Fortescue Metals Group Ltd application for declaration of services provided by the Mt Newman and Goldsworthy railway lines owned and operated by BHP Billiton Minerals Pty Ltd, Mitsui-Itochu Iron Pty Ltd and CI Minerals Australia Pty Ltd trading as joint ventures, and BHP Billiton Iron Ore Pty Ltd, and
- the Lakes R Us Pty Ltd application for declaration of water storage and transport services provided by Snowy Hydro Limited and State Water Corporation.

Virgin Blue Airlines application for declaration of airside services at Sydney Airport

On 1 October 2002 the Council received an application from Virgin Blue Airlines for declaration of airside services at Sydney Airport. The application sought declaration under part IIIA of:

- a service for the use of runways, taxiways, parking aprons and other associated facilities necessary to allow aircraft carrying domestic passengers to:
  - take off and land using the runways at Sydney Airport
  - move between the runways and the passenger terminals at Sydney Airport ('airside service')
- a service for the use of domestic passenger terminals and related facilities to process arriving and departing domestic airline passengers and their baggage at Sydney Airport ('domestic terminal service').

Virgin Blue Airlines withdrew its application for declaration of the domestic terminal service on 6 December 2002 following its commercial agreement with Sydney Airport Corporation Limited's (SACL) on terminal access.

On 30 June 2003 the Council issued a draft recommendation, for public comment, that the airside service should be declared. However, after considering the submissions received in response to the draft recommendation, the Council recommended that the airside service not be declared. The Council was not affirmatively satisfied that the Virgin Blue Airlines application met declaration criteria (a) and (f). For criterion (a) to have been met, the Council needed to be satisfied that declaration would promote competition in the relevant passenger or freight domestic air transport markets. In particular, the Council considered that SACL's incentive to exercise market power by increasing prices for the airside service is likely to be constrained by SACL's desire to increase passenger traffic to maximise revenue from retail concessions and the threat of re-regulation. Furthermore the Council considered airside service charges were only a small contributor to the overall costs of air travel and it was unclear that SACL's proposed charges would advantage some airlines over others so as to risk limiting downstream competition.

While SACL's ability and incentive to exercise market power would not be completely hindered, the Council was not satisfied that the impact of such a tempered exercise of market power on competition in the dependent markets would adversely affect competition to a material degree. For this reason, the Council considered that criterion (a) was not met. The Council found that criterion (f), which requires that declaration not be contrary to the public interest, was also not met because it could not be satisfied that the costs of declaration would be less than the resultant competitive benefits.

The Council provided its recommendation to the Parliamentary Secretary to the Treasurer, who was the decision maker in this matter, on 30 November 2003. The Council therefore took 425 days from the date of receipt of the application to provide its recommendation.

On 29 January 2004 the Parliamentary Secretary to the Treasurer decided that the airside service should not be declared. On 18 February 2004, Virgin Blue sought review of the Minister's decision by the Australian Competition Tribunal. On 12 December 2005, the Tribunal handed down its decision to declare the services for five years from 9 December 2005, thereby finding against the decision-maker and the Council's recommendation (Virgin Blue Airlines [2005] ACompT 5).

The Tribunal was satisfied that criteria (a) and (f) are met. Regarding criterion (a) it considered that SACL had misused its monopoly power in the past and that, unless the airside service is declared, competition in the dependent market will continue to be affected. In particular, the Tribunal was satisfied that SACL had misused its monopoly power by the manner in which, and the reasons for which, it had changed the basis for its charge for providing the airside service from an aircraft's maximum take-off weight to a charge on a per-passenger basis. (It noted that this change adversely affected low cost carriers such as Virgin Blue as against full cost carriers such as Qantas.) Further, the evidence disclosed before the Tribunal indicated that SACL had chosen a passenger-based charge 'because Qantas preferred it' and that SACL knew that the charge would impact more adversely on Virgin Blue than on Qantas.

The Tribunal also referred to issues relating to the manner in which SACL is contemplating further charges, noting that these issues are likely to be resolved by SACL exercising monopoly power to impose upon the airlines a level of revenue growth that would not be available in a competitive environment. While these matters are outstanding, the Tribunal noted that the absence of independent arbitration and determination left the opportunity for SACL to impose higher and additional charges upon the airlines, which would be unlikely to be accepted in a competitive environment. The Tribunal considered similar outcomes are likely regarding non-price terms and conditions for the use of facilities and related services at Sydney Airport.

Services Sydney application for declaration of sewage transportation and interconnection services

On 3 March 2004, the Council received an application under part IIIA from Services Sydney Pty Ltd for a recommendation to declare the following services provided by Sydney Water's sewage reticulation network in the Sydney metropolitan area:

- a service for the transmission of sewage via Sydney Water's sewage reticulation network from the customer collection points to the interconnection points, and

- a service for the connection of new trunk main sewers owned and operated by Services Sydney to the existing Sydney sewage reticulation network at the interconnection points.

The Council released an issues paper on Services Sydney's application in April 2004 and a draft recommendation on 12 August 2004. In its draft recommendation report, the Council identified six sewage transport and sewer connection services and recommended that these be declared for a period of 15 years.

On 1 December 2004 the Council provided its recommendation to the Premier of New South Wales—the decision maker—that the six sewage transport and sewer connection services be declared for a period of 50 years. The Council therefore took 273 days from the date of receipt of the application to reach a final recommendation.

The Premier of New South Wales did not publish a decision within 60 days of receiving the Council's recommendation. Pursuant to section 44H(9) of the Trade Practices Act, he was therefore deemed to have decided not to declare the services. Services Sydney sought review of the Premier's deemed decision by the Australian Competition Tribunal. On 21 December 2005, the Tribunal handed down its decision to set aside the deemed decision of the Premier and to declare the services for a period of 50 years from 21 December 2005 (Application by Services Sydney Pty [2005] ACompT 7).

Fortescue Metals Group Ltd application for declaration of services provided by the Mt Newman and Goldsworthy railway lines

On 15 June 2004, the Council received an application under part IIIA from Fortescue Metals Group Ltd for declaration of a service described as the use of the facility, being that part of:

- the Mt Newman railway line that runs from a rail siding that will be constructed near Mindy Mindy in the Pilbara to port facilities at Nelson Point in Port Hedland, and is approximately 295 kilometres long

- the Goldsworthy railway line that runs from where it crosses the Mt Newman railway line to port facilities at Finucane Island in Port Hedland, and is approximately 17 kilometres long.

The applicant identified the service provider as BHP Billiton Minerals Pty Ltd, Mitsui-Itochu Iron Pty Ltd and CI Minerals Australia Pty Ltd trading as joint venturers, and BHP Billiton Iron Ore Pty Ltd (BHPBIO).

On 15 December 2004, following the release of an issues paper and public consultation, the Council released decisions on two preliminary issues in relation to the Fortescue Metals Group application. In those decisions, the Council concluded that the two railway lines each provide a separate service and that the Mt Newman line service is capable of being considered further

for declaration, while the Goldsworthy line is not because it is part of a production process.

On 24 December 2004, BHPBIO applied to the Federal Court for a declaration that the use of the Mt Newman railway line is not a service for which a declaration under part IIIA can be sought, given that the service is part of a production process. On 25 February 2005, Fortescue Metals Group applied to the Federal Court for a declaration that the use of the Goldsworthy railway line is a service for which declaration under part IIIA can be sought given that the service is not part of a production process.

In the absence of any interim orders from the court on the above matters, the Council proceeded to consider Fortescue Metals Group's application for declaration of the use of the Mt Newman railway line. The Council released an issues paper for public consultation on 11 March 2005 and a draft recommendation on 4 November 2005, also for public consultation, that recommended declaration of the Mt Newman service. In addition, the Council engaged an independent expert to advise it on railway capacity (including the capacity of the Mt Newman railway line) and the likely means and cost of augmenting the Mt Newman railway line (including the cost of building another facility to provide the service that is the subject of the Fortescue Metals Group declaration application). The Council released the independent expert's report for public comment.

The Council provided its recommendation, recommending declaration for a period of 20 years, to the Parliamentary Secretary to the Treasurer on 24 March 2006. The Council therefore took 647 days from the date of receipt of the application to provide its recommendation. This period included extensions to allow more time for provision of submissions and other information, at the request of participants.

The Australian Treasurer, who assumed responsibility as the decision maker for this matter, did not publish a decision within 60 days of receiving the Council's recommendation. Pursuant to section 44H(9) of the Trade Practices Act, on 23 May 2006, the Australian Treasurer was therefore deemed to have decided not to declare the service.

On 9 June 2006, Fortescue Metals Group applied to the Australian Competition Tribunal for a review of the deemed decision not to declare the service provided by the use of that part of the Mt Newman railway line from near Mindy Mindy to port facilities at Port Hedland. The Federal Court proceedings concerning the Council's decision on the services that are the subject of the Fortescue Metals Group application for declaration are expected to be heard in October 2006. The Tribunal is expected to hear Fortescue Metals Group's review application in the first half of 2007.

Lakes R Us application for declaration of water storage and transport services provided by Snowy Hydro and State Water

On 8 October 2004, Lakes R Us Pty Ltd applied to the Council for a recommendation for declaration of the services provided by certain water facilities operated by Snowy Hydro Limited and State Water Corporation. (At the request of the Council, on 12 January 2005 Lakes R Us provided supplementary material to augment its application.)

Lakes R Us is a venture company that was set up to manage unused water allocations in the Snowy Scheme. It proposes to store water using the excess storage capacity (vacant air space) of the Snowy Scheme facilities operated by Snowy Hydro and to release and transport water to users in the Murray and Murrumbidgee systems using the services provided by facilities operated by Snowy Hydro and State Water.

The Council published a draft recommendation on 8 September 2005 that the services not be declared. It provided its recommendation, also that the services not be declared, on 10 November 2005. The Council therefore took 398 days from the date of receipt of the application (310 days from the date that Lakes R Us provided additional information to complete its initial application) to provide its recommendation.

The decision maker—the Acting Premier of New South Wales—determined on 6 January 2006 not to declare the services. The Council published this decision on its website on 9 January 2006. On 30 January 2006 Lakes R Us—the applicant—sought review of the Acting Premier's decision. Lakes R Us sought leave on 26 May 2006 to withdraw its application for review. Leave to withdraw was granted by the Tribunal on 31 May 2006 (Lakes R Us Pty Ltd [2006] ACompT 3).

Certification activities

The Council considers applications from state or territory governments that wish to establish infrastructure access regimes to take the place of the national access regime. It recommends to the designated Commonwealth Minister the certification of state or territory regimes that meet the requirements set down in the Trade Practices Act.

Since 30 June 2005, the Council has received one application seeking the certification of a state regime. This was an application lodged by the Western Australian Government seeking a recommendation that the state's access regime for electricity network services—the Electricity Networks Access Code 2004—is an effective access regime.

At 30 June 2005 there were also two certification matters still to be determined. These matters were (in chronological order):

- an application by the Queensland Government seeking a recommendation that the state's access regime for gas pipeline services is an effective regime, and

- an application by the Tasmanian Government seeking a recommendation that the state's access regime for gas pipeline services is an effective regime.

Western Australian Government application for certification of the state access regime for electricity network services

On 11 July 2005 the Western Australian Government applied to the Council seeking a recommendation that the Electricity Networks Access Code 2004 be certified as an effective access regime.

The Council released a draft recommendation on 3 August 2005 that the access regime be certified for 15 years. The Council provided its recommendation to the decision-maker (the Parliamentary Secretary to the Australian Government Treasurer) on 12 October 2005. The Council therefore took 93 days from the date of receipt of the application to provide its recommendation.

On 17 July 2006, the Parliamentary Secretary announced his decision to certify the Western Australian electricity networks access code as an effective access regime for 15 years. This decision accords with the Council's recommendation. As required under the Trade Practices Act, the Council released its recommendation when the Parliamentary Secretary announced his decision. The recommendation is available on the Council's website.

Queensland Government application for certification of the state access regime for gas pipeline services

The Queensland Government made application to the Council on 25 September 1998 seeking a recommendation for the certification of the Queensland Gas Access Regime covering gas pipeline services. (The Queensland regime was subsequently enacted in May 2000.) The regime contains derogations affecting four major transmission pipelines that quarantine those pipelines from having to comply with the principles underpinning the National Gas Code for varying periods.

In February 2001, the Council forwarded its recommendation on the effectiveness of the Queensland regime to the then Australian Government Minister for Financial Services and Regulation that the regime not be certified. Subsequently, the Minister advised the Council that he had received a substantial amount of new material from the Queensland Government and the owners of the four gas pipelines subject to derogations under the regime. The Minister sought the Council's advice as to whether this material raised new issues of relevance to his consideration of the regime's effectiveness.

To ensure that all relevant material was properly reflected in its advice to the Minister, the Council withdrew its February 2001 recommendation so as to forward a fresh recommendation after it had given full consideration to the new material. Because considerable time had elapsed since interested parties had an opportunity to provide views on the effectiveness of the regime, the Council released a further draft recommendation. This new draft recommendation, released in February 2002, was that the regime did not satisfy the Competition Principles Agreement clause 6 principles and is therefore not an effective access regime. After considering public submissions on the new draft recommendation, the Council forwarded its recommendation to the Minister on 21 November 2002.

The Council took 1518 days from the date of receipt of the application to reach a recommendation. Part of this period was to accommodate further public consultation on the new material provided by the Queensland Government and pipeline owners after the Council had made its original recommendation to the Minister.

On 17 July 2006 the Parliamentary Secretary to the Australian Government Treasurer (now the decision maker in this matter) determined that the Queensland gas access regime is not an effective access regime. This decision accords with the Council's recommendation. The Queensland regime is in place and the provisions of the regime apply, although the services provided by pipeline assets remain open to declaration under part IIIA of the Trade Practices Act in the absence of a certified effective state access regime.

Tasmanian Government application for certification of the state access regime for gas pipeline services

On 13 October 2004 the Tasmanian Government applied to the Council for a recommendation that the state's access regime for gas pipeline services is an effective access regime.

On 1 February 2005, the Council released a draft recommendation for public consultation. The draft recommendation was that the regime be certified for 15 years. On 14 April 2005, the Council forwarded its recommendation to the decision maker, the Parliamentary Secretary to the Australian Government Treasurer. The Council therefore took 183 days from the date of receipt of the application to reach a final recommendation.

On 17 July 2006, the Parliamentary Secretary announced his decision to certify the Tasmanian gas access regime as an effective regime for 15 years. This decision accords with the Council's recommendation. As required under the Trade Practices Act, the Council released its recommendation when the Parliamentary Secretary announced his decision. The recommendation is available on the Council's website.

National Gas Code coverage and coverage revocation activities

Under the National Third Party Access Code for Natural Gas Pipeline Systems (the National Gas Code), the Council considers applications for the coverage of a pipeline or revocation of coverage. In assessing coverage and revocation applications, the Council must consider whether the relevant pipeline(s) meets the coverage criteria in the National Gas Code. It then makes a recommendation to the decision maker—the relevant state, territory or federal Minister.

At 30 June 2005 there was one revocation matter and one coverage matter still to be determined. These were an application from Epic Energy South Australia Pty Ltd for revocation of coverage of the transmission pipelines within the Moomba-to-Adelaide Pipeline System and an application by Molopo Australia Limited for coverage of the Dawson Valley Pipeline. Since 30 June 2005, the Council has received a further two applications for revocation of coverage under the National Gas Code. These were applications by BHP Petroleum (Ashmore Operations) Pty Ltd (BHPPAO) seeking revocation of coverage under the National Gas Code of the Tubridgi Pipeline and the Griffin Pipeline.

Legal processes concerning the agreement by the parties to withdraw the application for review of the decision by the Western Australian Minister for Energy to not revoke coverage of the Goldfields Gas Pipeline were concluded in February 2006.

Epic Energy South Australia application for revocation of coverage of the Moomba-to-Adelaide Pipeline system

On 15 March 2005, the National Competition Council received an application from Epic Energy for revocation of coverage under the *Gas Pipelines Access (SA) Act 1997* and the National Gas Code of the transmission pipelines within the Moomba to Adelaide Pipeline System. The system comprises the main transmission pipeline that runs from Moomba to Adelaide in South Australia and laterals.

Epic Energy sought revocation of coverage on the basis that the system no longer meets all of the criteria for coverage under the National Gas Code.[8] Epic Energy argued that changed market conditions, including the commissioning of the SEA (South East Australia) Gas Pipeline, provide

8 Section 1.9(a) of the National Gas Code requires 'that access (or increased access) to services provided by means of the pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the services provided by means of the pipeline'. Section 1.9(b) requires 'that it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the pipeline'. Section 1.9(d) requires 'that access (or increased access) to the services provided by means of the pipeline would not be contrary to the public interest'.

incentives for it to offer market based price and service offerings, such that the coverage criteria are no longer satisfied.

The Council released a draft recommendation on 16 November 2005 that coverage of the system be revoked. After considering submissions on the draft recommendation, the Council released its recommendation on 14 December 2005, therefore taking 274 days to make its recommendation. The recommendation is that coverage of the Moomba to Adelaide Pipeline System be revoked.

The Council forwarded its recommendation to the decision-maker, who is the South Australian Minister for Energy, the Hon Patrick Conlon. No decision on the recommendation had been taken at the time of publication of this annual report.

Molopo Australia application for coverage of the Dawson Valley Pipeline

On 16 March 2005, Molopo Australia applied for coverage of the Dawson Valley Pipeline under the National Gas Code. Molopo Australia sought coverage of the entire pipeline (Qld: PPL26), which extends from Dawson Valley to the Wallumbilla-to-Gladstone Pipeline. The owner of the pipeline at the time of the publication was Oil Company of Australia (Moura) Transmissions Pty Ltd, which is a wholly owned subsidiary of Origin Energy Limited.

On 8 July 2005, the Council released a draft recommendation that the Dawson Valley Pipeline should not be covered. On 4 August 2005, after considering submissions on the draft recommendation, the Council forwarded a recommendation to the decision-maker (the Australian Government Minister for Industry, Tourism and Resources). The Council therefore took 141 days to provide its recommendation to the decision maker.

The Council recommended that the Dawson Valley Pipeline should not be covered because it was not satisfied that the pipeline meets all four of the coverage criteria in the National Gas Code. A significant factor in the Council's conclusion was the presence of another pipeline—the Anglo Mitsui Pipeline—in sufficiently close proximity to the Dawson Valley Pipeline to provide a significant constraint on the exercise of market power by the Dawson Valley Pipeline service provider.

On 7 September 2005, the Australian Government Minister for Industry, Tourism and Resources requested the Council to consider matters raised with him by the Department of Industry, Tourism and Resources and by the applicant. In particular, on 5 October 2005 the Minister asked the Council to examine the ownership arrangements of the Dawson Valley Pipeline in the context of the Council's recommendation that the pipeline not be covered. The Minister's request related to information that had become available to the Council after it had made its recommendation about an agreement by Origin Energy (announced on 7 September 2005) to sell its interests in the Moura

coal seam gas field assets, including the Dawson Valley Pipeline, to the owners of the Anglo Mitsui Pipeline.

On 31 October 2005 (88 days after providing its recommendation), the Council provided the Minister with supplementary advice. The Council considered that the announced change in ownership of the Dawson Valley Pipeline would remove the cap on the ability of the owner of the Dawson Valley Pipeline to charge monopoly prices for pipeline transmission services. The Council's view was that, with the change in ownership, the pipeline would satisfy all criteria for coverage under the National Gas Code. It recommended therefore that the Minister set aside its recommendation of 4 August 2005 and determine that the Dawson Valley Pipeline be covered.

The Council took a total of 229 days from the date of receipt of the application to reach its recommendation, including providing supplementary advice following the announcement of the sale of the Dawson Valley Pipeline.

On 26 April 2006, the Hon Ian Macfarlane (Minister for Industry, Tourism and Resources) determined that the Dawson Valley Pipeline be covered under the National Gas Code with effect from 10 May 2006.

BHP Petroleum (Ashmore Operations) Pty Ltd applications for revocation of coverage of the Tubridgi Pipeline and the Griffin Pipeline

On 4 November 2005, BHP Petroleum (Ashmore Operations) Pty Ltd made two applications seeking revocation of coverage under the National Gas Code of the Tubridgi Pipeline and the Griffin Pipeline. The pipelines are owned and operated by BHP Petroleum (Ashmore Operations) Pty Ltd.

The Tubridgi and Griffin pipelines are located on the flood plain of the Ashburton River, 25 kilometres south of Onslow in Western Australia. Each pipeline is about 87 kilometres in length. The two pipelines run parallel from the Tubridgi gas processing facility to Compressor Station 2 on the Dampier to Bunbury Natural Gas Pipeline. At the time of the application, the pipelines were covered under the National Gas Code.

On 16 January 2006 the Council released its draft recommendation that coverage of the two pipelines be revoked. After considering submissions on the draft recommendation, the Council finalised its recommendation to the decision maker, the Hon Francis Logan, Minister for Energy (Western Australia). The Council's recommendation, provided on 28 February 2006, was that coverage of the Tubridgi and Griffin pipelines under the National Gas Code be revoked. The Council therefore took 116 days to provide its recommendation to the decision maker.

On 3 April 2006, the Minister for Energy (Western Australia) determined that coverage of the two pipelines under the National Gas Code should be revoked (consistent with the Council's recommendation) with effect from 1 May 2006.

Table A1.2: Declaration matters not finalised at 30 June 2005: consideration (days from application) and current status

Matter	*Application*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
Virgin Blue Airlines: use of runways, taxiways, parking aprons and associated facilities at Sydney Airport provided by Sydney Airport Corporation Limited (SACL)	1 October 2002	Draft recommendation to declare: 30 June 2003 Recommendation not to declare: 30 November 2003 425 days	Decision by the Australian Government Parliamentary Secretary to the Treasurer not to declare: 29 January 2004 485 days	Application to the Australian Competition Tribunal by Virgin Blue Airlines for review of the Parliamentary Secretary to the Treasurer's decision: 18 February 2004 Decision 12 December 2005: services declared for five years from 9 December 2005 1168 days	Services declared for five years from 9 December 2005 Service provider (SACL) lodged proceedings in the Federal Court to challenge the Australian Competition Tribunal's determination: 6 January 2006 The matter has been heard and the Federal Court has reserved its decision
Services Sydney Pty Ltd: use of sewage reticulation network and interconnection of new trunk main sewers to the existing network provided by Sydney Water	3 March 2004	Draft recommendation to declare: 12 August 2004 Recommendation to declare for a period of 50 years: 1 December 2004 273 days	Deemed decision by the Premier of New South Wales not to declare: 2 February 2005 336 days	Application to the Australian Competition Tribunal by Services Sydney for review of the Premier of New South Wales's decision: 18 February 2005 Decision 21 December 2005: services declared for 50 years from 21 December 2005 658 days	Services declared for 50 years from 21 December 2005

(*continued*)

Table A1.2: continued

Matter	*Application*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
Fortescue Metals Group: use of part of the Mt Newman railway line from near Mindy Mindy to port facilities at Nelson Point in Port Hedland provided by BHP Billiton Iron Ore (BHPBIO)	15 June 2004	Decision by the Council that the Mt Newman line is capable of being considered for declaration: 15 December 2004 Draft recommendation to declare: 4 November 2005 Recommendation to declare for a period of 20 years: 24 March 2006 647 days	Deemed decision by the Australian Treasurer not to declare: 23 May 2006 707 days	Application to the Federal Court by BHPBIO that the use of the Mt Newman railway line is not a service for which declaration can be sought: 24 December 2004 Application to the Federal Court by Fortescue Metals Group that the Goldsworthy railway line is a service for which declaration can be sought and requiring the Council to consider the application for declaration: 25 February 2005 Application to the Australian Competition Tribunal by Fortescue Metals Group for review of the Australian Treasurer's deemed decision: 9 June 2006	Federal Court applications by BHPBIO and Fortescue Metals Group are proceeding Application for review of the Australian Treasurer's deemed decision is proceeding

(*continued*)

Table A1.2: continued

Matter	*Application*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
Lakes R Us Pty Ltd: use of water storage and release/transport services provided by Snowy Hydro Limited and State Water Corporation	8 October 2004 Further information relevant to application: 12 January 2005	Draft recommendation not to declare: 8 September 2005 Recommendation not to declare: 10 November 2005 398 days	Decision by the Acting Premier of New South Wales not to declare: 6 January 2006 455 days	Application to Australian Competition Tribunal by Lakes R Us for review of the Acting Premier's decision: 30 January 2006 Application for review withdrawn 31 May 2006 602 days	Services not declared

Table A1.3: Certification matters not finalised at 30 June 2005: consideration (days from application) and current status

Matter	*Application received*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
Queensland gas access regime: access to the services of relevant gas pipelines	25 September 1998	Draft recommendation (February 2001) withdrawn to allow the Council to consider new information. Further draft recommendation: February 2002 The Council's recommendation to the then Commonwealth Minister for Financial Services and Regulation was that the regime is not effective (21 November 2002). The Minister asked the Council to release its recommendation. 1518 days	Not to certify as effective: 17 July 2006 2852 days		Queensland gas access regime in place. Not certified and the services provided by gas pipelines are open to declaration under part IIIA of the Trade Practices Act.
Tasmanian gas access regime: access to the services of gas pipelines	13 October 2004	Draft recommendation that the regime be certified for 15 years: 1 February 2005 Recommendation that the regime be certified for 15 years: 14 April 2005 183 days	To certify as effective: 17 July 2006 642 days		Certified as effective access regime for a period of 15 years.
Western Australian electricity network services access regime: access to electricity transmission and distribution network services	11 July 2005	Draft recommendation that the regime be certified for 15 years: 3 August 2005 Recommendation that the regime be certified for 15 years: 12 October 2005 93 days	To certify as effective: 17 July 2006 371 days		Certified as effective access regime for a period of 15 years.

Table A1.4: National Gas Code matters not finalised at 30 June 2005: consideration (days from application) and current status

Matter	*Application received*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
Goldfields Gas Transmission Pty Ltd: revocation of coverage of the Goldfields Gas Pipeline (Western Australia)	17 March 2003	Not to revoke coverage: 27 November 2003 245 days	Not to revoke coverage: 2 July 2004 473 days	Goldfields Gas Transmission sought review by the Western Australian Gas Review Board. Parties agreed to discontinue the review: 2 February 2006	Covered
Epic Energy South Australia: revocation of coverage of the Moomba to Adelaide Pipeline system	15 March 2005	Draft recommendation to revoke coverage: 16 November 2005 Recommendation to revoke coverage: 14 December 2005 274 days	At the time of publication of this annual report, the South Australian Minister for Energy was considering his decision. Days elapsed at 30 June 2006: 472 days		Covered
Molopo Australia: coverage of the Dawson Valley Pipeline	16 March 2005	Draft recommendation not to cover: 8 July 2005 Recommendation not to cover: 4 August 2005 After considering the 7 September 2005 announcement of the change in ownership of the Dawson Valley Pipeline, the Council recommended that the pipeline should be covered: 31 October 2005 229 days	To cover: 26 April 2006 406 days		Covered

(*continued*)

Table A1.4: continued

Matter	*Application received*	*Council recommendation*	*Minister's decision*	*Application for review*	*Current status*
BHP Petroleum (Ashmore Operations) Pty Ltd: two applications seeking revocation of coverage of the Tubridgi Pipeline and the Griffin Pipeline	4 November 2005	Draft recommendation to revoke coverage of both pipelines: 16 January 2006 Recommendation to revoke coverage of both pipelines: 28 February 2006 116 days	To revoke coverage of both pipelines: 3 April 2006. 150 days		Not covered

Table A1.5: Summary of all declaration applications to the Council since the enactment of part IIIA

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Australian Union of Students (April 1996)	Payroll deduction service provided by the Department of Education, Employment, Training and Youth Affairs	Not to declare (June 1996)	Not to declare (August 1996)	The union applied to the Australian Competition Tribunal for a review of the Minister's decision. The Tribunal determined not to declare (July 1997).
Futuris Corporation (August 1996)	Western Australian gas distribution service			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Qantas ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Ansett ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Sydney International Airport (three applications)	To declare (May 1997)	To declare (July 1997)	The Federal Airports Corporation applied to the Australian Competition Tribunal for a review of the Minister's decision. The Tribunal determined to declare the services for five years from 1 March 2000.
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Melbourne International Airport (three applications)	To declare (May 1997)	To declare for 12 months (July 1997)	Services were declared from August 1997 until 9 June 1998, and since have been subject to access provisions of the *Airports Act 1996*.

(*continued*)

Table A1.5: continued

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Carpentaria Transport (December 1996)	Queensland rail services, including above-rail services	Not to declare (June 1997)	Not to declare (August 1997)	Carpentaria applied to the Australian Competition Tribunal for a review of the Minister's decision. It then withdrew the application for review.
Specialized Container Transport (February 1997)	New South Wales rail track services (Sydney to Broken Hill)	To declare (June 1997)	Deemed decision not to declare due to expiry of 60-day following the Council's recommendation (August 1997)	Specialized Container Transport applied to the Australian Competition Tribunal for a review of the Minister's decision. It then withdrew the application for review following successful access negotiations.
New South Wales Minerals Council (April 1997)	New South Wales rail track services in the Hunter Valley	To declare (September 1997)	Deemed decision not to declare due to expiry of 60-days following the Council's recommendation (November 1997)	The New South Wales Minerals Council applied to the Australian Competition Tribunal for a review of the Minister's decision. It then withdrew the application for review following the certification of the New South Wales Rail Access Regime.
Specialized Container Transport (July 1997)	(1) Western Australia's rail track services, (2) arriving/departing services, (3) marshalling/shunting service, (4) marshalling/shunting access, (5) fuelling service (five applications)	To declare the rail track service; not to declare other services (November 1997)	Not to declare any of the five services (January 1998)	Specialized Container Transport applied to the Australian Competition Tribunal for review of the Minister's decision. The application for review was withdrawn following successful access negotiations.
Robe River (August 1998)	Hamersley rail track services			The Federal Court decided that the service was not within part IIIA of the Trade Practices Act (June 1999). The Federal Court decision was appealed. Robe River withdrew the application for declaration before the Full Federal Court hearing. The appeal was stayed.

(continued)

Table A1.5: continued

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Normandy Power Pty Ltd, NP Kalgoorlie Pty Ltd and Normandy Golden Grove Operations Pty Ltd (Normandy) (January 2001)	Electricity services provided through Western Power's south west electricity networks			Western Power and Normandy settled the broader commercial dispute between them and agreed to discontinue court proceedings seeking to prevent the Council from considering Normandy's application for declaration. Normandy withdrew its application for declaration.
Freight Australia (May 2001)	Rail track services provided through Victoria's intrastate rail network	Not to declare (December 2001)	Not to declare (February 2002)	Freight Australia applied to the Australian Competition Tribunal for a review of the Minister's decision. It then withdrew the application for review. The Victorian Government is reviewing the Victorian rail access regime to consider alternative arrangements that would account for the concerns raised by Freight Australia and other parties.
Portman Iron Ore Limited (August 2001)	Rail track services provided through the Koolyanobbing–Esperance rail track			The application was withdrawn.
AuIron Energy Limited (November 2001)	Rail track services provided through the Wirrida–Tarcoola rail track	To declare (July 2002)	To declare (September 2002)	In October 2002, APT (operator of the rail track) applied to the Australian Competition Tribunal for a review of the Minister's decision. In March 2003, the Tribunal set aside the Minister's decision on the procedural basis that there was no probative material before it that could affirmatively satisfy the matters in s44H(4) of the Trade Practices Act.

(*continued*)

Table A1.5: continued

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Virgin Blue Airlines Pty Ltd (October 2002)	The use of runways, taxiways, parking aprons and other associated facilities necessary to allow aircraft carrying domestic passengers to: (1) take off and land using the runways at Sydney Airport; and (2) move between the runways and the passenger terminals at Sydney Airport (airside service)	Not to declare (November 2003)	Not to declare (January 2004)	On 18 January 2004 Virgin Blue applied to the Australian Competition Tribunal for a review of the Minister's decision. On 12 December 2005 the Tribunal determined that the airside service be declared for five years expiring on 8 December 2010. On 6 January 2006 the service provider (Sydney Airport Corporation Limited) lodged proceedings in the Federal Court to challenge the Tribunal's determination. The Federal Court has reserved its decision.
Services Sydney Pty Ltd (March 2004)	Services for the transmission of sewage via Sydney Water's Sydney sewage reticulation network from the customer collection points to the interconnection points (transmission services) Services for the connection of new trunk main sewers owned and operated by Services Sydney to the existing Sydney sewage reticulation network at the interconnection points (interconnection services)	To declare sewage transmission and sewer connection services for a period of 50 years (December 2004).	Deemed decision not to declare due to the expiry of 60 days following the Council's recommendation (April 2005)	On 18 February 2005 Services Sydney applied to the Australian Competition Tribunal for a review of the Minister's decision. On 21 December 2005 the Tribunal determined that the services be declared for 50 years from 21 December 2005.

(*continued*)

Table A1.5: continued

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Fortescue Metals Group Ltd (June 2004)	Services described as the use of the facility, being that part of the Mt Newman railway line that runs from a rail siding to be constructed near Mindy Mindy in the Pilbara to port facilities at Nelson Point in Port Hedland; and the use of that part of the Goldsworthy railway line that runs from where it crosses the Mt Newman railway line to port facilities at Finucane Island in Port Hedland	To declare for a period of 20 years (March 2006)	Deemed decision not to declare due to the expiry of 60 days following the Council's recommendation (May 2006)	Applications to the Federal Court by Fortescue Metals Group and BHPBIO are on the application of the production process exemption proceeding. On 9 June 2006 Fortescue Metals Group applied to the Australian Competition Tribunal for a review of the deemed decision not to declare.
Lakes R Us Pty Ltd (October 2004, further information January 2005)	A service described by Lakes R Us as a water storage and transport service provided by Snowy Hydro Limited and State Water Corporation.	Not to declare (November 2005)	Not to declare (January 2006)	On 30 January 2006 Lakes R Us applied to the Australian Competition Tribunal for a review of the Minister's decision. On 31 May 2006 Lakes R Us was granted leave to withdraw its application for review.

Table A1.6: Summary of all certification applications to the Council since the enactment of part IIIA

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
New South Wales gas distribution networks regime (interim regime, October 1996)	Access to services of relevant gas pipelines	To certify (May 1997)	To certify (August 1997)	Certified (but intended only as an interim regime before the introduction of the National Gas Code)
Victorian commercial shipping channels (December 1996)	Access to commercial shipping channels leading into Melbourne Port	To certify (May 1997)	To certify (August 1997)	Certified for five years
New South Wales rail (June 1997)	Access to rail track services	To certify (April 1999)	To certify (November 1999)	Certified until 31 December 2000
South Australian gas access regime (June 1998)	Access to services of relevant gas pipelines	To certify (September 1998)	To certify (December 1998)	Certified for 15 years
Queensland rail (June 1998)	Access to rail track services			The Queensland Government withdrew the application in February 1999.
Queensland gas access regime (September 1998)	Access to services of relevant gas pipelines	Draft recommendation sent to the Minister (February 2001). The Council withdrew this recommendation to consider new information provided to the Minister. The Council's recommendation was that the regime is not effective (November 2002).	Not to certify (July 2006)	Not certified

(*continued*)

Table A1.6: continued

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
New South Wales gas access regime (October 1998)	Access to services of relevant gas pipelines	To certify (March 1999)	To certify (March 2001)	Certified for 15 years. Decision was delayed pending resolution of cross-vesting issues.
Australian Capital Territory gas access regime (January 1999)	Access to services of relevant gas pipelines	To certify (July 2000)	To certify (September 2000)	Certified for 15 years
Western Australian gas access regime (March 1999)	Access to services of relevant gas pipelines	To certify (February 2000)	To certify (May 2000)	Certified for 15 years
Western Australian rail (February 1999)	Access to rail track services			The Western Australian Government withdrew the application.
Northern Territory/South Australian rail (March 1999)	Access to rail track services from Tarcoola to Darwin	To certify (February 2000)	To certify (March 2000)	Certified until 31 December 2030
Victorian gas access regime (July 1999)	Access to services of covered pipelines	To certify (April 2000)	To certify (March 2001)	Certified for 15 years
Northern Territory electricity access regime (December 1999)	Access to services of electricity distribution networks	To certify (December 2001)	To certify (March 2002)	Certified for 15 years
Northern Territory gas access regime (March 2001)	Access to services of covered pipelines	To certify (June 2001)	To certify (October 2001)	Certified for 15 years
Victorian rail access regime (July 2001)	Access to rail track services			The Victorian Government withdrew the application.

(*continued*)

Table A1.6: continued

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
South Australian ports and maritime services access regime (August 2001)	Access to prescribed port and maritime services			The South Australian Government withdrew the application.
Tasmanian gas access regime (October 2004)	Access to services of covered pipelines	Final recommendation forwarded to the decision maker (April 2005)	To certify (July 2006)	Certified for 15 years
Western Australian electricity network services access regime (July 2005)	Access to electricity transmission and distribution network services	Final recommendation forwarded to the decision maker (October 2005)	To certify (July 2006)	Certified for 15 years

Table A1.7: Summary of all coverage and revocation applications under the National Gas Code to the Council

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline to Keith power station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline to Leinster power station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Kalgoorlie–Kambalda pipeline (Western Australia)	Revocation	Not to revoke coverage (June 1999)	Not to revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline to Kalgoorlie power station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999)
SAGASCO South East (May 1999)	Tubridgi pipeline (Western Australia)	Revocation	Not to revoke coverage (July 1999)	Not to revoke coverage (August 1999)
Boral Energy Resources (May 1999)	Beharra Springs pipeline (Western Australia)	Revocation	To revoke coverage (July 1999)	To revoke coverage (August 1999)
Robe River Mining Company (June 1999)	Karratha–Cape Lambert pipeline (Western Australia)	Revocation	To revoke coverage (September 1999)	To revoke coverage (September 1999)
Epic Energy SA (December 1999)	South east pipeline system (South Australia)	Revocation	To revoke coverage (March 2000)	To revoke coverage (April 2000)
AGL Energy Sales and Marketing (January 2000)	Eastern Gas Pipeline (Longford–Sydney)	Coverage	To cover (June 2000)	To cover (October 2000) AGL Energy Sales and Marketing applied to the Australian Competition Tribunal for a review of the Minister's decision. On 4 May 2001, the Tribunal determined not to cover the pipeline.
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Moomba–Sydney pipeline system (Moomba–Wilton trunk line)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)

(continued)

Table A1.7: continued

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Young–Culcairn lateral line (New South Wales)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Dalton–Canberra lateral line (New South Wales and the ACT)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)
Envestra Ltd (April 2000)	Palm Valley–Alice Springs pipeline (Northern Territory)	Revocation	To revoke coverage (July 2000)	To revoke coverage (July 2000)
Envestra Ltd (April 2000)	Alice Springs distribution system (Northern Territory)	Revocation	To revoke coverage (July 2000)	To revoke coverage (July 2000)
Dalby Town Council (August 2000)	Dalby distribution network (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Peabody Moura Mining Pty Ltd (August 2000)	Peabody–Mitsui pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Oil Company of Australia (August 2000)	Kincora–Wallumbilla pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Oil Company of Australia (August 2000)	Dawson Valley pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Envestra Ltd (May 2001)	Mildura pipeline (South Australia and Victoria)	Revocation	To revoke coverage (August 2001)	To revoke coverage (September 2001)
Envestra Ltd (May 2001)	Riverland pipeline (South Australia)	Revocation	To revoke coverage (August 2001)	To revoke coverage (September 2001)

(*continued*)

Table A1.7: continued

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Moomba–Sydney pipeline system (Moomba–Wilton trunk line)	Revocation	Not to revoke coverage (November 2002)	To revoke coverage for that part of the mainline from the exit flange at the Moomba processing facility to immediately upstream of the off-take point of the Central West pipeline at Marsden, New South Wales; to retain coverage for that part of the mainline from the off-take point of the Central West pipeline at Marsden to the Sydney city gate at Wilton, New South Wales (November 2003)
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Dalton–Canberra lateral line (New South Wales and the ACT)	Revocation	Not to revoke coverage (November 2002)	Not to revoke coverage (November 2003)
CMS Gas Transmission Australia (October 2001)	Parmelia pipeline (Western Australia)	Revocation	To revoke coverage (February 2002)	To revoke coverage (March 2002)
Roma Town Council (February 2002)	Roma distribution system (Queensland)	Revocation	To revoke coverage (April 2002)	To revoke coverage (May 2002)
Envestra Ltd (September 2002)	Mildura distribution system (Victoria)	Revocation	To revoke coverage (December 2002)	To revoke coverage (December 2002)
NT Gas Distribution Pty Ltd (January 2003)	City Gate–Berrimah pipeline (Northern Territory)	Revocation	To revoke coverage (April 2003)	To revoke coverage (May 2003)
Goldfields Gas Transmission Pty Ltd (March 2003)	Goldfields Gas Pipeline (Western Australia)	Revocation	Not to revoke coverage (November 2003)	Not to revoke coverage (July 2004)

(*continued*)

Table A1.7: continued

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
Country Energy Gas Pty Ltd (July 2003)	South West Slopes natural gas distribution network	Revocation	To revoke coverage (September 2003)	To revoke coverage (October 2003)
Country Energy Gas Pty Ltd (July 2003)	Temora natural gas distribution network	Revocation	To revoke coverage (September 2003)	To revoke coverage (October 2003)
Epic Energy South Australia (March 2005)	Moomba-to-Adelaide Pipeline system	Revocation	To revoke coverage (December 2005)	At the time of publication of this annual report, the South Australian Minister for Energy was considering his decision.
Molopo Australia Ltd (March 2005)	Dawson Valley Pipeline	Coverage	To cover (October 2005)	To cover (April 2006)
BHP Petroleum (Ashmore Operations) Pty Ltd (November 2005)	Tubridgi Pipeline Griffin Pipeline	Revocation	To revoke coverage of both pipelines (February 2006)	To revoke coverage of both pipelines (April 2006)

A1.3 Matters arising from the Council's third party access work

At 30 June 2005 there were eight third party access matters[9] under consideration. Of these:

- two declaration applications were before the Council and two decisions by designated Ministers on declaration applications were under review by the Australian Competition Tribunal
- two certification recommendations by the Council were with the designated Minister for decision, and
- two applications for coverage or revocation of coverage under the National Gas Code were being considered by the Council.

During 2005-06 the Council received one new application for certification of a state access regime and two new applications for the revocation of coverage of gas transmission pipelines under the National Gas Code. There were no new applications for declaration of a service.

As well as reporting on its third party access work in 2005-06 and providing tabular summaries of all third party access activity, the Council has addressed the matters that the Australian Government identified as being of interest. The *Trade Practices Amendment (National Access Regime) Act 2006*, passed on 10 August 2006, among other things, asks the Council to report on:

- the time taken for its recommendations
- any court or Tribunal decisions interpreting paragraph (f) of the definition of a service (a service that constitutes the use of a production process is exempt from declaration under part IIIA) or other matters relevant to declaring services under part IIIA
- any matter that it considers has impeded the operation of part IIIA from delivering efficient access outcomes
- any evidence of the benefits arising from the ACCC's arbitration determinations

9 Leaving aside the Goldfields Gas Transmission Pty Ltd application for revocation, for which the parties had agreed to withdraw Goldfield Gas Transmission's application for review of the Minister's decision.

- any evidence as to the costs of or disincentives for investment in infrastructure by which declared services are provided, and
- any implications for the future operation of part IIIA.

The time taken for recommendations

The Council has reported above on all applications for the declaration of services, the certification of regime effectiveness and the coverage or revocation of coverage under the National Gas Code of gas pipelines that were 'live' during 2005-06. Tables A1.2-A1.4 summarise the key steps in the process of determining these applications, including outcomes, dates and elapsed times.

The Trade Practices Amendment (National Access Regime) Act imposes a number of non-binding time limits to various decisions under part IIIA. It provides:

- four months for the Council to assess an application for declaration and make a recommendation to the designated Minister that a service be declared or not declared
- six months for the Council to assess an application and make a recommendation that a state or territory access regime is or is not an effective regime or to extend the period for which a decision is in force
- 60 days for a ministerial decision to revoke a declaration and 60 days for the Commonwealth Minister to decide that a state or territory access regime is or is not an effective regime or to extend the period for a decision is in force (part IIIA already provides for a period of 60 days following the Council's recommendation for a ministerial decision on a declaration application), and
- four months for the Australian Competition Tribunal to process an appeal.

The Council's objective is to produce sound and sustainable recommendations as quickly as possible. It has sought to do this while providing appropriate opportunity for consultation with applicants, service providers (whose assets are subject to the declaration application) and other interested parties.[10] The Council has also needed to obtain and verify evidence and data, and develop analysis addressing the Trade Practices Act criteria.

The Council has frequently spent considerable time after an application is received assisting applicants to (1) define the service(s) for which they are seeking declaration and relevant infrastructure, and to (2) provide the

10 Via meetings where appropriate and a public process typically involving the Council releasing an issues paper and draft recommendation prior to recommending to the decision maker.

information necessary to support their application. In addition, while the Council's public consultation process offers interested parties at least two opportunities to submit evidence, it is not uncommon for parties (particularly infrastructure owners) to provide additional information sometimes quite late in the process of assessing the application.

Further, infrastructure owners have sometimes challenged the Council's jurisdiction to assess applications for declaration. Such challenges have generally involved, in essence, an argument that the service to which access is being sought constitutes the use of a production process and so is immune to declaration. Challenges to the Council's jurisdiction based on the definition of service arose in two of the four declaration applications that were current in 2005-06 (see below).

Overall there has been significant variation in the time that the Council has taken to recommend on third party access matters. At one extreme, the Council recommended on the Western Australian Government's application for certification of its electricity network access regime after 93 days and on the BHP Petroleum (Ashmore Operations) applications for the revocation of coverage under the National Gas Code of the Tubridgi and Griffin pipelines after 116 days. Conversely, the Council took 647 days to recommend on the application by Fortescue Metals Group Ltd for declaration of the services of a section of BHPBIO's Mt Newman railway line. In the latter application, the Council faced a challenge to its jurisdiction and needed to spend considerable time testing data provided by key parties. Table A1.8 below summarises elapsed times for the key milestones for all access matters ongoing in 2005-06.

To assist in meeting the government's objective on timing, the Council is redesigning its application templates to help applicants to provide, at the outset, reliable evidence and supporting data. By helping applicants to ensure their applications are comprehensive, the Council believes that it is possible to streamline public consultation and data collection without significantly reducing opportunities for public participation. The template for an application for declaration has been redesigned and is available on the Council's website. The Council is currently developing similar application templates for National Gas Code coverage and revocation of coverage matters and for applications under the recently enacted greenfields pipelines incentives.

The Council's approach is always to encourage potential applicants to discuss their applications with it prior to finalising an application to assist them to develop complete applications. A complete application generally makes a significant contribution to timely assessment. In the case of the application by the Western Australian Government for the certification of its electricity network access regime, on which the Council recommended after 93 days, the government consulted with the Council prior to lodging its application to ensure that it had appropriately considered the certification criteria.

One other factor that has influenced the timing of recommendations is the mechanism for reviewing decisions of the designated Minister. The review is

currently a de novo merits review by the Australian Competition Tribunal. Therefore information received as part of the recommendation or decision making process later than the milestones for those processes is considered by the Australian Competition Tribunal (even if it had not been provided to the Council in time). Although it has inevitably meant some delay, the Council has thought it better to account for 'late' information when making its recommendation wherever possible, rather than have that information considered for the first time by the decision maker or the Tribunal.

COAG agreed on 10 February 2006 to amend the Competition Principles Agreement such that where merits reviews of regulatory decisions are provided for, the review would be limited to the information provided to the regulator. Clarification via the passage of the legislation that the Parliament intends that the Council consider only those submissions that are within time, and amendment to the Competition Principles Agreement as COAG has agreed, will assist in reaching more timely outcomes.

Table A1.8: Time taken to consider and determine third party access matters ongoing in 2005-06 (days)

Access matter (lodgement date)	*Council recommendation (from date of application)*	*Minister's decision (from date of Council's recommendation)*	*Review (from date of lodgement of review application)*	*Total: lodgement to finalisation*
Virgin Blue Airlines: airside services at Sydney Airport (1 October 2002)	425	60	662	1168
Services Sydney: sewage network and interconnection services of Sydney Water (3 March 2004)	273	Deemed decision after 60 days	329	662
Fortescue Metals Group: services of Mt Newman railway line (15 June 2004)	647	Deemed decision after 60 days	Application for review lodged 9 June 2006: ongoing at 30 June 2006	Not finalised. At 30 June 2006: 746 days elapsed since the application lodged
Lakes R Us: water storage and release services of Snowy Hydro and State Water Corporation (8 October 2004)	398	57	Application for review withdrawn on 31 May 2006 (121 days)	602
Queensland gas access regime certification (25 September 1998)	1518	1334		2852
Tasmanian gas access regime certification (13 October 2004)	183	459		642
Western Australian electricity access regime certification (11 July 2005)	93	278		371

(*continued*)

Table A1.8: continued

Access matter (lodgement date)	*Council recommendation (from date of application)*	*Minister's decision (from date of Council's recommendation)*	*Review (from date of lodgement of review application)*	*Total: lodgement to finalisation*
Epic Energy: revocation of coverage of the Moomba to Adelaide pipeline system (15 March 2005)	274	At 30 June 2006:Minister was considering the recommendation 198 days since the Council's recommendation		At 30 June 2006: Minister was considering the recommendation 472 days since the application lodged
Molopo Australia: coverage of the Dawson Valley Pipeline (16 March 2005)	229	177		406
BHP Petroleum (Ashmore Operations): revocation of coverage of the Tubridgi and Griffin pipelines (4 November 2005)	116	34		150

Notes: 1. Total time lodgement to finalisation also includes the period following the Minister's decision prior to any application for review.

2. Table does not include Goldfields Gas Transmission Pty Ltd application for revocation of coverage under the National Gas Code. At 30 June 2005, the parties had agreed to withdraw the application for review.

Court and Tribunal decisions interpreting the definition of a service

Part IIIA of the Trade Practices Act defines 'service' as meaning a service provided by means of a facility, and including the use of an infrastructure facility (such as a road or railway line), the handling or transporting of things (such as goods or people) and a communications or similar service. Section 44B excludes from the definition of service the supply of goods, the use of intellectual property and the use of a production process, except where that production process is an integral but subsidiary part of the service.

What is and what is not a production process is a matter that has proved contentious. The term 'production process' is not defined in the Trade Practices Act. The Federal Court of Australia considered the meaning of production process in *Hamersley Iron Pty Ltd v NCC* [1999] FCA 867. In this matter, Justice Kenny considered that the question of what is and what is not a production process is concerned with examining when a 'marketable commodity' comes into existence.

> *The expression "production process" in the definition of "service" in s 44B of the Act means, in my view, a series of operations by which a marketable commodity is created or manufactured.* Hamersley decision at [34]

The Hamersley decision represents the current state of the law. Accordingly, in its consideration of applications under part IIIA, the Council is obliged to follow the decision. In doing so, the Council must focus on the point at which a marketable commodity comes into existence because, in the words of the Hamersley decision, a production process ends once a commodity exists that is capable of being sold (that is, when it is a marketable commodity).

Applying the Hamersley test in considering the application by Fortescue Metals Group Ltd for the declaration of services provided by BHPBIO in the Pilbara region of Western Australia, the Council concluded that the Mt Newman railway line is not a production process whereas the Goldsworthy railway line is a production process and therefore could not form part of Fortescue Metals Group's application. (Therefore the Council had jurisdiction to consider Fortescue Metals Group's application for the declaration of a service provided by part of the Mt Newman railway line but not that for the declaration of a service provided by the Goldsworthy railway line.)

The Council's conclusion on its jurisdiction concerning the Fortescue Metals Group application is the subject of proceedings before the Federal Court of Australia. BHPBIO has challenged the conclusion on the basis that the Council erred in concluding that the Mt Newman railway line is not part of a production process. Fortescue Metals Group also lodged a challenge on the basis that the Council erred in concluding that the Goldsworthy line is part of a production process.

The facts concerning BHPBIO's mining operations and its use of the Mt Newman and Goldsworthy railway lines are different from those that were before Justice Kenny in the Hamersley matter, as is the evidence filed by the parties. In the current proceedings the parties have each engaged economic experts to assist in formulating and explaining the test that should be applied in respect of whether or not the respective railway lines are production processes. The Council considers that, given the importance of the Trade Practices Act to economic regulation, the meaning of 'production process' should be interpreted having regard to economic principles. Accordingly, the outcome of the current Federal Court proceedings will be critical to future part IIIA applications.

In the application by Lakes R Us for a recommendation for the declaration of water storage and transport services provided by Snowy Hydro Ltd and State Water Corporation, Snowy Hydro argued that the services that were the subject of the application constitute a production process (for electricity). In applying the Hamersley test in this matter, the Council reached a view that the services are not a production process. The Council recommended against declaration, a recommendation that was taken up by the designated Minister (who was the Acting Premier of New South Wales). While Lakes R Us applied for review of the decision, it was subsequently granted leave to withdraw. Consequently, the Tribunal did not determine the matter of whether the water storage and transport services constituted a production process.

Western Power Corporation also questioned the Council's jurisdiction in relation to the 2001 application by Normandy Power Pty Ltd for a recommendation for declaration of certain electrical transmission and distribution services it provides. Western Power Corporation commenced proceedings in the Federal Court claiming that the services that were the subject of the application are not 'services' within the meaning of part IIIA. These proceedings were discontinued before consideration by the Federal Court.

The various challenges to the Council's jurisdiction (arising from debate as to the meaning of 'production process'), including the challenges that were discontinued, have delayed the Council's consideration of applications under part IIIA and resulted in undesirable regulatory uncertainty as to the ambit of part IIIA of the Trade Practices Act. The Council looks forward to the outcome of the current Federal Court proceedings on the Fortescue Metals Group application to help clarify the meaning of 'production process' such that regulatory certainty is enhanced.

Matters impeding the operation of part IIIA

The Trade Practices Amendment (National Access Regime) Act, enacted on 10 August 2006, contains several provisions that address impediments in the current operation of part IIIA. These provisions include:

- time limits for various stages of the declaration process

- a new objects clause for part IIIA providing that the object of the part is to promote the economically efficient operation and use of, and investment in, essential infrastructure services and encourage a consistent approach to access regulation across industries

- access pricing principles that include setting prices which are at least sufficient to meet the efficient costs of providing access, and allow investment returns commensurate with regulatory and commercial risks, and

- reinforcement of the requirement that declaration must promote a material increase in competition in another market.

The Council's view is that these changes will streamline regulatory processes, improve the timeliness of decision making and reduce regulatory uncertainty.

The Council also welcomes the 10 February 2006 decision of COAG to amend the Competition Principles Agreement to include a provision that where merits review of regulatory decisions is provided, the review be limited to the information submitted to the regulator.

In the Council's view, such a change is well justified by the circumstances of the application by Virgin Blue Airlines for a recommendation for declaration of airside services at Sydney Airport. As discussed above, the Council recommended, and the designated Minister determined, that the services not be declared whereas the Australian Competition Tribunal's decision following the application for review by Virgin Blue was to declare the services for a period of five years.

An important reason for the difference between the Council's recommendation and the Australian Competition Tribunal's decision is that the parties provided new and additional evidence as part of the review. In contrast to its approach with the Council, Qantas was represented by senior counsel and produced industry and economic expert witnesses and important new evidence. A significant amount of critical evidence was put before the Tribunal that was not put to the Council when it was formulating its recommendation.

Allowing declaration to be approached in this way in the Council's view provides an incentive for parties to 'game' the decision making process and can result in divergent decisions at different stages of consideration of a declaration application. The Council considers that the change agreed by COAG will allow appropriate re-examination of declaration decisions while reducing the regulatory uncertainty that can result from different factual information being adduced at different stages of the process. In addition, the time taken for reviews and their cost should be reduced because most evidence will be available from the record that the Council provides to the Australian Competition Tribunal when proceedings commence.

In addition to the above matters, the Council also considers that where a decision maker does not determine a matter within the required 60 days, he

or she should be deemed to have accepted the Council's recommendation, rather than to have declined the application in all cases. This would avoid the prospect of decisions, and appeals against decisions, for which there are no reasons, as has occurred in relation to the Services Sydney application for declaration of services provided by Sydney Water's sewerage transport and connection services and the Fortescue Metals Group application for the declaration of the services provided by a section of the BHPBIO owned Mt Newman railway line.

Evidence of benefits from Australian Competition and Consumer Commission arbitration determinations under part IIIA

Where an access seeker and the provider of a declared service are unable to agree on one or more aspects of access to the service, the ACCC is vested with arbitration powers to resolve the dispute. Where a dispute cannot be resolved following private negotiation, mediation and/or conciliation, either of the access parties may notify the dispute to the ACCC.

For the ACCC to arbitrate a dispute, the service that is the subject of the access dispute must:

- have been declared for third party access by the designated Minister or
- be governed by an access undertaking given by the service provider (which provides for the ACCC to determine any access disputes that arise).

Arbitration by the ACCC is generally considered to be a final stage of the dispute resolution process. Where the ACCC is notified of an access dispute the ACCC must determine the matter, unless it decides to terminate the arbitration or the notification is otherwise withdrawn. At this stage the ACCC has arbitrated no access disputes under part IIIA (although it has arbitrated several telecommunications access disputes under part XIC of the Trade Practices Act).

Evidence on the costs of, or disincentives for, investment in infrastructure by which declared services are provided

Since the enactment of part IIIA, declared services have been provided by airport infrastructure and sewerage infrastructure. There have been no services declared provided by rail infrastructure. While acknowledging that the declaration of services provided by sewerage infrastructure is quite recent, the Council considers there is no evidence that declaration under part IIIA has provided a disincentive for investment in either sector.

Potential disincentive for investment in rail was considered as part of the Fortescue Metals Group application for declaration of the service provided by the BHPBIO-owned Mt Newman railway. In their public submissions, BHPBIO and Rio Tinto Iron Ore argued that declaration would adversely affect their investment in rail infrastructure and more generally in infrastructure in the Australian economy.[11]

As outlined in its recommendation on the application, the Council had significant doubt that the declaration of the Mt Newman service would lead to the adverse impacts suggested by BHPBIO and Rio Tinto Iron Ore. In summary the Council considered that:

- although the prospect of declaration might add to perceived or actual investment risk, such risk can generally be addressed via access terms and conditions that reflect the dynamics of investment

- part IIIA contains a number of safeguards to minimise (although not eliminate) the risk faced by infrastructure owners from regulatory error and the increased cost of operating in a regulated environment

- the infrastructure owner (in this case BHPBIO) decides whether or not to expand railway capacity (not the regulator or any third party access holder)

- a service provider with substantial revenue at stake (as in this case) acting rationally is unlikely to decide to delay or not proceed with a specific investment because of a perceived increase in risk (from declaration) unless it is convinced that the cost of that risk compared to the potential loss in revenue from not proceeding with an investment is significant. (BHPBIO instead claimed that declaration per se would cause it to decide to delay significant capacity expansion during a period of unprecedented global demand for Australian iron ore).

There has been considerable gas pipeline development in the last few years, and further investment proposed (for some examples see table A1.9). While it is not possible to be certain about the extent of growth that would have occurred in the absence of gas access regulation, the evidence would suggest that access has not adversely affected investment.

11 The Mt Newman service was not declared (following the deemed decision by the Australian Treasurer) and the matter is currently before the Australian Competition Tribunal.

Table A1.9: Examples of gas pipeline development since 2000

Pipelines constructed	
Pipeline	*Pipeline data*
Braemar Power Station Pipeline	56km of 380 mm, 8km of 305 mm pipeline
Casino Gas Pipeline	$200 million (includes well development), 46 km (12 km on shore), 300 mm diameter.
North Queensland Gas Pipeline	370 km, 300mm diameter 22 km lateral, 250 mm diameter
Nifty Gas Pipeline	$15 million, 40 km
Otway Gas Pipeline	70 km of 500 mm offshore, then onshore to Waarre and SEA Gas pipeline
Port Hedland - Telfer Gas Pipeline	$114 million, 450 km, 250 mm diameter
South East Australia (SEA) Gas	$500 million, 680 km, part 460 mm then twin 355 mm diameter
South East South Australia	45 km, 200 mm diameter
Spring Gully Natural Gas Pipeline	89 km transmission pipeline
Major pipeline expansion	
Dampier to Bunbury Natural Gas Pipeline	Several expansions
Proposed new pipelines	
Wadeye Gas Pipeline	$130 million, 275 km
PNG-Queensland Pipeline	$3 billion, 3800 km, 350 to 700 mm diameter

Sources: AGL (2006); DBP (2006); DSE (2004); Enertrade (2005); GasNet (2003 and 2005); Harvey, L., Great Southern Press, personal communication, June 2006; McConnell Dowell (2006); Origin Energy (2006); PowerWater (2006); Santos (2006); SEA Gas (2006).

Other implications for the operation of part IIIA: the timing of regulatory decision making

The Council has identified a further matter, other than those discussed above, that it considers has implications for the effective operation of part IIIA. This further matter concerns the time taken by decision making Ministers to reach decisions following their receipt of recommendations by the Council regarding the certification or otherwise of the effectiveness of a state or territory access regime and coverage or revocation of coverage of gas pipelines under the National Gas Code. In some recent matters, Ministerial decisions were outstanding for long periods following Council recommendations (see table A1.8 above).

Regarding applications for declaration, part IIIA of the Trade Practices Act provides that the designated Minister must decide, on receiving a declaration recommendation from the Council, either to declare the service or not declare it. The designated Minister must publish the declaration or his or her decision not to declare the service. If the Minister does not publish a decision

within 60 days of receiving the Council's recommendation, he or she is deemed to have taken a decision not to declare the service.

Unlike for declaration applications, the Trade Practices Act has no similar stricture regarding designated Ministers' decisions following Council recommendations on the certification of effectiveness of state and territory access regimes. The National Gas Code provides some guidance, requiring that the Minister make a decision on a Council recommendation for the coverage or revocation of coverage of a gas pipeline within a period of 21 days following receipt of the Council's recommendation (with scope for extensions in periods of 21 days). The National Gas Code also specifies time limits (also with scope for extension) for the Council's processes for recommending on applications for coverage or revocation of coverage.

The Australian Government is currently addressing timing arrangements on recommendations and decisions on third party access matters with the objective of increasing incentives for timely regulatory decision making. As discussed above, the Trade Practices Amendment (National Access Regime) Act has introduced, among other things, indicative time limits for the Council's recommendations on applications for declaration and certification. The Act also contains measures aimed at improving the timeliness of Ministerial decision making. In particular, in relation to certification applications, it provides a period of 60 days for the designated Australian Government Minister to decide that a state or territory access regime is or is not an effective regime or to extend the period for which a decision is in force. (The Act also introduces a period of 60 days for a Ministerial decision to revoke a declaration.)

In relation to recommendations and determinations on coverage and revocation of coverage matters under the National Gas Code, energy Ministers are seeking to expedite timing by imposing conditions on the Council's ability to seek an extension to make its recommendations. Under these proposals, the Council may extend the period of time to make a recommendation by no more than two months, and only where the recommendation is of sufficient difficulty or complexity or if there is a material change in circumstances such that the public interest warrants extending the time for the recommendation. Where the Council misses a time limit it will be required to report to the Ministerial Council on Energy, and to specify the new timeframe.

Energy Ministers have also proposed time limits for designated Ministers to determine coverage or revocation of coverage matters following receipt of the Council's recommendation. Ministers will have 30 days to make a determination, with the capacity to extend for difficult or complex matters or where there is a material change in circumstances such that extension is in the public interest. Unlike the reporting arrangement proposed for the Council, however, Ministers have not proposed that they report when they miss a time limit.

The Council supports the arrangements proposed for improving the timing of access recommendations and decisions. It is currently preparing an

application template to assist applicants for coverage and revocation of coverage under the National Gas Code. The Council accepts that it is appropriate for those making regulatory recommendations and decisions to report transparently where they miss specified time limits. In this regard, it has raised with Australian Government officials the possibility that the requirement to report be extended to decision making Ministers. Officials have advised that the policy decision is that energy Ministers do not report when they miss a deadline.

A2 Assessment of governments' implementation of the National Competition Policy (output 1)

A2.1 Outcomes from Australia's National Competition Policy

In 1995 the Council of Australian Governments (COAG) agreed to the National Competition Policy (NCP) and a set of 'related' reforms in electricity, gas, water and road transport. The agreement set out reform obligations for all governments and provided for the Australian Government to make payments (to 2005-06) to the states and territories that satisfactorily addressed those obligations.

COAG created the National Competition Council, principally to assess governments' progress in implementing the agreed reforms and to make recommendations to the Australian Government Treasurer on whether progress was sufficient for states and territories to receive NCP payments. COAG initially provided for three assessments, in 1997, 1999 and 2001. However, in November 2000, it decided that from 2001 the Council should annually assess governments' compliance with the agreed reforms up to, and including, 2005. The Council's 2005 NCP assessment, provided to the Australian Government Treasurer in October 2005, was therefore the last assessment under the 1995 arrangements.

Drawing on the 2005 NCP assessment, this annual report discusses governments' progress in implementing the agreed reforms over the life of the NCP. Much has been accomplished, with the legislation review and reform agenda being the only area of the NCP in which governments did not achieve the timeframe set by COAG. Governments' implementation of the NCP is now well accepted as a key factor in Australia's sustained productivity improvement that has, in turn, underpinned Australia's record economic growth. To that extent, the work of Australia's governments in implementing the NCP has been hailed internationally as world leading.

COAG agreed in 2003 to refresh the 1994 water reform framework and provide a forward water reform program, reaching the Intergovernmental

Agreement on a National Water Initiative in 2004.[12] In accord with this agreement, the National Water Commission is responsible for assisting the implementation of Australia's ongoing water reform program. The National Water Commission conducted the 2005 NCP assessment of governments' compliance with their water commitments and will report to COAG on governments' progress against the ongoing water reform program.

A snapshot of outcomes

The NCP reforms are based on a pro-competitive presumption, but with competition as a means rather than an end in itself. Foremost, the NCP aims to promote the public interest. Its reform elements, therefore, are subject to safeguards to weigh the costs and benefits on a case basis, with provision for consideration of efficiency, social, environmental, equity and regional objectives in assessing reform options.

The 1995 NCP and related reforms intergovernmental agreements set out the following commitments.

Competition Code

Commitment: Enact legislation to apply the Competition Code—which reflects the part IV anticompetitive conduct provisions of the *Trade Practices Act 1974*—to those unincorporated persons to whom part IV of the Trade Practices Act does not apply for constitutional reasons.

Outcome: All state and territory governments have extended the Trade Practices Act prohibitions against anticompetitive behaviour. Accordingly, the Competition Code applies to all persons, including the Crown (in so far as it carries on a business), within a jurisdiction's reach.

Prices oversight

Commitment: Consider the merits of establishing independent sources of price oversight for government businesses enterprises.

Outcome: All Australian governments determined that independent prices oversight arrangements would be in the public interest. This function generally resides within regulatory authorities, but may be also undertaken by other institutions such as competitive neutrality units.

12 Western Australia and Tasmania signed the Intergovernmental Agreement on a National Water Initiative subsequent to June 2004.

The key institutions are the Australian Competition and Consumer Commission (ACCC) (Australian Government), the Independent Pricing and Regulatory Tribunal (New South Wales), the Essential Services Commission (Victoria), the Queensland Competition Authority, the Economic Regulation Authority (Western Australia), the Essential Services Commission of South Australia, the Government Prices Oversight Commission (Tasmania), the Independent Competition and Regulatory Commission (ACT) and the Utilities Commission (Northern Territory).

Competitive neutrality

Commitment: Ensure regulatory and commercial neutrality between government businesses and competing private businesses where the benefits exceed the costs. (Competitive neutrality principles are consistent with government subsidies and community service obligations that meet their social goals—the obligation is that these be transparent, rather than hidden behind opaque cross-subsidisation with attendant competition restrictions.)

Outcome: In all states and territories, major government business enterprises have been corporatised, other significant businesses have been exposed to competitive neutrality principles, and competitive neutrality complaints units have been established. Nevertheless, outcomes across Australia are mixed, and there is scope for improving the coverage of competitive neutrality principles and the operation of complaints mechanisms.

Performance monitoring of government trading enterprises (GTEs) reveals that many have a return on capital below the risk free government bond rate (PC 2005b). The Productivity Commission observed in 2005 that:

> … *without a commitment to better governance, the National Competition Policy reform objective of operating GTEs commercially will not be fully achieved' … failure to meet this objective has potentially serious consequences, given that these GTEs have combined assets of more than $174 billion and generate $55 billion in revenue annually.* (PC 2005b)

The Productivity Commission's subsequent monitoring of the financial performance of GTEs found that despite some improvement, a majority of the monitored GTEs failed to obtain commercial rates of return in 2004-05. It found that the proportion of GTEs falling below this threshold has not changed significantly for over a decade In 2004-05, aggregate profitability increased in the electricity, water and urban transport sectors compared with the previous year but declined in the railways, forestry and ports sectors (PC 2006).

Failure to achieve the risk free bond rate would, other things being equal, suggest that the community would be better served if governments simply invest the capital associated with their businesses rather than continue to manage them. Although simplistic, this indicates the need for GTEs to have

clearly delineated commercial and non-commercial objectives and to ensure the latter are met efficiently. Further work in this area is required.

Structural reform of public monopolies

Commitment: Remove regulatory functions from government businesses and review the merits of separating any monopoly elements, before privatising a public monopoly or introducing competition.

Outcome: Governments generally have met these commitments, in particular recognising the need to remove regulatory functions from government businesses that operate in markets with private sector competitors. In relation to the part-privatisation of Telstra, rather than undertake a structural separation review as called for by the Competition Principles Agreement, the Australian Government preferred to prohibit anticompetitive conduct and facilitate third party access to telecommunications services through special provisions in the Trade Practices Act.

Legislation review (extant legislation)

Commitment: Review all legislation containing competition restrictions (as at 1996) to ensure that the restrictions are in the public interest and remove those restrictions that are not.

Outcome: Each government identified laws regulating areas of economic activity. They have reviewed most of these laws, and have removed restrictions found not to provide a community benefit. In aggregate terms, governments reviewed and, where appropriate, reformed around 85 per cent of their nominated legislation.

The legislation review program was pivotal in removing unwarranted barriers to competition across activities as diverse as the professions and occupations through to transport and communications. In some sectors, such as agricultural marketing and shopping hours regulation, the program has resulted in the substantial removal of unwarranted restrictions.

The program required a strong commitment by governments. In many cases, they introduced major reforms in tandem with systematically transforming a multitude of smaller productivity-impeding regulations. Some competition restrictions while appearing relatively isolated in their impact, in total were a significant drag on the economy's growth potential.

The legislation review program was based on governments' initial screening of their legislation for competition restrictions. This proved to be limiting in some cases because it did not necessarily account for legislation that impinges on efficiency, or involves excessive 'red tape', without restricting competition. Such legislation was not formally addressed under the NCP.

Where restrictive legislation has a national dimension, the NCP provided for review on a national basis. The conduct of national reviews however often proved to be unsatisfactory. In several cases, governments did not implement recommended reforms, and, owing to delays from protracted intergovernmental consultation, some national reviews took many years without reaching a satisfactory outcome. Outcomes appeared to depend on two main considerations: (1) who conducted the national review and (2) the relative costs and benefits of national consistency versus competition policy.

Ideally, independent agencies should conduct national reviews, such as occurred in the case of the Productivity Commission's national review of architects. Where reviews were not sufficiently independent, there was a substantial risk that outcomes would settle on a 'consensus' or least common denominator reforms that all the parties could achieve leading to very little benefit in some jurisdictions.

Apart from reduced duplication, the chief benefit of national reviews is the scope to engender regulatory consistency throughout Australia, thereby reducing compliance and transactions costs. On the other hand, the Council observed innovative approaches to reform in one jurisdiction being adopted by others. Reform in one jurisdiction thus provided a catalyst for other jurisdictions to act in areas that seemed (politically) intractable.

Legislation review (new legislation)

Commitment: Ensure that all new legislation containing competition restrictions is in the public interest.

Outcome: The integrity of governments' regulation impact assessment processes is central to their capacity to ensure new regulation (including legislation restricting competition) is effective and efficient. The process by which governments ensure they develop effective and efficient regulation is referred to as 'gatekeeping'.

Effective gatekeeping is necessary to guard against the introduction of legislation that is not in the public interest. Australia is subject to a rapid regulatory accretion, and governments face a variety of pressures to enact new laws. Where new laws are in the public interest, community welfare is enhanced. But governments, through gatekeeping, need to rationally assess the costs as well as the anticipated benefits of regulation.

All governments now have gatekeeping mechanisms that could, in principle, operate to ensure compliance with their NCP commitments. However, while governments improved their approach to gatekeeping over the NCP, most governments have arrangements that fall short of best practice and so may not be delivering appropriate outcomes in practice. Box A2.1 summarises the Council's view of the necessary ingredients for effective gatekeeping.

Box A2.1: Elements of best practice gatekeeping

Institutional environment settings (COAG and individual governments)

- A high level commitment by governments to the importance of good process to achieve high quality regulation
- Consideration given to assessing the quality of the stock of legislation, in addition to ensuring the flow of high quality new legislation
- (At least initial) external monitoring, comparison and assessment of the performance of gatekeeping systems as governments move to improve these arrangements
- Cross-jurisdictional information exchange through the Regulation Review Forum as a vehicle to continually promote best practice gatekeeping systems

Whole-of-government process issues

- Legislative underpinning for the application of regulatory impact assessments for primary, subordinate and quasi regulation
- Structured integration of regulation impact statement (RIS) processes into agencies' regulatory policy development roles
- Mandatory guidelines for the conduct of RISs, with appropriate cost–benefit assessment frameworks that focus on the quantification of costs and benefits for consumers, business, government and the community, and that appropriately explore alternatives to meet the stated objectives
- Greater awareness of the risks of using regulation to achieve off-budget solutions and/or to placate vested interests, rather than adopting a community-wide perspective

The gatekeeper

- Optimal model: an independent statutory gatekeeper established under a separate Act or through protocols to ensure independence
- Second best: an independent entity removed from a direct role in policy formulation, with an appropriate 'Chinese wall', adequate resources and a high level line of reporting
- Responsibility for 'fail safe' systems to ensure that all regulatory proposals are scrutinised to determine whether a RIS should be undertaken, and that RISs are conducted in a timely manner to avoid *ex post* justifications
- Capability to provide/withhold certificates of adequacy for RISs before consideration by Cabinet (or to not accept poor quality RISs)
- Training capabilities and high level imprimatur to work with agencies in developing RISs
- Public monitoring and exposure of agencies' compliance with RIS requirements and the quality of RISs prepared

Transparency

- Where appropriate, the conduct of RISs at the consultation stage and for the decision maker
- RISs made publicly available when legislation is introduced, including expurgated RISs where genuine confidentiality considerations arise
- A publicly accessible repository for RISs
- Incorporation of sunset clauses to facilitate *ex post* evaluation of the projected costs and benefits of the RIS

Third party access to essential infrastructure

Commitment: A national regime to facilitate third party access, on reasonable terms and conditions, to essential infrastructure services with natural monopoly characteristics.

Outcome: The Australian Government legislated to establish, in part IIIA of Trade Practices Act, three pathways for a party to seek access to an infrastructure service: via declaration; via an effective access regime; or by meeting terms and conditions set out in voluntary undertakings approved by the Australian Competition and Consumer Commission (ACCC).

Under part IIIA, the decision on whether a significant infrastructure facility, such as a gas pipeline or railway track, is subject to regulation is generally separated from the regulation of that facility. The Council advises on whether access to an infrastructure facility should be regulated by the ACCC or a similar state body, or not at all. The Council's third party access work is discussed in section A1.

Electricity

Commitment: Structural, governance, regulatory and pricing reforms to promote competition in electricity generation and retailing.

Outcome: New South Wales, Victoria, Queensland, South Australia and the ACT are part of an interconnected national electricity market. Tasmania entered the national electricity market in 2005, and is now connected to Victoria by the world's longest subsea electricity cable (Basslink). Basslink has been fully operational as of midnight 28 April 2006.

The benefits of the national electricity market include providing for customers to choose suppliers (generator, retailer and trader), the ability of generation and retail suppliers to enter the market, and the capacity for interstate and intrastate trade in electricity.

Although outside the national electricity market, Western Australia commenced a program of electricity market reform in 2003 aimed at creating a competitive energy market. Key elements of the state's reform agenda included the restructure of the state's electricity monopoly (Western Power) into four government-owned entities and the establishment of a wholesale electricity market. Both Western Australia and the Northern Territory have introduced a third party access regime for transmission and distribution.

Most governments have met their commitments under the NCP related electricity agreements, although some critical elements remain outstanding. While progress has been made towards achieving the goal of a fully competitive national electricity market, the electricity market has significant deficiencies that that the current reform program does not specifically address. These shortcomings were identified in 2003 during the Ministerial

Council on Energy's deliberations on a future reform agenda for electricity. Subsequently there has been some progress in relation to electricity sector policy, regulatory and related institutions.

Gas

Commitment: Remove legislative and regulatory barriers to the free trade of gas both within and across state and territory boundaries, and provide third party access to gas pipelines.

Outcome: The objective of national free and fair trade in gas is now largely realised. The Australian gas market is increasingly competitive, dynamic and efficient. All governments have met their commitments in relation to structural reform and franchising and licensing principles. New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Queensland deferred implementing full retail contestability for customers consuming less than 1 terajoule of gas per annum until 1 July 2007, when full retail for domestic and small business gas customers will commence. This will coincide with the introduction of full retail competition for electricity customers in Queensland.

Road transport

Commitment: Improve the efficiency of the road freight sector.

Outcome: The NCP road transport reform program comprised 31 initiatives covering six areas: registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, heavy vehicle registration, driver licensing, and compliance and enforcement. COAG endorsed frameworks covering 25 of the initiatives for assessment under the NCP.

Of the 147 reform elements across all jurisdictions, 143 have been satisfactorily implemented. The outstanding commitments relate to relatively minor areas of the reform agenda.

Not all road transport reform elements were required to be implemented under the NCP and the program left significant scope for further productivity enhancing reforms in road, and for a more integrated agenda for road and rail. COAG has recognised the importance of efficient transport infrastructure to improving productivity. On 10 February 2006 it committed to a range of high priority national transport market reforms as follows.

- The Productivity Commission will develop proposals for the efficient pricing of road and rail freight infrastructure, recommending to COAG by the end of 2006 on optimal methods and possible implementation timeframes.

- Road and rail regulation is to be reformed and harmonised within five years. This work is to cover productivity enhancing reforms, improved road and rail safety regulation and performance based standards for innovative vehicles that do less damage to roads.

- Transport planning and project appraisal processes are to be strengthened and coordinated to ensure the best use of public investment via adoption, by December 2006, of the Australian Transport Council endorsed guidelines for evaluating new public road and rail infrastructure projects.

- There is to be a review of the options for managing congestion focusing on national freight corridors, with the objective of reducing current and projected urban transport congestion (COAG 2006a)

Water

Commitment: COAG agreed to a strategic water reform framework in 1994, which was incorporated into the 1995 NCP agreements. COAG's main objectives in 1994 were to establish an efficient and sustainable water industry and to arrest widespread natural resource degradation, for which water use is partly responsible. The 1994 framework covered pricing, the appraisal of investment in rural water schemes, the specification of, and trading in, water entitlements, resource management (including recognising the environment as a user of water via formal allocations), institutional reform and improved public consultation.

Under the arrangements agreed for the NCP program by COAG senior officials, the 2002, 2003 and 2004 NCP assessments considered specific aspects of the reform framework. Governments were expected to have implemented the entire 1994 agenda by 2005.

COAG agreed in 2003 to refresh the 1994 water reform framework and provide a forward water reform program beyond 2005, reaching the Intergovernmental Agreement on a National Water Initiative in June 2004.[13] In accord with this agreement, the National Water Commission conducted the 2005 NCP assessment of governments' compliance with water commitments.

Outcome: The Council's work on water reform up to 2004 revealed that all governments recognise the importance of effective and efficient water management. Each government had made progress towards this objective (albeit they were at different stages of implementation) but had substantial remaining work to meet their COAG commitments, particularly to implement compatible systems of water access entitlements and water planning including appropriate environmental allocations, and to establish effective water trading arrangements.

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13 Western Australia and Tasmania signed the Intergovernmental Agreement on a National Water Initiative subsequent to June 2004.

The 2005 NCP assessment conducted by the National Water Commission (NWC) found that 'state and territory governments are making considerable effort and progress in improving the management of our water resources' but at the same time found 'a number of areas where COAG commitments were not met or where little progress had been made by states and territories' (NWC 2006, p. ii). In particular, the National Water Commission's assessment found three areas where COAG commitments were not met and where penalties were warranted. These were:

- the failure to meet specific COAG commitments to open up interstate trade in permanent water entitlements in the southern Murray-Darling Basin (where penalties were recommended for New South Wales, Victoria and South Australia)

- New South Wales's compliance with its COAG commitments in relation to water planning and addressing overallocated and/or overused systems, and

- Western Australia's compliance with its COAG commitments in relation to water planning and addressing overallocated and/or overused systems (NWC 2006, p. ii).

In future years the National Water Commission will assess governments' water reform performance through the biennial assessments of progress in implementing the National Water Initiative provided to COAG. The first biennial assessment is scheduled for 2006–07.

A2.2 Much has been achieved but there is more to do

Many reform objectives under the NCP and program of related reforms have substantially been met. All governments have appropriate prices oversight mechanisms in place and generally have removed regulatory functions from public monopolies operating in competitive markets. They have also applied competitive neutrality principles to their large government businesses and have complaints mechanisms in place. These commitments continue to be relevant as long as governments own businesses.

Similarly, commitments continue relating to third party access to the services provided by essential infrastructure facilities. Third party access is discussed in the preceding section A1.

Commitments directed at ensuring the quality of new legislation (gatekeeping) remain fundamental to Australia's prosperity. Effective gatekeeping is a key to moving towards regulation that achieves its objectives without unwarranted efficiency and compliance costs. Governments'

gatekeeping mechanisms, while developing under the NCP, need to be improved substantially and subject to oversight.

Governments did not meet the timeframe set by COAG for the legislation review and reform agenda. They did however deliver substantial elements of the program, and the reform dividend to the nation is evident. One drawback not envisaged by the NCP's focus on removing unwarranted restrictions on competition is the extent of costs (efficiency, compliance and administration) sometimes imposed to support restrictions that are in the public interest. It is possible, for example, for a non discriminatory measure to have an excessive compliance burden, yet meet NCP requirements. Similarly, regulations that impede efficiency but which do not involve competition restrictions may not even have been reviewed under the NCP. In this context, enhanced gatekeeping arrangements could ensure an improved flow of regulation, but do little to improve excessive 'red tape' in the stock.

Energy reform progressed reasonably well in relation to the specified NCP obligations. Nevertheless, COAG's objective of a fully competitive national electricity market has not yet been attained, and reviews have identified significant deficiencies (not addressed under the NCP reform program).

Similarly, the NCP road transport reform obligations were substantially met, although further integrated and coordinated reform of land transport (and coastal shipping and ports) is needed. Some key elements of the NCP water reform program remained outstanding at the end of the NCP. COAG has endorsed a forward reform program for water beyond the 1994 water reform framework incorporated in the NCP related water reforms, which is being implemented under the auspices of the National Water Commission. COAG has also agreed (February 2006) to a range of reforms aimed at improving the efficiency, adequacy and safety of Australia's transport infrastructure.

Reflecting the NCP's broad agenda and the commitment required by all governments, it is not surprising that outcomes across reform areas and between jurisdictions were mixed (see table A2.1). The key areas of unfinished NCP business include: completing the legislation review program; improving the application of competitive neutrality principles; better adherence to structural reform principles; and improvement by all governments of their regulation gatekeeping arrangements.

Table A2.1: Summary of NCP outcomes, by jurisdiction

	Energy reform	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
Australian Government	✓	x	✓	x	x	✓✓✓✓
New South Wales	✓	✓	✓	✓	✓	✓
Victoria	✓	✓	✓	✓	✓	✓✓✓
Queensland	✓	✓	✓	✓	✓	✓✓
Western Australia	✓	x	x	✓	x	✓
South Australia	✓	✓	✓	✓	x	✓✓
Tasmania	✓	✓	✓	✓	✓	✓✓
ACT	✓	x	✓	✓	✓	✓
Northern Territory	✓	✓	✓	✓	✓	✓✓

Source: NCC 2005, p. xviii

There is more to do

As the productivity enhancing reforms in the NCP have been implemented, new challenges (many not envisaged in 1995) have emerged. Thus the reform task is somewhat like walking up a down escalator — in a globally competitive environment, reform inertia will mean declining living standards. Best practice today may tomorrow be an impediment to the nation achieving its growth potential.

Australia needs to finalise the decade-old NCP agenda and have in place a new microeconomic reform program. As governments have recognised, the timely implementation of a new reform program to help 'lock in' the gains from the NCP is critical.

The new National Reform Agenda

In November 2000 COAG agreed that it would review the NCP reform agenda and arrangements before the end of 2005. Accordingly, the Australian Government requested the Productivity Commission, in April 2004, to inquire into the impacts of the NCP and report on future areas 'offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition' (PC 2005a, pp. iv–v).

The Productivity Commission reported in February 2005, finding that:

> *National Competition Policy (NCP) has delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs. It has:*
>
> - *contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes*
> - *directly reduced the prices of goods and services such as electricity and milk*
> - *stimulated business innovation, customer responsiveness and choice*
> - *helped meet some environmental goals, including the more efficient use of water.*
>
> *… Though Australia's economic performance has improved, there is both the scope and the need to do better. Population ageing and other challenges will constrain our capacity to improve living standards in the future. Further reform on a broad front is needed to secure a more productive and sustainable Australia.* (PC 2005a, p. xii)

The COAG meeting of 3 June 2005 endorsed the need to maintain reform momentum and to lock in the substantial benefits achieved. The communique from that meeting stated that:

> *It is important not to be complacent about the continued performance of the Australian economy. Resting on the achievements of the last decade will cost the Australian community opportunities for greater prosperity.*
>
> *Australia's productivity performance is under threat, with further reform essential if the economic expansion of the last 14 years is to continue.*
>
> *The Australian economy is operating in an intensely competitive international environment. As a small trading nation, Australia will drive its economic growth by minimising barriers to trade and maximising its business flexibility.*
>
> *The case for continuing reforms on a collaborative basis is clear.* (COAG 2005, p. 5)

COAG reviewed the NCP, drawing from, but not being limited by, the Productivity Commission report. On 10 February 2006 it agreed to a new National Reform Agenda and supporting institutional arrangements, recognising particularly the challenges of Australia's ageing population and intensified global competition. The three-pronged objective of the new agenda is to enhance the nation's human capital and to continue competition reform

and regulatory reform to help underpin Australia's future prosperity (COAG 2006a). On 14 July 2006, COAG reaffirmed its commitment to progress the National Reform Agenda, stating that it recognised the benefits to the economy and community of progressing the three streams of reforms and the potential costs of failing to do so (COAG 2006b).

Human capital

COAG's objective for human capital reform is to boost labour force participation and productivity. Relevant to this objective, COAG recognised:

- the need for an effective health system noting that good health underpins Australians' wellbeing and quality of life and that preventing ill health and improving physical and mental health helps workforce participation and productivity, and

- the important role of education and training, from early childhood development, core skills attainment, transition from school to work or further study and adult learning.

At its meeting on 14 July 2006, COAG agreed to four initial priority work areas (focusing on improving early childhood development outcomes, student outcomes on literacy and numeracy, child care to support workforce participation by parents with dependent children, and improving health outcomes initially focusing on diabetes). COAG also agreed to 11 indicative high-level outcomes to provide a framework for improving participation and productivity.

Competition and infrastructure regulation

COAG endorsed a new NCP reform agenda with the objective of providing a supportive market and regulatory framework for productive investment in and efficient use of, infrastructure by improving pricing and investment signals and establishing competitive markets. In doing so, COAG noted the Productivity Commission's conclusion that the NCP has delivered substantial net benefits to the Australian economy and across the community. Governments also all recommitted to the principles contained in the Competition Principles Agreement.

COAG intends the competition stream of the National Reform Agenda to add to and continue the NCP reforms, which it considered to be 'highly successful'. COAG seeks to further boost competition, productivity and the efficient functioning of markets by focusing on reform in transport and other export-oriented infrastructure, energy, infrastructure regulation and planning, and climate change.

COAG is also seeking to provide for a simpler and consistent national system of economic regulation for nationally-significant infrastructure, including ports, railways and other export-related infrastructure. It signed a

Competition and Infrastructure Reform Agreement aimed at reducing regulatory uncertainty and compliance costs for owners, users and investors in significant infrastructure and to support the efficient use of national infrastructure. In this regard, it agreed to amend the Competition Principles Agreement to incorporate the following principles:

- all third-party access regimes will include objects clauses that promote the economically efficient use of, operation and investment in, significant infrastructure;

- all access regimes will include consistent principles for determining access prices; and

- where merits review of regulatory decisions is provided for, the review will be limited to the information submitted to the regulator.

COAG also agreed to:

- require regulators to make regulatory decisions under an access regime within six months, provided the regulator has been given sufficient information

- submit all state and territory access regimes for certification by 2010 following agreement on a streamlined certification process (to promote consistency)

- implement a simpler and consistent national system of rail access regulation for agreed nationally significant railways (using the Australian Rail Track Corporation access undertaking as a model)

- each jurisdiction reviewing the regulation of its ports and port authority, handling and storage facility operations at significant ports to ensure that where economic regulation is warranted it conforms with agreed access, planning and competition principles, and

- enhance the application of competitive neutrality to government business enterprises engaged in significant business activities in competition with the private sector.

Continuing regulatory reform

The regulatory reform stream of the National Reform Agenda focuses on reducing the regulatory burden imposed by the three levels of government. COAG agreed that effective regulation is essential to ensuring markets operate efficiently and fairly, to protecting consumers and the environment and to enforcing corporate governance standards. It also noted the importance of ensuring that the benefits from regulation are not offset by unduly high compliance and implementation costs.

COAG agreed to a range of measures to ensure best-practice regulation making and review, and to make a 'downpayment' on regulatory reduction by taking action now to reduce specific regulation 'hotspots'. In addition, it expected that further action to address burdensome regulation and red tape will be taken as the Australian Government considers and responds to the report of the Taskforce on Reducing the Regulatory Burden on Business, and as state, territory and local governments undertake their own regulation review processes.

COAG agreed that all governments will:

- establish and maintain effective arrangements to maximise the efficiency of new and amended regulation and avoid unnecessary compliance costs and restrictions on competition

- undertake targeted public annual reviews of existing regulation to identify priority areas where regulatory reform would provide significant net benefits to business and the community

- identify further reforms that enhance regulatory consistency across jurisdictions or reduce duplication and overlap in regulation and in the role and operation of regulatory bodies, and

- in-principle, aim to adopt a common framework for benchmarking, measuring and reporting on the regulatory burden.

At its 10 February 2006 meeting, COAG agreed to address six priority cross-jurisdictional 'hot spot' areas where it considered overlapping and inconsistent regulatory regimes are impeding economic activity. The six areas are: rail safety regulation; occupational health and safety; national trade measurement; chemicals and plastics; development assessment arrangements; and building regulation. It also agreed to measures to advance infrastructure planning and to adopt a new national Climate Change Plan of Action.

Subsequently, on 14 July 2006, COAG agreed to address an additional four cross-jurisdictional regulatory hot-spot areas, namely: business registration; bilateral (Commonwealth/state and territory) agreements on accrediting environmental assessment and environmental approvals processes; personal property securities (relating to creditor/debtor property interests): and product safety regulation.

Institutional arrangements to support the National Reform Agenda

As well as agreeing to the objectives and priority areas for the new National Reform Agenda, COAG has agreed to new intergovernmental arrangements to support the program.

Intergovernmental Action Plans, agreed by COAG, will set out, as appropriate, reform outcomes and commitments, progress measures, actions and milestones. COAG decided to establish a new independent body — the COAG Reform Council — whose primary role will be to report annually on progress towards achieving the agreed reform milestones and progress measures.

At the COAG meeting of 14 July 2006, the Australian Government undertook to provide funding to the states and territories and, where appropriate, to local government, on a case-by-case basis once specific implementation plans have been developed, if funding is needed to ensure a fair sharing of the costs and benefits of reform. The specific reform proposals are to include the actions that will be undertaken jointly and individually by jurisdictions and information on the direct costs to jurisdictions of proposed actions, including any significant economic adjustment costs.

Funding is to be linked to achieving agreed actions or progress measures and to demonstrable economic benefits, and would take into account the relative costs and proportional financial benefits across the different levels of government of specific reform proposals. Funding implications, where appropriate, are to be considered by all governments once each specific reform proposal has been developed.

Once specific reform proposals have been considered by COAG (including out of session) there would be an independent assessment by the COAG Reform Council of the relative costs and benefits of each of the proposals. Assessments would give due regard to economic, demographic, geographic and other differences between jurisdictions, with jurisdictions retaining full discretion as to how they act upon the COAG Reform Council's assessment. The Australian Government would decide on any payments.

Maintaining a 'competition culture'

In the Council's view (and as COAG has recognised), it is critical to Australia's prosperity that there be a continuing program of microeconomic reform to follow the NCP. As discussed above, the two COAG meetings in 2006 established the National Reform Agenda and supporting institutional arrangements.

For Australia's economy to continue to grow, as well as reforming particular sectors, it needs to continue to commit to the broad NCP principles that have delivered what the Organisation for Economic Cooperation and Development calls a deep-seated 'competition culture' (OECD 2005, p. 11). The new National Reform Agenda and institutional support arrangements are still at an early stage. The human capital elements are new and aspirational, and their scope is still being determined. Australia has somewhat more experience with the competition and regulatory reform elements of the new agenda as a consequence of the NCP, although specific action plans in both areas are also yet to be developed. Importantly, although the focus of the National Reform

Agenda is on particular industry sectors and hotspot areas, governments have reaffirmed their commitment to the Competition Principles Agreement and to continue with regulation review and effective gatekeeping. Both these elements were key aspects of the NCP and are central to maintaining a culture of competition.

Effective governance arrangements are also important. To implement a reform agenda, there is a need for informed independent monitoring of outcomes and transparent reporting on outcomes, including where commitments are not being delivered. Informed transparent reporting will in itself provide an incentive for meeting objectives. Direct incentives, such as payments where independent assessment shows that objectives are delivered, can provide additional encouragement.

COAG has agreed to establish the COAG Reform Council — to monitor implementation reform progress against agreed milestones — and to arrangements for funding, where this is necessary to ensure a fair sharing of the costs and benefits of reform. COAG has agreed that the COAG Reform Council will be an independent body whose primary role will be to report annually to COAG. An independent body, with appropriate authority and clear lines of accountability, is essential. Parties that are responsible for developing and implementing reform programs cannot credibly also undertake the monitoring and reporting task.

The NCP succeeded because it incorporated general programs and sector-specific reforms, and sound public policy principles and strong governance processes, within an agreed all-embracing reform program. It also allowed jurisdictions to implement reforms according to their own priorities within agreed overall targets, so providing flexibility while remaining disciplined and accountable. The task now for governments is to quickly translate the National Reform Agenda into concrete actions and measurable objectives that enable effective and timely implementation. Actions and objectives need to ensure the competition culture engendered by the NCP is maintained, by for example ensuring appropriate priority for regulation review and gatekeeping processes, and for the Competition Principles Agreement. In addition, there is a need for implementation of governance arrangements such that there is an independent progress reporting body that has a transparent and overarching reporting role (including on payments where these are warranted) and clear lines of accountability, particularly given the sector-based emphasis of the National Reform Agenda.

A2.3 Retail trading hours and liquor trading legislation: case studies in legislation review and reform

At the commencement of the National Competition Policy (NCP), most jurisdictions' laws regulating retail trading hours and liquor trading contained significant restrictions on competition. As part of their commitment to review and, where appropriate, reform legislation that restricts competition, state and territory governments examined their legislation in each area.

Retail trading hours

At the commencement of the NCP, each state and territory government apart from New South Wales and the Northern Territory restricted the times that consumers could shop, and shops could trade.[14] The legislation governing retail trading hours at the commencement of NCP, together with the main pre-NCP restrictions and the environment post-NCP are listed in table A2.2.

Trading hours restrictions prior to the NCP took a range of forms.

- The most common restriction was a requirement that shops open after, and close before, a prescribed time on weekdays and Saturdays.
- Trading on Sundays was generally prohibited (although there were some exceptions for CBD and tourist areas).
- There were different trading arrangements depending on the size (either in employment or display area) of retail outlets and the products they sold. Typically, smaller and specialist retailers were permitted to stay open for longer than larger stores. Retailers in central city and tourist shopping precincts tended to face fewer restrictions than retailers in suburban areas.

[14] Trading hours in New South Wales have been virtually unrestricted Monday to Saturday since 1988, with only a few locality-based restrictions in regional areas. While there are legislative restrictions on Sunday trading, the New South Wales Government has readily granted exemptions because it considers that Sunday trading brings benefits such as increased employment and is necessary to meet potential tourist demand. The government assesses applications to remove the remaining locality-based restrictions via a cost-benefit analysis of each case.

Table A2.2: Legislation regulating retail trading hours

Jurisdiction	*Legislation*	*Key restrictions prior to the NCP*	*Situation at the conclusion of the NCP*
New South Wales	*Factories, Shops and Industries Act 1962* (part 4 covers trading hours)	No restrictions on Monday–Saturday; restrictions on Sunday trading and public holiday trading (but widespread use of exemptions allows Sunday trading).	No change.
Victoria	*Shop Trading Act 1987* and the *Capital City (Shop Trading) Act 1992*	Restrictions on Saturday and Sunday trading hours depending on shop type and location.	Unrestricted trading on days other than major public holidays.
Queensland	*Trading (Allowable Hours) Act 1990* and Regulations	Restrictions on Monday–Saturday trading hours for large department stores and supermarkets; prohibition on Sunday trading by these stores outside major cities and tourist areas; exemption from restrictions for 'independent retail shops' (shops employing fewer than 20 employees and fewer than 60 statewide).	Restrictions on Monday–Saturday trading hours for large department stores and supermarkets remain in operation. Sunday trading between specified hours allowed for the south-east Queensland region and major tourist areas.
Western Australia	*Retail Trading Hours Act 1987* and Regulations	Large retailers and specialist retailers have restricted Monday–Saturday trading with large retailers allowed fewer trading hours than specialist retailers; prohibition on Sunday trading outside tourism precincts, within which trading hours are restricted; no restrictions above the 26th parallel.	No change.
South Australia	*Shop Trading Hours Act 1977*	Restrictions on Monday–Saturday trading hours with longer hours allowed for smaller specialist retailers; prohibition on most Sunday trading in the Adelaide metropolitan area except within the CBD, where trading hours are restricted	Shopping allowed until 9 pm on weekdays and Sunday trading extended to suburban areas between 11 am and 5 pm.
Tasmania	*Shop Trading Hours Act 1984*	Prohibition on major retailers (shops employing more than 250 people) trading during prescribed periods (Sundays, public holidays and weekdays after 6 pm other than Thursday and Friday).	Unrestricted trading on days other than major public holidays.
ACT	*Trading Hours Act 1962*	Restrictions on Monday–Saturday trading hours; prohibition on Sunday trading but wide range of exemptions and limited enforcement meant restrictions had little real impact.	Restrictions removed via repeal of legislation

The restrictions led to some apparently incongruous outcomes. In Victoria, for example, consumers could buy everything for a barbeque on Sunday except the meat. Victorians could buy hardware on Sunday but not furniture. In Western Australia and South Australia, people could buy a television set from a city or tourist precinct retailer but not from a branch of the same retailer in a suburban centre.

Governments adopted a variety of approaches to the review and reform of their legislation. In 1996, Victoria removed its restrictions (except for public holidays) after its NCP review found the restrictions were not in the public interest. In 1997, the ACT repealed its legislation following an internal review that found a lack of community support for the restrictions. Tasmania removed its weekday and Sunday restrictions in 2002 after an independent review group found that extended hours would be in the public interest. The review commissioned market research which confirmed the findings of an earlier Tasmanian Government report that liberalising trading hours would bring benefits through increased retail expenditure and employment and would mean that retailers could better meet the needs of Tasmanian consumers.

Queensland addresses trading hours matters via the Queensland Industrial Relations Commission process for determining applications for extended trading hours. The commission must consider a range of criteria when determining an application for extended trading hours, including the locality of the shop, the needs of the population, tourist demand and the public interest, consumer interest and business interest. There has been some liberalisation of trading hours arrangements, particularly in tourist areas. In December 2001, the commission granted an application for Sunday trading to the local government area of the City of Brisbane. In 2002, following criticism that this change disadvantaged traders and consumers in areas adjacent to Brisbane, and recognition of the numerous inconsistencies between the Sunshine Coast area and the Gold Coast area in trading hours arrangements, the Queensland Government legislated uniform Sunday trading hours (from 9 am to 6 pm) for the south-east Queensland region. This arrangement, which has operated from 1 August 2002, means that most Queenslanders can now shop on Sundays.

South Australia reviewed its legislation in 1998. Following that review the South Australian Government allowed some extension to trading hours for supermarkets and department stores, but retained significant restrictions on late night and Sunday trading. South Australia amended its Act again in December 2000 to extend trading hours for shops in the Glenelg tourist precinct. In May 2003, the South Australian Government introduced legislation to allow shopping until 9 pm on weekdays and extend Sunday trading to suburban areas between 11 am and 5 pm.

Western Australia continues to restrict trading hours. While 'small shops' face no restriction on when they may open, 'special retail shops' (those with a specified activity) may open between 6 am and 11:30 pm and larger 'general shops' between 8 am and 6 pm on Monday, Tuesday, Wednesday and Friday, 8 am and 9 pm on Thursday and 8 am and 5 pm on Saturday. Large retailers

located in tourism precincts may trade on Sundays but not if they are located outside tourism precincts (such as in suburban centres). Western Australia also regulates the non-petroleum products that service stations may sell according to business size, with small business service station proprietors[15] permitted to stock a wider range of after-hours nonpetroleum products.

In 2005, Western Australia conducted a referendum asking voters to assess separately whether the Western Australian community would benefit if general retail trading hours in the Perth metropolitan area were extended to allow trading until 9 pm on weeknights, and for six hours on Sundays. (The Western Australian Electoral Commission prepared and published material supporting the yes and no cases for the two questions.) In the referendum, 58 per cent of voters supported the 'No' case on extended weeknight trading and 61 per cent of voters supported the 'No' case on Sunday trading.

The Treasurer of Western Australia subsequently advised the Council that Western Australia would not address restrictions in the state's retail trade legislation because the referendum had established the public interest for the restrictions. Noting that the obligation under the NCP, accepted by Western Australia, was to conduct an independent, transparent and objective review, the Council considered that Western Australia had not met its legislation review and reform commitments on retail trading hours legislation.

The available evidence shows that people living in areas where extended weekday trading and Sunday trading is available support the liberalised arrangements, and do not want to return to a restricted trading environment. Data presented to the Northern Territory review of its Liquor Act showed that Sunday had become the third or fourth most popular day of the week for grocery shopping. Moreover, where shoppers have experienced extended trading hours they are reluctant to reinstate restrictions. For example:

- The ACT Government reinstated some restrictions on supermarket hours for a trial period in 1997, but ended the trial after finding that the community opposed the reinstated restrictions and did not redirect their demand to small shops.

- Victoria's legislation allows local governments to restrict Sunday trading if this is supported by a poll of local residents. The City of Bendigo conducted a referendum in 1998, some fifteen months after the removal of restrictions on Sunday trading. Although voting was voluntary, a high proportion of voters (72 per cent) turned out, with 77 per cent of votes cast in favour of continuing Sunday trading.

- Tasmania's legislation allows for local governments to restrict Sunday trading. Local governments have not used this provision to date.

[15] These are stations owned by up to six people who collectively operate no more than three shops in which a maximum of 10 people work at any time.

An argument sometimes raised during debates on trading hours is that extension has adverse effects on the small retailer sector and as a consequence leads to a reduction in retail employment. While care must be taken in analysing the performance of the retail sector (because for example the performance of the sector is related to the health of the economy), the claims that extended trading has a detrimental effect do not appear to have been realised. Tasmania's review for example, examined the experience of other states in some detail. It found no evidence to show that the removal of restrictions in Tasmania would have an adverse impact on the aggregate level of employment in the state's retail sector. The review anticipated that the removal of restrictions would bring additional employment, real wage increases for some retail employees or a combination of these outcomes.

Such outcomes are not surprising. Reducing the restrictions on when retailers may trade allows them to decide for themselves when it is best to open. Retailers as a result face fewer handicaps when competing with rival demands for consumer spending, and consumers can shop at the times that best suit them. The overall result is a more appropriate pattern of retail trading times.

Liquor retailing

Alcohol is not just another product. Its consumption is linked to a range of health and social problems and has the potential to harm both immediate consumers and the wider community. The challenge in regulating the use of alcohol is to put in place measures that ensure the community can enjoy alcohol while minimising harm from consumption.

There are a range of measures that regulate the sale of liquor. Some of these, as recognised by NCP reviews, have a clear harm minimisation rationale. Such measures include restrictions on the minimum age for sellers, requirements that sellers be suitable persons with an adequate knowledge of the relevant Act, nondiscriminatory limits on trading hours and prohibitions on practices that encourage excessive consumption. Other measures, however, restrict competition without having a clear harm minimisation rationale. These restrictions are summarised in table A2.3.

Table A2.3: Legislation regulating liquor sales

Jurisdiction	*Legislation*	*Key restrictions prior to the NCP*	*Situation at the conclusion of the NCP*
New South Wales	*Registered Clubs Act 1976* *Liquor Act 1982*	Needs test (allows objections to the granting of a new licence on the grounds that existing facilities are meeting the public need); high initial fee charged for a new licence or the transfer of an existing licence, which restricts entry by new sellers	Needs test replaced by a social impact assessment; lower licence fees charged on an annual basis.
Victoria	*Liquor Control Act 1987* *Liquor Control Reform Act 1998*	Needs test and the 8 per cent rule, under which no liquor licensee could own more than 8 per cent of general or packaged liquor licences.	Needs test with replaced by a test based on the impact on social amenity and potential for harm from grant of a new licence; eight per cent rule removed.
Queensland	*Liquor Act 1992*	Needs test; provision for only hotel licensees to sell packaged liquor to the public; limit on the number of bottle shops that any one hotel can establish; restrictions on the maximum size of bottle shops.	Replacement of needs test with a public interest test that focuses on the social, health and community impacts of a licence application; limited relaxation of the size and location constraints applying to packaged liquor outlets; restrictions relevant to packaged liquor sales remain in place.
Western Australia	*Liquor Licensing Act 1988* and Regulations	Needs test; prohibition on liquor stores, unlike hotels, from trading on Sunday.	No change
South Australia	*Liquor Licensing Act 1997* (retaining certain restrictions from the earlier *Liquor Licensing Act 1985*)	Needs test; requirement that clubs purchase liquor from a hotel or bottle shop; differential trading hours—specialist packaged liquor retailers required to close at 6 pm, whereas hotels can sell packaged liquor until midnight; sale of packaged liquor must take place in separate premises from other products.	Removal of requirement that clubs purchase from a hotel or bottle shop; increased trading hours for bottle shops; needs test remains in place.
Tasmania	*Liquor and Accommodation Act 1990*	Nonhotel sellers of packaged liquor prevented from selling liquor (except for Tasmanian wine) in quantities less than nine litres in any one sale; prohibition on supermarkets selling packaged liquor from their supermarket premises.	Removal of nine litres rule.

(*continued*)

Table A2.3: continued

Jurisdiction	*Legislation*	*Key restrictions prior to the NCP*	*Situation at the conclusion of the NCP*
ACT	*Liquor Act 1975 (except ss 41E[2] and 42E[4])*	*No restrictions of concern.*	
Northern Territory	*Liquor Act*	*Needs test; prohibition on liquor stores, unlike hotels, from trading on Sunday.*	*Needs test replaced with a public interest test; prohibition on Sunday trading by liquor stores remains in place.*

At the commencement of NCP, several restrictions on packaged liquor sales appeared to be directed more to advantaging particular groups rather than to harm minimisation. Foremost among these was the 'needs test' found in the legislation of the five largest states and the Northern Territory. A needs test provides for licensing authorities, when assessing an application for a new liquor licence, to consider the effect of the additional licence on the competitive interests of incumbent licence holders. The needs tests, as they applied prior to the NCP, allowed incumbents to use objection procedures to frustrate entry by new competitors.

There was a second group of restrictions that discriminated among various outlet types providing similar services. For example, most jurisdictions allowed hotel bottle shops longer trading hours than (non-hotel) specialist packaged liquor retailers. At the extreme was the requirement in Western Australia and the Northern Territory preventing specialist packaged liquor stores from trading on Sundays while allowing hotel bottle shops to open. Tasmania required a minimum purchase of nine litres (except for Tasmanian wines) from a specialist packaged liquor store, whereas it permitted a hotel bottle shop to sell any volume of alcohol it wished.

Other notable restrictions included:

- Victoria's provision that no liquor licensee could own more than 8 per cent of general (hotel) or packaged liquor licences, and

- Queensland's provision that only general (hotel) licence holders can operate bottle shops and associated limits on the number of bottle shops per hotel licence, their location and their size.

Governments' NCP reviews questioned the justification for many of these restrictions. In 1998, following an NCP review, Victoria was the first jurisdiction to remove its needs test, replacing the test with licensing criteria directed at ensuring that new licence holders are responsible sellers whose activities will not create social disamenity or encourage the misuse of alcohol. (The Victorian legislation specifically disallows an objection to a new licence on the ground that the business of another licensee would be adversely affected.) Queensland, New South Wales and the Northern Territory subsequently reviewed their legislation and, on the basis of their review findings, replaced needs tests with licensing tests that focus on the potential social harm that would arise from the grant of a liquor licence.

Tasmania removed its nine litre requirement following the finding by its 2002 NCP review that the provision had the potential to encourage harmful consumption. Victoria's review of its 8 per cent 'rule' recommended its gradual removal over four years. The Victorian Government accepted the review recommendation and accompanied the removal of the cap with measures to assist small licence holders adversely affected by the reform.

Western Australia and South Australia have retained a needs test despite their reviews recommending change. Western Australia's NCP review, reporting in March 2001, recommended removal of the needs test and its

replacement with a public interest assessment that does not involve consideration of the competitive effect on existing licence holders. Western Australia conducted another review in 2005, which also recommended replacing the needs test with a public interest test. South Australia's initial review in 1997 recommended retention of the needs test but that the government conduct a further review after three or four years when evidence of outcomes in less regulated jurisdictions would be available. The 2003 draft report of the second NCP review recommended abolition of the state's needs test. South Australia has not published a final review report.

Queensland's 1999 NCP review recommended retaining the hotel licence requirement for the sale of packaged liquor. The review considered that the requirement was justified primarily because:

- the potential harms from alcohol misuse support the concept of a 'specialist provider' model limited to hotel licence holders, and

- any loss of revenue from packaged liquor sales by country hotels would have adverse effects on their viability, to the detriment of their important social role in rural areas.

These arguments do not provide a compelling harm minimisation case for the Queensland hotel licence requirement. Whereas other jurisdictions require responsible attitudes by sellers of packaged liquor, they do not oblige packaged liquor retailers to also hold a hotel licence. An outcome of the Queensland restriction appears to be to encourage increases in the price of hotels, because parties wishing to obtain a licence to sell packaged liquor must purchase a hotel licence and provide bar facilities at the site of the hotel licence.

NCP reviews in both Western Australia and the Northern Territory found no justification for the provisions that differentiate between specialist packaged liquor stores, which are not permitted to trade on Sundays, and hotel bottle shops, which are permitted to trade on Sundays. The Western Australian review could find no harm minimisation rationale for the restriction. The Northern Territory review found attempts to relate the restriction to harm minimisation and public amenity 'largely unconvincing.'

Western Australia undertook a further non-NCP review of its Liquor Licensing Act 1988, which reported in 2005. Following this review, on 28 March 2006, Western Australia announced a package of reforms, including replacing the needs test with a public interest test and allowing Sunday trading between 10 am and 10 pm by metropolitan liquor stores (though continuing to restrict Sunday trading in country towns to hotels.) Western Australia proposes that the public interest test will at a minimum 'involve consideration of the potential for harm or ill health and the impact on the amenity of the local area' (DRG 2006). The Western Australian Government anticipates introducing its changes to the Parliament during the Spring session with the objective that the reforms will take effect in 2007. The Northern Territory Government is also overhauling its legislation.

To assist governments formulate liquor licensing regulation that appropriately addresses harm minimisation and competition policy objectives, the Council commissioned Marsden Jacob Associates to consider evidence on the effects of alcohol and to examine the options for regulation of packaged liquor retailing (MJA 2005). The Marsden Jacob Associates report evaluated best practice approaches to the regulation of liquor selling based on an examination of international and Australian reviews and individual research studies.[16] The report concluded that the mix of approaches chosen must be tuned to the particular circumstances of the jurisdiction concerned.

There is no conflict between appropriate regulation of alcohol sales and the pro-competitive commitments entered into by Australian governments under the NCP. The important question is not whether regulation is needed, but whether particular regulatory responses are properly directed at harm reduction and whether they work. An important outcome of the NCP legislation review and reform process is the adoption of licence tests by most states and territories that have a public interest focus on minimising harm, rather than a focus on the impact of new entrants on the profits of incumbent sellers. Even when licensing regulation is properly focused on harm minimisation there is a need for complementary measures to address the consequence of greater accessibility of alcohol, including effective enforcement of licensing conditions.

On 10 February 2006, COAG recommitted to the principles contained in the Competition Principles Agreement and agreed to complete outstanding priority legislation reviews from the current NCP legislation review program in accord with the NCP public benefit test.

16 The report recommended that governments consider: minimum legal purchase age requirements; alcohol taxes to increase price, particularly hypothecated taxes with revenue earmarked to address harms; restrictions on hours or days of sale; outlet density restriction; licensing and enforcement to ensure compliance with these measures; restrictions on price discounting (these do not currently extend to sales from liquor stores); licensee codes of conduct where supported by compliance pressure; the ability to declare and support special restrictions, including prohibition for indigenous communities; ability to discriminate by product type and/or alcohol content; and restrictions on advertising/promotion.

A3 Communications (output 2)

The National Competition Council's communications focus in 2005-06 was on consultation and the provision of timely information on the National Competition Policy (NCP) and the Council's role and activities for the benefit of stakeholders and the general public. This focus was achieved principally through both hard copy and web based publication of relevant material. Speeches were also used for the same communication objective.

Consultation

The secretariat and members of the Council met with representatives of the Australian, state and territory governments, and representatives of business and community groups throughout the year. These meetings covered matters relevant to the Council's role in facilitating the implementation of competition policy.

Speeches

Councillors and Council staff made two speeches in 2005-06 (box A3.1). The central emphasis was on improving understanding of elements of the NCP agenda and facilitating discussion of NCP issues.

Box A3.1: Speeches by councillors and Council staff, 2005-06

Alan Johnston, Director, 'National Competition Policy and liquor regulation', presented to the industry reference group on the review of the Queensland liquor act, January 2006
John Feil, Executive Director, 'Regulation – Balancing competing objectives and interests', presented at the Transport & Infrastructure Regulation Summit 2006, March 2006

Website development

The Council continued in 2005-06 to use its website (www.ncc.gov.au) to enhance community understanding of the NCP and to provide a comprehensive, readily accessible database on the Council's activities.

Publications

The Council's publications in 2005-06 included its annual report, the 2005 NCP assessment report, its recommendations on applications under part IIIA of the *Trade Practices Act 1974* and under the National Gas Code and three commissioned research reports. The three research reports, which the Council released as part of its series of occasional papers, had the purpose of informing discussion on, and community understanding of, important elements of reform.

The Council also made two submissions to public inquiries during 2005-06.

Most Council publications, including the two submissions, are available on the Council's website or in hard copy from the Council. Box A3.2 lists Council publications in 2005-06.

Box A3.2: Council publications, 2005-06

Assessment documents

Assessment of governments' progress in implementing the National Competition Policy and related reforms. October 2005

Declaration, certification and coverage matters

Molopo Australia Ltd's application for coverage of the Dawson Valley Pipeline: draft recommendation, July 2005; final recommendation, August 2005

Application by the Western Australian Government that the state's access regime for electricity network services is effective in terms of the requirements of the Trade Practices Act 1974: draft recommendation, August 2005; final recommendation, October 2005

Lakes R Us Pty Ltd's application for declaration of a water storage and transport service: draft recommendation, September 2005; final recommendation, November 2005

Epic Energy South Australia Pty Ltd's application for revocation of the Moomba-to Adelaide Pipeline system: draft recommendation, November 2005; final recommendation, December 2005

Fortescue Metals Group Ltd's application for declaration of services provided by the Mt Newman and Goldsworthy railway lines: draft recommendation, November 2005, final recommendation, March 2006

BHP Petroleum (Ashmore Operations) Pty Ltd's applications for revocation of coverage of the Tubridgi Pipeline and the Griffin Pipeline: draft recommendation, January 2006; final recommendation, February 2006

Occasional series

Identifying a framework for regulation in packaged liquor retailing, Marsden Jacob Associates, September 2005

Principles for national reform: learning lessons from NCP, The CIE, October 2005

Gas swaps, Firecone Ventures Pty Ltd, April 2006

(continued)

Box A3.2: continued

Submissions

Submission to the Regulation Taskforce, 'Submission to the taskforce on reducing the regulatory burden on business', November 2005

Submission to the Ministerial Council of Energy Standing Committee of Officials, 'Review of decision making in the gas and electricity regulatory frameworks', November 2005

Other documents

Annual report 2004-05, September 2005

B1 Corporate governance and organisation

The National Competition Council is an independent advisory body for all Australian governments involved in implementing the National Competition Policy (NCP). The Australian Government funds the Council and its secretariat through budget appropriations.

Corporate governance

The Council's corporate governance framework is designed to establish accountability and create decision-making processes that effectively and efficiently manage the Council's resources and allocate those resources to NCP priorities.

The Council is responsible for the activities of the organisation, consistent with the requirements of the *Trade Practices Act 1974,* the intergovernmental agreements on the NCP and related reforms, and any subsequent amendments to those agreements. Part IIA of the Trade Practices Act specifies the processes for appointing councillors, conducting Council meetings and disclosing interests by councillors.

The outcome and outputs of the Council are agreed with the Department of Finance and Administration and reported in the portfolio budget papers. The *Corporate plan*, endorsed by the Council, specifies activities that contribute to the outcome and outputs. The Council's annual report details the achievements of the Council over the financial year and how they have contributed to the Council's objectives.

Like any agency funded by the Australian Government, the Council has embraced all of the management, accountability, financial and employment reforms applicable to government agencies.

The Council

The Council comprises a President and up to four other councillors. At 30 June 2006, there were four councillors, including an Acting President. The councillors were David Crawford (Acting President), Doug McTaggart, Rod Sims and Virginia Hickey. The councillors are drawn from across Australia and different industry and community sectors to provide a range of skills and experience. Councillors are generally appointed for three year terms and may

be reappointed. The terms of office of all the existing Councillors end on 18 December 2006. David Crawford's current term as acting President ends on 31 August 2006.

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

Box B1.1: Councillor profiles

Mr David Crawford

Mr David Crawford is Acting President of the National Competition Council and Chair of the Westralia Airports Corporation Pty Ltd, the Export Grains Centre Ltd, HRZ Wheats Pty Ltd, and Canola Breeders Western Australia Pty Ltd. He is a Director of Grain Biotech Australia Pty Ltd, and Grain Foods CRC Ltd. Mr Crawford is also Chair of the Board of Advisors of Curtin University Graduate School of Business, and a management committee member of both educational and service organisations.

Mr Crawford was previously the corporate affairs director of Wesfarmers Limited, managing director of Western Collieries Ltd, chief operating officer of Ranger Minerals NL and managing director of Abosso Goldfields Limited. Mr Crawford has also been a member and/or chair of a number of government and non-government committees in the agriculture and mining industries.

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

Dr Doug McTaggart

Dr Doug McTaggart is currently Chief Executive of the Queensland Investment Corporation and a Director of the Investment and Financial Services Association, a Councillor of the National Competition Council, and a Council Member of the Queensland University of Technology.

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 and a member of the Australian Accounting Standards Board.

Dr McTaggart holds an Honours degree in Economics from the Australian National University and a Masters degree and PhD from the University of Chicago.

(continued)

Box B1.1: continued

Mr Rod Sims

Mr Rod Sims is a Director of Port Jackson Partners Limited, which he joined in 1994. In addition to his role as a Councillor with the National Competition Council, Mr Sims is also Chair of Inglewood Farms in Queensland and Chair of Sustainable Energy Limited based in Papua New Guinea. From 1996 to 2003, he was chair of the Rail Access Corporation and later chair of the Rail Infrastructure Corporation. Mr Sims was appointed by the Australian Government as a member of the panel reviewing Australia's energy policy for the Council of Australian Governments (COAG) in 2002.

Mr Sims previously worked for the Australian Government for over eight years, including as the deputy secretary in the Department of Prime Minister and Cabinet. During this period, he also occupied the position of deputy secretary responsible for Transport in the Department of Transport and Communications. From 1988 to 1990, Mr Sims was the economic advisor to the Prime Minister and prior to that worked for nine years overseas as an economic advisor to governments.

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

Ms Virginia Hickey

Ms Virginia Hickey is Principal of Luma Corporate Governance Consulting, Commissioner of the National Transport Commission, Chair of TransAdelaide, and is a board member of Flinders Ports, Medical Insurance Group Australia, Playford Capital and the Art Gallery of South Australia. She was formerly a member of the University of South Australia Council. Through her role at the National Transport Commission, Ms Hickey is involved in the COAG national transport reform agenda.

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

She was appointed as a Councillor of the National Competition Council in December 2003.

Ms Hickey has a Bachelor of Arts from Monash University, a Bachelor of Laws from University of Melbourne and is a graduate of the Company Directors Course (AICD).

Council meetings

The Council meets regularly, generally once each month, although the timing of its work sometimes necessitates changes to its meeting schedule. During 2005-06, the Council met on 13 occasions, including five times by teleconference. All in-face meetings are held in the Council's Melbourne office. Table B1.1 lists the dates of the meetings of the Council in 2005-06.

Table B1.1: National Competition Council meetings, 2005-06

5 July 2005	8 November 2005
2 August 2005	13 December 2005
23 August 2005	7 February 2006
6 September 2005	24 February 2006
11 October 2005	7 March 2006
24 October 2005	17 March 2006
	30 May 2006

Mr Crawford, and Ms Hickey attended all 13 Council meetings, and Dr McTaggart attended 12 of the 13 meetings. Mr Sims attended 12 meetings. He was not required to attend the meeting on 17 March 2006 because of a conflict in relation to the only agenda item for that meeting.

Audit and Risk Management Committee

The role of the Council's Audit and Risk Management Committee is to oversee the organisation's financial reporting, audit functions, risk management and internal controls. At 30 June 2006 the Audit and Risk Management Committee comprised Councillors Dr Doug McTaggart (Chair) and Ms Virginia Hickey. The Committee met twice during 2005-06.

The 23 August 2005 meeting considered the Council's 2004-2005 financial statements, the implications for the Council of the revised 2005 Financial Management Act (FMA) Orders and arrangements for transition to the international accounting standards.

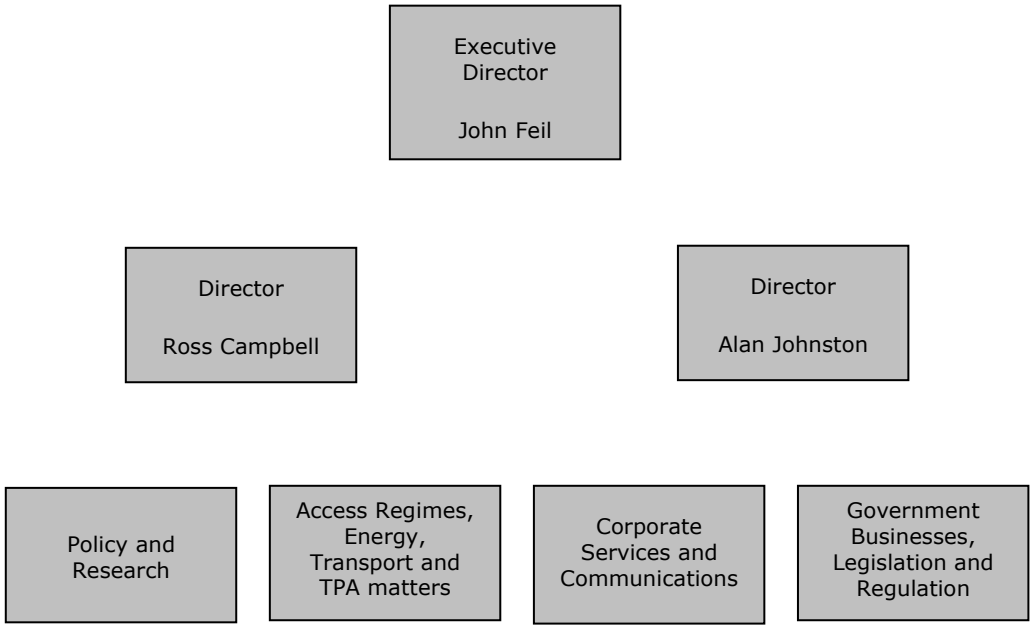
Arising from advice from the Australian National Audit Office (ANAO) following the 2004-05 financial statements, at its meeting on 7 February 2006 the Audit and Risk Management Committee reviewed the Council's method of calculating the 'leave in service factor' for superannuation on-costs (the proportion of long service leave that staff actually take while at work at the Council). After considering the ANAO advice, the Audit and Risk Management Committee decided that the Council should continue to use a factor of .25. The Committee noted that an actuarial study would be unlikely to deliver a reliable estimate for an agency as small as the Council and the cost of undertaking such a study is not warranted.

Both members of the Audit and Risk Management Committee attended the two meetings. Secretariat members John Feil (Executive Director) and Ross Campbell (Director) also attended the two meetings.

The secretariat

The Council is supported by a secretariat located in Melbourne. The secretariat provides advice and analysis at the Council's direction on matters related to the implementation of the NCP. It represents the Council in dealings with officials from the Australian, state and territory governments and with other parties that have interests in NCP matters. Figure B1.1 depicts the structure of the Council secretariat at 30 June 2006.

Figure B1.1: National Competition Council secretariat organisation chart, 30 June 2006



The Executive Director and the two directors comprise the executive team, which is responsible for the day-to-day management of the secretariat. The executive team is also responsible for forward planning and for policy and expenditure decisions. Minutes of executive meetings are circulated to all staff and the Council President. All staff discuss relevant issues at weekly staff meetings.

All human resources and personnel policies were reviewed during 2005-06 and staff advised of the updated policies. Each staff member is issued with a *Policy manual* and a separate *Procedures document* that details corporate governance matters. These documents cover matters such as the Australian Public Service

values and what is expected of Australian Government employees and were updated during 2005-06.

Internal and external scrutiny

Mechanisms for internal and external scrutiny include: formal reviews of the NCP, NCP issues and the role of the Council; legal mechanisms for reviewing the Council's decisions; and the Council's processes for engaging with stakeholders.

Formal reviews

Drawing on the Productivity Commission's Review of National Competition Policy Reforms, the Council of Australian Governments (COAG) conducted a Review of National Competition Policy. At its meeting on 10 February 2006, COAG agreed on a new National Reform Agenda to help underpin Australia's future prosperity. The agenda is aimed at providing a supportive market and regulatory framework for productive investment in energy, transport and other export-oriented infrastructure, and its efficient use, by improving pricing and investment signals and establishing competitive markets. There was also agreement to reduce the regulatory burden on business.

At its meeting on 10 February 2006, COAG decided to establish a new independent body — the COAG Reform Council — to report to it annually on progress towards the achievement of agreed reform milestones and progress measures across the National Reform Agenda. At its meeting on 14 July 2006, COAG reaffirmed its February 2006 commitment to progress the National Reform Agenda and to create the COAG Reform Council (COAG 2006a and COAG 2006b).

During 2005-06, the Australian Government Ombudsman made no comments on the Council, and no decisions by administrative tribunals involved the Council. The Council's financial statements and procedures were subject to audit by the Auditor-General.

Legal mechanisms for reviewing Council decisions

Under both part IIIA of the Trade Practices Act and the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code), an applicant or service provider may seek review by the Australian Competition Tribunal of decisions (made in response to a recommendation from the Council) by the designated Australian Government decision maker or state

premier.[17] Four such matters were considered by the Australian Competition Tribunal in 2005-06:[18]

- On 18 February 2004 Virgin Blue Airlines Pty Limited filed an application for review of the decision by the Parliamentary Secretary to the Treasurer not to declare certain airside services provided by Sydney Airport. On 12 December 2005, the Australian Competition Tribunal determined to declare the airside services for a period of five years from 9 December 2005, thereby finding against the decision maker and the Council's recommendation.

- On 18 February 2005 Services Sydney Pty Limited filed an application for review of the New South Wales Premier's deemed decision not to declare sewage transmission and interconnection services provided by Sydney Water. (Pursuant to s44H(9) of the Trade Practices Act, the Premier was deemed to have made a decision not to declare the services, because he did not make a decision on declaration within 60 days of receiving the Council's recommendation.) On 21 December 2005, the Australian Competition Tribunal determined to declare the services for a period of 50 years from 21 December 2005, thereby finding against the Premier's deemed decision and supporting the Council's recommendation.

- On 30 January 2006 Lakes R Us Pty Limited filed an application for review of the decision of the Acting Premier of New South Wales not to declare water storage and release services provided by Snowy Hydro Limited and State Water Corporation. Leave was granted on 31 May 2006 for the applicant to withdraw the application for review.

- On 9 June 2006 Fortescue Metals Group Limited (FMG) filed an application for review of the deemed decision by the Australian Government Treasurer not to declare the service provided by means of a section of the Mt Newman railway line owned by BHP Billiton Iron Ore (BHPBIO). Both FMG and BHPBIO had previously filed evidence in the Federal Court in relation to this matter.

The Western Australian Gas Review Board also concluded an access matter relating to the Goldfields Gas Pipeline. The matter was resolved between the access seeker and the provider and the review application discontinued on 2 February 2006.

The Council is also subject to external scrutiny through its published recommendations to all governments on matters relating to access determinations and competition reforms, and through its other publications.

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17 The Australian Competition Tribunal is the appellate body for decisions on declaration, certification and coverage/revocation of coverage except that under the National Gas Code, the appellate body in Western Australia is the Western Australian Gas Review Board and in South Australia the appellate body is the Administrative and Disciplinary Division of the District Court.

18 These matters are discussed in detail in section A1 covering the Council's work on third party access to infrastructure.

The Council's engagement with stakeholders

During 2005-06, the Council provided submissions to:

- the Ministerial Council on Energy Standing Committee of Officials review of decision making in the gas and electricity regulatory frameworks (November 2005), and
- the Regulation Taskforce review on reducing the regulatory burden on business (November 2005).

The Council published three commissioned research papers during 2005-06. These papers were:

- Marsden Jacob Associates 2005, *Identifying a framework for regulation in packaged liquor retailing*, Report prepared for the National Competition Council as part of the NCC Occasional Series, Melbourne
- Centre for International Economics 2005, *Principles for national reform: learning lessons from NCP*, Report prepared for the National Competition Council as part of the NCC Occasional Series, Canberra, and
- Firecone Ventures 2006, *Gas Swaps*, Report prepared for the National Competition Council as part of the NCC Occasional Series, Melbourne.

All of the Council's research papers are available on its website (www.ncc.gov.au). The discussion on communications in chapter B3 details the Council's processes for providing information and engaging with stakeholders.

Overview of staffing developments

At 30 June 2006, the secretariat had nine full time equivalent staff. These comprised the Executive Director, two Directors, four project managers and two administrative staff (table B1.2). These staff comprised seven on-going and two non-ongoing staff, all of whom were employed under Australian Workplace Agreements.

During the year, the Council also employed three staff on secondment for varying periods to assist with its work on third party access. Two of these were officers from other Australian Public Service agencies and the third was a legal officer seconded from one of the law firms on the Council's panel of legal services providers.

Table B1.2: Staff profile, 30 June 2006

Level	*Salary range[a] ($'000)*	*Female*	*Male*	*Total*
Senior Executive Service, band 2	Up to 207		1	1
Senior Executive Service, band 1	Up to 153		2	2
Executive level 2	98–102	2	2	4
Administrative Service Officer, grade 6	75	2		2
Total		**4**	**5**	**9**

a The salary structure reflects comparative salaries in similar Australian Public Service agencies. Council staff do not receive any form of performance pay or any other non salary benefits.

Table B1.3 Staff by employment status, as at 30 June 2005 and 30 June 2006

Employment status	*2005*	*2006*
Female		
Full-time ongoing	3	3
Full-time non-ongoing	-	1
Male		
Full-time ongoing	6	4
Full-time non-ongoing	2	1
Total	**11**	**9**

Consultants

The Council uses the services of consultants for legal and economic advice when the required specialist expertise is not available within the Council, and when it is efficient and cost-effective to do so. Table B1.4 lists the type and value of consultancies engaged in 2005-06, as well as those for the preceding two financial years.

The Council maintains a panel of five legal services providers, comprising Allens Arthur Robinson, the Australian Government Solicitor, Clayton Utz, Gilbert + Tobin and Phillips Fox. The Council established the panel using an open tender process. Where the Council requires specialist legal services, it draws from the panel firms. The selection process is constrained to some extent by the need to avoid conflicts of interest.

During 2005-06, the Council had four ongoing legal services contracts involving total actual expenditure of $439 267. It entered three new legal contracts involving total actual expenditure in 2005-06 of $17 883. Expenditure on each of these three contracts was less than $10 000 in 2005-06. The new contracts were for the provision of advice on matters relating to the Council's work under part IIIA of the Trade Practices Act and the National

Gas Code and on a supplier contract. In all cases, the providers of the legal services are members of the Council's legal services panel.

During 2005-06, the Council entered five new contracts for the provision of economic and technical advice, involving a total actual expenditure of $293 135. Expenditure on four of the five new contracts exceeded $10 000 during 2005-06. Two contracts were for commissioned research reports released as part of the Council's series of occasional papers (see part B3 relating to the Council's communications output) and the remaining three were for the provision of economic advice relating to the Council's work under part IIIA of the Trade Practices Act. The Council also entered a new contract for the provision of specialist media management services, with expenditure in 2005-06 totalling $107 822. The contracts with expenditure in 2005-06 exceeding $10 000 are reported in table B1.5.

The Council endeavours to use a select tendering process when engaging economic consultants. The tendering process is constrained by the requirement that consultants have specialist economic or technical expertise and by the need to avoid conflicts of interests. The Council engages consultants directly where choice is extremely limited.

Table B1.4: Summary of expenditure on all contracts during 2003-04, 2004-05 and 2005-06

Purpose	*2003-04*	*2004-05*[a]	*2005-06*[a]
Legal (new)	67 000	5 659	17 883
Legal (ongoing)		613 524	439 267
Economic (new)	225 000	45 000	293 135
Economic (ongoing)		111 700	-
Communications and corporate services (new)	17 000	-	107 822
Communications and corporate services (ongoing)		-	-
Total	**309 000**	**775 883**	**858 107**

a The figures for 2004-05 and 2005-06 include GST.

Table B1.5: Contracts let during 2005-06 (expenditure exceeding $10 000)

Consultant name	*Description*	*Contract price (GST inc.)*	*Selection process*	*Justification*
Centre for International Economics	Production of a research report	$44 000	Select tender	Need for independent research and assessment
Firecone Ventures Pty Ltd	Production of a research report	$44 000	Direct engagement	Need for specialist expertise
G13 & Associates Pty Ltd	Technical and economic advisory services: advice on an application for declaration	$141 417	Direct engagement	Need for specialist expertise
Patrick Rey.	Technical and economic advisory services: advice on an application for declaration	$59 923	Direct engagement	Need for specialist expertise
Royce	Media services	$107 822	Select tender	Need for specialist expertise
Total		**$397 162**		

B2 Functions

Agency overview

The role of the National Competition Council is to oversee and assist the implementation of the National Competition Policy (NCP) and related reforms outlined in frameworks developed and agreed on by all Australian governments, including assessing whether the Australian Government and the states and territories had made satisfactory progress against their commitments under the NCP agreements. The Council's responsibilities also include assisting public awareness of competition reform agendas and recommending on the design and coverage of infrastructure access regimes under part IIIA of the *Trade Practices Act 1974* and the National Gas Code.

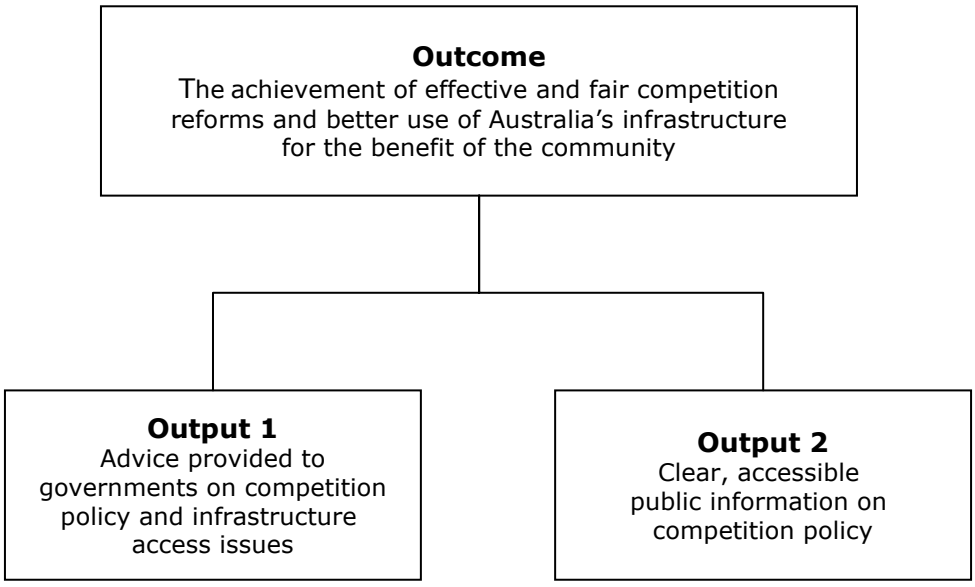
The Council's vision is to help to deliver Australia's competition policy and program of related reforms by providing objective and constructive advice to governments, thus achieving outcomes that benefit the community as a whole. The Council's goals include building community awareness and understanding of, and support for, the NCP. This approach encourages the development of more competitive markets where this results in stronger economic growth, reduced unemployment, better social outcomes and the better use of resources for all Australians.

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

Agreed outcome and outputs

Figure B2.1 represents the Council's planned outcome and outputs, as developed and agreed on through the budget process. The planned outcome relates to the high level Australian Government outcome of 'well functioning markets', which is part of the overall government outcome of 'strong, sustainable economic growth and the improved wellbeing of Australians'.

Figure B2.1: National Competition Council's planned outcome and contributing outputs



The Council's two outputs and its performance against these outputs are discussed in part A of this annual report.

Activities

The Council has statutory responsibilities under both the Trade Practices Act and the *Prices Surveillance Act 1983* to make recommendations to relevant governments on:

- the design and coverage of infrastructure access regimes, and
- whether state and territory government businesses should be subject to prices surveillance by the Australian Competition and Consumer Commission (ACCC).

Apart from these statutory responsibilities, the three NCP agreements established the following roles for the Council:

- to advise on the progress made by the stakeholder governments against the competition policy agreements
- to provide other advice on competition policy as agreed on by a majority of the stakeholder governments, and
- to advise the Australian Government when it is considering overriding state or territory exceptions from the Trade Practices Act.

The Council has an implied function of supporting NCP processes and appropriate reform, as reflected in the Council's mission statement and goals (box B2.1). Of these activities, the design and coverage of infrastructure access regimes and advice on governments' progress in implementing the NCP reforms used most of the Council's resources. Another significant area of activity was the building of community awareness of NCP reforms.

The Council delivers its functions and responsibilities through its work program areas (box B2.1).

Box B2.1: National Competition Council's mission statement, goals and work program

Mission statement

To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest

Goals

- To facilitate timely implementation of effective and fair competition reforms by governments
- To promote better use of Australia's resources
- To build community awareness and understanding of, and support for, Australia's NCP
- To ensure the Council is a dynamic organisation, capable of providing a safe, healthy and professional work environment for its staff and developing their full potential

Work program

- Facilitation and assessment of governments' progress in implementing NCP and related reforms
- Provision of recommendations to governments on access to infrastructure
- Ongoing improvement of the Council's operational standards in leadership, strategic direction, information systems, support services, resource allocation and staff development
- Building of community awareness and understanding of, and support for, the NCP

B3 Management

Staff development and management

Training

Excluding the salary costs of staff undertaking training, the Council devoted a total of $22 359 to staff training and development for 2005-06. Various staff participated in training for skill and professional development, including executive and leadership development. Secretariat staff attended conferences on issues associated with competition policy and its implementation. One officer received assistance to undertake further tertiary education.

Fraud prevention and control

The Council continued its promotion of an ethical workplace culture and environment through a range of fraud prevention and control initiatives. The Council Fraud Control Policy contains strategies to minimise the risk of fraud. It assigns responsibility for fraud control action to secretariat staff. The plan is reviewed every 12 months, or earlier if there is a significant change in the Council's structure or functions, or if incidents indicate the need for revision.

A number of management functions have an impact on the effectiveness of the measures in the Fraud Control Policy. These include:

- the Council's encouragement of ethical behaviour by staff
- arrangements for financial authorisations
- provisions aimed at ensuring information and information technology security
- appropriate written delegations, and
- protective security.

There were no instances of fraud or allegation of fraud within the Council during 2005-06.

Certificate of Fraud Measures

I certify that, as at 30 June 2006, the National Competition Council (the Council) had completed its fraud risk assessments and fraud control plan. I also certify that the Council has in place appropriate fraud detection, prevention, investigation, reporting and data collection procedures and processes that meet the specific needs of the organisation and comply with the *Commonwealth fraud control guidelines*.

John Feil
Executive Director

Industrial democracy

Industrial democracy plan

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.

Consultative mechanisms

Minutes of the executive meetings are circulated to all staff. Also, the Council secretariat meets weekly to discuss the secretariat's work program and other issues relevant to the workplace. These weekly meetings are the principal means of inviting staff consideration of issues facing the Council. Proposed changes to research priorities, staffing arrangements, accommodation, office policies, occupational health and safety, information technology issues and training are discussed at these regular meetings. Work teams also met during 2005-06 to discuss work priorities and progress.

Occupational health and safety

During 2005-06, the Council continued to place significant weight on providing a safe and healthy work environment for its staff and contractors. Reports on monthly testing of cooling towers for legionella and other bacteria are circulated to the Occupational Health and Safety (OHS) Committee and

to staff. Fire extinguishers and emergency exit lights are checked every six months. Fire wardens participate in regular briefing and training sessions and fire evacuation exercises involving all staff have been undertaken.

The Council also offers all staff access to screen based eyesight testing, the review by an ergonomist of work stations and the flu vaccine. Staff members also continue to have access to the confidential health appraisal and advisory program and the Employee Assistance Program.

The OHS Committee met on a quarterly basis during the year, inviting staff to contribute to its agenda and circulating its minutes to all staff. Training has been undertaken by new OHS committee members. In addition, OHS is a standing agenda item at the secretariat's weekly staff meeting.

The Council received no accident/incident reports during 2005-06. No notices were lodged and no directions were given to the Council under ss30, 45, 46 or 47 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* during the year.

Outsourcing (corporate services)

During 2005-06, the Council outsourced the following corporate services functions:

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

Finance and accounting

The Australian Competition and Consumer Commission (ACCC) is contracted to provide all financial services to the Council. It processed the Council's accounts during 2005-06 using the Finance One accounting software. As an Australian Government body, the Council is required by the Department of

Finance and Administration to reconcile its GST components on a monthly basis.

Contracts and purchasing

During 2005-06, the Council renegotiated contracts for library services and the employee assistance agreement. The Council's purchasing was consistent with the Australian Government procurement guidelines. The key elements of these guidelines are value for money, efficiency and effectiveness, accountability and transparency, ethics and industry development.

Equity matters

Social justice

Within its work program, the Council addresses social justice issues in two main contexts. First, in conducting its functions related to the national access regime and the National Gas Code, the Council must consider public interest issues. Matters that the Council may consider include:

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

Second, in assessing jurisdictions' progress in implementing the National Competition Policy (NCP) reforms, the Council has had to consider the extent to which governments have implemented agreed reforms. The NCP agreements allow governments to account for all of the costs and benefits of reform options, including social, environmental and economic considerations. The agreements recognise that social justice considerations can warrant restrictions on competition, although the Council also calls for governments to consider whether they can meet social justice objectives without restricting competition. At the same time, the NCP agreements recognise that many restrictions, by benefiting specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Application of the Australian Government disability strategy

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

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

Further, the Council's consultation process does not discriminate against any group within the community, satisfying that performance criterion in 2005-06. Similarly, the Council's recruitment policy does not discriminate on the basis of race, disability, colour, sex or religion. Recruitment information is available in electronic and hard copy formats.

The Council developed its workplace, including office facilities and workstations, with the aim of reducing barriers to access by people with disabilities. Council reports are available in hard copy and electronically; on request, they can be supplied in MS Word format to facilitate the use of computer programs designed to assist people with a visual impairment.

Workplace diversity

The Council continued to apply its *Workplace diversity plan* in 2005-06. All recruitment conducted during the year included a selection criterion relating to an understanding of the principles and practical effects of workplace diversity policies. Selection panels included at least one male and one female.

No workplace harassment was reported during 2005-06.

At 30 June 2006, secretariat staff identified themselves as members of an equal employment opportunity group as set out in table B3.1.

Table B3.1: Staff by equal employment opportunity (EEO) group, 30 June 2006

Level	*Female*	*NESB 1*[a]	*NESB 2*[b]	*ATSI*[c]	*Persons with disabilities*
Senior Executive Service	-	1	-	-	-
Senior Officer Executive, levels 1–2	2	-	-	-	-
Administrative Service Officer, grades 1–6	2	-	-	-	-
Total	**4**	**1**	**-**	**-**	**-**

a Non-English speaking background, first generation.

b Non-English speaking background, second generation.

c Aboriginal or Torres Strait Islander.

Other matters

Freedom of information

The Council received two requests for the release of documents under the *Freedom of Information Act 1982* during 2005-06. The Council agreed to release the requested documents in each case.

Categories of documents held by the Council

The secretariat holds three classes of document. First, it holds representations to the Council's President, Executive Director and staff. The Council receives correspondence covering aspects of government microeconomic policy and administration. Second, it holds files relevant to the Council's operations. The documents on these files include correspondence, analysis and policy advice prepared by secretariat officers. Four main categories of file are relevant to the Council's operations:

1. Council views on the progress of the Australian, state and territory governments in implementing the NCP reforms

2. Council recommendations on applications for declaration of services for third party access and the certification of access regimes. The designated ministers are required to publish their decisions on these applications. The Council makes its recommendations and reasons publicly available after the designated decision maker has published a decision. In the case of a declaration application, if the decision maker does not determine the matter within 60 days of receiving the Council's recommendation, then the decision is deemed to be not to grant access, and the Council will publish its recommendation.

3. Council recommendations on coverage or revocation of coverage under the National Gas Code, which are made public when sent to the relevant decision maker

4. material relating to other work assigned to the Council.

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

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

The following categories of document are publicly available:

- the Council's annual reports to Parliament
- speeches by Council and secretariat staff
- research papers and guides on specific competition policy issues
- submissions by the Council
- the Council's corporate plan
- applications received for declaration or certification, or coverage or revocation of coverage under the National Gas Code
- submissions by interested parties on access declaration or certification applications, applications under the National Gas Access Code, and other reviews and matters considered in the annual Council assessments of governments' compliance with the NCP and related reforms (where information contained is not commercial-in-confidence)
- the Council's issues papers and recommendations on applications for declaration, certification and coverage or revocation of coverage under the National Gas Code
- assessments and recommendations to the Australian Government Treasurer on governments' progress in implementing the NCP
- community information papers and media releases
- issues papers, draft reports and final reports on other reviews referred to the Council.

These documents are usually available in both hard copy and electronic form. The Council places as much material as possible on its website

(www.ncc.gov.au). Documents, publications and speeches can be obtained directly from the Council.

Facilities for access to Council documents

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

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

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

The Director (Freedom of Information Request) is authorised under s23 of the Act to grant or refuse requests for access to documents. In accordance with s54, an applicant may apply to the Executive Director within 28 days of receiving notification of a decision under the Act, seeking an internal review of a decision to refuse a request. The application should be accompanied by a $40 application review fee, as provided for in the Act.

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

Annual reporting requirements and aids to access

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

- s74 of the Occupational Health and Safety (Commonwealth Employment) Act
- s50AA of the *Audit Act 1901*
- the *Public Service Act 1999*
- s8 of the Freedom of Information Act
- s29(O) of the Trade Practices Act

- the guidelines issued by the Department of the Prime Minister and Cabinet.

A compliance index is provided at the end of this chapter.

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

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

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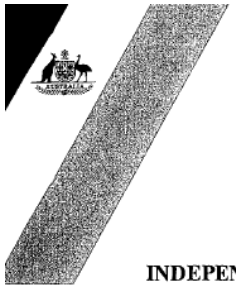
B4 Financial statements

Financial statements

for the year ended 30 June 2006



INDEPENDENT AUDIT REPORT

To the Treasurer

Matters relating to the Electronic Presentation of the Audited Financial Statements

This audit report relates to the financial statements published in both the annual report and on the website of the National Competition Council for the year ended 30 June 2006. The National Competition Council President and Executive Director are responsible for the integrity of both the annual report and its web site.

The audit report refers only to the financial statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the National Competition Council's annual report.

Scope

The financial statements and Acting Council President and Executive Directors' responsibility

The financial statements comprise:

- Statement by the Acting Council President and Executive Director;
- Income Statement, Balance Sheet and Cash Flow Statement;
- Statement of Changes in Equity;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the National Competition Council for the year ended 30 June 2006.

The National Competition Council's President and Executive Director are responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the National Competition Council, and that comply with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997,* Accounting Standards and other mandatory financial reporting requirements in Australia. The National Competition Council's President and Executive Director are also responsible for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit Approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgement, selective

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BARTON ACT
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testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997,* Accounting Standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the National Competition Council's financial position, and of its financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Council President and Executive Director.

Independence

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

Audit 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*; and

(b) give a true and fair view of the National Competition Council's financial position as at 30 June 2006 and of its performance and cash flows for the year then ended, in accordance with:

  (i) the matters required by the Finance Minister's Orders; and

  (ii) applicable Accounting Standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office

Carla Jago
Executive Director

Delegate of the Auditor-General

Canberra

28 August 2006

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

Office of Council President

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

In our opinion, the attached financial statements for the year ended 30 June 2006 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders under the *Financial Management and Accountability Act 1997*, as amended.

David Crawford
Acting President

28 AUG 2006
Dated: .....

John Feil
Executive Director

28 AUG 2006
Dated: .....

NATIONAL COMPETITION COUNCIL
INCOME STATEMENT
for the year ended 30 June 2006

	Notes	**2006** **$**	2005 $
INCOME			
Revenue			
Revenues from Government	3(a)	**3,954,000**	3,880,233
Other revenues	3(b)	**15,171**	15,480
Total Revenue		**3,969,171**	3,895,713
Gains			
Other gains	3(c), 12	**51,503**	20,500
Total Gains		**51,503**	20,500
TOTAL INCOME		**4,020,674**	3,916,213
EXPENSES			
Employees	4(a)	**1,490,268**	1,760,795
Suppliers	4(b)	**1,614,329**	1,789,449
Depreciation and amortisation	4(c)	**70,668**	88,137
TOTAL EXPENSES		**3,175,265**	3,638,381
Operating Result		**845,409**	277,832

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

NATIONAL COMPETITION COUNCIL
BALANCE SHEET

as at 30 June 2006

	Notes	**2006 $**	2005 $
ASSETS			
Financial Assets			
Cash	5(a)	**157,524**	549,645
Receivables	5(b)	**1,474,081**	285,123
Total Financial Assets		**1,631,605**	834,768
Non-Financial Assets			
Buildings	6(a),(c)	**29,503**	45,024
Infrastructure, plant and equipment	6(b),(c)	**36,099**	61,743
Other non-financial assets	6(d)	**12,037**	11,348
Total Non-Financial Assets		**77,639**	118,115
TOTAL ASSETS		**1,709,244**	952,883
LIABILITIES			
Payables			
Suppliers	7(a)	**151,882**	239,355
Total Payables		**151,882**	239,355
Provisions			
Employees	8(a)	**291,621**	293,196
Other provisions	8(b)	**8,000**	8,000
Total Provisions		**299,621**	301,196
TOTAL LIABILITIES		**451,503**	540,551
NET ASSETS		**1,257,741**	412,332
EQUITY			
Reserves		**2,707**	2,707
Retained surpluses		**1,255,034**	409,625
TOTAL EQUITY		**1,257,741**	412,332
Current assets		**1,643,642**	846,116
Non-current assets		**65,602**	106,767
Current liabilities		**437,016**	528,365
Non-current liabilities		**14,487**	12,186

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

NATIONAL COMPETITION COUNCIL
CASH FLOW STATEMENT

for the year ended 30 June 2006

	Notes	**2006** **$**	2005 $
OPERATING ACTIVITIES			
Cash Received			
Appropriations		**3,954,000**	3,880,233
Goods and services		**15,611**	18,195
GST received from Australian Taxation Office (ATO)		**164,556**	178,144
Total Cash Received		**4,134,167**	4,076,572
Cash Used			
Employees		**1,529,738**	1,836,044
Suppliers		**1,796,550**	1,968,835
Cash transferred to the Official Public Account (OPA)		**1,200,000**	246,000
Total Cash Used		**4,526,288**	4,050,879
Net Cash From or (Used by) Operating Activities	9	**(392,121)**	25,693
INVESTING ACTIVITIES			
Cash Used			
Purchase of property, plant and equipment		**-**	36,562
Total Cash Used		**-**	36,562
Net Cash From or (Used by) Investing Activities		**-**	(36,562)
Net Increase or (Decrease) in Cash Held		**(392,121)**	(10,869)
Cash at the beginning of the reporting period		**549,645**	560,514
Cash at the End of the Reporting Period	5(a)	**157,524**	549,645

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

NATIONAL COMPETITION COUNCIL
STATEMENT OF CHANGES IN EQUITY

for the year ended 30 June 2006

	Accumulated Results		Asset Revaluation Reserves		TOTAL EQUITY	
	2006	2005	**2006**	2005	**2006**	2005
	$	$	**$**	$	**$**	$
Opening Balance	**409,625**	149,064	**2,707**	-	**412,332**	149,064
Adjustment for errors		-		-	**-**	-
Adjustment for changes in accounting policies		-		-	**-**	-
Adjusted Opening Balance	**409,625**	149,064	**2,707**	-	**412,332**	149,064
Income and Expense						
Revaluation adjustment	**-**	(17,271)	**-**	2,707	**-**	(14,564)
Subtotal income and expenses recognised directly in equity	**-**	(17,271)	**-**	2,707	**-**	(14,564)
Net Operating Result	**845,409**	277,832	**-**	**-**	**845,409**	277,832
Total income and expenses	**845,409**	260,561	**-**	2,707	**845,409**	263,268
Closing balance as at 30 June	**1,255,034**	409,625	**2,707**	2,707	**1,257,741**	412,332

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

NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS

as at 30 June 2006

	2006	2005
	$	$
BY TYPE		
Other Commitments		
Operating leases [1]	**106,882**	95,859
Total other commitments	**106,882**	95,859
Commitments receivable	**9,716**	8,714
Net commitments by type	**97,166**	87,145
BY MATURITY		
Operating lease commitments		
One year or less	**97,166**	87,145
From one to five years	**-**	-
Over five years	**-**	-
Total operating lease commitments by maturity	**97,166**	87,145
Net commitments by maturity	**97,166**	87,145

NB: All commitments are GST inclusive where relevant.

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

Nature of lease	*General description of leasing arrangement*
Lease for office accommodation	The current lease expires on 9 May 2007. There is no annual increase in accordance with movements in the Consumer Price Index.

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

NATIONAL COMPETITION COUNCIL
SCHEDULE OF CONTINGENCIES

as at 30 June 2006

Contingent Liabilities	**Claims For Damages or Costs**	
	2006	2005
	$	$
Balance from previous period	**-**	28,040
New	**-**	-
Re-measurement	**-**	-
Liabilities crystallised	**-**	(14,020)
Obligations expired	**-**	(14,020)
Total Contingent Liabilities	**-**	-

Contingent Assets	**Claims For Damages or Costs**	
	2006	2005
	$	$
Balance from previous period	**-**	1,158
New	**-**	-
Re-measurement	**-**	-
Liabilities crystallised	**-**	(1,158)
Obligations expired	**-**	-
Total Contingent Assets	**-**	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 14: Contingent Liabilities and Assets

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

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2006

Note

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the National Competition Council

The National Competition Council (the Council) was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments. The Council is an independent advisory body for all governments on implementation of the national competition policy reforms.

The role of the Council is to oversight and assist the implementation of National Competition Policy and related reforms outlined in frameworks developed and agreed by all Australian Governments. Its responsibilities also include assisting public awareness of governments' competition reform agendas, recommending on the design and coverage of infrastructure access regimes under Part IIIa of the Trade Practices Act 1974, and assessing whether the Commonwealth, States and Territories have made satisfactory progress towards their commitments to competition policy reform.

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

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

The Council's outcome is separated into two output groups as follows:

Output Group 1

Advice provided to governments on competition policy and infrastructure access issues.

Output Group 2

Clear, accessible public information on competition policy.

1.2 Basis of Preparation of the Financial Statements

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

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 1 July 2005)*);
- Australian Accounting Standards issued by the Australian Accounting Standards Board that apply for the reporting period; and
- Interpretations issued by the AASB and UIG that apply for the reporting period.

This is the first financial report to be prepared in compliance with the Australian Equivalents to International Financial Reporting Standards (AEIFRS). The impacts of adopting AEIFRS are disclosed in Note 2.

The Council's Income Statement and Balance Sheet have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets, which, as noted, are at valuation. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 14).

Revenues and expenses are recognised in the Income Statement when and only when the flow or consumption or loss of economic benefits has occurred and can be reliably measured.

The financial report is presented in Australian dollars.

1.3 Application of Accounting Standards

The financial report complies with Australian Accounting Standards, which include Australian Equivalents to International Financial Reporting Standards (AEIFRS). Australian Accounting Standards require the Council to disclose Australian Accounting Standards that have not been applied, for standards that have been issued but are not yet effective.

The AASB has issued amendments to existing standards, these amendments are denoted by year and then number, for example 2005-1 indicates amendment 1 issued in 2005.

The table below illustrates standards and amendments that will become effective for the Council in the future. The nature of the impending change within the table, has been out of necessity abbreviated and users should consult the full version available on the AASB's website to identify the full impact of the change. The expected impact on the financial report of adoption of these standards is based on the Council's initial assessment at this date, but may change. The Council intends to adopt all of standards upon their application date.

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2006

Title	Standard affected	Application date*	Nature of impending change	Impact expected on financial report
2005-1	AASB 139	1-Jan-06	Amends hedging requirements for foreign currency risk of a highly probable intra-group transaction.	No expected impact.
2005-4	AASB 139, AASB 132, AASB 1, AASB 1023 and AASB 1038	1-Jan-06	Amends AASB 139, AASB 1023 and AASB 1038 to restrict the option to fair value through profit or loss and makes consequential amendments to AASB 1 and AASB 132.	No expected impact.
2005-5	AASB 1 and AASB 139	1-Jan-06	Amends AASB 1 to allow an entity to determine whether an arrangement is, or contains, a lease. Amends AASB 139 to scope out a contractual right to receive reimbursement (in accordance with AASB 137) in the form of cash.	No expected impact.
2005-6	AASB 3	1 Jan 2006	Amends the scope to exclude business combinations involving entities or businesses under common control.	No expected impact.
2005-9	AASB 4, AASB 1023, AASB 139 and AASB 132	1-Jan-06	Amended standards in regards to financial guarantee contracts.	No expected impact.
2005-10	AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 and AASB 1038	1-Jan-07	Amended requirements subsequent to the issuing of AASB 7.	No expected impact.
2006-1	AASB 121	31-Dec-06	Changes in requirements for net investments in foreign subsidiaries depending on denominated currency.	No expected impact.
	AASB7 Financial Instruments: Disclosures	1-Jan-07	Revise the disclosure requirements for financial instruments from AASB132 requirements.	No expected impact.

* Application date is for annual reporting periods beginning on or after the date shown

1.4 Revenue and Receivables

Revenues from Government

Amounts appropriated for Departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, 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. They relate to amounts appropriated by Parliament in the current or previous years which are available to be drawn down by the Council.

Other Revenue

Revenue from the sale of goods is recognised upon the delivery of goods to customers.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts or other agreements to provide services. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services are recognised at the nominal amounts due less any provision for bad or doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is judged to be less rather than more likely.

1.5 Gains

Resources Received Free of Charge

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

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as revenue at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements.

Other Gains

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

1.6 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Commonwealth agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

1.7 Employee benefits

As required by the Finance Minister's Orders, the Council has early adopted AASB 119 Employee Benefits as issued in December 2004.

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

Liabilities for wages and salaries (including non-monetary benefits), annual leave and sick leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

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

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

Leave

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

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

The non-current portion of the provision for long service leave is expected to be paid out greater than 12 months, and is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees as at 30 June 2006. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Superannuation

Staff of the Council are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Council makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Council's employees.

The liability for superannuation recognised as at 30 June 2006 represents outstanding contributions for the final fortnight of the year.

1.8 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 benefits incidental to ownership of leased non-current assets. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the beginning of the lease term and a liability 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.

Lease incentives taking the form of "free" leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating lease payments between rental expense and reduction of the liability.

1.9 Borrowing costs

All borrowing costs are expensed as incurred.

1.10 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

No interest is earnt on the Council's bank balances.

1.11 Contingent Liabilities and Contingent Assets

Contingent Liabilities (assets) are not recognised in the Balance Sheet but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability (asset), or represent an existing liability (asset) in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable, a liability (asset) is recognised. A liability (asset) is recognised when its existence is confirmed by a future event, settlement becomes probable (virtually certain) or reliable measurement becomes possible. Refer to Note 14.

1.12 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.

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

1.13 Property, Infrastructure, Plant and Equipment (PP&E)

Asset Recognition Threshold

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

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

Revaluations

Basis and frequency

Property, infrastructure, plant and equipment are carried at fair value, being revalued with sufficient frequency such that the carrying amount of each asset is not materially different, at reporting date, from its fair value.

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

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

Following initial recognition at cost, valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not materially differ with the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through profit and loss. Revaluation decrements for a class of assets are recognised directly through profit and loss except to the extent that they reverse a previous revaluation increment for that class. Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Under fair value, assets which are surplus to requirements are measured at their net realisable value. At 30 June 2006, the Council had no assets in this situation.

Depreciation and Amortisation

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

Depreciation/amortisation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued. Depreciation and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below. These rates apply to each item in that class except where the useful life of the item has been reassessed following revaluation.

Asset Class	**2006** **Total useful life**	2005 Total useful life
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 7 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4(c).

1.14 Impairment of Non-Current Assets

All assets were assessed for impairment at 30 June 2006. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

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

No indicators of impairment were found for assets at fair value.

1.15 Inventories

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

1.16 Trade Creditors

Trade creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.17 Change in Useful Life of Leasehold Improvements

During 2005-06 the Council's lease for office accommodation was extended by a further 12 months. As a result of this extension, the useful life of the leasehold improvements has been extended and the net book value of the leasehold improvements has been restated. The restatement of accumulated amortisation to reflect the increased useful life has resulted in a gain.

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Note 2: Impact of the transition to AEIFRS from previous AGAAP	**2005** $	2004 $
Reconciliation of total equity as presented under previous AGAAP to that under AEIFRS		
Total equity under previous AGAAP	**416,645**	149,064
Adjustments to retained earnings		
Makegood assets [1]	**3,687**	8,000
Other provisions [2]	**(8,000)**	(8,000)
Total equity translated to AEIFRS	**412,332**	149,064
Reconciliation of profit or loss as presented under previous AGAAP to AEIFRS		
Prior year profit as previously reported	**282,145**	
Amortisation [3]	**(4,313)**	
Prior year profit translated to AEIFRS	**277,832**	

The cash flow statement presented under previous GAAP is equivalent to that prepared under AEIFRS.

[1] AASB 116 Property, Plant and Equipment requires an estimate of any future estimated restoration costs to be included in the cost of the underlying asset. Amounts for 'makegood' provisions in existing accommodation leases have been taken up accordingly.

[2] A liability equivalent to the 'makegood assets' is recognised under AASB 137 Provisions, Contingent Liabilities and Contingent Assets.

[3] Additional amortisation on 'makegood' assets.

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	2006	2005
	$	$
Note 3: Income		
Revenues		
3(a) Revenues from Government		
Appropriations for outputs	**3,954,000**	3,880,233
Total revenues from government	**3,954,000**	3,880,233
3(b) Other Revenues		
Applications under the National Gas Code	**15,000**	15,000
Other revenue	**171**	480
Total other revenues	**15,171**	15,480
Gains		
3(c) Other gains		
Resources received free of charge	**22,000**	20,500
Change in useful life of leasehold improvements	**29,503**	-
	51,503	20,500
Note 4: Expenses		
4(a) Employee Expenses		
Wages and Salary	**1,147,863**	1,397,545
Superannuation	**179,374**	220,439
Leave and other entitlements	**112,221**	116,035
Separation and redundancies	**4,965**	-
Other employee expenses	**45,845**	26,776
Total employee expenses	**1,490,268**	1,760,795

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	2006	2005
	$	$
4(b) Suppliers Expenses		
Goods from related entities	**10,045**	11,707
Goods from external entities	**40,543**	48,154
Services from related entities	**368,595**	293,085
Services from external entities	**1,083,751**	1,305,282
Operating lease rentals*	**111,395**	131,221
Total supplier expenses	**1,614,329**	1,789,449

* These comprise minimum lease payments only.

4(c) Depreciation and Amortisation		
(i) Depreciation		
Infrastructure, plant and equipment	**25,644**	35,161
(ii) Amortisation		
Leasehold improvements	**45,024**	52,976
Total depreciation and amortisation	**70,668**	88,137

The aggregate amounts of depreciation or amortisation expensed during the reporting period for each class of depreciable asset are as follows:

Leasehold improvements	**45,024**	52,976
Plant and equipment	**25,644**	35,161
Total depreciation and amortisation	**70,668**	88,137

No depreciation or amortisation was allocated to the carrying amounts of other assets.

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	2006	2005
	$	$
Note 5: Financial Assets		
5(a) Cash		
Cash at bank and on hand	**157,524**	549,645
Total cash	**157,524**	549,645
5(b) Receivables		
GST receivable from the Australian Taxation Office	**28,081**	39,123
Appropriations receivable	**1,446,000**	246,000
Total receivables (gross)	**1,474,081**	285,123
All receivables are current assets.		
Receivables (gross) are aged as follows:		
Current	**1,474,081**	285,123
Overdue by:		
Less than 30 days	**-**	-
30 to 60 days	**-**	-
60 to 90 days	**-**	-
More than 90 days	**-**	-
	-	-
Total receivables (gross)	**1,474,081**	285,123
Note 6: Non-Financial Assets		
6(a) Land and Buildings		
Leasehold improvements		
At fair value	**98,000**	98,000
Less: Accumulated amortisation	**(68,497)**	(52,976)
Total leasehold improvements	**29,503**	45,024
Total Land and Buildings (non-current)	**29,503**	45,024

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	2006	2005
	$	$
6(b) Infrastructure, Plant and Equipment		
Infrastructure, plant and equipment		
At fair value	**96,825**	96,905
Less: Accumulated depreciation	**(60,726)**	(35,162)
Total Infrastructure, Plant and Equipment (non-current)	**36,099**	61,743

6(c) Analysis of Property, Plant, and Equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment

Item	**Leasehold improvements**	**Infrastructure plant and equipment**	**TOTAL**
	$	**$**	**$**
As at 1 July 2005			
Gross book value	98,000	96,905	194,905
Accumulated depreciation/amortisation	(52,976)	(35,162)	(88,138)
Opening net book value	45,024	61,743	106,767
Depreciation/amortisation expense	(45,024)	(25,644)	(70,668)
Change in useful life	29,503	-	29,503
As at 30 June 2006			
Gross book value	**98,000**	**96,825**	194,825
Accumulated depreciation/amortisation	**(68,497)**	**(60,726)**	(129,223)
Closing net book value	**29,503**	**36,099**	65,602

The Council does not hold assets under construction or finance lease.

	2006	2005
	$	$
6(d) Other Non-Financial Assets		
Prepayments	**12,037**	11,348

Other non-financial assets are current assets.

	2006	2005
	$	$

Note 7: Payables

7(a) Supplier Payables

Trade creditors and accruals	**151,882**	239,355

All supplier payables are current liabilities.

Trade creditors standard settlement terms are 30 days.

Note 8: Provisions

8(a) Employee Provisions

Salaries and wages	**8,883**	4,583
Superannuation	**1,382**	590
Leave	**281,356**	288,023
Aggregate employee benefit liability and related on-costs	**291,621**	293,196
Current	**277,134**	281,010
Non-current	**14,487**	12,186
Aggregate employee benefit liability and related on-costs	**291,621**	293,196

8(b) Other Provisions

Provisions for 'Makegood' on leasehold improvements	**8,000**	8,000

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

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	2006	2005
	$	$

Note 9: Cash Flow Reconciliation

Reconciliation of operating result to net cash from operating activities:		
Operating Result	**845,409**	277,832
Depreciation / amortisation	**70,668**	88,137
Gain on change in useful life of leasehold improvements	**(29,503)**	-
(Increase) / decrease in net receivables	**(1,188,958)**	(245,445)
(Increase) / decrease in prepayments	**(689)**	2,504
Increase / (decrease) in employee provisions	**(1,575)**	(164,425)
Increase / (decrease) in supplier payables	**(87,473)**	67,090
Net cash from operating activities	**(392,121)**	25,693

Note 10: Executive Remuneration

The number of executives who received or were due to receive total remuneration of $130,000 or more:

	2006	2005
	Number	Number
$145,000 to $159,999	**-**	2
$160,000 to $174,999	**1**	1
$190,000 to $204,999	**1**	-
$220,000 to $234,999	**-**	1
$235,000 to $249,999	**1**	-
	3	4

The aggregate amount of total remuneration of executives shown above.	**$603,992**	$688,808
The aggregate amount of separation payments during the year to executives shown above.	**-**	-

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Note 11: Councillors Remuneration

The Councillors during the year were:

President:	David Crawford (Acting President)
Councillors:	Virginia Hickey
	Doug McTaggart
	Rod Sims

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

	2006	2005
	Number	Number
$0 to $14,999	**-**	1
$15,000 to $29,999	**3**	3
$45,000 to $59,999	**1**	1
	4	5
The aggregate amount of total remuneration of Councillors shown above.	**$141,810**	$145,251

	2006	2005
	$	$

Note 12: Remuneration of Auditors

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

The fair value of the services provided was:	**22,000**	20,500

No other services were provided by the Auditor-General.

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	2006	2005
	Number	Number
Note 13: Average Staffing Levels		
The average staffing levels for the Council during the year were:	**13.2**	17.7

Average staffing levels includes the Councillors.

Note 14: Contingent Liabilities and Assets

Quantifiable Contingencies

There were no quantifiable contingencies as at 30 June 2006.

The Schedule of Contingencies reports a contingent liability as at 1 July 2004 in respect of disputed unpaid invoices issued between 1999 and 2001. The matter was resolved during 2004-05 with the Council agreeing to pay 50% of the disputed invoices.

Unquantifiable Contingencies

As at 30 June 2006, the Council had 1 matter (2005: 0 matters) scheduled to appear before the courts. In the event of an unfavourable judgement by the court, the Council may have costs and disbursements awarded against it. It is not possible to determine the costs and disbursements that may be awarded in relation to this matter.

Remote Contingencies

There were no remote contingencies at 30 June 2006 (2005: $Nil).

Note 15: Financial Instruments

15(a) Net fair values of financial assets and liabilities

Financial assets

The net fair values of cash and non-interest bearing monetary financial assets approximate their carrying amounts in both the current and immediately preceding

reporting period.

Financial liabilities

The net fair values for trade creditors are approximated by their carrying amounts in both the current and immediately preceding reporting period.

15(b) Credit Risk Exposures

The Council's maximum exposure to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Position.

The Council has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 16: Appropriations

16(a) Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

	2006		2005	
	Departmental Outputs	**Total**	Departmental Outputs	Total
	$	**$**	$	$
Balance carried from previous year	**834,768**	**834,768**	600,192	600,192
Unspent prior year appropriations - invalid s31	**-**	**-**	(418,486)	(418,486)
Adjusted balance carried from previous period	**834,768**	**834,768**	181,706	181,706
Appropriation Act (No.1)	**3,954,000**	**3,954,000**	3,896,000	3,896,000
Appropriation Act (No.3)	**-**	**-**	-	-
Refunds credited (net) (FMA s30)	**6,782**	**6,782**	2,643	2,643
Appropriation reduced by section 9 determinations (current year)	**-**	**-**	(15,767)	(15,767)
Sub-total Annual Appropriation	**3,960,782**	**3,960,782**	3,882,876	3,882,876
Appropriations to take account of recoverable GST (FMAA s30A)	**153,514**	**153,514**	177,589	177,589
Annotations to 'net appropriations' (FMAA s31)	**15,611**	**15,611**	18,195	18,195
30 June 2005 variation - s31	**-**	**-**	418,486	418,486
Total appropriations available for payments	**4,964,675**	**4,964,675**	4,678,852	4,678,852
Cash payments made during the year (GST inclusive)	**(3,333,070)**	**(3,333,070)**	(3,844,084)	(3,844,084)
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	**1,631,605**	**1,631,605**	834,768	834,768
Represented by:				
Cash	**157,524**	**157,524**	549,645	549,645
Departmental appropriations receivable	**1,446,000**	**1,446,000**	246,000	246,000
GST receivable from ATO	**28,081**	**28,081**	39,123	39,123
Total	**1,631,605**	**1,631,605**	834,768	834,768

16(b) Special Accounts

Services for other Governments & Non-Agency Bodies Account

The Council has a Services for other Government & Non-Agency Bodies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997* (FMA Act). For the years ended 30 June 2005 and 2006 the account had a nil balance and there were no transactions debited or credited to it.

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

Other Trust Monies Special Account

The Council has an Other Trust Monies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997*. For the years ended 30 June 2005 and 2006, the account had a nil balance and there were no transactions debited or credited to the account.

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

Note 17: Compensation and Debt Relief

No Acts of Grace payments were made during the reporting period (2005: No payments made).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2005: No waivers made).

No ex-gratia payments were made during the reporting period (2005: No payments made).

No payments were made under the 'Defective Administration Scheme' during the reporting period (2005: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2005: No payments made).

Note 18: Reporting of Outcomes

The Council attributes its outcome between its two output groups on the basis of identifiable actual costs. The $0.2 million attributed to Output Group 2 primarily covers direct costs of these activities. Expenditure on this output group is small in total and as a proportion of the Council's total costs. The Council has concluded that it is not cost effective to allocate overheads to this output group. This basis of attribution is consistent with that used in the 2005-06 budget.

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18(a) – Net Cost of Outcome Delivery

	Outcome 1		Total	
	2006	2005	**2006**	2005
	$	$	**$**	$
Departmental expenses	**3,175,265**	3,638,381	**3,175,265**	3,638,381
Total expenses	**3,175,265**	3,638,381	**3,175,265**	3,638,381
Costs recovered				
Departmental	**15,000**	15,000	**15,000**	15,000
Total costs recovered	**15,000**	15,000	**15,000**	15,000
Other external revenues				
Departmental				
Other	**51,674**	20,980	**51,674**	20,980
Total other external revenues	**51,674**	20,980	**51,674**	20,980
Net cost/(contribution) of outcome	**3,108,591**	3,602,401	**3,108,591**	3,602,401

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

Note 18(b) - Major Departmental Income and Expenses by Output Groups and Outputs

Outcome 1	**Output Group 1**		**Output Group 2**		**Total**	
	2006	2005	**2006**	2005	**2006**	2005
	$	$	**$**	$	**$**	$
Departmental expenses						
Employees	**1,287,055**	1,595,230	**203,213**	165,565	**1,490,268**	1,760,795
Suppliers	**1,596,154**	1,773,940	**18,175**	15,509	**1,614,329**	1,789,449
Depreciation & amortisation	**70,668**	88,137	**-**	-	**70,668**	88,137
Total departmental expenses	**2,953,877**	3,457,307	**221,388**	181,074	**3,175,265**	3,638,381
Funded by:						
Revenue from government	**3,747,000**	3,676,233	**207,000**	204,000	**3,954,000**	3,880,233
Other non-taxation revenues	**66,674**	35,980	**-**	-	**66,674**	35,980
Total departmental revenues	**3,813,674**	3,712,213	**207,000**	204,000	**4,020,674**	3,916,213

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

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