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Australia's National Competition Policy: Its Evolution and Operation

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Background

The purpose of this brief is to provide users with access to key electronic documentation tracing the emergence of Australia's present competition policy regime over the past decade, as well as providing ready access to recent documentation which has been significant in the day to day implementation and review of the Policy.

Origins of Australian competition law

Australian competition policy dates from 1906 when the first Federal law dealing with restrictive practices was enacted. This was the Australian Industries Preservation Act 1906, comparable with the US Sherman Act of 1890 in that it sought to prohibit monopolisation and other activities which restrained interstate trade or damaged Australian industries by unfair competition. However this legislation quickly fell into general disuse following a very restricted interpretation of the Commonwealth's powers in 1910.

Contemporary Australian competition policy stems from the 1965 Trade Practices Act. Although it required registration of trade agreements and contained scope for the disallowance of such agreements if contrary to the public interest, the 1965 Policy was relatively weak. Amendments to the Act to address resale price maintenance matters were passed in 1971, while a new Trade Practices Act implemented by the Whitlam Government in 1974. The 1974 Act took a new approach to competition law, based on prohibition rather than administrative investigation of conduct; it also provided for authorisation of conduct in the public interest. Over following years, considerable ongoing fine tuning of the Act took place.

The mid 1970s and the 1980s saw some major Government initiatives to enhance national productivity through liberalisation of the economy such as the across the board tariff cuts of 1973, the floating of the dollar (1983) and the elimination of foreign exchange controls. At industry level, initiatives such as the corporatisation of government business enterprise and progressive deregulation in the transport and

telecommunications sectors became keystones of the so-called 'microeconomic reform programs' of both Commonwealth and State and Territory Governments.

The need for a national competition policy for Australia

As the microeconomic reform programs gathered pace into the 1990s, it became increasingly evident that the limited purview of the existing Federal competition policy arrangements would severely constrain the scope for further economic reform and the development of a competitive national economy within an increasingly competitive international setting. This was reflected in Prime Minister Hawke's 12 March 1991 Ministerial Statement, Building a Competitive Australia, where Mr Hawke observed:-

> The Trade Practices Act is our principal legislative weapon to ensure consumers get the best deal from competition. But there are many areas of the Australian economy today that are immune from that Act: some Commonwealth enterprises, State public sector businesses, and significant areas of the private sector, including the professions.
>
> This patchwork coverage reflects historical and constitutional factors, not economic efficiencies; it is another important instance of the way we operate as six economies, rather than one. The benefits for the consumer of expanding the scope of the Trade Practices Act could be immense: potentially lower professional fees, cheaper road and rail fares, cheaper electricity.

The Commonwealth's move to foster a more national approach to competition policy was one of the elements of its broad ranging 'new federalism' initiative announced by the Prime Minister on 19 July 1990. National Press Club Address 19 July 1990. Under this initiative, the Commonwealth sought to form a closer partnership between the three tiers of government - Commonwealth, State and local - by addressing 'sensible, practicable steps to get better cooperation within the framework of the Federal Constitution as it stands'.

A series of Special Premiers Conferences held over subsequent years were used to advance the new federalism agenda in public policy areas as diverse as Federal financial relations, government service delivery and social justice, inter-governmental cooperation on environmental protection and enhancing national efficiency.

Thus, the development of the NCP process fitted consistently within this broader public policy direction; although the Commonwealth led the process, its drew heavily on the coordination and consultation machinery provided by the Special Premiers Conferences and the regular meetings of the Council of Australian Governments (COAG) to ensure broad,

common agreement on its scope and direction.

Developing the national competition policy reform agenda

The 1991 Competitive Australia Statement referred to above marked a turning point in the emergence of the NCP. In the Statement, Mr Hawke indicated that he had initiated a process whereby the States and the Commonwealth would undertake an urgent examination of all that could be done to widen the ambit of the Trade Practices Act to bring the excluded areas of economic enterprise within the scope of a national framework of competition policy and law.

At a Special Premiers' Conference held in July 1991, Government leaders and representatives agreed that a national approach to competition policy be considered to ensure that consumers benefit fully from the structural adjustment initiatives and other reform programs then under way. Communique Special Premiers' Conference, Sydney, 30-31 July 1991. They agreed competitive markets would achieve a more efficient allocation of resources within the economy and noted the role national competition policy could play in underpinning the effective functioning of those markets.

The meeting therefore agreed that a Working Group of Officials, chaired by the Commonwealth, would review the appropriateness of current competition policy, including the application of the Trade Practices Act, to the following areas within Commonwealth, State and Territory jurisdictions: (1) Government Trading Enterprises; (2) Marketing Authorities; (3) Unincorporated bodies; and (4) Government procurement by Commonwealth, State Territory and local governments.

Leaders and representatives agreed that the Working Group should establish the nature of, and reasons for, the exclusions identified in each case and prepare papers for the November 1991 special Premiers' Conference containing recommendations on whether the Trade Practices Act's application should be extended to the above areas and whether alternative approaches within the scope of a national framework of competition policy and law might be more effective.

Subsequently a meeting of the Premiers and Chief Ministers on 21-22 November 1991 endorsed the need for a national competition policy and agreed to the establishment of an *independent* review of the Trade Practices Act to assess its capacity to secure a national competition policy and to identify alternative models for regulating market behaviour. Communique of the Premiers and Chief Ministers Meeting, Adelaide 21-22 November 1991. This endorsement was in the context of deliberations on related inter-governmental policy matters including the mutual recognition of standards, the regulation of non bank financial institutions, nationally uniform road rules, a national electricity grid protocol and the reform of

State Government trading enterprises.

Shortly after taking on the Prime Ministership in December 1991, the Hon Paul Keating MP tabled the major Ministerial Statement, One Nation 26 February 1992*;* this foreshadowed the prominence which the Commonwealth would give to competition policy as one of seven elements of its economic and social strategy for the 1990s

Establishment of The National Competition Policy (Hilmer) Review

On 4 October 1992, the Prime Minister, Mr Keating announced the establishment of a major independent inquiry into competition policy in Australia, thus putting into effect the decision of Heads of Australian Governments of the previous year; see the Statement by the Prime Minister on the National Competition Policy and attached Terms of Reference of 4 October 1992. The terms of reference were drawn up in consultation with the States and Territories and gave special emphasis on areas outside the Trade Practices Act. The inquiry would be chaired by Professor Fred Hilmer, Dean of the Australian Graduate School of Management in the University of New South Wales, who would be joined by Mr Geoff Taperell, a partner in the law firm of Baker & McKenzie and by Mr Mark Rayner, Group Executive, CRA Ltd.

The Inquiry received written submissions from 150 organisations and individuals from around Australia and the team consulted widely with senior representatives of Australian Governments as well as many industry, professional, trade union, consumer and other organisations.

The Hilmer Committee's report was delivered to the Heads of Government on 25 August 1993; it advocated six policy proposals:

- extending the reach of the Trade Practices Act 1974 (TPA) to unincorporated businesses and State and Territory government businesses so that the competitive conduct rules (contained in Part IV of the Act) apply to all business activity in Australia

- provision for third party access to nationally significant infrastructure

- introduction of competitive neutrality so that government businesses do not enjoy unfair advantages when competing with private businesses

- restructuring of public sector monopoly businesses to increase competition; .review of all laws which restrict competition and

- extending prices surveillance arrangements to State and Territory government businesses to deal with those

circumstances where all other competition policy reforms prove inadequate.

A more detailed overview and assessment of the report proposals is available at the Parliamentary Research Paper 'National Competition Policy: Overview and Assessment' while a short layperson's introduction is at Hilmer, the National Competition Policy: A Layperson's Introduction.

Following the public release of the report, its recommendations were widely discussed and reviewed. At the time, Professor Hilmer observed that his Committee's recommendations were shaped by its views on what constitutes competition policy and the need to develop such a policy in a manner consistent with Australia's Federal system. A paper released by Professor Hilmer at the time, The Bases and Impact of Competition Policy, sets out the underpinning bases of the Committee's report. In this paper, Professor Hilmer states that his report rested on three main propositions:-

1. that competition policy covers a broad set of laws, policies and government actions that should be seen as an integrated whole
2. the main elements of competition policy dealt with by the review were the processes, institutions and broad principles that would generate specific guidelines for various sectors of the economy
3. the recommended processes and institutions leave much of competition policy squarely in the political domain.

Inter-governmental review of the Hilmer Review's recommendations

At its third meeting held on 25 February 1994, COAG agreed on the need to accelerate and broaden progress on micro-economic reform to support higher economic and employment growth on a sustainable basis. Accordingly, it agreed to pursue a more extensive national micro-economic reform agenda and to establish a standing committee of senior officials to manage this continuing agenda of micro-economic reform. The Working Group was directed to report to the Council with detailed proposals for further reform.

In agreeing to the principles of the competition policy articulated in the Hilmer Report, COAG adopted a range of initiatives as set out in the Communique of the Council of Australian Governments, Hobart, 25 February 1994 including agreement that

- any recommendation or legislation arising from the Hilmer Report being applicable to all bodies, including Commonwealth and State government agencies and authorities

- that the Trade Practices Commission and the Prices Surveillance Authority be merged to form the basis for

the Australian Competition Commission. The Australian Competition Commission would also have new powers. Commonwealth, State and Territory Governments are to develop the detailed arrangements for the establishment of this body, including the process for State and Territory participation in the appointments process;

- the Commonwealth would consider providing financial assistance to the States and Territories for loss of monopoly rents and the process for managing adjustment.

COAG's fourth meeting was held in Darwin in August 1994. The Communique of this 19 August 1994 meeting refers to reform commitments entered into by participating governments including:

- the revision of the conduct rules of trade practices legislation and their extension to cover State and local government business enterprises and unincorporated businesses;
- the application by individual jurisdictions of agreed principles on structural reform of public monopolies, competitive neutrality between the public and private sector where they compete, and a program of review of regulations restricting competition;
- the establishment in each jurisdiction of a system to carry out surveillance of prices charged by utilities and other corporations with high levels of monopoly power and a regime to provide access to essential facilities such as electricity grids, gas pipelines, airports, rail networks, postal delivery services, communication channels and seaports; and
- the establishment of the Australian Competition Commission and the Australian Competition Council to exercise recommendatory powers in relation to access and pricing surveillance issues and advisory powers on matters determined by governments.

The Darwin meeting also agreed to release for public comment relevant draft legislation, a draft Inter-governmental Conduct Code Agreement and a draft Inter-governmental Competition Principles Agreement with a view to undertaking public consultations and finalising the legislative package at Council's February 1995 meeting with the aim of bringing the new arrangements into effect on 1 July 1995.

Significantly, COAG determined that all Governments should share the benefits to economic growth and revenue from Hilmer and related reforms to which they have contributed. Accordingly it agreed that the Industry Commission would undertake an assessment of The Growth and Revenue Implications of Hilmer and Related Reforms on a brief provided by Heads of the Commonwealth Treasury. This would be used to assist the Council in determining the increase in the Commonwealth revenue which might be expected from these reforms and the appropriate percentage share which would accrue to the States, Territories and Local Government. Recognising the important implications of NCP for local government, the Council agreed

that the Australian Local Government Association would participate in the further consultations on competition policy.

Legislating the NCP

In Apri1 1995, COAG agreed to the National Competition Policy package of measures to implement the Hilmer proposals and to meet previous reform commitments in the areas of electricity, gas, water and road transport. The package consisted of

- the Commonwealth Competition Policy Reform Act 1995
- Compendium of National Competition Policy Agreement incorporating:
  - the Competition Principles Agreement
  - the Conduct Code Agreement
  - the Agreement to Implement the National Competition Policy and Related Reforms
- and associated State and Territory application legislation.

The *Competition Policy Reform Act* 1995 amended the competitive conduct rules (part IV) of the TPA and extended their coverage to State, Territory and local government businesses and unincorporated bodies. It also created a Part IlIA of the TPA to provide a national regime for access to the services provided by nationally significant infrastructure facilities and amended the Prices Surveillance Act 1983 to extend prices oversight arrangements to State and Territory business enterprises.

In addition, the *Competition Policy Reform Act* 1995 created two new institutions to oversee the implementation of the competition policy package. The Australian Competition and Consumer Commission (ACCC) was created through the merger of the former Trade Practices Commission and Prices Surveillance Authority with the principal function of enforcing the TPA. The National Competition Council (NCC) was established on 6 November 1995 pursuant to section 29A of the TPA as an independent advisory body for all Australian governments on National Competition Policy issues.

As part of the implementation of the National Competition Policy, three agreements were signed by all heads of government:

- the *Conduct Code Agreement* which sets out the basis for extending the coverage of the TPA and consultative processes for amendments to the competition laws of the Commonwealth, States and Territories and for appointments to the ACCC

- the *Competition Principles Agreement* (CPA) which sets out the principles agreed by governments in relation to prices oversight, structural reform of public monopolies,

review of anti-competitive legislation and regulation, third party access to services provided by essential facilities, the elimination of net competitive advantages enjoyed by government businesses where they compete with the private sector, and the application of these principles to local government. It also establishes consultative arrangements for defining ,appointments to, and deciding the work program the NCC, and

- the *Agreement to Implement the National Competition Policy and Related Reforms* (the Implementation Agreement) which sets out the conditions for provision of financial transfers from the Commonwealth to the States and Territories and the role and functions of the NCC in assessing States' and Territories' progress on the reforms and advising the Commonwealth Treasurer on eligibility for the competition payments.

A range of processes aimed at promoting competition were set in train by the competition policy agreements. For example, governments agreed to examine the structure of publicly-owned monopolies before introducing competition to a sector traditionally supplied by a public monopoly and before privatising a public monopoly.

The NCP's Institutional Framework

The Australian Competition and Consumer Commission (ACCC)

The Australian Competition and Consumer Commission (ACCC) was formed on 6 November 1995 by the merger of the Trade Practices Commission and the Prices Surveillance: Authority. Its formation was an important step in the implementation of the national competition policy reform program agreed by the Council of Australian Governments.

The Commission's roles

An independent statutory authority, the Commission administers the Trade Practices Act 1974 (TPA) and the Prices Surveillance Act 1983 and has additional responsibilities under other legislation. The objective of the TPA, as set out in the legislation, is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection. Under the national competition policy reform program, the TPA has been amended so that, together with relevant State Territory legislation, its prohibitions of anti-competitive conduct apply to virtually all businesses in Australia.

In broad terms, the TPA covers anti-competitive and unfair market practices, mergers or acquisitions of companies, product safety/liability and third party access to facilities of national significance. The Commission is the only national agency dealing generally with competition matters and the only agency

with responsibility for enforcement of the TPA and the associated State/Territory legislation.

Under the *Prices Surveillance Act,* the Commission has three pricing functions; to vet the proposed price rises of any business organisation placed under prices surveillance, (b) to hold inquiries into pricing practices and related matters and to report the findings to the responsible Commonwealth Minister and (c) to monitor prices, costs and profits of an industry or business and to report the results to the Minister.

The Commission's consumer protection work complements that of State and Territory consumer affairs agencies, which administer the mirror legislation of their jurisdictions, and the Consumer Affairs Division of Treasury.

The ACCC has a network of offices in all capital cities as well as Townsville and Tamworth to handle public complaints and inquiries. ACCC staff provide guidance to business and consumers on their rights and obligations under the law, but do not give legal advice

The Commissioners

The full time Commissioners are:-

Graeme Samuel will act as chairman of the ACCC for a year from July 1, 2003. A Company Director and a co-founder of Grant Samuel & Associates, corporate advisers. From 1981 to 1986 he was Executive Director of Macquarie Bank Ltd in charge of its Victorian operations and a Director of its Corporate Services Division. His career as a banker was preceded by 12 years as a partner of leading Melbourne law firm, Phillips Fox & Masel. He was the co-author of a text on the Securities Industry Code and has published numerous papers and journal articles on business affairs. Graeme Samuel currently holds several other offices including: Chairman of Opera Australia; Chairman of Melbourne & Olympic Parks Trust; Commissioner of the Australian Football League; member of the Docklands Authority and Director of Thakral Holdings Limited. He attended Wesley College, Melbourne, and subsequently obtained a Bachelor of Laws from Melbourne University and a Master of Laws from Monash University.

Mr Sitesh Bhojani has been a full-time member of the ACCC since November 1995. Before then he was a barrister with a general commercial and civil litigation practice at the independent bar in Western Australia. In 1994 he was appointed an Associate Commissioner of the Trade Practices Commission. He was Deputy Chairman of the Law Council of Australia, Business Law Section's Trade Practices Committee. He holds a Bachelor of Science (Monash) and Bachelor of Laws (Monash). In 1986 he was admitted as a barrister and solicitor in Victoria and Western Australia. He has also tutored in trade practices law at the University of Western Australia. Mr Bhojani's appointment is until 10 November 2003.

Mr Ross Jones was appointed as a Commissioner of the ACCC

in June 1999. He is an economist and before his appointment was Senior Lecturer in Economics at the University of Technology, Sydney. He has lectured in industrial organisation and micro-economic policy at universities in Australia and overseas. Mr Jones' appointment is until 14 June 2004.

Mr John Martin was Executive Director of the Australian Chamber of Commerce and Industry from 1989 until his appointment to the ACCC in June 1999. In his position at ACCI he represented business interests to the Commonwealth Government and was responsible for developing business policies and programs, particularly as they affected small and medium enterprises. Earlier in his career he was a policy adviser and program manager with the Commonwealth Treasury and the Department of Industry. He holds an economics degree from the Australian National University. Mr Martin's appointment is until 6 June 2004.

Ms Jennifer McNeill was a partner with the law firm Blake Dawson Waldron before her appointment to the ACCC in July 2002. Ms McNeill is a NSW Law Society Accredited Specialist in Litigation and an accredited Mediator. Her appointment with the ACCC is until July 2007.

Mr Ed Willett was the Executive Director of the National Competition Council (NCC) before his appointment in January 2003. Mr Willett previously served as an Assistant Commissioner with the Industry Commission, in a public sector career which has included positions in the Department of Industry Science and Technology, the Department of Defence and the New Zealand Ministry of External Relations and Trade. His Appointment with the ACCC is until January 2008

The Associate members of the ACCC are:-

Ms Teresa Handicott, a partner with Corrs Chambers Westgarth. She was appointed an Associate Commissioner of the Trade Practices Commission in 1994 and Associate Commissioner of the ACCC in November 1995. She is a director of CS Energy Limited, and Member, Company Committee, Queensland Law Society and Law Council of Australia. Ms Handicott's appointment is until 3 June 2002.

Ms Yasmin King is a Director of Flexible Resource, a consultancy practice which focuses on outsourcing and industry development advisory services particularly in information technology. She was appointed as an Associate Commissioner of the ACCC in 1998. Ms King was previously an economic adviser for the State Government of South Australia during the establishment and implementation of National Competition Policy. Before that she held a number of senior positions in the finance industry. Ms King's appointment is until 25 October 2001.

Mr Don Watt is a lawyer and company director. In recent years his major area of legal practice has been advising the State of Western Australia in relation to various commercial matters. Mr

Watt's appointment is until 3 June 2002.

Mr Warwick Wilkinson is a retired pharmaceutical company director. From 1992 to 1993 he was a Member of the Economic Planning and Advisory Council. From June 1999 to Feburary 2000 he was Chairman of National Competition Policy Review of Pharmacy appointed by the Council of Australian Governments..Mr Wilkinson's appointment is until 3 June 2002.

Professor Douglas Williamson RFD QC FAIM is the Director of the Centre for Energy and Resources Law at the Law Faculty, the University of Melbourne. He was appointed Associate Member of the ACCC in June 1999. He is also Deputy Chairman of the National Electricity Tribunal, a Member (part-time) of the National Native Title Tribunal, and a mediator accredited to the Supreme Court of Victoria. Professor Williamson's appointment is until 3 June 2002.

The ex-officio members are:

Mr Paul Baxter, the Senior Commissioner, ACT Independent Competition and Regulatory Commission. His appointment is until 30 June 2004.

Professor David Flint is the Chairman of the Australian Broadcasting Authority. He is an Emeritus Professor, University of Technology Sydney and Visiting Professor, Faculty of Law, University of Western Sydney Macarthur; National President (Australia) of the World Jurists
Association; Chairman of the Executive Council of World Association of Press Council; and Consulting Editor of the Australian International Law Journal. Past positions include Chairman, Australian Press Council; Dean of Law School University of Technology, Sydney; Convenor/Chairman, Committee Australian Law Deans; Director of Studies, International Law
Association (Australian and New Zealand branch); and Editor, Australian International Law News. He holds the following qualifications: LL.B, LL.M (Sydney); BSc (Ecs) (London); DSU (Paris 2). Professor Flint is a Member of the Order of Australia. In 1991 he won the World Jurists Association's World Outstanding Legal Scholar Prize. Professor Flint's appointment is until 4 October 2004.

Mr Edward John Hall is a Member of the Board of Consolidated Rutile Ltd and has an appointment until 30 September 2002.

Mr Lew Owens was appointed as the first full-time Independent Industry Regulator on 1 January 2000, for a term of six years. His prime responsibilities are to regulate network and franchise pricing, monitor and enforce service standards and supply performance, and promote competitive conduct in the market. His appointment with the ACCC is until January 2006

Dr Thomas Parry is Executive Chairman of the Independent Pricing and Regulatory Tribunal of NSW, has been appointed

until 6 June 2005

Mr Alan Tregilgas was the Northern Territory's inaugural part-time Utilities Commissioner. Mr Tregilgas is appointed until 31 March 2004.

Mr Andrew Reeves is the Commissioner, Government Prices Oversight Commission, Tasmania, and his appointment is until 31 December 2001.

Mr Tony Shaw, PSM is the Chairman of the Australian Communications Authority. Mr Shaw's appointment is until 30 June 2002.

Mr Graham Scott was appointed as the South Australian Independent Pricing and Access Regulator on 2 April 1998 for three years on a parttime basis. Mr Scott is a Senior Lecturer in Economics in the Faculty of Social Sciences at Flinders University where he completed a three year term as Head of the School of Economics. He is Chairman of the SA Local Government Superannuation Scheme, Unisure Ltd (the workers compensation insurer for the three SA universities) and of Adelaide Airport Ltd. He is a board member of Superannuation Scheme for Australian Universities and Flinders Technologies Pty Ltd (the intellectual property arm of Flinders University). He was the Deputy Director of the SA Centre for Economics Study from its establishment in 1984 until 1998 and in that position wrote extensively on the SA economy. Mr Scott's other professional interests are in the area of macro-economics, financial markets and macroeconomic policy.

Dr John Tamblyn is Victoria's Regulator-General responsible for regulation of access and service performance of the electricity, gas, water and transport utility industries.Dr Tamblyn's appointment is until 13 July 2002.

The ACCC reports to the Hon Joe Hockey MP, Minister for Financial Services and Regulation. The Department of the Treasury has portfolio responsibility for the Commission. The Minister for Financial Services & Regulation is responsible for restrictive trade practices issues, pricing policy and consumer affairs. The Commission's consumer protection work complements that of State and Territory consumer affairs agencies, which administer the mirror legislation of their jurisdictions.

The National Competition Council

The Council of Australian Governments established the Council in 1995 when its members agreed to implement the National Competition Policy. The general role of the Council is to assist COAG with the NCP implementation process. It is a policy advisory body and provides national oversight of NCP. It does not set reform agendas or implement reforms itself, this is the responsibility of the various governments.

Although funded by the Commonwealth, the Council is a national body, with responsibilities to all Australian

governments. As a statutory body, the Council is also independent of the executive (political) arm of any government. The Council comprises five part-time councillors drawn from different business sectors and parts of Australia. It is supported by a secretariat of around twenty staff located in Melbourne.

The Council's main specific roles are:-

1. The assessment of Governments' progress in implementing the competition reforms – and recommendations as to the level of competition payments. To share the benefits of competition, the Commonwealth makes substantial financial payments to the States and Territories provided they make satisfactory progress First Tranche Assessment , Second Tranche Assessment , Third Tranche Assessment. The provision of advice on the design and coverage of access rules under the National Access Regime*.
2. Undertaking other projects as requested by a majority of Australian governments. (These can include reviews and advice relating to restrictive or anti-competitive legislation, the structural reform of public monopolies, prices oversight, and competitive neutrality).
3. Undertaking community education and communication in relation to both specific reform implementation matters and National Competition Policy generally.

The Councillors

The Councillors are drawn from various parts of Australia and different industry sectors to provide a range of skills and experience. Councillors are appointed for a three-year term and the appointments are made jointly by the Commonwealth,

State and Territory Governments. The Councillors report formally to the Federal Treasurer and currently comprises five part-time councillors supported by a secretariat of around twenty staff located in Melbourne.

Graeme Samuel, ***President of the NCC:*** A Company Director and a co-founder of Grant Samuel & Associates, corporate advisers. From 1981 to 1986 he was Executive Director of Macquarie Bank Ltd in charge of its Victorian operations and a Director of its Corporate Services Division. His career as a banker was preceded by 12 years as a partner of leading Melbourne law firm, Phillips Fox & Masel. He was the co-author of a text on the Securities Industry Code and has published numerous papers and journal articles on business affairs. Graeme Samuel currently holds several other offices including: Chairman of Opera Australia; Chairman of Melbourne & Olympic Parks Trust; Commissioner of the Australian Football League; member of the Docklands Authority and Director of Thakral Holdings Limited. He attended Wesley College, Melbourne, and subsequently obtained a Bachelor of Laws from Melbourne University and a Master of Laws from Monash University.

David Crawford is the Chairman of the Westralia Airports Corporation Pty Ltd and Chairman of Export Grains Centre Ltd.

He is a member of Transfield Pty Ltd (WA Advisory Board), Chairman of John Curtin International Institute (Board of Advisors), member of the University Graduate School of Business (Board of Advisors), WA Trade Advisory Council and the WA Government Treasury Advisory Group.

Robert Fitzgerald practised as a commercial and corporate solicitor for twenty years, having been engaged by the legal firms of C R Fieldhouse, Clayton Utz and principal of his own commercial legal practice. He was also engaged as a senior management consultant with Horwath (NSW) Accountants, specialising in licensing and franchising areas.

Dr Doug McTaggart is currently the Chief Executive Officer of the Queensland Investment Corporation. Between 1996 and 1998 he was the Under Treasurer and Under Secretary of the Queensland Department of Treasury, a Director of the Queensland Office of Financial Supervision, Director of the Queensland Treasury Corporation, and the Chairman of QSuper Board of Trustees. Between 1983 and 1996 Dr McTaggart held various academic positions as an economist. He holds an Honours Degree in Economics from the Australian National University, and a Masters Degree and PhD from the University of Chicago.

Dr Wendy Craik is currently the Chief Executive Officer of Earth Sanctuaries Ltd, Chair of the Australian Fisheries Management Authority, a Council Member of the Australian Institute of Marine Science and a Board Member of the Cooperative Research Centres for Coastal Resources, the Great Barrier Reef Research Foundation and the Foundation for Rural and Regional Renewal. Between 1995 and 2000 Dr Craik was the Executive Director of the National Farmers' Federation. Dr Craik holds an Honours Degree in Science from the Australian National University, a PhD in Zoology from the University of British Columbia and a Graduate Diploma of Management from the Capricornia Institute of Advanced Education.

The Australian Competition Tribunal

The Australian Competition Tribunal is a quasi-judicial review body constituted under the Trade Practices Act 1974. It was originally established under the *Trade Practices Act 1965* and continues under the *Trade Practices Act 1974* ("the Act"). Prior to 6 November 1995, the Tribunal was known as the Trade Practices Tribunal. Prior to November 1995, it was known as the Trade Practices Tribunal, a name dating from its establishment in 1965.

The Tribunal is a review body. A review by the Tribunal is a re-hearing or a re-consideration of a matter and it may perform all the functions and exercise all the powers of the original decision-maker for the purposes of review. It can affirm, set aside or vary the decision.

Thus, the Tribunal's principal functions are:-

- to review determinations of the Australian Competition and Consumer Commission in relation to applications for, and revocations of, authorisations of conduct and arrangements that would otherwise contravene provisions of the Act, and in relation to notices given by the Commission regarding exclusive dealing, and to review decisions of the Minister or the Commission in relation to third party access to significant infrastructure facilities.

Composition of the Tribunal

- The Tribunal consists of a President and such number of Deputy Presidents and other members as are appointed by the Governor-General. A presidential member must be a judge of a federal court.

- Other members must have knowledge of or experience in industry, commerce, economics, law or public administration.

- For the purpose of hearing and determining proceedings, the Tribunal is constituted by a presidential member and two non-presidential members. Currently, all presidential members are Judges of the Federal Court of Australia.

The Tribunal has no staff or physical resources of its own. The funds appropriated by the Parliament for the purposes of the Tribunal are managed by the Federal Court. Registry services and administrative support for the Tribunal are provided by the staff of the Federal Court.

Tribunal Members

The Hon. Justice J von Doussa President
The Hon. Justice A Goldberg Deputy President
The Hon. Justice P Hely Deputy President
Mr R C Davey Member
Prof. R C Duncan Member
Mr G Latta Member
Dr M J Messenger Member
Assoc. Prof. D Round Member
Miss M M Starrs Member
Dr J E Walker Member

Concluding comments on sources

This E-Brief is intended to provide a basic introduction to key sources which trace the evolution of the NCP in Australia and the key agencies responsible for its implementation. However the detailed documentation associated with the implementation of NCP is not referred to here nor are the substantial information sources and policy documentation specific to

individual industries and jurisdictions. Fortunately much of this material is readily available on the internet or can be obtained in hard copy format by approaching the relevant State, Territory or Commonwealth agencies.

For copyright reasons some linked items are only available to Members of Parliament.

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