National Competition Council

# Annual Report 1999 – 2000

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**Office of Council President**

31 August 2000

The Honourable Peter Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

We submit to you the fifth Annual Report of the National Competition Council, for the year 1999-2000. The report is prepared and submitted in accordance with section 29O of the *Trade Practices Act 1974*.

Yours Sincerely

Graeme Samuel
President

David Crawford
Councillor

Robert Fitzgerald
Councillor

Paul Moy
Councillor

Elizabeth Nosworthy
Councillor

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# Abbreviations and Definitions

| | |
|---|---|
| ABB | Australian Barley Board |
| ACCC | Australian Competition and Consumer Commission |
| ACF | Australian Conservation Foundation |
| ACT | Australian Capital Territory |
| ADIC | Australian Dairy Industry Council |
| AGA | Australian Gas Association |
| AM | Member of the Order of Australia |
| AO | Officer of the Order of Australia |
| ARTC | Australian Rail Track Corporation |
| APS | Australian Public Service (staff classification) |
| ATC | Australian Transport Council |
| BCA | Business Council of Australia |
| CAN | Customer Access Network |
| CEDA | Committee for Economic Development of Australia |
| CIE | Centre for International Economics |
| CoAG | Council of Australian Governments |
| CPA | Competition Principles Agreement |
| CPRA | Competition Policy Reform (New South Wales) Act 1995 |
| CRR | COAG Committee for Regulatory Reform |

| | |
|---|---|
| CSO | Community Service Obligation |
| CTP | Compulsory Third Party |
| Cwth | Commonwealth |
| DNR | Department of Natural Resources (QLD) |
| DoFA | Department of Finance and Administration (Comonwealth) |
| EEO | Equal Employment Opportunity |
| EL | Executive Level (staff classification) |
| FAG | Financial Assistance Grant |
| FOI | Freedom of Information |
| FOI | Act Freedom of Information Act 1982 |
| GBE | Government Business Enterprise |
| GDP | Gross Domestic Product |
| GGTP | Goldfields Gas Transmission Pipeline |
| GPOC | Government Prices Oversight Commission (Tasmania) |
| GRIG | Gas Reform Implementation Group |
| GRTF | Gas Reform Task Force |
| GST | Goods and Services Tax |
| GL | Gigalitre, one billion litres |
| Hamersley | Hamersley Iron Pty Ltd |
| Hilmer | Review Independent Committee of Inquiry into National Competition Policy |
| Hope Downs | Hope Downs Management Services Pty Ltd |

| | |
|---|---|
| HRSCCTMR | House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform |
| HRSCFIPA | House of Representatives Standing Committee on Financial Institutions and Public Administration |
| IC | Industry Commission (now Productivity Commission) |
| IMF | International Monetary Fund |
| IPARC | Independent Pricing and Regulatory Commission (ACT) |
| IPART | Independent Pricing and Regulatory Tribunal (New South Wales) |
| IROG | Interstate Rail Operators Group |
| MA | Master of Arts |
| NCC | National Competition Council |
| NCP | National Competition Policy |
| NEM | National Electricity Market |
| NFF | National Farmers Federation |
| NGPAC | National Gas Pipelines Advisory Committee |
| NRTC | National Road Transport Commission |
| NSW | New South Wales |
| NUS | NUS International Pty Ltd |
| NZ | New Zealand |
| OECD | Organisation for Economic Cooperation and Development |
| OHS | Occupational Health and Safety |
| ORG | Office of the Regulator General (Victoria) |

| | |
|---|---|
| PC | Productivity Commission |
| PhD | Doctor of Philosophy |
| PL | Pipeline Licence |
| QCA | Queensland Competition Authority |
| Qld | Queensland |
| QR | Queensland Rail |
| RBA | Reserve Bank of Australia |
| RMS | Rail Management Services Pty Ltd |
| RRIA | Robe River Iron Associates |
| SAA | Standards Association of Australia |
| SCARM | Standing Committee on Agriculture and Resource Management |
| SCNPMGTE | Steering Committee on National Performance Monitoring of Government Trading Enterprises |
| SCOT | Standing Committee on Transport |
| SCT | Specialized Container Transport |
| SES | Senior Executive Service Band (staff classification) |
| SIRWP | Sugar Industry Review Working Party |
| SPL | Significant Producer Legislation (Victoria) |
| TAB | Totalisator Agency Board |
| TAP | Tasman Asia Pacific |
| TPA | Trade Practices Act 1974 |
| Tribunal | Australian Competition Tribunal |

| | |
|---|---|
| UIWG | Upstream Issues Working Group |
| UK | United Kingdom |
| USA | United States of America |
| WA | Western Australia |
| WSAA | Water Services Association of Australia |

# Part A

# A1 State of play: an overview

Much has been achieved since the National Competition Policy (NCP) reforms were launched in April 1995. Energy reform is significantly advanced, and reforms in water and road transport are well underway. More than half the 1700 pieces of anti-competitive legislation identified by governments have been reviewed or have reviews in train, with indications that a high proportion of these will be reformed. The great majority of larger government businesses are now required to apply competitive neutrality principles, which means fairer competition with their private sector counterparts.

These developments are starting to pay dividends in terms of lower prices and better services to consumers, in areas ranging from more flexible shopping hours to reduced energy prices. The challenging area of water reform promises to deliver social and environmental benefits, by safeguarding the sustainability of rivers and the quality of drinking water for future generations.

As an important part of Australia's structural reform program, NCP is also contributing to the strength and resilience of the economy. We have now seen several years of sustained economic growth, coupled with strong productivity growth and declining unemployment. There is considerable evidence that structural reform policies such as NCP are playing an important role in these outcomes (OECD 1999, 2000; Singh 1998). Work by the Productivity Commission (PC) suggests that, in the long term, NCP can potentially add 2.5 per cent to Australia's economic growth (PC 1999a).

These benefits can translate through to achieving social policy goals. By helping to boost economic growth, NCP reforms allow governments to do more about social justice and poverty issues. Higher growth with lower unemployment reduces pressure on social welfare programs, enabling governments to spend more on community priorities without raising taxes. And opening up markets and exerting downward pressure on prices for products such as electricity and transport services is especially helpful to low-income households.

# The benefits of a national approach

An important feature underpinning NCP has been a generally consistent approach to implementation across jurisdictions. This not only reflects the national framework of the 1995 competition agreements,[1] but also the commitment by governments to adopt an Australia-wide approach to infrastructure reform and key areas of legislation review. For example, national energy markets have been created and national reviews adopted in areas such as food regulation, pharmacy regulation and mutual recognition.

Adopting a national perspective has resulted in greater benefits to the Australian community than would have been possible if reform had been pursued through a more piecemeal approach. Australia is for all practical purposes a single integrated market, and often, the full benefits of reform will not be felt in one jurisdiction unless similar reform occurs in others. For example:

- South Australia will benefit from reform of water allocation practices in the Murray-Darling system in Queensland, New South Wales and Victoria;
- New South Wales will benefit from reform in the production and transportation of gas in South Australia and Victoria;
- Victorian rice growers expect to benefit from reforms to the marketing arrangements for rice in New South Wales;
- Western Australia will benefit from any reforms in rail or road that improve the efficiency of interstate, long distance transport;
- Queensland and South Australia will gain substantially from full implementation of the National Electricity Market (NEM) reforms; and
- Tasmania will be able to make better use of its hydro-power generation, while reducing electricity prices overall, by joining the NEM.

## Unfinished business

While much has been done, the task is far from complete. The NCP agreements targeted June 2001 as the date for the third and final progress assessment. In fact, there are significant NCP reforms which, despite ongoing work, may not be fully implemented by June 2001. Outstanding reform areas are likely to include full

1 The Competition Principles Agreement (CPA), the Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement) and the Conduct Code Agreement. These agreements are reproduced in NCC 1998b, which can be viewed on the Council's web site at www.ncc.gov.au.

retail contestability in energy markets, water pricing, and legislation review and reform.

The Council sees NCP as an ongoing reform process. Given that some reforms may not be completed by June 2001, the Council sees value in governments extending the assessment process until the original reform objectives are closer to completion.

The goals of reform may also be advanced by clarifying some of the processes set out in the 1995 Agreements. A valuable step would be to ensure that independent and transparent processes are used when governments consider reform. The Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy (Senate Select Committee) has recognised the value of an increased commitment by governments to independent processes. The Senate Select Committee also recommended that governments release review reports – and official responses to reports – to assist the community to better understand NCP and its potential costs and benefits.

There is also a strong case for broadening the ambit of NCP to cover certain industries currently exempt from explicit reform programs. In particular, there would be considerable value in extending the NCP approach to encompass rail reform and upstream gas reform.

While there has been some progress with rail reform, the pace has been poor in comparison with industries – such as electricity and road transport – that fall under the NCP umbrella. A major obstacle is the absence of a comprehensive and co-ordinated national approach. This is starting to have serious implications for the viability of the rail industry as compared with road transport, where systematic reform is now underway.

And while the NCP program has delivered the significant reforms it set out to achieve in the gas pipeline sector, limited progress has occurred upstream. The 1995 agreements did not explicitly address the significant barriers to competition in gas exploration and production. These barriers remain an impediment to achieving a competitive Australian gas industry.

# A2 What has been achieved so far?

The task that Australian governments set themselves in 1995 was ambitious, and the full extent of this has perhaps only become apparent as the reform process has evolved. Box A1 provides a summary of the NCP program.

## Box A1 The NCP reforms

In essence, the NCP reforms agreed by governments in 1995 were to:

- *review and, where appropriate, reform all laws which restrict competition*, ensure that any new restrictions provide a net community benefit, and adopt good regulatory practices in setting national standards.
- *widen Australia's consumer protection laws* by extending the reach of Part IV of the Trade Practices Act (TPA) to apply to all businesses in Australia. Part IV contains laws prohibiting anti-competitive behaviour such as the abuse of market power and market fixing by businesses.
- *improve the performance of government businesses* through *structural reform*; introducing *competitive neutrality* so that government businesses do not enjoy unfair advantages when competing with private businesses; and considering the use of *prices oversight*.
- *improve the quality of Australia's infrastructure* through reform packages in the *electricity, gas, water and road transport industries*; and establishing third party *access* arrangements for the services of nationally significant monopoly infrastructure such as gas pipelines, electricity grids and railway lines.

Progress against these reform commitments, as outlined in the following overview, has been considerable.

# Legislation review

Almost 1700 pieces of legislation have been identified as containing restrictions on competition, with reviews completed or commenced for over 900. By late 1999, the review and reform process had been completed for more than 370 pieces of legislation, with over 86 per cent of these instruments removed or subject to reform (NCC 1999e). If this is indicative of the legislation review program as a whole, significant benefits are likely to be achieved by the time it is completed.

These benefits include lowering 'red tape' hurdles faced by business. For example, New South Wales has identified 85 licences for repeal under its Licence Reduction Program, while South Australia has streamlined regulations affecting the keeping of livestock by repealing six separate acts and replacing them with one. In Queensland and Victoria, advertising and commercial controls in regulations governing health and medical practitioners have been reduced, allowing greater flexibility for business.

These reforms allow for more competitive supply arrangements, with benefits to consumers in terms of lower prices and/or better service arrangements. Other reforms offer direct benefits to consumers. For example:

- reforms to shop trading hours in Victoria and the ACT are allowing consumers greater choice as to when and where they can shop;
- consumers in Western Australia have benefited through the removal of restrictions on bread delivery;
- removing licence restrictions on the supply of taxis in the Northern Territory has almost doubled the number of taxis on the road at any one time; and
- deregulation of farmgate prices and supply arrangements in the dairy industry has seen price benefits to consumers in most States and Territories, and the emergence of new products in fresh milk markets. The reforms have been accompanied by an adjustment package for farmers and communities adversely affected by the new arrangements.

Another significant benefit of this area of reform is a cultural shift in the way governments approach regulation. Today, all governments regularly examine their legislation review program and continue to identify additional laws for review. As

a result of the reform criteria set out in the 1995 Competition Principles Agreement (CPA), all governments now have mechanisms for explicitly considering the value to the community of new legislative restrictions, including whether restricting competition is the best policy approach.[2] This scrutiny leads to more effective policy approaches – that pursue the aims of the legislation while maximising the gains from competition – and arguably greater efficiency within bureaucracies.

## The Competition Code

The Competition Code has been implemented in all jurisdictions, extending the operation of Part IV of the *Trade Practices Act 1974* (TPA) to all businesses in Australia. Part IV guards against the misuse of market power. This important reform has overcome constitutional constraints that had previously exempted many businesses from the operation of Part IV.

## Competitive neutrality

Competitive neutrality principles are now applied to the majority of significant Commonwealth, State, Territory and local government businesses. Inconsistencies remain, in that some significant business activities are still exempt in some jurisdictions, and the application of the principles is still to be determined for certain classes of business – for example, the business activities of tertiary education institutions. Despite this, the application of competitive neutrality policy is extensive.

All jurisdictions have established complaint mechanisms to assist with the application and understanding of competitive neutrality. These mechanisms strengthen public confidence that government businesses are competing fairly with their private sector competitors. They also provide an important discipline for managers of public businesses.

## Infrastructure

The structural reform programs for infrastructure have been significantly progressed, with NCP electricity and gas reforms substantially completed in most

2 This principle, which is set out in clause 5 of the CPA, is the cornerstone of the legislation review program.

jurisdictions. There is also considerable structural reform in rail, airports, ports and telecommunications.

## Gas

Gas reform has been one of the major success stories of NCP. While progress until 1995 was patchy, reform has progressed strongly since. All jurisdictions[3] have undertaken the key NCP gas reforms of removing regulatory restrictions on free and fair trade in gas; and implementing a National Third Party Access Code for Natural Gas Pipelines (National Gas Code).

One of the central benefits of gas reform is coming from new investment in gas transmission pipelines. Some of these projects may not be viable without access to distribution networks, made possible under the National Code. As major markets become linked to more than one gas basin, competition between basins is likely to start delivering important gains for gas consumers. The reforms have already led to significant price reductions in gas pipeline charges in New South Wales and Western Australia.

Competition between producers within gas basins is another key step, and while co-ordinated reform is lacking in this area, there are signs of progress. For example:

- in Victoria, Woodside has expressed an interest in developing the Kipper gas field in Bass Strait. The field lies adjacent to fields under production by Esso and BHP; and
- in South Australia, a number of new entrants have been awarded exploration licenses in the Cooper Basin. The licences were relinquished by Santos in 1999.

## Electricity

The National Electricity Market (NEM) is fully operational in New South Wales, Victoria, South Australia, the ACT and Queensland. Structural reform of electricity utilities is complete in New South Wales, Victoria, Queensland, South Australia and the ACT. There is strong evidence that the electricity reforms have led to lower electricity prices in New South Wales, Victoria and more recently Queensland (BCA 2000). Interstate trade is also helping to deal with supply and demand imbalances, allowing States with shortages to buy power from across the border. Apart from the

3 Other than Tasmania, which does not yet have a natural gas industry.

economic advantages, interstate trading offers significant environmental benefits in helping to avoid unnecessary investment in new power stations.

While considerable progress has been made, new impetus is nevertheless needed to address a number of factors that may be constraining the benefits of electricity reform to end users. The issues are noted in section A5.

## Water

There is good progress across Australia towards a more efficient water industry, particularly in the urban sector where customers have '…benefited from ongoing industry reforms through generally improved service at lower prices' (WSAA 1999). Adjusting prices to reflect consumption and the costs of supply is also encouraging better conservation of water – allowing governments to devote less taxpayers' money to capital works such as dams. This not only has environmental benefits, but will also help keep water prices down in the future.

Price reforms, combined with reductions in cross-subsidies, mean that people are only paying for the water they use. This creates a strong incentive for conservation. Importantly, reform in this area does not mean reduced assistance to special needs groups. However, it does mean that assistance is provided more transparently, leading to improved accountability and better outcomes – helping to ensure, for example, that intended benefits go to target groups.

In rural Australia, overuse and poor management of water have left many rivers in a damaged and precarious situation. Land clearing and excessive irrigation have led to serious problems of salinity. In the Murray Darling Basin, salinity now affects over 2 million hectares of productive land and threatens regional towns. In Western Australia, salinity has degraded 80 per cent of rivers and streams in the south-west, with half the water bird species having disappeared from wetlands.

The NCP water reforms are a necessary response to salinity, river degradation and pollution, biodiversity loss and soil degradation. A joint report prepared for the Australian Conservation Foundation (ACF) and the National Farmers Federation (NFF) recently described this cumulation of issues as a national crisis (ACF and NFF 2000).

According to the report:

- These environmental issues have significant economic and social dimensions:
    - the viability of farming (and, thus, our agricultural industry) is being undermined;
    - rural and regional infrastructure (such as roads, railways, pipelines and buildings) is being eroded; and
    - industries that depend upon our natural heritage, such as tourism, are being affected.

The NCP water reforms target these issues, both through pricing reforms and a new system of water allocations and trading that allows water to flow to higher value uses. In Victorian irrigation areas, up to 4 per cent of water rights are now traded permanently every year, and up to 17 per cent are traded on a temporary basis. An outcome is that farming activities that use water efficiently become more competitive compared with those that use the resource inefficiently. Over time, this encourages a more water-efficient agricultural sector, providing a foundation for sustainable wealth generation in rural Australia.

The environment is also starting to benefit through State and Territory action plans for rivers at risk and through integrated resource management. Consultation and community education, both elements of the water reform framework, are promoting a wider awareness of the need for change, and helping to ensure that changes are introduced in a manner that meets community needs.

## Road transport

Linking inter-governmental agreements on road transport reform to the NCP program means that Australia will have in place a nationally consistent regulatory framework for heavy vehicles registration and driver licensing. Advances in safety and fatigue management and consistency in national mass and dimension regulations have been achieved.

# A3 The work of the Council

The National Competition Council is an independent policy advisor to governments. It was established by all Australian governments in November 1995 to provide:

- national oversight of NCP; and
- advice on the design and coverage of third party access arrangements under Part IIIA of the TPA.

The Council comprises a President and four other members with knowledge of, or background in, industry, the community sector, commerce, economics, law or administration. It is supported by a secretariat of 22 staff in Melbourne.

A central objective of the Council is to help facilitate reform in the public interest. In last year's Annual Report, the Council outlined its four-point approach to working with governments to assist this process. It involves governments reaching agreement on remaining priorities, developing practical approaches to implementing reform, and consulting with key stakeholders – including on adjustment to change. A central role noted for the Council was in providing information to the community on experiences to date and specific reform implementation matters.

The Council's focus on facilitating reform is manifested in its 'no surprises' approach to assessment. It has also directed the Council's views on transitional arrangements to phase in certain reforms and its interactive work with governments in developing solutions that achieve good outcomes.

The Council adopts processes that promote transparency and accountability to governments, CoAG and the community in relation to its NCP oversight and Part IIIA roles. The Council's advice is informed by extensive consultation with governments and other interested groups and individuals, and its formal recommendations to governments are made public. The Council is also involved in a number of on-going multilateral forums on NCP and workshops on particular reform issues.

While the Council is accountable to governments collectively through CoAG, it is independent of individual governments, including the Commonwealth. The Council's independence assists in ensuring that no government is able to depart

from its agreed commitments without the opportunity for other governments to consider that non-compliance. This gives confidence that reforms are being progressed in a generally consistent manner across all jurisdictions and within the timeframes agreed.

## Oversight of NCP

The Council's role in national oversight of NCP comprises three elements:

- assessing governments' progress with implementing the agreed reforms;
- making recommendations on competition payments following each assessment; and
- facilitating successful implementation of the reform program.

Some of the principal oversight issues are discussed below. The Council's work in oversight of NCP is expanded upon in Part B1 of this report.

## Assessment

The NCP assessment function is the primary oversight and accountability mechanism for implementation of the reforms.

Under the 1995 competition agreements, the Commonwealth, State and Territory governments agreed that the Council would undertake three assessments during the NCP program. Two assessments have been completed: the first in June 1997 and the second in June 1999. The third assessment is scheduled for June 2001. The Council's assessments are released as public documents.

## Competition payments

The Council assesses progress by each jurisdiction in implementing NCP as the basis for recommendations to the Commonwealth Treasurer on providing competition payments to the States and Territories as dividends from reform. Under the framework established in 1995, three tranches of competition payments were created, to be paid in tandem with the Council's 1997, 1999 and 2001 assessments.

The competition payments recognise that NCP stimulates economic activity, thereby increasing taxation revenues to the Commonwealth. The payments are an economic dividend from the Commonwealth to the States to better distribute these gains from NCP reform. They also ensure that at least some of the gains from reform accrue directly to all governments investing in reform, as a fiscal incentive. Where governments do not invest in reforms, reductions in NCP payments may be recommended, because less money is available to be shared. While the Commonwealth itself is assessed, it is not subject to payment sanctions. However, failure to invest in reform would impact on the Commonwealth through lost taxation revenue.

The Council only recommends reductions in NCP payments as a last resort where no path to dealing with outstanding issues can be agreed. From its earliest days, the Council has used its assessment role to encourage governments to address competition concerns comprehensively, rather than seeking payment reductions for non-compliance. In this regard, where governments achieve progress against a reform objective but have not fully implemented the reform by the time of the assessment, the Council's usual approach is to recommend a supplementary assessment. The objective of the supplementary assessment is to provide additional time for full implementation where there is evidence of commitment. The Council liaises closely with all jurisdictions on its approach and signals emerging issues at an early stage.

The Council supports policies in Queensland, Western Australia and Victoria to make a share of competition payments available to local governments in recognition of the contribution of NCP reforms undertaken at that level. These jurisdictions have also assisted with training and systems development at the local government level. To the extent that NCP makes significant demands on local government, other governments could consider introducing similar arrangements. A major benefit may be greater acceptance of NCP reform at the local government level.

## Impact of the Goods and Services Tax

The NCP payments originally comprised two components:

- general purpose payments totalling $4.2 billion (in 1994-95 dollars); and
- maintenance of the real per capita guarantee of the Financial Assistance Grants (FAG) pool.

The introduction of the GST on 1 July 2000 has seen the FAG arrangements replaced with payment of GST revenues to States and Territories. NCP payments will therefore be confined to the general purpose payments element. However, the same dividend for investing in reform remains. States and Territories will now directly receive the higher taxation revenues from the GST associated with increased economic activity arising from implementation of NCP.

## An ongoing process

As the Council has noted, it is unlikely that the NCP reform agenda set out in 1995 will be implemented in full by the time of the third assessment in 2001. As a result, the Council considers it would be useful for governments to establish a process to ensure continued implementation of reform beyond that time. To this end, one option is to establish a formal assessment of reform performance beyond the third assessment. An extension of the assessment and competition payments framework could also involve extending the reform program itself into areas such as rail reform and upstream gas reform.

## Facilitating reform

One way that the Council helps to facilitate reform is by explaining NCP and its benefits to the community. As foreshadowed in last year's Annual Report, the Council has established a community information program to increase understanding and assist implementation. The program draws on successful experiences and addresses specific implementation matters.

Recent inquiries into NCP, notably the work undertaken by the Senate Select Committee and the PC, pointed to misunderstanding about NCP by substantial parts of the community. The Senate Select Committee made a number of recommendations aimed at increasing community access to information about NCP, including a recommendation for an expanded public education campaign.

The Commonwealth has provided additional funding for this project, allowing the Council to devote resources to the task of increasing community awareness and understanding of NCP. As a first step, the Council released a series of community information papers in recent months on NCP reform areas. Recent discussion papers cover such issues as shop trading hours, urban and rural water reform,

improving our taxis, the professions, a range of papers on agriculture, and an overview of what NCP is about.

The Council publishes a range of other material to help promote better understanding of NCP reform and to assist stakeholders in the reform process. A third edition of the *Legislation Review Compendium*, published in December 1999, consolidates jurisdictions' annual progress reports in this area. The Compendium, which is developed with the assistance of governments, will be updated and a further edition published in 2001. The Council continues to update its legislation review database as information is made available by governments, and proposes to add relevant material to its website.

## Access to infrastructure

An access regime gives a business a legal avenue to use the services of infrastructure owned by another business. For example, an electricity generating company may be able to gain a legal right to have its electricity transmitted through another company's electricity grid. The NCP access reforms are set out in Part IIIA of the TPA.

Part IIIA, and Part XIC of the TPA (covering access to telecommunications services) are scheduled for review in 2000. The *Prices Surveillance Act* will also be reviewed. The Council notes that prices surveillance offers a possible alternative to access regulation as a response to natural monopoly ownership of infrastructure – particularly where an infrastructure owner has little or no incentive to restrict access.

### Costs and benefits of access regulation

Owners of major infrastructure facilities – such as ports, aerodromes, roads, rail networks, gas pipelines, electricity grids, telephone lines, and radio communications networks – often have substantial market power. This is because:

- these major infrastructure facilities tend to be natural monopolies – a single facility can meet market demand at less cost than two or more facilities, making duplication unnecessary and wasteful; and

- access to certain infrastructure facilities may be essential for businesses operating in upstream or downstream markets. For example, electricity generators must have access to an electricity grid to deliver their product.

One way infrastructure operators could seek to exploit their market power is by restricting output and charging monopolistic prices to businesses using the infrastructure. If an infrastructure owner has a commercial interest[4] in upstream or downstream markets, it might deny its competitors access altogether.

To address the risk of monopoly pricing (and restricted competition in dependent markets) and wasteful duplication of major infrastructure facilities, governments have introduced legislated access regimes. By allowing third parties to use major infrastructure facilities on commercial terms and conditions, access encourages new firms to enter upstream and downstream markets. The aim is for this to instil greater competition in those markets. While business users are often the direct beneficiaries, the benefits are passed on to households through lower prices and/or better service for end products. Australian industry is also made more competitive, creating scope for stronger economic growth and job creation.

However, access regulation can entail costs if it is applied inappropriately or too widely. Concerns are sometimes expressed that access regulation can deter decisions to invest in new infrastructure, or that it is an inappropriate intrusion on property rights, especially in relation to privately-owned infrastructure. Some argue that access regulation heightens sovereign risk and undermines opportunities to earn blue-sky profits in high-risk markets.

On the other hand, those seeking access argue that it is not sensible to force them to invest in new infrastructure at high cost to the whole community when existing facilities have spare capacity, and all users can be supplied at lower cost if existing facilities are shared.

The Council considers that access regulation is intrusive, and should only be imposed where competition and public interest benefits are likely to outweigh the costs. The Council gives careful consideration to balancing the benefits of access for potential users with the costs to existing and potential infrastructure operators. It also aims to be responsive to the needs of governments and the wider community.

In considering these trade-offs, the Council notes that access is a highly targeted area of regulation applicable to a narrow range of infrastructure with natural

4 A commercial interest may derive from an equity, joint-venture or contractual arrangement.

monopoly characteristics. And where access *is* needed to promote competition in related markets and the efficient utilisation of infrastructure, the Council seeks to minimise any disincentives for new investment.

Part IIIA of the TPA recognises these issues by:

- limiting its scope to a narrow range of infrastructure with natural monopoly characteristics;
- acknowledging the importance of existing contractual rights;[5]
- ensuring that regulatory and arbitration processes take into account the interests of infrastructure owners; and
- requiring that access regulation under Part IIIA only be applied where it promotes competition in other markets and where net public interest benefits are likely to arise.

It should be borne in mind that the goals of promoting competition and fostering infrastructure investment are often mutually supportive. For example, new investment in infrastructure helps to promote access by making new capacity available.

At the same time, access can expand opportunities for investment by facilitating market growth upstream and downstream. For example, an objective of the National Gas Pipelines Access Regime (National Gas Regime) is to expand the market for natural gas by enabling customers to access spare capacity in gas pipelines. This in turn may help promote new investment in transmission pipelines.

## The Council's roles in access

The Council plays three roles in access. It makes recommendations to governments on the following matters:

- which infrastructure services should be declared for access. Declaration imposes the access regulation in Part IIIA;
- whether an access regime developed by a State or Territory government can be certified as 'effective.' If a regime is certified, it overrides Part IIIA and exclusively governs access to the relevant services; and

5 See, for example, clause 44W(1)(c) of the TPA and clause 6(4)(d) of the CPA.

- which gas pipelines should be subject to access regulation under the National Gas Code. The Code was developed to reflect the objectives of Part IIIA.

The Council conducts open and transparent processes in its work in access, with its recommendations to Ministers made available on the Council's web site.

An overview of recent work by the Council in access is provided below, and is expanded upon in Part B2 of this report.

## Certification of access regimes

Over the last year, the Council continued to work closely with jurisdictions to develop access regimes that satisfy the certification requirements. The Council understands that this pathway to access is often preferable to infrastructure owners and access seekers through the regulatory certainty it provides compared with the uncertainty over outcomes associated with declaration. The resolution of access issues is also a critical underpinning for new investment.

In 1999-2000, the following access regimes were certified as effective :

- Northern Territory/South Australian Rail Access Regime;
- NSW Rail Access Regime; and
- Western Australian Gas Access Regime.

The Council worked closely with the Northern Territory and South Australian Governments to develop a regime that would not rule out investors in the proposed Darwin to Tarcoola rail line achieving a commercial return. At the same time, the Council sought to achieve good outcomes in rail freight charges that will benefit consumers.

## Activity under the National Gas Code

The Council plays an ongoing role under the National Gas Code as coverage advisory body. A party who wishes to have a gas pipeline 'covered' – regulated under the National Code – or to have coverage of a pipeline revoked, must apply to the Council. The Council's recommendations on coverage matters are conveyed to the relevant Minister.

The Council handled 10 matters under the National Gas Code in 1999-2000, including one application for coverage under the Code and nine applications for revocation of coverage. The Council recommended removal of regulation in a majority of cases, reflecting its preference for light-handed regulation. Removal of access regulation on a number of small pipelines in Western Australia, South Australia and the Northern Territory is expected to save the pipeline companies hundreds of thousands of dollars in compliance costs, in turn, avoiding these costs being passed onto consumers. It also allows regulators to focus their resources on those pipelines where access regulation is likely to bring tangible benefits.

## Access publications

During 2000, the Council developed new guides to assist parties interested in access issues. Drafts were circulated to jurisdictions and other stakeholders for comment, with publication to follow in late 2000.

The two publications – *Guide to Declaration* and *Certification of Access Regimes* – cover access pathways in which the Council plays a role. Information on the third pathway – access undertakings – is available from the Australian Competition and Consumer Commission (ACCC). The Council is not directly involved with the access undertakings route.

The guides draw on relevant authorities and the Council's approach to declaration and certification applications since 1996, illustrating the Council's thinking as it has developed through dealing with these applications. The Council plans to update the guides periodically, with the relevant version available on its website at http://www.ncc.gov.au

# A4 Competition in the public interest

The past year has seen extensive public discussion about the importance of governments taking account of the interests of rural and regional communities in developing policies, including NCP. This discussion focused particularly on concerns that NCP is impacting directly on rural communities and contributing to social dislocation including population decline in some communities, regional unemployment and the withdrawal of government and other services, while benefits are flowing disproportionately to metropolitan areas.

Two major inquiries looked into these questions during the year. The PC assessed the economic and social effects of NCP on rural and regional Australia and the impacts of reforms on rural and regional communities relative to cities (PC 1999a). The PC undertook a comprehensive investigation of NCP, travelling widely, holding discussions with almost 1000 people from all walks of life and receiving some 300 submissions.

The PC found that, as well as helping improve Australia's overall economic performance, NCP will bring net benefits to businesses and consumers in rural and regional Australia. It found that, to date, the reforms have produced cost reductions for large rather than small businesses, and for business users rather than residential customers, but that benefits would spread to smaller users over time. The PC also noted that improved competitiveness of businesses supplying rural firms and consumers is likely to indirectly benefit country communities through reduced costs and prices and increased output and employment.

Contrary to the perception of some, the PC found that many parts of rural and regional Australia are growing, particularly those on or near the coast, with increasing employment and rising living standards. While observing a decline in population in some regions, the PC found this was related more to demographic factors and lifestyle preferences than NCP. The Commission's modelling found that virtually all regions will gain as the benefits from NCP reform flow to the economy.

The Senate Select Committee on the Socio-economic Consequences of National Competition Policy (Senate Select Committee) also investigated community attitudes to NCP, general micro-economic reform and globalisation (Senate Select Committee 2000). The Senate Select Committee received evidence to support the

PC finding that NCP is bringing benefits overall. The Committee also found that many people, although not all, accept that NCP provides a net benefit. However, it observed that people also reject individual changes where direct costs (such as increased unemployment or reduced social infrastructure) are severe.

Both reports found that NCP is only one of many factors contributing to rural uncertainty. The reports found that much of the hardship in rural and regional communities stems from declining business and employment opportunities caused by falling world prices for agricultural commodities, improvements in farm productivity (reducing the demand for labour), and a population drift towards larger regional centres and the cities. Branch closures by banks, for example, are commercial decisions reflecting dwindling commerce in many rural and remote areas, and have little or nothing to do with NCP.

In addition to this, both inquiries found continuing misunderstanding about the scope and requirements of NCP. For example, both noted that many people associate NCP with government policy decisions such as privatisation, compulsory competitive tendering or the withdrawal of government services. In fact, none of these is required by NCP. However, because the NCP agreements do not contain clearly defined reform initiatives, and because governments often cite NCP as the reason for decisions to privatise or reduce funding for an activity, NCP tends to be not well understood by many people.

## Socio-economic effects of change

The Council well recognises that NCP, while benefiting Australia overall, can have significant impacts on those directly affected by change. These people are likely to work in industries that have previously been sheltered from competition or live in communities dependent on such industries. For example, while recent structural reforms including NCP have contributed to strong economic growth and helped to reduce unemployment nationally, there have also been significant job losses in some of the industries in the front line of change – including electricity, gas, railways and telecommunications.

The NCP framework calls for an assessment of these costs and benefits – through a public interest test – prior to implementing reform. Even so, some reforms that impose costs on certain groups will still proceed – because the benefits to the community as a whole are found to be greater. It is important that the community

has good information about the nature of these trade-offs. One way to achieve this is to ensure that the NCP public interest test is transparent, rigorous and independent. In this way, the community can have confidence that the test is being applied fairly, and that resulting policy outcomes are warranted.

There may also be a case for governments to assist adjustment, particularly where adjustment pressures are severe or develop rapidly, or are concentrated on regions where there is little opportunity for alternative employment. Where this occurs, the generally available social welfare safety net may not be sufficient. In these circumstances, the Council sees a strong case for considering region-specific assistance on a case-by-case basis, to ensure the social fabric binding local communities is not unduly damaged while enabling a reform benefiting the broader community to proceed.

A key focus of such assistance should be to help people adjust to change. Assistance should be of limited duration and tailored to the particular dislocation. Examples of such assistance include assisting people to leave a particular activity, or assisting businesses to help them adapt to changed circumstances. Adjustment burdens can also be eased through education and retraining that make people more adaptable to change.

Sometimes, reforms can be phased in over time. This eases adjustment pressures by spreading the effects of change over a longer period. In several areas to date, the Council has accepted proposals by governments for transitional arrangements as a means of smoothing the adjustment burden. There is a downside to phasing though. If a reform is found to be beneficial, then delaying its full implementation can reduce the benefits to others.

## Assessing the costs and benefits of reform under NCP

Underlying NCP is the recognition that open domestic competition provides the greatest benefit to Australia's economic growth, employment and living standards, particularly in a highly competitive international environment. As a consequence, governments undertook to implement the key CPA reforms – the application of competitive neutrality principles and the removal of legislative restrictions on competition – unless there is evidence that this would adversely affect the community as a whole. This has been the direction taken in Australian competition law for over 25 years.

How the interests of the whole community are assessed and determined is therefore an integral factor in implementing NCP and, hence, in the success of the reforms. The 'public interest test' in the CPA includes a wide range of factors relevant to assessing community benefits and costs. These include the environment, employment, social welfare and consumer interests as well as business competitiveness and economic efficiency (see Box A2). Social and environmental matters have as much importance as financial and efficiency considerations.

## Box A2 Assessing the net community benefit from reform

Under clause 1(3) of the Competition Principles Agreement, governments are to take into account the following factors, where relevant, when assessing the merits of reforms in relation to competitive neutrality, anti-competitive legislation and the structure of public monopolies:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

The list is open-ended, meaning that any other relevant matter should also be considered when assessing the merits of a particular course of action or the best means of achieving a policy objective.

An important challenge is to achieve outcomes that benefit the community as a whole, rather than provide special treatment for certain groups at the expense of others. At the same time, it is important that the impacts of reform on individuals, regions and industries directly exposed to reform are taken into account. As part of this, any trade-offs between the interests of different groups should be made explicit so that governments can objectively consider whether compensation measures are warranted for groups that may be adversely affected.

For these reasons, the Council has consistently stressed the importance of independent, transparent and rigorous processes by governments in considering public interest matters. This is essential to maintain community confidence that factors relevant to the community have been examined objectively. This is also the advice from the PC and Senate Select Committee inquiries. Both, in essence, recommended more transparent processes and wider availability of information on the application of the test.

In particular, both inquiries recommended that governments develop a set of basic principles for applying the CPA test. The earlier Hawker Committee made a similar recommendation (HRSCFIPA 1997). The aim of establishing clear principles is to provide greater guidance to reviewers and to the community, in order to reduce confusion and misunderstanding over what constitutes the public interest. Both the PC and the Senate Select Committee also considered that the availability of illustrative 'case studies' would assist community understanding of the operation of the public interest test, and the Senate Select Committee recommended that the Council put together an information database of case studies.

The Council supports these recommendations and has done so since the inception of NCP. As noted elsewhere, the Council publishes a regular consolidation of jurisdictions' progress with legislation review and reform. The Council also commissioned the Centre for International Economics to develop guidelines for NCP legislation reviews (published in February 1999).

While supportive of the Senate Select Committee proposal that it develop a database of case studies, the Council currently lacks access to the review reports it would need to create such a database. Governments have not systematically published all review reports or made these available to the Council. In some cases, this is because resource demands have meant that governments did not adopt a full review process. More significantly, however, some governments have not released

review reports where they have judged that a review matter may raise political sensitivities.

The Council considers that open and transparent processes are the best way to engender a wider understanding of NCP and the benefits that it can bring to the community. Should governments agree to make available all review reports – and full details of their policy responses – it would no doubt strengthen public confidence in the NCP process.

# A5 Unfinished business: completing the 1995 reforms

The Council's on-going assessment of NCP implementation provides a basis for identifying outstanding reforms. Despite the progress made to date, it is clear that a significant task remains.

## Legislation review

Under the CPA, the legislation review program is to be completed by the end of 2000. Reform recommendations arising from these reviews are also scheduled to be implemented by that time, although there is scope for phased reform. While many of the laws originally identified as anti-competitive have been reviewed or have reviews in train, many pieces of legislation remain to be examined, and many reforms recommended by reviews are not yet implemented.

## Competitive neutrality

Because government businesses operate in evolving markets, the appropriate boundaries for applying competitive neutrality shift over time. The question of what businesses are significant – and should be subject to competitive neutrality policies – needs to be continually addressed at all levels of government. Given that the CPA allows flexibility in the application of competitive neutrality, there is also a need to consider whether differences across jurisdictions are in the public interest.

## Energy

In gas and electricity, fully competitive markets are unlikely to be achieved by the NCP target date of June 2001. The delay means that the reform program will need to continue beyond the Council's third tranche assessment.

The chief obstacles are delays in allowing customers choice of supplier and the ongoing nature of a number of derogations and transitional arrangements. In electricity, issues have also arisen concerning:

- the need for further interconnection within the NEM, notably between South Australia and New South Wales;
- the ongoing use of vesting contracts to manage financial risk;
- the lack of a consistent response to supply imbalances, in some cases resulting in electricity prices being inflated; and
- concerns among some parties that government owned businesses in the electricity sector may enjoy competitive advantages by virtue of their public ownership.

## Water

There is considerable way to go to complete the water reform program, which has a strong ecological focus. There are several remaining tasks, including:

- establishing legislative frameworks for water allocations and trading of entitlements;
- determining the appropriate structure of water and wastewater charges for urban and rural systems; and
- introducing the appropriate institutional arrangements.

Despite good progress in recent times, consumption-based water prices are unlikely to be in place before late 2001. Water allocations and trading systems are unlikely to be fully implemented until 2005, with allocations to be reviewed thereafter at least every five years. All States are currently identifying environmental needs. An ongoing issue will be to assess the extent to which the NCP reforms are arresting environmental degradation. Future interventions may need to be identified and agreed upon.

## Addressing the outstanding matters

The outstanding reforms, combined with the need for transitional periods in some areas, mean that considerable work will be required beyond June 2001. This was not envisaged by the 1995 competition agreements, which assumed that a fully established reform program would be in place by that time, with governments then able to continue along a well defined path.

As the Council has noted, it would be useful to establish a process to ensure continued implementation of reform beyond June 2001. This might encompass an ongoing assessment program as a basis for ongoing competition payments.

# A6 Strengthening the NCP framework

Five years on, Australia's experience indicates several areas where the NCP program could be modified to improve the quality of outcomes. The Council outlines three such areas below.

## Regulation review processes

The Council has emphasised the importance of independent and open review processes. In this way, people can have confidence that the outcomes of legislation review and reform programs have been objectively reached and address the interests of the community as a whole.

There would be value in governments confirming that clause 5 of the CPA requires independent and transparent review processes, and committing to making review reports public within a short period of their completion.

Such a commitment would help address many of the concerns identified through the PC and Senate Select Committee inquiries. In particular, the availability of review reports would provide case studies that could help explain the application of the net community benefit test of whether reform is warranted. It would also improve community awareness of the processes of reform and ensure there are ample opportunities for discussion.

## Competitive neutrality reforms

The NCP competitive neutrality reforms aim to promote an efficient allocation of resources between public and private businesses. This objective will be undermined if governments adopt approaches that unnecessarily limit the application of competitive neutrality. There is evidence that this may be occurring in relation to certain decisions by governments in relation to:

- what constitutes a significant government business, and is therefore subject to competitive neutrality arrangements; and
- the delivery of social policy objectives.

## What constitutes a significant government business

Governments have generally adopted a threshold size criterion to decide what constitutes a significant business. The specific approach varies across jurisdictions. Some require smaller businesses (including local government businesses) to be considered for competitive neutrality, or make an assessment based of whether a business is significant in its relevant market. Others identify particular businesses for application of competitive neutrality, leaving others exempt. Across Australia, this varied approach means that:

- some significant government businesses are excluded from competitive neutrality policy; and
- certain types of business fall within the ambit of competitive neutrality in some jurisdictions but not in others.

The Council considers there to be strong grounds for governments establishing a presumption in favour of the application of competitive neutrality principles. This could be done by allowing competitive neutrality complaints bodies to investigate and recommend on all formal competitive neutrality complaints, including about businesses that have not been exposed to competitive neutrality principles. The complaints unit would then be able to recommend to government whether competitive neutrality principles should apply.

The Council is aware of special cases arising for legislative or other reasons where this approach might be impractical, for example:

- the business activities of tertiary education institutions; and
- businesses that were partially privatised without being required to apply competitive neutrality principles.

## Delivery of social policy objectives

The community's best interests are likely to be served if social policy objectives can be delivered in a manner that also achieves the benefits of competition. Australian governments have generally acknowledged the principle that efficient delivery of community service obligations (CSOs) requires that CSOs be clearly defined (such as in legislation or through explicit Ministerial direction) and costed and funded directly from the relevant department's budget.

For the benefits of competitive neutrality policy to be fully achieved, governments could go further and consider adopting more contestable approaches to the delivery of social objectives. While this is not an NCP obligation, governments could ensure that CSOs are delivered competitively where there are potential competing providers, unless there is a net community benefit in adopting a different approach.

## Structural reform

Clause 4 of the CPA sets out principles for reviewing the structure of public monopolies where the introduction of competition or privatisation is contemplated. For example, industry regulation should be separated out from monopoly elements of the business. The aim is to ensure the industry is structured in a way that will reap the benefits of competition for consumers.

There is evidence, however, that governments have not always conducted clause 4 reviews in an open and independent way, potentially undermining public confidence in the outcomes. In some cases, review recommendations appear to have been ignored.

The Council has dealt with a number of access matters involving publicly owned infrastructure that have been complicated by concerns among industry players that structural reform issues had not been addressed. The issue has proved especially difficult in the case of vertically integrated monopolies. A more transparent and rigorous application of the clause 4 principles would create a better understanding of the issues involved in retaining or separating vertically integrated public monopolies.

# A7 Broadening the ambit of NCP

In addition to strengthening certain aspects of the NCP framework, the Council considers there to be a strong case for broadening the ambit of NCP to include a number of areas of the economy currently exempt from explicit reform commitments. In particular, the NCP approach could be widened to encompass rail reform and upstream gas reform.

## Rail reform

Access to rail infrastructure has dominated the Council's work in access in recent years. There have been five applications to declare rail network services – in New South Wales, Queensland and Western Australia. The Council has also considered, or is considering, applications to certify state- based access regimes in New South Wales, Western Australia, South Australia and the Northern Territory, and is expecting an application from Queensland.

A significant issue has been the ramifications of State-based access solutions for interstate rail access. Regulation of interstate services has proved difficult for the Council to deal with in the context of individual access applications. And across the Part IIIA matters the Council has considered, interstate rail operators have voiced their frustration about the slow progress in interstate rail reform and the problems they have on a daily basis with operating trains over four differently regulated networks.

Despite the 1997 Intergovernmental Agreement on Rail, there are few signs that interstate issues will be resolved in the foreseeable future. The stalemate is in contrast with the progress achieved in gas and electricity, where governments have implemented nationally consistent reform packages, with benefits being passed through to end users.

The lack of attention to resolving interstate rail access questions can be contrasted with governments' improved commitment to road transport reform under NCP. But this has increased the gap between road and rail transport, and may lead to inefficient and inappropriate use of both types of infrastructure. Many recent

reviews have stressed the need to look at road and rail transport together and develop consistent approaches across the two modes.

The Interstate Rail Operators Group (IROG) has argued that the slow pace of change may affect the future viability of the rail sector. As road and sea have become more efficient, rail's market share has fallen and will continue to do so, unless price distortions and regulatory inconsistencies across modes of transport are addressed and track access is provided on a consistent basis.

One way to promote progress would be to bring rail reform within the NCP framework to build upon the work already undertaken by governments. It would ensure that the reform program is implemented in a reasonable timeframe, assisting the development of a viable interstate rail transport sector. The Commonwealth could explicitly recognise the vital role which rail plays, particularly by ensuring adequate funding for progressing reforms, including necessary track upgrades.

Bringing rail reform within the ambit of NCP would not require overturning the work done to date. The Council has worked with governments to ensure that the New South Wales, Western Australian and South Australian/Northern Territory rail access regimes adhere to a common framework.

## Upstream gas reform

While the NCP program has delivered the significant reforms it set out to achieve in the gas pipeline sector, the 1995 agreements did not explicitly address the significant barriers to competition in gas exploration and production. These barriers cover issues such as acreage management, joint marketing of gas and access to upstream production facilities.

There have recently been some positive developments in this area, noted in section A2. However, the lack of a co-ordinated approach to upstream reform appears to be delaying potential benefits to consumers. As evidence of this, a recent report prepared for the Business Council of Australia (BCA) noted that in Western Australia – the only state with significant upstream reform – well-head gas prices have fallen by 25-50 per cent (BCA 2000).

One way to ensure that consumers benefit from gas reform would be for the NCP framework to be broadened to require governments to introduce pro-competitive arrangements in the upstream sector. In 1999, the Upstream Issues Working Group, an intergovernmental working group on which the Council was an observer, made a number of recommendations aimed at increasing competitive pressures in gas exploration and production. This work could form the basis of an agreed reform package for upstream gas markets under the auspices of NCP.

# Part B

# B1 Building on the second tranche assessment: NCP progress during 1999-2000

## B1.1 The NCP program

National Competition Policy (NCP) is part of an important ongoing process of review and reform. This continual process is necessary to ensure that laws, policies and industry structures in Australia continue to evolve in a way that enables businesses to respond flexibly to changing customer needs and new opportunities.

The role of the NCP program in this ongoing process involves:

- extending the reach of the anti-competitive conduct laws in Part IV of the TPA to virtually all private and public sector businesses. This Act protects consumers and businesses against anti-competitive practices and market rigging;
- improving the performance of essential infrastructure through implementing nationally co-ordinated reform packages in:
  - electricity: through the introduction of a fully competitive National Electricity Market by 1 July 1999 that provides for consumer choice, third party interconnection to transmission and distribution networks and non-discriminatory regulatory arrangements;
  - gas: through structural reform or ring fencing of vertically integrated transmission, distribution and retail monopolies, the establishment of a national third party access code for transmission and distribution pipelines and the removal of regulatory barriers to free and fair interstate trade;
  - water: through a strategic framework designed to create an economically efficient and ecologically sustainable water industry, including pricing reform, structural separation of institutional arrangements, water allocations and trading, and integrated catchment management and water quality guidelines; and

  - road transport: through the introduction of uniform national reforms covering heavy vehicle registration, the transport of dangerous goods, driver licensing, vehicles standards, road rules and a consistent approach to compliance and enforcement;

- establishing a legal regime for third party 'access' to the services of nationally significant monopoly infrastructure;
- reviewing, and where appropriate, reforming all laws which restrict competition by the end of the year 2000, ensuring that any new restrictions provide a net community benefit and adopting good regulatory practice in setting national standards, where these restrict competition; and
- improving the performance of government businesses through:
  - reviewing the structure of the public monopoly businesses prior to privatising those monopolies or introducing competition into the markets they serve, and ensuring that any regulatory functions previously held by the public monopoly are separated from the business and relocated within government;
  - implementing competitive neutrality principles, including a mechanism to investigate alleged breaches of competitive neutrality policy, to ensure that government businesses do not enjoy unfair advantages or disadvantages arising from their public ownership when competing with private business; and
  - considering the establishment of prices oversight arrangements to ensure that government businesses with substantial market influence do not overcharge for the services they provide.

Governments also agreed to apply NCP reform to local governments within their jurisdiction.[6]

6 For more information see the Council's publication Compendium of National Competition Policy Agreements, Second Edition.

## B1.2 Progress so far

While it is well recognised that the NCP program is large and covers some politically difficult issues much has been achieved in the last five years.

Governments have charged the Council with undertaking three assessments of their progress in implementing NCP. The first assessment was to be before 1 July 1997 (first tranche), the second before 1 July 1999 (second tranche) and the third before 1 July 2001 (third tranche).

### First tranche assessment (1997)

The first two years of the reform program, 1995 to 1997, focused on establishing the necessary policy agendas and administrative arrangements to support implementation.

All States and Territories passed legislation to extend the *Trade Practices Act 1974* (TPA) to cover all businesses. All governments also developed timetables and processes for reviewing existing and new legislation that contains restrictions on competition. They released policies for applying competitive neutrality principles to significant government businesses and established mechanisms to deal with competitive neutrality complaints. There was also substantial 'on the ground' reform in electricity and commencement of moves towards free and fair trade in gas.[7]

### Second tranche assessment (1999)

The two years following the first tranche assessment saw significant progress in reform and some real benefits emerging. The second tranche assessment recognised the broad scope of the NCP program and the strong reform performance of all Australian Governments. However, the Council did identify several areas where reform commitments had not been met.[8]

7 For more information see the Council's *Annual Report 1996-97* and *National Competition Policy: First Tranche*.

8 For more information see the Council's *Annual Report 1998-99* and *Second Tranche Assessment of Governments' Progress in Implementing National Competition Policy and Related Reforms.*

***Electricity***

The second tranche assessment recognised that the electricity reform program was well established. Structural reform of electricity utilities was complete in New South Wales, Victoria, Queensland and the ACT, and substantially progressed in South Australia and Tasmania. The National Electricity Market (NEM) was fully operational in New South Wales, Victoria, Queensland (operating a wholesale power market under the NEM rules), South Australia and the ACT. The construction of transmission links would confer full participation on Queensland (in 2000) and Tasmania (expected 2002).

The operation of the NEM represents one of the most complex of the NCP reforms. While competition in the wholesale power market is established, albeit with some transitional arrangements still to be phased out, transaction costs are so far preventing extension of full competition to individual residential customers. The benefits to customers where competition is available have been marked. Electricity tariffs for business customers have fallen by up to 50 per cent since the levels of the 1980s.

The Council's second assessment recognised the need for both the electricity industry and governments to focus on the form of retail competition to be introduced for residential customers and the manner of its introduction.

***Gas***

By the Council's second assessment it was clear that gas reform was producing substantial benefits for Australian business. While the gas reforms are largely complete, there are some remaining issues that will need to be considered by the Council in later assessments; these include:

- the finalisation of access regimes in some States and Territories; and
- solving some of the practical problems around retail competition for smaller customers, and considering the need for additional industry and consumer standards to cover such customers (such as approaches to disconnection and dispute resolution).

Reforms in the gas industry have resulted in a significant reduction in gas haulage tariffs. For example, gas transmission tariffs in Western Australia fell by 25 per

cent between 1997 and 2000, while distribution tariffs in New South Wales fell by up to 60 per cent between 1997 and 2000 (Farrant 1998, IPART 1997).

***Water***

Water reform has been a major focus of governments' NCP implementation activities over the past five years. The NCP water reform agenda is now well underway. The second assessment focused on: urban water pricing; the approaches to determining the economic viability and ecological sustainability of new investment proposals; the establishment of timetables for providing environmental allocations in stressed river systems; and establishing frameworks to allow for appropriate institutional structures and the allocation and trading of water.

Water reform highlights the multifaceted nature of NCP. The water reform package encompasses urban and rural water and wastewater industries and includes economic, environmental and social objectives. The implementation of reform is improving the efficiency and effectiveness of water service providers; developing water management planning that looks at all the effects of water use by agriculture, industry, households and the environment; and resulting in clearer rules on who is responsible for establishing and enforcing regulations in the water industry.

***Road transport***

The objective of the road reforms is to create a consistent national regulatory framework aimed at improving transport efficiency, increasing road safety and reducing the administrative and compliance costs of regulation.

CoAG endorsed a nineteen point assessment framework for the second tranche, encompassing consistency across States and Territories in relation to matters such as heavy vehicle registration, heavy vehicle dimensions, loading regulations, managing driver fatigue and driver licensing. This program was substantially completed by the time of the second tranche assessment.

***Legislation review and reform***

The legislation review program is aimed at ensuring that all legislative restrictions on competition are removed unless they can be shown to provide a net community benefit, and that new laws do not unnecessarily restrict competition. Governments' review programs cover many diverse areas, including shopping hours, marketing of

agricultural products, the finance and insurance sector, food labelling, trades and professions regulation, gambling regulation and local government planning processes.[9]

In general governments are making good progress against their legislation review schedules. This has seen the repeal of redundant legislation, amendment or replacement of legislation to reflect NCP principles and regulatory best practice, and the reform of previously protected activities. Conversely, it has also seen the retention of restrictions on competition where these have been demonstrated to provide a benefit to the community as a whole (for example, see Box B1).

### Box B1 Competition restrictions retained in the public interest

The review of the *Liquor Control Act 1987* in Victoria stated that:

> *In many cultures, including our own, liquor is regarded as a 'special' product. There are long traditions that seek to control or mediate in the consumption of liquor. This is, in part, a consequence of the possible effects of the consumption of liquor on safety, social behaviour and public health. Alcohol has a particular place in both history and contemporary society, and in many religious traditions. It is reasonable to assume that the Victorian community has an expectation that there should be some controls over the sale of liquor.*

In response to these public interest issues, the review recommends that regulations should be retained to maintain a licensing system, and licences should not be granted to drive-in cinemas, petrol stations, milk bars, convenience stores and mixed businesses. It also recommended that restrictions on the supply and sale of liquor to minors should be retained.

The legislation review program has presented some challenges to governments and the Council, and this is likely to continue. At the time of the Council's second tranche assessment, about half of the reviews on governments' agendas had been commenced or completed, but for only around 20 per cent had the implementation

9 A full list of the pieces of legislation to be subject to review is contained in the Council's publication Legislation Review Compendium, Second Edition.

of subsequent reforms been finalised. While this meant that an impressive number of reviews had been conducted within a short period, it also highlighted the task ahead: many reviews are yet to commence while large numbers are yet to progress to policy response stage. This includes some difficult reform areas, such as agricultural marketing arrangements and price support schemes, retail trading arrangements (including trading hours and liquor licensing arrangements), taxi licensing, the regulation of the trades and professions and mandatory insurance arrangements (such as workers compensation and transport accident insurance).

***Government business reform***

Reform of government businesses, which in many areas predated the formal NCP agreements, has been drawn together and considerably boosted by NCP. The focus of NCP in relation to government businesses is on three areas – structural reform, competitive neutrality and prices oversight. As a result of these reforms the productivity of government businesses has improved, average prices to consumers have fallen, there is some evidence of improvements in service quality and higher dividends have been delivered to governments.

In the case of the structural reform obligations, it is important to review an industry's structure prior to privatisation or introducing competition to an industry formerly supplied by a government monopoly. These reviews ensure that, if necessary, the structure of the industry is changed so that it is conducive to realising the greatest benefits from increased competition. In the Council's experience, governments need to be more systematic and rigorous in considering the matters in clause 4 of the CPA. While the most significant issues are usually addressed the approaches are often ad hoc. This can be problematic, particularly with privatisation, because it can be very difficult to change the structure of the business once it has been sold.

Competitive neutrality principles are now applied to the great majority of government businesses. As the implementation of competitive neutrality proceeds, the complaints handling processes are highlighting issues that all governments need to address. For example, the Coachtrans complaint in Queensland, relating to competition between bus and train passenger services, raised questions about how governments best deliver social objectives so that they also gain the benefits from competition. While this issue has emerged first in Queensland, it will need to be considered by all governments as it is likely that it will also arise in other States.

***Overall assessment***

The Council's second tranche assessment of governments' progress with implementing NCP noted that while significant overall progress had been made, there were also instances where commitments had not been met. However, given that States and Territories and the Commonwealth had demonstrated a genuine commitment of achieving appropriate reform within a reasonable period of time, the Council agreed to consider subsequent progress on each issue in supplementary assessments.

Supplementary assessments are undertaken where governments have achieved progress against reform objectives but have not implemented the objectives in full at the time of the tranche assessments. Because NCP is a comprehensive program, often demanding on resources of governments, the Council prefers to use the supplementary assessment process to allow additional time where a reform is progressing but not complete, rather than recommending a reduction in NCP payments. Where the Council considers a supplementary assessment is warranted, it defers recommendations for reduced NCP payments pending the supplementary assessment. In this way the Council focuses on approaches that promote and encourage reform.

In the second tranche assessment the Council also recommended that 25 per cent of Queensland's NCP payments be suspended because, for a number of infrastructure developments, it had not demonstrated robust and independent appraisals of the economic viability and ecological sustainability of the projects. The Council undertook to consider any further information provided by Queensland in December 1999 and consider then whether to recommend that the suspension be lifted, or converted into a reduction in Queensland's NCP payments. The NCP payments are discussed in Box B2.

## Box B2 NCP payments

Under the Implementation Agreement, the Commonwealth agreed to make payments to the States and Territories for implementing the NCP reform package. These payments recognise that NCP reforms provide dividends not just to the whole community, but also to Commonwealth revenues. The payments are an economic dividend paid by the Commonwealth to States and Territories in return for investment in NCP reform. They also ensure that some of the tax revenue gains from reform accrue directly to each responsible government as a financial incentive.

Satisfactory progress against the NCP obligations is a prerequisite for States and Territories to receive these payments; without reform implementation, there can be no reform dividends to share. The Council's assessments of State and Territory progress against the NCP obligations includes recommendations to the Commonwealth Treasurer on the NCP payments. Where governments do not invest in reforms in the public interest, reductions in NCP payments may be recommended.

However, the Council does not rely solely on the NCP payments. It uses a range of mechanisms to encourage and promote the implementation of NCP reforms. These include:

- increasing public awareness of the benefits of reform and therefore raising the general support for reform;
- being involved in individual discussions with States and Territories on possible approaches to reform;
- participating in joint government processes to develop reform approaches and overcome specific areas of difficulty; and
- making recommendations that involve combinations of supplementary assessments, suspensions of competition payments or reductions in competition payments.

## Table B1.1 Estimated annual competition payments ($m) for the period 1999-00 to 2005-06 by jurisdiction[10]

| JURISDICTION | 1999-00 | 2000-01 | 2001-02 | 2002-03 | 2003-04 | 2004-05 | 2005-6 |
|---|---|---|---|---|---|---|---|
| New South Wales | 211.9 | 156.5 | 241.5 | 248.0 | 253.5 | 260.4 | 267.4 |
| Victoria | 153.8 | 115.1 | 177.7 | 182.4 | 186.3 | 191.2 | 196.2 |
| Queensland | 120.4 | 86.4 | 133.8 | 138.2 | 142.2 | 147.1 | 152.2 |
| Western Australia | 62.5 | 45.8 | 70.8 | 73.1 | 75.1 | 77.6 | 80.2 |
| South Australia | 54.2 | 36.1 | 55.3 | 56.4 | 57.3 | 58.6 | 59.8 |
| Tasmania | 19.1 | 11.3 | 17.2 | 17.4 | 17.6 | 17.9 | 18.2 |
| Aust. Capital Territory | 10.9 | 7.5 | 11.6 | 11.9 | 12.1 | 12.5 | 12.8 |
| Northern Territory | 14.7 | 4.7 | 7.3 | 7.6 | 7.8 | 8.1 | 8.4 |
| Total | 647.6 | 463.4 | 715.2 | 735.0 | 752.1 | 773.4 | 795.3 |

Source: Commonwealth Treasury (as at July 2000)

## B1.3 Supplementary assessments

As a result of the second tranche assessment in June 1999, the Council scheduled three supplementary assessments for December 1999, March 2000 and June 2000.[11]

The Council's ability to assess reforms is confined by the nature of the assessment process contained in the NCP agreements. The Implementation Agreement provides that:

> *Prior to 1 July 1997, 1 July 1999 and 1 July 2001 the National Competition Council will assess whether the conditions for payments to the States to commence on those dates have been met.*

This means that, only matters specifically identified in the second tranche report could be included in supplementary assessments. The Council is unable to assess ongoing developments that occur after the second tranche assessment until June 2001. While the Council will raise these matters with governments as early as possible and seek a solution, it cannot formally assess the government's performance until the third tranche.

10 For the years 2001-02 to 2005-6 the table shows estimates of payments based on current CPI and population growth. Actual figures are published in each Federal Budget.

11 There are separate documents available on each of these assessments: *Supplementary Second Tranche Assessment, December 1999; Supplementary Second Tranche Assessment Road Transport Reform, March 2000;* and *Supplementary Second Tranche Assessment, 30 June 2000.*

***Supplementary assessment December 1999***

This assessment revisited reforms in water for Queensland, South Australia, Tasmania and the Northern Territory and gas and electricity reforms in South Australia. The results of this assessment are summarised in Table B1.2.

## Table B1.2 Supplementary second tranche assessment December 1999

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| Queensland | Cost and pricing reforms of urban (metropolitan and rural) water and wastewater providers. | Supplementary assessment of progress prior to 30 June 2000. |
| | Implementation of the recommendations of independent reviews on the introduction of two-part tariffs (consumption based pricing) by local government. | Supplementary assessment of progress prior to 30 June 2000. |
| | Demonstration of robust independent appraisals being conducted to determine economic viability and ecological sustainability prior to investment in rural schemes and/or implementation of the recommendations of such appraisals. | Suspension of 25 per cent of second tranche 1999-2000 competition payments be lifted. Supplementary assessment of progress prior to 30 June 2000. |
| | Separation of water service providers from regulation, standard setting and resource management functions. | Supplementary assessment of progress prior to 30 June 2000. |
| | Devolution of irrigation management. | Supplementary assessment of progress prior to 30 June 2000. |

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| South Australia | Progress with commercial water pricing. | Supplementary assessment of progress prior to 30 June 2000. |
| | Progress with implementation of electricity reforms. | Second tranche commitments met. |
| | Government's response to the recommendations of the *Cooper Basin (Ratification) Act 1975* review. | Supplementary assessment of progress prior to 30 June 2000. |
| Tasmania | Progress with water pricing reform | Supplementary assessment of progress prior to 30 June 2000. |
| | Progress with devolution of irrigation management. | Assess progress as part of third tranche assessment. |
| Northern Territory | Urban cost recovery, rates of return and cross-subsidies. | Second tranche commitments met. |
| | Bulk water pricing. | Supplementary assessment of progress prior to 30 June 2000. |
| | Separation of service provision from regulatory and standard setting functions. | Supplementary assessment of progress prior to 30 June 2000. |
| | Legislative framework for water allocation and trade. | Supplementary assessment of progress prior to 30 June 2000. |
| | Program for action on priority resources. | Second tranche commitments met. |
| | Process for ensuring the economic viability of new investment. | Second tranche commitments met. |

***Water***

*Queensland*

Several areas of water reform for Queensland were subject to supplementary assessment:

- demonstration that robust independent appraisals were being conducted to determine economic viability and ecological sustainability prior to investment in rural schemes and/or implementation of the recommendations of such appraisals;
- cost and pricing reforms for urban (metropolitan and town) water and wastewater providers;
- implementation of the recommendations of independent reviews on the introduction of two-part tariffs (consumption-based pricing) by local governments;
- devolution of irrigation management; and
- separation of water service providers from regulation, standard setting and resource management functions.

The Council was concerned that certain rural projects had not been subjected to robust independent appraisals to determine their economic viability and/or ecological sustainability prior to proceeding with the projects. The specific rural schemes were: Bedford Weir Stage II; Bingegang Weir Stage II; Dumbleton Weir Stage III; Mareeba-Dimbulah Irrigation Area; Moura off-stream storage; St George off-stream storage; Walls Weir; and Warrill Creek Diversion Weir.

In response to these concerns, the Queensland Government provided the Council with more information on specific projects and made commitments to further develop its approaches to the assessment of new projects.

In regard to the completion of environmental impact assessments by water service providers, and the apparent lack of consistency within the Department of Natural Resources (DNR) regarding responsibility for the completion of environmental impact assessments, the Queensland Government stated that it:

> *…proposes to develop guidelines to streamline the completion of environmental impact assessment for new projects. These guidelines will, amongst other things, outline arrangements for independent appraisal of environmental impacts by either independent consultants or by the Resource Regulator within DNR.*

In regard to economic viability assessments of new rural schemes, the Queensland Government stated that:

> *…proposes to develop additional economic evaluation guidelines specifically for evaluation of new rural water projects. The guidelines would, amongst other things, address:*
>
> - *evaluation of the level of cost recovery for new projects;*
> - *the relationship between economic assessment of new projects and the Queensland Treasury Community Service Obligation Guidelines; and*
> - *require that the results of the economic assessments are reported in a transparent manner.*

The Queensland Treasurer also informed the Council that the Government did not intend to proceed with the St George off-stream storage. Consequently this project was not longer an issue for the second tranche assessment.

Given the additional information and commitments by Queensland, the Council recommended that:

- the suspension of 25 per cent of Queensland's NCP payments be lifted; and
- the guidelines for development of small rural water schemes, ecological sustainability and economic viability proposed by Queensland be part of the supplementary assessment in June 2000.

In the second tranche assessment, the Queensland Government was also unable to provide the Council with sufficient information to demonstrate that all service providers had met their commitments on cost recovery (including earning a positive rate of return) and pricing. The Council had also identified problems with four local

governments not implementing two-part tariffs despite having conducted reviews that recommended their introduction.

In the course of the assessment, Queensland offered to provide further information following the collection and analysis of data by the Queensland Competition Authority (QCA). This information was expected to be available at the end of November 1999.

Following consideration of the QCA report the Council concluded that despite progress, particularly among the majority of the largest seventeen local governments, reforms had not been fully implemented across the urban water industry.

For example:

- a significant number of local governments had not even started the process of introducing full cost recovery; and
- the issues of introducing two-part tariffs in Townsville and Thuringowa were still unresolved.

The Council recommended that another supplementary assessment be conducted in June 2000. This would assess further progress on cost and pricing reforms for urban water and wastewater providers and the implementation of the recommendations of independent reviews on the introduction of two-part tariffs by local government.

The second tranche assessment also found that the arrangements in Queensland did not provide for sufficient devolution of operational management for rural water services. The supplementary assessment noted that Queensland was progressing this through a draft discussion paper. The Council concluded that the reform commitment was not met but that it would reassess progress in the June 2000 supplementary assessment.

In addition, the second tranche assessment concluded that the institutional frameworks in the Queensland water industry fell well short of the water reform requirements to separate service providers from regulation, standards setting and resource management functions.

In December, the Council was provided with copies of draft bills that would significantly improve the regulatory framework for the water industry. Therefore,

the Council concluded that although legislation was not in place and Queensland had not fully met its commitments, progress achieved meant that Queensland should be given additional time to complete the reforms. As a result, the Council decided to reassess the issues in June 2000.

*South Australia*

In South Australia, the process of reforming commercial water pricing was subject to supplementary assessment. The Council was concerned about the inclusion of free water allowances and property values in the fixed component of the two-part tariff paid by commercial water users.

Before the December supplementary assessment, South Australia advised the Council that it intended to undertake public consultation on both water and wastewater pricing.

The Council recognised that public consultation is an important part of achieving reform and that there are merits in consulting across a broad range of water pricing matters simultaneously. Therefore, while the Council had concerns about the approach to commercial water pricing, it decided to reconsider this issue in a further supplementary assessment in June 2000.

*Tasmania*

The second tranche assessment expressed the Council's concern at the lack of progress made by Tasmania in introducing two-part tariffs to urban water providers where they are shown to be cost effective. After considering the factors that had delayed progress and the fact that Tasmania had in place a process to address this issue in a timely way, the Council decided to reassess progress in December 1999.

The second tranche assessment also noted the Council's concern that current management arrangements for the State's government-owned irrigation schemes provided only limited scope for local involvement in operational management issues. However, action was being taken that would result in progress against this reform commitment so, again, the Council decided to revisit this matter in December 1999.

*Northern Territory*

In the Northern Territory there were still a number of areas where water reform commitments had not been met or where insufficient information had been provided to demonstrate compliance. These included:

- cost recovery and rates of return achieved by urban water and wastewater services and cross-subsidies;
- separation of all regulatory and service provision functions;
- removal of ties between water property rights and particular pieces of land and thus removal of all barriers to trade;
- provision of an implementation program for environmental allocations; and
- bulk water pricing and economic viability assessment processes.

In the lead up to the December supplementary assessment, the Northern Territory made significant progress towards achieving its second tranche water reform commitments and provided the Council with a substantial amount of additional information.

Based on that information, the Council was satisfied that the Northern Territory had implemented appropriate reforms for: full cost recovery, rates of return, cross-subsidies, an implementation program for environmental allocations for priority water resources, and processes for assessing the economic viability of new rural investment.

While substantial progress had been made in relation to water allocations and trading and institutional separation, legislation was still not passed to implement these reforms. Therefore, the Council concluded that it would revisit these matters in June 2000 to confirm that appropriate legislation had been passed. The Council also noted that it would look for further progress on the implementation of internal bulk water charges at that time.

***Electricity and gas reforms in South Australia***

*Electricity*

Prior to the second tranche assessment, South Australia undertook a review of the structure of the electricity supply industry, consistent with clause 4 of the Competition Principles Agreement. That review recommended some changes to the structure of the industry and its regulatory arrangements, including the establishment of an independent industry regulator. At the time of the second tranche assessment the changes to the regulatory arrangements had not been made.

By December 1999, the South Australian Independent Industry Regulator had been established with functions including the regulation of pricing and access for distribution networks and administering the licensing of electricity entities. Therefore, the Council concluded that South Australia had met its second tranche commitments in electricity reform.

*Gas*

In its second tranche assessment, the Council was unable to recommend that South Australia had met its commitment to remove regulatory barriers to free and fair trade in gas until it was notified of South Australia's official response to the review of the *Cooper Basin (Ratification) Act 1975*. The Council did not receive this information from South Australia and, therefore, undertook to reconsider the issue in the June 2000 supplementary assessment.

## Supplementary assessment March 2000

The Council's second tranche assessment found that there had been significant progress against the road reform program, with over 80 per cent of the second tranche program in place. However, only New South Wales and Victoria had implemented all elements at the time of the assessment. The March supplementary assessment considered progress with implementing the remaining road reforms.

The March assessment found that all jurisdictions, except the Northern Territory, continued to progress their road reform commitments, and had now implemented, or were in the process of implementing, the full program. Specifically:

- South Australia, Tasmania and the ACT had passed legislation and drafted associated regulations to introduce national vehicle registration and driver licensing reforms;
- parliamentary schedules in Queensland and Western Australia suggested that the necessary legislation and regulations would be in place by 30 June 2000; and
- the Commonwealth was expected to introduce its required legislation in the August 2000 sitting of parliament.

The Council proposed to conduct a further assessment of Queensland and Western Australia in June 2000 to ensure the legislation was in place and noted that it would consider recommending a reduction in NCP payments for 2000-01 at that time if those two states had not met their legislative commitments.

The Council also noted that it would review the status of the Commonwealth's legislation in June 2000, when it would assess whether the Commonwealth was in breach of its obligations.

Several jurisdictions indicated that there would be delays with 'on the ground' implementation of road reforms primarily due to the time required for computer systems development and data conversions. For instance, Queensland, South Australia, Tasmania and the ACT all advised the Council that they would experience delays with aspects of the vehicle registration and driver licensing reforms. The Council proposed to examine on the ground implementation as part of the third tranche assessment prior to July 2001.

The Northern Territory had implemented 15 of the 16 road reforms relevant to it at June 1999. At that time, it was still to take a decision on a demerit points system for licensed drivers. Subsequently, the Northern Territory has decided to introduce a demerit points system from February 2002, but only for drivers of heavy commercial vehicles that operate on interstate routes. The Council considered this proposal at odds with the demerit points element of the CoAG framework. The Council noted that it would conduct a further assessment for the Northern Territory as part of the supplementary assessment of progress in June 2000. At that time it would consider recommending a reduction in the NCP dividends to apply from 2000-01 until the Territory either agrees to implement a demerit points arrangement consistent with the CoAG framework and timetable, or demonstrates that it has an exemption from CoAG for this aspect of the road reform program.

Table B1.3 summarises the outcomes of the March assessment.

# Table B1.3 Supplementary second tranche assessment March 2000

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| Commonwealth | Supplementary assessment issue Passing amendment to *Interstate Road Transport Act 1985*. | Supplementary assessment of progress prior to 30 June 2000. |
| | National bus driving hours. | Second tranche commitments met. |
| | Uniform heavy vehicle design and construction standards. | Second tranche commitments met. |
| Queensland | Introduction of fee-free licence conversions. | Supplementary assessment prior to 30 June 2000. |
| | Nationally consistent approach to driver licence suspensions. | Assess progress as part of third tranche assessment. |
| | Heavy vehicle emission controls. | Second tranche commitments met. |
| Western Australia | Legislation to introduce national heavy vehicle registration, driver licensing reforms. | Supplementary assessment of progress prior to 30 June 2000. |
| | Regulations to introduce reforms for heavy vehicle standards, mass and loading and enhanced safe carriage and restraint of load. | Assess on the ground implementation as part of the third tranche. |
| South Australia | Systems development delaying on the ground implementation of heavy vehicle registration, and driver licensing reforms. | Legislation passed. Assess progress as part of third tranche assessment. |
| | Heavy vehicle mass and loading regulations, national mass dimensions limits and enhanced safe carriage and restraint of load regulations. | Second tranche commitments met. |
| Tasmania | Systems development delaying on the ground implementation of heavy vehicle registration, and driver licensing reforms. | Tasmania obtained an extension to implement these reform areas. Assess progress as part of third tranche assessment. |
| | Heavy vehicle driving hours. | Tasmania obtained an exemption from this reform area. |
| ACT | Implementation of driver licensing, and heavy vehicle registration and mass and loading regulations. | Legislation passed. Assess on the ground implementation as part of the third tranche. |
| | National package for the carriage of dangerous goods. | Second tranche commitments met. |
| Northern Territory | No decision to introduce demerit points arrangements. | Supplementary assessment of progress prior to 30 June 2000. |

## Supplementary assessment June 2000

This assessment revisited:

- legislation review in;
  - the dairy industry in New South Wales, Queensland, Western Australia and ACT;
  - domestic rice marketing arrangements in New South Wales;
  - compulsory third party insurance for motor vehicles in Victoria and Tasmania;
  - workers compensation insurance arrangements in Victoria;
  - professional indemnity insurance for solicitors in Victoria; and
  - the Australian *Postal Corporation Act 1989* in the Commonwealth.
- gas reform in Queensland and South Australia;
- road reforms not completed at 31 March 2000 for the Commonwealth, Queensland, Western Australia and the Northern Territory; and
- various elements of the water reform package in New South Wales, Queensland, Western Australia, South Australia, Tasmania and the Northern Territory.

In addition, the Council had deferred the second tranche assessment of Queensland's progress in implementing competitive neutrality principles. That assessment was deferred because an application for judicial review relevant to the assessment was then before the Supreme Court of Queensland. The deferral allowed time for the Supreme Court to determine the matter and for the Queensland Government to finalise its policy response.

The results of the June 2000 supplementary assessment are outlined in Table B1.4.

## Table B1.4 Supplementary second tranche assessment June 2000

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| LEGISLATION REVIEW | | |
| New South Wales, Queensland, Western Australia, ACT | Dairy | Second tranche commitments met. |
| New South Wales | Domestic rice marketing. | Reduction of $10 million in NCP payments from 31 July 2000 until agreement is reached on a Commonwealth reform model or domestic rice vesting arrangements are repealed. |
| Victoria | Compulsory third party insurance for motor vehicles. | Second tranche commitments met. Further assessment in third tranche. |
| Tasmania | Compulsory third party insurance for motor vehicles. | Second tranche commitments met. Further assessment in third tranche. |
| Victoria | Workers compensation arrangements. | Second tranche commitments met. Further assessment in third tranche. |
| | Professional indemnity insurance for solicitors. | Second tranche commitments met. Further assessment in third tranche. |
| Commonwealth | *Australian Postal Corporation Act.* | Further assessment in third tranche. |
| GAS | | |
| Queensland | Application of the National Gas Access Code. | Second tranche commitments met. |
| South Australia | Remaining recommendations of the review of the *Cooper Basin (Ratification) Act 1975.* | Second tranche commitments met. |
| ROAD | | |
| Commonwealth | Amendments to road legislation not passed. | Second tranche commitments have not been met. |
| Queensland | Introduction of fee-free licence conversions. | Second tranche commitments met. |
| Western Australia | Amendments to road legislation not passed. | Second tranche commitments have not been met. Further assessment in the third tranche. |
| Northern Territory | Failure to implement comprehensive demerit points arrangements. | Reduction of 5 % of 2000-01 NCP payments (approx $235 000) until an appropriate demerit points arrangement is agreed or exemption for this reform obtained from CoAG. |

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| WATER | | |
| New South Wales | Legislation to establish appropriate water allocation framework. | Supplementary assessment in December 2000 to ensure legislation consistent with the water framework is substantially in force, otherwise a reduction in 2000-2001 NCP payments of 5% (for the period July to December 2000, approx $7.5m) will be recommended. In addition, a suspension of 5% (for period January to June 2001) will be recommended; total of 10% of NCP payments affected. |
| Queensland | Legislation to establish appropriate water allocation framework, implement institutional separation and provide for devolution of irrigation management. | Supplementary assessment in December 2000 to ensure legislation consistent with the water framework is substantially in force, otherwise reduction in 2000-2001 NCP payments of 7.5% (for the period July to December 2000, approx $6.5m) will be recommended. In addition, a suspension of 7.5% (for period January to June 2001) will be recommended; total of 15% of NCP payments affected. |
| | Urban water pricing reform. | Suspension of 5% of 2000-2001 NCP payments (approx $4.3m) and supplementary assessment 30 September 2000 for insufficient progress with implementation of two-part tariffs. |
| Western Australia | Legislation to establish appropriate water allocation framework. | Supplementary assessment in December 2000 to ensure legislation consistent with the water framework is substantially in force, otherwise reduction in 2000-2001 NCP payments of 5% (for the period July to December 2000 approx $2.3m) recommended. In addition, a suspension of 5% (for period January to June 2001) will also be recommended; total of 10% of NCP payments affected. |
| South Australia | Further implementation of urban water and sewerage pricing reform:<br>• trade waste charges<br>• sewerage charges<br>• free water allowances<br>• commercial charges. | Suspension of 5% of 2000-2001 NCP payments (approx $1.8m) until 30 September 2000 for insufficient progress with urban water pricing reforms. Further assessment at this time and if progress remains unsatisfactory reduction in payments. |
| | Bulk water | Reform commitments met. |

| Jurisdiction | Supplementary assessment issue | Recommendation |
|---|---|---|
| WATER | | |
| Tasmania | Legislation to establish appropriate water allocation framework. | Reform commitments met. |
| | Urban water pricing reform. | Sound progress with implementation of two-part tariffs achieved, revisit in third assessment. |
| | Progress with pricing reform and CSOs provided by local government. | Second tranche commitments met. |
| Northern Territory | Bulk water charging. | Second tranche commitments met, revisit in third tranche assessment. |
| | Legislation to provide for institutional separation. | Suspension of 2.5% of 2000-2001 NCP payments (approx $120 000) and supplementary assessment 31 October 2000. If legislation not before Parliament, reduction of this amount. Supplementary assessment in December 2000 to ensure legislation consistent with the water framework is substantially in force. If still not before Parliament, further reduction of 2.5%. If before Parliament and not commenced a reduction of 2.5% (if applicable, where legislation was before Parliament by 31 October 2000) and a suspension of a further 2.5% (for period January to June 2001) will be recommended; total of 5% of NCP payments affected. |
| | Legislation to establish appropriate water allocation framework. | Second tranche commitments met. |
| COMPETITIVE NEUTRALITY | | |
| Queensland | Failure to implement a framework defining and costing rail CSOs. | The Council recommended suspension of 10% of Queensland's NCP payments for 2000-01 (about $8.6 million), pending a supplementary assessment of progress in December 2000. The Council will recommend that the suspended NCP payments be reinstated if an appropriate framework is finalised. However, the Council will recommend that the suspension become a permanent reduction if Queensland has not developed an appropriate passenger transport CSO framework for South East Queensland by 31 December 2000. |

***Legislation review and reform***

*Dairy industry: New South Wales, Queensland, Western Australia and ACT*

In its June 1999 assessment, the Council considered the dairy industry reviews conducted by the New South Wales, Queensland, Western Australia and ACT Governments. At that time, the Council expressed concerns about the conduct of those reviews, for example, the robustness of the cost benefit analysis and the independence of review panels.

Each of the reviews expressed the view that deregulation was inevitable, with market arrangements becoming increasingly difficult to sustain due to domestic and external commercial pressures. All reviews also expressed concern that reform be introduced in a manner sensitive to expected social and economic impacts on producers and rural communities.

In March 2000, all Australian Agriculture and Primary Industries Ministers signed a communique setting out governments' commitments to reform market milk regulation prior to 30 June 2000 and the provision of an industry assistance package. The Commonwealth legislation to give effect to the reform package was passed in April 2000. By June, all States and Territories had passed legislation to repeal market milk regulations in accordance with the March communique. Based on this progress the Council found that all States and Territories had met their commitments on dairy reform.

*Domestic rice marketing: New South Wales*

In 1995, the New South Wales Rice Review Group recommended that the domestic rice marketing monopoly held by the New South Wales Rice Marketing Board be deregulated, finding that this would deliver a net community benefit. The review found a case for retaining the Board's export monopoly. However, contrary to this recommendation, the New South Wales Government retained the existing vesting arrangements until 31 January 2004, with a further review in the year 2002.

In its first tranche assessment in June 1997, the Council identified the decision by New South Wales as a failure to meet its NCP obligations. The Council's recommendation did not extend to the single desk export monopoly, as the Review found it provided a net benefit.

New South Wales then committed to working with the Council towards resolving the matter consistent with its review recommendations. However, as the following twelve months saw no progress toward deregulating domestic rice market arrangements, in June 1999 the Council recommended a reduction in New South Wales' NCP payments of $10 million.

The $10 million reduction was ultimately not imposed following an in-principle agreement in April 1999 by the New South Wales Premier to deregulate domestic rice marketing. As a result of the in-principle agreement, and an expectation that this agreement would result in satisfactory progress being made, the Council was satisfied that New South Wales had met its second tranche NCP obligations. However, the Council undertook to monitor developments and make a supplementary assessment, prior to the third tranche assessment, if evidence emerged of unsatisfactory progress against this in-principle agreement.

In the following twelve months, the Commonwealth and New South Wales, in consultation with representatives of the New South Wales rice industry, worked towards achieving deregulation.

Given that there had been sufficient time since the second tranche assessment for New South Wales and the Commonwealth to have developed and agreed to a reform model in the June supplementary assessment, the Council considered that for progress to be assessed as satisfactory it would be necessary for New South Wales to:

- agree to the Commonwealth model – conditional only on the Commonwealth seeking and obtaining the agreement of all other states to the proposal; or
- repeal its domestic rice vesting arrangements.

At the time of the supplementary assessment, the Council understood that New South Wales was still to respond to the Commonwealth's proposal. Consequently, the Council concluded that New South Wales has failed to meet its NCP commitments.

The Council recommended a reduction of $10 million per annum from New South Wales' NCP payments, to be imposed from 31 July 2000. If, prior to that time, New South Wales accepted the Commonwealth proposal or repealed its domestic rice vesting arrangements in accordance with the 1995 review recommendation, the

Council would recommend that the Treasurer not impose the reduction and that the Council re-examine this issue in the third tranche assessment.

*Compulsory third party motor vehicle insurance: Victoria and Tasmania*

Victoria reviewed its compulsory third party (CTP) arrangements in 1997-98. The review found a net benefit in requiring motorists to hold CTP insurance but significant costs associated with the statutory monopoly. These included: reduced incentives for suppliers to innovate and reduce costs and prices; and constraints on consumer sovereignty. Despite the review recommendation, the then Victorian Government announced in October 1998 that it would retain the key features of the monopoly.

Tasmania reviewed its *Motor Accidents (Liabilities and Compensation) Act 1973* in 1997. The review found that the statutory monopoly delivered a net community benefit and recommended that it be retained. The Tasmanian Government accepted the review findings. The review raised several arguments in support of the monopoly, including that premiums would be higher under a competitive model and that the small size of the Tasmanian market is likely to preclude more than two providers, leading to potential oligopoly.

The Council was concerned about the rigour of the arguments supporting Tasmania's review findings. Its concerns were exacerbated by a lack of independence in the review process.

In response, both Victoria and Tasmania undertook to support a national review of the regulation of transport accident insurance. However, such a review did not receive the support of the majority of governments and therefore did not proceed.

In the absence of the national review, Victoria advised the Council in February 2000 that it intended to conduct a further State-based review of CTP arrangements. Tasmania advised the Council in June 2000 that it intended to consider its policy approach in the light of the outcome of Victoria's review, which is expected to examine other review outcomes and experience in other jurisdictions. The Council will review both of these processes in its third tranche assessment.

*Workers compensation insurance: Victoria*

Victoria reviewed its workers' compensation arrangements in 1997-98. The review recommended that the Victorian WorkCover Authority monopoly should cease and

that competition should be introduced, although it did not put forward a proposal for a competitive scheme. The then Victorian Government rejected this recommendation and decided to retain monopoly provision of workers' compensation.

In response to the Council's concerns, Victoria agreed to support a national review of workers' compensation arrangements.

However, the proposal for a national review of workers' compensation arrangements did not proceed. Because of this, Victoria decided to conduct its own independent State-based review. The Council will consider the outcome of that review in its third tranche assessment.

*Professional indemnity insurance for solicitors: Victoria*

Following a review in 1996, Victoria introduced legislation to allow lawyers a choice of insurer, with a phased transition period. However, after another review by Victoria's Legal Practice Board in 1998, the Government decided to retain the statutory monopoly in the provision of professional indemnity insurance for solicitors. Subsequently, Victoria confirmed the statutory monopoly through the *Legal Practice (Amendment) Act 1998*.

In the light of concerns expressed by the Council, the then Victorian Government committed to revisit its policy approach to the delivery of professional indemnity insurance for solicitors. The current government will release all review reports and a draft response for public discussion, prior to finalising its approach. The Council will consider the outcome of this process and the government's policy response in the third tranche assessment.

*Australian Postal Corporation Act 1989: Commonwealth*

On 19 May 1997, the Commonwealth requested the Council to review the *Australian Postal Corporation Act 1989*. The Council recommended a package of reforms for consideration by the Government and the Government announced its response in July 1998.

While the Commonwealth's proposals differ from those of the Council, both approaches are intended to increase competition in the provision of mail services while maintaining Australia Post's universal service obligation and the uniform letter rate.

Accordingly, in the second tranche assessment, the Council considered that the Commonwealth's proposed package was consistent with its NCP obligations. It noted, however, that the key to the success of the reform program was the implementation of an effective access regime. The Council concluded that, subject to putting in place an effective access regime, the Commonwealth had fulfilled its NCP obligations.

At the time of the supplementary assessment, the bill introducing an access regime for Australia Post was before the Commonwealth Parliament. As a result, the Council considered that the Commonwealth had satisfactorily met second tranche obligations.

The Council will continue to monitor implementation of the Australia Post access regime as part of the third tranche assessment.

***Free and fair trade in gas***

*Queensland*

*The Queensland Gas Pipelines Access (Qld) Bill* was passed by Parliament and assented to in May 1998. The legislation had not been proclaimed as at 30 June 1999, and was therefore not operational. Queensland informed the Council that it had chosen to delay making the National Code operational until the Council has determined whether the Queensland Gas Pipelines Access Regime (incorporating the National Code) should be certified as an effective access regime under Part IIIA of the TPA.

As the *Gas Pipelines Access (Qld) Act 1998* commenced on 19 May 2000, the Council concluded in its supplementary assessment that Queensland had met all its second tranche obligations with respect to free and fair trade in gas.

*South Australia*

South Australia's *Cooper Basin (Ratification) Act 1975* provides concessions to the Cooper Basin producers and exempts certain agreements from the operation of the TPA. The ACCC previously identified the *Cooper Basin (Ratification) Act* as a significant legislative barrier to free and fair trade in gas.

South Australia reviewed the Act during 1998. The review identified a number of restrictions on competition where the costs outweighed public benefits.

The Government advised the Council that it was amending parts of the Act but the protection afforded by the Act had been assessed as in the public interest and consequently a number of restrictions would remain.

After considering the information provided, the Council concluded that South Australia had met its obligations. It also noted that there would be benefits from increasing competition between the Cooper Basin producers. However, review of the Ratification Act on its own, and even full implementation of the review recommendations, would have little effect on the level of competition in the Cooper Basin. Changes to acreage management legislation, the release of considerable portions of the Cooper Basin through new exploration licences and the changes being introduced to the gas market in south eastern Australia through the construction of the Victorian/NSW interconnect and the Eastern Gas Pipeline, are more likely to ensure a more competitive production environment in the Cooper Basin. This environment would also improve more quickly if there were effective third party access to the Cooper Basin facilities.

***Road transport: Queensland, Western Australia, South Australia, Tasmania, ACT and Northern Territory***

*Fee-free licence conversions: Queensland*

One of the CoAG agreed reforms for the second tranche was that licences must be able to be transferred between jurisdictions free of charge and without the driver needing to sit another test. At June 1999, Queensland still charged a fee for interstate licence conversions, although the Government stated that it was preparing a new proposal for licence fee restructuring.

The Queensland Treasurer advised the Council in March 2000 that the Government expected to have arrangements for fee-free interstate licence conversions in place by 1 July 2000. Queensland had already removed the requirement that people converting interstate licences undergo a further driving test.

Queensland confirmed in June 2000 that it had implemented the regulatory changes necessary for fee-free licence conversion by 30 June 2000 and the Council concluded that it was satisfied that this approach was consistent with second tranche road transport commitments.

*Legislation to implement the national vehicle registration and driver licensing reforms: Commonwealth and Western Australia*

The Commonwealth will complete its second tranche road reform program with the passage of amendments to the *Interstate Road Transport Act 1985*. These were to have been considered by the Parliament by about April 2000, although subsequently the Commonwealth extended the timetable to early in 2001. While the Commonwealth assured the Council that it is committed to land transport reform, and in particular, to the road reforms, the extension of the deadline means that the Commonwealth will not have completed its legislation commitments by the end of June 2000. The Council considers that this breaches second tranche road reform commitments.

Western Australia reported in March 2000 that it had three Bills to amend the *Road Traffic Act 1974* in progress, and that it expected these to be passed by 30 June 2000.

On 13 June 2000, Western Australia notified the Council that, while progress is continuing, some of the amending Bills had been delayed. Western Australia expected passage of these Bills in the Spring sittings. It also advised that pending the passage of these Bills and amended regulations, many of the reforms were being implemented by administrative arrangements.

As Western Australia had not passed the legislation required to complete its second tranche road reform obligations, it was technically in breach of its second tranche obligations. However, the Council was satisfied that progress with the legislative process, coupled with the use of administrative arrangements to achieve the reform outcomes in the interim, indicated that Western Australia would complete its second tranche reforms within a reasonable period of the target set by CoAG.

The Council noted that it would monitor the passage of Western Australia's legislation in the third tranche assessment and may recommend a reduction in NCP payments if the necessary legislative and regulatory matters have not been finalised.

*Demerit points scheme: Northern Territory*

At June 1999, the Northern Territory had completed 15 of its 16 relevant second tranche road reforms. The only outstanding matter was the demerit points component of the National Driver Licensing Scheme.

This reform requires uniform national approaches for key driver licensing transactions including issue, renewal, suspension and cancellation (excluding learner and novice drivers). A demerit points system applying to all licensed drivers is a key element of these reforms, which are directed at achieving national uniformity and enhancing road safety. To date, all jurisdictions except the Northern Territory have introduced a full demerit points arrangement.

On 30 March 2000, the Northern Territory advised that it had decided to introduce a demerit points scheme in a form that would apply only to larger commercial vehicles.

The Council acknowledged that the Northern Territory had made good progress against the second tranche road reform framework. Nevertheless, the Northern Territory had not implemented a full driver demerit points scheme. Neither had it sought an exemption from the demerit points requirement, despite having had considerable time to do so. The demerit points obligation had been known for some time. The matter was brought to the Northern Territory's attention in both the June 1999 Second Tranche Assessment and the March 2000 supplementary assessment.

As a result, the Council found that the Northern Territory breached its second tranche NCP road reform obligations and recommended an annual reduction of 5 per cent in the Territory's NCP payments for 2000-01 (approximately $235 000), to apply from 2000-01. The Council will review this recommendation if the Territory either agrees to implement a demerit points arrangement consistent with the CoAG framework and timetable, or obtains an exemption from CoAG for this aspect of the road reform program.

***Water reform***

All States and Territories except Victoria and the ACT were subject to a June 2000 supplementary assessment for the implementation of water reform. In all cases, except South Australia, this assessment included consideration of whether new

water legislation had been passed which would address water allocations and trading and, in some cases, institutional reforms. Other issues included cost and pricing reforms in Queensland, South Australia and the Northern Territory and the process for assessing new infrastructure developments in Queensland.

*Water allocation and trading and institutional reforms*

New South Wales, Queensland, Western Australia, Tasmania and the Northern Territory had all been assessed in the second tranche as not having implemented a comprehensive system of clearly specified water entitlements backed by separation of water property rights from land title. They all intended to pass legislation that would address these issues. In Queensland and Tasmania, legislation was also necessary to ensure that there is sufficient separation between the water services provider and water management, standards setting and regulation.

The June 2000 supplementary assessment noted that Tasmania had passed its *Water Management Act 1999* and therefore had met its reform commitments. The Northern Territory had passed its *Water Amendment Act 2000* and, therefore, had met its commitments on allocations and trading. It had not drafted the legislation to address the institutional reform issues.

New South Wales, Queensland and Western Australia had all introduced their legislation into Parliament. In the assessment, the Council recognised that strict adherence to timelines could curtail proper public and Parliamentary debate. This may result in legislation that fails to address issues in the most appropriate manner. Therefore, having regard to the fact that the legislation was before the Parliament, the Council recommended that there be no reduction in NCP payments on account of the failure to pass legislation.

The Council concluded that it would undertake a supplementary assessment in December 2000 to ensure that legislation consistent with the water framework is substantially in force. Before that assessment, the Council will review the legislation and consider any submissions it receives concerning the consistency of arrangements with the reform commitments.

Should the legislation not be substantially in force by 31 December 2000, the Council is of the view that it will recommend a reduction in NCP payments. The Council considers that this failure will have implications for 10 per cent of the State's NCP payments for the year 2000-01 (with an additional 5 per cent in

Queensland because the legislation in that State is also necessary to address commitments on institutional reform).

The Council considers that the appropriate manner to implement this recommendation is as follows:

- that 5 per cent (7.5 per cent for Queensland) of NCP payments for the year 2000-01 be deducted for the failure to pass legislation between July and December 2000; and
- that 5 per cent (7.5 per cent for Queensland) of NCP payments for the year 2000-01 be suspended for the period January to June 2001. Following passage of the legislation, the Council will make a recommendation as to what part of the suspended payments, if any, should be paid to the State.

The Council noted that if reforms are not substantially in force by the third tranche assessment, it will consider whether the reduction in NCP payments should continue until legislation consistent with CoAG water reform commitments is implemented.

In relation to legislation to address institutional reform issues in the Northern Territory, the Council considered that the appropriate recommendation was that 2.5 per cent of the NCP payments due to the Northern Territory for the year 2000-01 be suspended until 31 October.

By 31 October 2000 the Council will undertake a further assessment when it will look to legislation for institutional reform, consistent with the CoAG water reforms, to be introduced into the Northern Territory Legislative Assembly. Should legislation not be before the Assembly, the Council will recommend that the suspended payments be converted to a permanent reduction from the Northern Territory's NCP payments, for 2000-01.

In addition, the Council recommended a further supplementary assessment for the Northern Territory in December 2000. That assessment will be along the same lines as for other States where legislation has already been introduced into Parliament. The Council will then consider whether any failure to pass the legislation should have further implications for the Territory's NCP payments.

*Queensland*

For Queensland, the June 2000 supplementary assessment also considered cost and pricing reforms and the assessment of new infrastructure developments.

Queensland had achieved progress against the milestones set by the December supplementary assessment. For example, the Council was provided with a draft of *Full Cost Pricing in Queensland Local Government – A Practical Guide* prepared by the Technical Issues Working Group and was advised that these Guidelines had been finalised without major amendment.

In addition, Queensland forwarded the QCA's *Draft Statement of Regulatory Pricing Principles* and advised that the QCA would undertake a comprehensive consultation process on the draft.

The government provided a timetable for progressing cost and pricing reform across local governments outside the largest eighteen with more than 5000 connections and a way forward for local government providers with greater than 1000 but less than 5000 connections.

Specifically on the introduction of two-part tariffs, Thuringowa had decided to introduce a two-part tariff. However, the Council is concerned at the lack of commitment to timely reform demonstrated by Townsville City Council.

While Queensland had made some progress in relation to two-part tariff commitments, a significant number of large local governments still had not provided a definite commitment on when two-part tariffs will be introduced or even when a decision would be made on their introduction. In particular, the Council considered that the position of Townsville City Council did not demonstrate a genuine commitment to considering reform within a timely manner. Similarly the Council viewed the failure of Johnstone and Cooloola to rigorously consider pricing reform breached CoAG commitments.

Therefore, given Council's significant concerns regarding the lack of progress and commitment demonstrated by Townsville, and reservations regarding progress in Johnstone and Cooloola, the Council considered that the appropriate recommendation was that 5 per cent of the NCP payments due to Queensland for the year 2000-01 should be suspended until 30 September 2000.

A suspension rather than an immediate reduction was recommended given the progress demonstrated by Queensland overall. However, by 30 September 2000 the Council will undertake a further assessment. Then the Council will consider whether Townsville has brought forward its review of two-part tariffs to before 1 July 2001 and any commitments by Cooloola and Johnstone to timely consideration of two-part tariffs.

In the June 2000 supplementary assessment, Queensland provided the Council with copies of *Guidelines for the Financial and Economic Evaluation of New Water Infrastructure in Queensland.* In correspondence to the Council, Queensland also advised that "the responsibility for management and assessment of the impact assessment process for water infrastructure transferred from [DNR] to the Environmental Protection Authority [EPA] in July 1999. While DNR (Resource Management) still has a number of functions as a concurrence agency under the assessment process, the actual assessment of impacts, including the adequacy of any studies, resides with the EPA". EPA is required to advise on the level of impacts, environmental acceptability and management/monitoring actions. DNR may be asked for expert advice but does not participate in the final assessments.

At a meeting between Council Secretariat officials and Queensland officials in June 2000, Queensland advised that small schemes will be assessed in a manner consistent with large schemes, and that the assessment will be conducted by the EPA.

The Council is satisfied that the Guidelines are consistent with CoAG commitments and that the approach proposed to considering ecological sustainability will meet Queensland's water reform commitments.

*South Australia*

In South Australia, the Council identified a range of problems with the approach to pricing urban water services. These included:

- absence of a comprehensive system of trade waste charges;
- access charges for commercial water users which are based on property values that could result in non-transparent cross-subsidies;
- sewage prices based on property values;

- the inclusion of significant free water allowances in commercial water prices; and
- an inability to calculate bulk water charges.

By June 2000, South Australia had made progress towards fully implementing a bulk water costing and charging system. The Council concluded that South Australia had met its second tranche commitments on this issue.

However, 12 months after the Council noted that it was not satisfied that CoAG commitments had been met in a number of aspects of water and sewerage pricing, South Australia was still not in a position to advise the Council on when, how or even if these concerns would be addressed. Nonetheless, acknowledging the progress achieved by South Australia overall, and advice at officer level that the Council's concerns may be addressed shortly, the Council was reluctant to recommend a reduction in NCP payments.

Therefore, the Council considered that the appropriate recommendation was that 5 per cent of the NCP payments due to South Australia for the year 2000-01 should be suspended until 30 September 2000. By 30 September 2000, the Council will complete a further assessment. It will recommend that the suspension be lifted if, by that time, the South Australian Government has announced an acceptable way forward on both water and sewerage pricing. However, should an acceptable path not be identified, the Council will recommend that the suspended payments be converted to a permanent reduction from the State's NCP payments for 2000-01.

*Northern Territory*

In June 1999, information provided by the Northern Territory was not sufficient to enable the Council to conclude that the Northern Territory had sufficiently ringfenced its bulk water and retail activities to facilitate internal and external charges. The Northern Territory has since developed its accounting mechanisms and the Council is now satisfied that second tranche commitments have been met.

***Competitive neutrality principles: Queensland***

The Council's second tranche consideration of Queensland's compliance with competitive neutrality principles took account of the implications for competitive neutrality of the Queensland Government's response to the recommendations of its competitive neutrality complaints body, the QCA, on the Coachtrans matter. The

Coachtrans matter was a complaint by a passenger bus operator, Sita Queensland (trading as Coachtrans), that Queensland Rail's (QR) passenger transport service from Brisbane to Helensvale (Gold Coast) was, among other things, not applying appropriate competitive neutrality principles in respect to fares on the route and that QR enjoyed procedural and regulatory advantages.

The QCA reported on the Coachtrans complaint in June 1998, finding that QR's fares on the Brisbane to Gold Coast route breached competitive neutrality principles but that QR did not enjoy any procedural or regulatory advantages. In August 1998, the Queensland Government rejected the QCA decision that there had been a breach of the principle of competitive neutrality in relation to the fares charged by QR. At the time, however, the Treasurer and Premier requested the Minister for Transport to develop, as a matter of priority, a comprehensive Community Service Obligation (CSO) framework for passenger transport in South East Queensland, taking account of the principle of competitive neutrality.[12]

The Council deferred the June 1999 second tranche assessment of this matter because there was an application by Sita Queensland for judicial review of the decision of the Queensland Premier and Treasurer. The Council advised Queensland that the CSO framework promised by Queensland would be a key to considering compliance.

The Supreme Court denied the application in September 1999. The Court could not be satisfied there was any error of law, in that the Premier and the Treasurer had applied some incorrect test, or that they had taken into account irrelevant considerations, in arriving at their decision.

The NCP agreements do not limit the discretion of governments to pursue broader social policies. Nevertheless, the agreements are premised on careful and systematic identification and implementation of CSOs. This is to ensure the community gains the maximum possible benefits from appropriate implementation of competitive neutrality principles, including in relation to pricing.

Queensland's 1996 policy statement emphasises the importance of effective delivery of social objectives. It states that "structural reform resulting from competitive neutrality strengthens the delivery of … Community Service Obligations (CSOs) by clearly identifying them and imposing specific performance targets and standards which must be met by the Significant Business Activity charged with their delivery."

12 Community Service Obligations are goods and/or services which a business would not provide if it considered its commercial interests only, and which the Government considers are necessary to deliver particular social objectives.

The Council considers that unless governments agree that CSOs (including the associated objectives) are to be clearly defined, costed and funded from budget as part of their NCP competitive neutrality obligations, there is a likelihood that 'social objectives' will become the justification, in effect the balancing item, for any question about pricing by government businesses. It will not be possible to satisfactorily resolve debates about what are CSOs and what is the result of government ownership.

The approach recommended by the QCA (and supported by the Premier and Treasurer in August 1998) – the development of a comprehensive CSO framework for passenger transport in South East Queensland – is the key to resolving competitive neutrality concerns about QR fares on the Gold Coast route. At the time of the supplementary assessment, however, Queensland had not finalised the framework, although it appeared possible that the framework would be available by the end of this year.

While it is now almost two years since the Premier and Treasurer undertook to ask the Minister for Transport to develop the framework, the Council acknowledges that development of the framework is a complex matter, requiring work to establish the 'efficient' price of the rail service and to define and cost the Government's social objectives for passenger transport. The Council also notes that Queensland is currently developing and entering formal contracts with QR for the rail services that QR is required to provide on behalf of the Government. These contracts should improve the transparency of CSO arrangements between the Government and QR.

The Council recommended a further supplementary assessment for Queensland in respect of competitive neutrality issues relating to passenger transport in South East Queensland prior to 31 December 2000. Further, the Council recommended that an amount equivalent to 10 per cent of Queensland's NCP payments for 2000-01 (approximately $8.6 million) be suspended pending finalisation of an appropriate framework, whereupon the suspended payment would be reinstated. The Council proposes to recommend that the suspension become a permanent reduction in Queensland's NCP payments for 2000-01 if Queensland has not appropriately resolved competitive neutrality issues, for example through the Government's proposed CSO framework, by 31 December 2000.

# B2 Access to infrastructure

## B2.1 Background

An access regime gives businesses (or individuals or other organisations) a legal avenue to share the use of infrastructure services owned by another business. For example, an electricity generating company may be able to gain a legal right to have its electricity transmitted through another company's electricity grid.

The rationale for access regulation stems from the fact that the owners of major infrastructure facilities often have substantial market power which they can exploit. There are two reasons for this.

First, major infrastructure facilities such as aerodromes, roads, rail networks, gas pipelines, electricity grids, and some communications networks, tend to be *natural monopolies* – a single facility can meet market demand at less cost than two or more facilities. This means that duplication would be unnecessary and wasteful.

Second, infrastructure owners can enjoy a strategic position in an industry because access to infrastructure facilities may be essential for businesses operating in upstream or downstream markets. For example, electricity generators must have access to an electricity grid to deliver their product.

One way infrastructure operators could seek to exploit their market power is by charging monopolistic prices to businesses using the infrastructure. This could harm competition in related markets and be detrimental to consumers. For example, if an electricity grid owner were to charge monopolistic prices, electricity generators would suffer reduced demand and electricity consumers would have to pay more for power.

Provided the business which owns or operates the infrastructure does *not* also have interests in upstream or downstream markets, the public policy issue is basically one of dealing with monopoly behaviour. An access regime is one means of restraining prices and maintaining output in these situations, although, in principle, there are also other means such as direct price monitoring or control.

More complex problems arise if a business which operates essential infrastructure also has interests in upstream or downstream markets. The business will still have incentives to charge monopolistic prices for using its infrastructure. But beyond this, it might discriminate against its competitors by offering them access only on inferior terms and conditions. Worse still, it could deny them access altogether.

To address these problems, governments have been introducing legislated access regimes. Allowing the use of infrastructure facilities access encourages new firms to enter upstream and downstream markets. This, in turn, instils greater competition in those markets, promoting more efficient use of infrastructure. Consumers will experience a wider choice of supplier, with the likelihood of a better range of services and/or lower prices.

## Part IIIA of the Trade Practices Act 1974

Part IIIA establishes principles to facilitate competitive outcomes in markets reliant on natural monopoly infrastructure.

It sets out the conditions under which businesses have a right of access to services provided by certain infrastructure facilities. It also sets out the roles and responsibilities of the government bodies which administer the regime.

Essentially, the reforms provide a regulatory framework for access negotiation supported by credible dispute resolution procedures.

***Pathways to access***

Part IIIA sets out three pathways for access to infrastructure services:

- *declaration (and arbitration):* under this approach, a business which wants access to a particular infrastructure service applies to have the service 'declared'. If it is, the business and the infrastructure operator then try to negotiate terms and conditions of access. If they fail to reach agreement, the terms and conditions are determined through legally binding arbitration;
- *certified (effective) regimes:* where an 'effective' access regime already exists, a business seeking access must use that regime. Under Part IIIA, an access regime can be certified as effective by the designated Commonwealth Minister following a recommendation by the Council.

- The criteria for assessing whether an access regime is effective focus on whether the regime has an appropriate framework to promote competitive outcomes; and
- *undertakings:* this approach allows infrastructure operators to make a formal undertaking to the ACCC setting out the terms and conditions on which they will provide access to their services. If accepted, these undertakings are legally binding, so other businesses can use them to gain access.

## B2.2 Overview of declaration activities

During 1999-2000, the Council received no new applications for declaration of services provided by infrastructure facilities. Three matters the Council had previously considered were finalised in the Federal Court and the Australian Competition Tribunal (the Tribunal).

In total, the Council has considered 21 applications for declaration since the enactment of Part IIIA. A chronological summary of these applications appears in Table B2.2 at the end of this section.

### Robe River Iron Associates application for declaration of rail services provided by the Hamersley rail line

***The application***

On 24 September 1998, the Council received an application from Robe River Iron Associates (RRIA) for declaration of the rail line service provided by Hamersley Iron Pty Ltd (Hamersley) in the Pilbara region of Western Australia. Details of this application were provided in the Council's 1998-99 Annual Report.

***Federal Court action***

On 30 October 1998, Hamersley brought an action in the Federal Court against the Council and RRIA. Hope Downs was later joined as a respondent.

Hamersley argued that the rail line service was an integral part of its production process that was exempt from the application of Part IIIA. Accordingly, Hamersley argued the Council did not have jurisdiction or power in relation to the application.

The Court handed down its decision on 28 June 1999 concluding the service to which RRIA was seeking access was an integral (and not subsidiary) part of the production process and therefore not a 'service' within the meaning of Part IIIA.

Hope Downs and the Council lodged appeals against the decision.

***Full Federal Court action***

On the first day of the hearing of the appeals, the Court was informed that RRIA had withdrawn its application for declaration of Hamersley's rail line service. After accepting undertakings from Hamersley, the Court then decided the appeals were forever stayed.

In summary, Hamersley undertook that:

- it will not enforce or otherwise seek to take advantage of paragraph 1 of the orders made by Kenny J on 3 August 1999;
- it will pay the costs of Hope Downs and the National Competition Council of the initial proceedings and of the appeal; and
- in relation to any application made under Part IIIA by Hope Downs and in relation to any proceedings (including proceedings before the Australian Competition Tribunal) in connection with that application, it will not contend that the declarations and orders made by Kenny J. in the proceedings on 28 June 1999, or the Reasons for Judgment upon which those declarations or orders were founded, give rise to any issue estoppel or res judicata affecting any contention raised by Hope Downs or the National Competition Council.

## Application for declaration of certain freight services at Sydney International Airport

***The application***

The Council's 1997-98 Annual Report provided details of an application for declaration of particular services at Sydney International Airport that related to ramp handling and cargo terminal operations. The Council had recommended declaration of some of those services and the Treasurer had accepted those recommendations. Sydney Airports Corporation (formerly Federal Airports Corporation) applied to the Tribunal for a review of the Treasurer's decision.

***Australian Competition Tribunal action***

The application was heard by the Tribunal in December 1998. The parties to the hearing were Sydney Airports Corporation, Ansett Australia, Australian Cargo Terminal Operators, South Pacific Air Motives and International Business Management Services. The Council's role was to assist, provide information and make reports as requested by the presiding member of the Tribunal (see section 44K(6) of the TPA).

The Tribunal handed down its decision on 1 March 2000.

***The decision***

The Tribunal:

- declared the service provided by the use of the freight and passenger aprons and the hard stands at Sydney International Airport for the purpose of enabling ramp handlers to load freight from loading equipment onto international aircraft and to unload freight from international aircraft onto unloading equipment;
- declared the service provided by the use of an area at Sydney International Airport for the purpose of enabling ramp handlers;
  - to store equipment used to load and unload international aircraft; and
  - to transfer freight from trucks to unloading equipment and to transfer freight from unloading equipment to trucks, at the airport.

The declarations are effective from 1 March 2000 until 28 February 2005.

The decision has clarified many of the contentious issues concerning the interpretation of the criteria for declaration. In particular, the Tribunal endorsed the view that declaration is primarily concerned with the services of natural monopoly infrastructure where access (or increased access) to those services would promote competition in another market.

Specifically, the Tribunal considered "that the 'uneconomical to develop' test should be construed in terms of the associated costs and benefits of development for society as a whole" (Tribunal 2000, paragraph 204). The Tribunal considered that this interpretation is consistent with the underlying intent of the legislation as

expressed in the second reading speech and picked up in the language of the statute.

The decision supports the concept that the 'promotion of competition' involves creating conditions or environment for improving competition from what it would be otherwise. The Tribunal considered that as:

> *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, the 'promotion of competition' test is concerned with the fostering of competition, that is to say it is concerned with the removal of barriers to entry which inhibit the opportunity for competition in the relevant downstream market (Tribunal 2000, paragraph 107).*

## NSW Minerals Council's application for declaration of rail services provided by the Hunter rail line

In its 1997-98 and 1998-99 Annual Reports, the Council provided details of the NSW Mineral Council's application. Following a decision by the Minister to not declare the service, the NSW Minerals Council applied to the Tribunal for a review of that decision.

In November 1999, the NSW Rail Access Regime was certified as 'effective'. This regime covered the services provided by rail track in New South Wales, including the Hunter Rail Line.

The NSW Minerals Council then withdrew its application for review, as there was now an 'effective' access regime under Part IIIA of the TPA, for the service.

## B2.3 Overview of certification activities

During 1999-2000, the Council received two new applications from State and Territory governments seeking to have their regimes 'certified' as effective under Part IIIA, making a total of 13 certification applications since its enactment.

To date five regimes have been certified as effective. The Council is now considering recommendations on four applications. The other application has been withdrawn.

Table B2.3, at the end of this section, summarises the Council's certification work.

### NSW Rail Access Regime

After considering the Council's recommendation, the Commonwealth Minister concluded that he would need to also consider the outcomes from several reviews on safety and timepath matters then being conducted by the NSW Government before he could conclude that the Regime is effective.

After considering the outcomes of these reviews, the Minister concluded in November 1999 that the Regime should be certified as effective until 31 December 2000.

### NT/SA Rail Access Regime

After considering the Council's recommendation, the Commonwealth Minister recommended in February 2000 that the NT/SA Rail Access Regime be certified as effective until 31 December 2030.

The Regime covers the facilities necessary for the operation of a railway from Tarcoola to Darwin. This comprises the existing line from Tarcoola to Alice Springs and a new line from Alice Springs to Darwin. The Regime commences when some services on the new part of the line are provided – this could occur before the line is fully completed. When these services are provided, the Regime will also apply to the existing line from Tarcoola to Alice Springs.

In a number of ways, regulation of entrepreneurial greenfields projects differs from that of established infrastructure facilities or facilities built to serve established markets. In particular, the Regime needs to consider the ex ante risks facing the

investor. Ignoring these risks would undermine the incentives to invest in new infrastructure projects.

However, while access arrangements must not deter efficient investment, they must also promote access and competition in related markets. The Council considers that the Regime now incorporates a balanced approach to access. It provides a framework for access negotiations that gives investors sufficient certainty to proceed with the project, while ensuring access on terms and conditions that could be expected in a competitive market.

The Regime has undergone significant change since first lodged by the NT and SA Governments in March 1999. These changes met the Council's concerns in areas such as pricing, the independence of the Regulator, the lack of a low cost dispute resolution process and cross border issues.

***Key features of the Regime***

*The independent regulator* can develop guidelines, assist in dispute resolution and generally monitor the effectiveness of the Regime.

*Competitive neutrality* provides safeguards against the infrastructure owner favouring its own rail operator at the expense of other unaffiliated operators.

*Access prices* are to be struck within a floor/ceiling band, set in accordance with efficient, forward-looking costs.

Where competition from non-rail freight provides sufficient incentive to the rail operator to minimise their costs and prices, the Regime's 'sustainable competitive' approach uses the price of the competitive non-rail freight as the starting point for calculating the rail access price between the floor/ceiling band. This ensures that access prices are based on competitive principles.

The Regime includes safeguards to ensure that monopoly rents are not built into access charges by periodically testing and, if necessary, adjusting those access prices vulnerable to monopoly pricing (priced under the floor/ceiling approach).

The access provider must develop policies on how it will manage timepath allocation and reallocation policies and day-to-day train management. These policies must be consistent with guidelines developed by the Regulator.

There are three *dispute resolution* mechanisms:

- advice from the Regulator on whether a negotiated outcome is consistent with the Regime;
- through voluntary conciliation by the Regulator; or
- full arbitration.

*Cross border issues* are important to the smooth running of interstate freight services. Several aspects of this Regime address interstate issues directly:

- specific clauses facilitate the Australian Rail Track Corporation (ARTC) negotiating broad access contracts, covering a range of freight, that it can then on-sell to other rail operators;
- the Regulator is required to consider interstate issues when developing guidelines; and
- the Regime allows for an arbitrator to be selected who can conduct arbitrations under other regimes. If this is not possible the arbitrator under this Regime must consult with arbitrators under other regimes when relevant to the dispute being considered.

The Regime has the flexibility to accommodate the national rail access approach and to facilitate co-operation and compatibility, regardless of the approach adopted for interstate freight.

The certification recommendation is for a relatively long period. To ensure the Regime operates in practice as it is intended to do, a requirement for a comprehensive *review* three years after operations commences has been included. This review will be public and conducted by the NT and SA Ministers, supported by the Regulator's assessment of the effectiveness of the Regime. This gives the NT and SA Governments an early opportunity to make the changes necessary to address any problems revealed through the first years of operations.

## Western Australian Rail Access Regime

The WA Government applied for certification of the WA Rail Access Regime in February 1999. The Council received ten submissions on the Regime and liaised with stakeholders. This process identified a number of issues, subsequently

addressed by Western Australia. Among the refinements agreed by the WA Government were:

- the creation of an independent rail access regulator with broad powers to enforce compliance with the Regime, using public and transparent processes;
- strengthened competitive neutrality provisions to address vertical integration concerns associated with the service provider;
- better access to information for market participants;
- modifications to the pricing regime to ensure that access tariffs reflect efficient practices; and
- measures to address deficiencies in the arbitration framework.

The Council released a Draft Recommendation in September 1999, stating its preliminary view that the amended WA Regime would be an effective access regime. The Council received eleven submissions on the draft and liaised further with key stakeholders. As a result of these processes, the Council identified a number of additional concerns. The Council has now reached agreement with Western Australia on addressing most of these issues. The principal amendments following the second round of consultation are:

- penalties for major breaches of the regime, including failure to provide information to the Regulator; breach of confidentiality provisions; failure to comply with ring fencing requirements; and hindering. The penalties, to be set at $100 000, will apply irrespective of whether the rail network is under public or private ownership;
- refinements to asset valuation principles such that capital charges built into access tariffs will reflect the service levels required by access seekers; and
- a common arbitrator to resolve disputes involving more than one access regime.

Discussions are continuing with Western Australia on one outstanding issue – the interface between the WA Regime and the proposed national rail access regime under the auspices of the ARTC.

## NT Electricity Access Regime

On 1 December 1999, the Council received an application from the NT Government to certify as 'effective' a regime for access to NT electricity distribution networks owned by the Power and Water Authority (PAWA). The Council published an issues paper soon after and received a number submissions.

The Council, through the public submission process, identified aspects of the Regime that it considered did not comply with clause 6 of the Competition Principles Agreement (the clause 6 principles). The Council raised these concerns with the NT Government which has agreed to make some amendments to the Regime, though some significant issues are still to be resolved. The Council intends to release a Draft Recommendation to allow for further public comment on the Regime and the proposed changes.

## NSW Gas Access Regime

The Council conveyed its recommendation on certification of the NSW Gas Access Regime to the Commonwealth Minister for Financial Services and Regulation in March 1999.

The Minister's decision has been delayed pending resolution of cross-vesting issues arising from the High Court decision in *Re Wakim: ex parte McNally*.

## Queensland Gas Access Regime

The Council received Queensland's application for certification in September 1998. After agreeing a process for consideration of the Regime with Queensland, the Council circulated an issues paper requesting comment from interested parties in April 1999.

The Queensland Gas Access Regime contains a number of derogations affecting four major transmission pipelines (see Table B2.1). The derogations quarantine the pipelines from having to comply with the tariff (pricing) principles of the National Gas Code for varying periods of time. Instead, pre-existing access tariffs approved by the Minister are scheduled to apply. The Council sought the advice of the ACCC on whether the access tariffs for these pipelines are broadly consistent with the National Gas Code.

The ACCC has now completed a substantial report on these matters and the Council is holding discussions with Queensland on its implications. The main body of the report can be viewed on the Council's website.

Having considered the ACCC report, the Council's main concerns are:

- tendering processes for three of the derogated pipelines were 'significantly inconsistent' with the tendering principles in the National Code;
- each of the derogated pipelines yield rates of return that – on at least one measure – appear unreasonably high;
- for three of the pipelines, the operator is absolved of responsibilities under the National Code to provide information to access seekers and the regulator;
- regulatory review periods for the pipelines are in the order of 20-25 years, in effect locking in demand assumptions for that duration and some of the pipelines do not return a share of profits to customers if these assumptions prove conservative; and
- for one of the pipelines, three access arrangements may be operating concurrently leading to the possibility that regulatory arrangements may be unworkable and a barrier to access for new users.

The Council notes that the Queensland Regime was enacted in May 2000. While not certified, the provisions of the Regime – including obligations on pipeline owners – now apply.

## Table B2.1 Queensland pipelines subject to derogations

| Pipeline Licence (PPL)Number | Description of pipeline | Revisions commencement date (derogation terminates) |
|---|---|---|
| 2 | Wallumbilla to Brisbane | 29 July 2006 |
| 24 | Ballera to Wallumbilla | 30 December 2016 |
| 30 | Wallumbilla to Rockhampton via Gladstone | The sooner of::<br><br>the date the capacity of the pipeline exceeds the nominal capacity specified in the pipeline license; or<br><br>the date the regulator approves revisions that must be submitted by 31 August 2016 |
| 41 | Ballera to Mt Isa | 1 May 2023 |

## Victorian Gas Access Regime

The Council received Victoria's certification application in July 1999. The Council released an issues paper and conducted a public process to assist in its consideration of the regime.

Most issues raised in the application have been examined by the Council in other contexts. A major difference between the Victorian Regime and other regimes, however, is the application of a market carriage framework for provision of access to pipelines. The Victorian application also contains a number of transitional arrangements, including a delay in its contestibility timetable.

The Council forwarded its recommendation to the Minister for Financial Services and Regulation in April 2000.

## Australian Capital Territory Gas Access Regime

The Council received the ACT Government application in January 1999 and conducted a public process to consider the Regime. The Council was satisfied that most aspects of the Regime complied with the certification principles, but raised with the ACT Government the issue of potential conflict of interest in the merged role of the regulator/arbitrator under the Regime.

In February 2000, the ACT Government passed amendments to the *Independent Pricing and Regulatory Commission Act (ACT),* including changes to the name and composition of the Commission, and changes to the legislation to the Independent Competition and Regulatory Commission (ICRC). Under these changes, the ICRC gained additional resources, roles, and standing commissioners, and the power to appoint associate commissioners for particular purposes. Further to this, in July 2000, the ICRC provided the Council with a copy of a practice direction expressing the intent that commissioners involved in regulatory decisions concerning pipelines would not be involved in subsequent arbitration decisions. The Council considered these measures adequately dealt with potential conflicts.

The ACT Government also advised the Council that it had changed its timetable for phasing in access to gas pipelines under the Regime. The Council accepted these changes in view of the practical difficulties associated with introducing access to smaller users.

The Council forwarded its recommendation to the Minister on 19 July 2000.

## Western Australian Gas Access Regime

The Council received the WA Government's application for certification of its Gas Access Regime in March 1999, and conducted a public process to assist in its consideration of the Regime.

The Council considered the Regime's timetable for phasing in competition, which provided for competitive access to the services of pipelines by 1 July 2002. The Council accepted that the timetable provided a reasonable transitional period to allow the industry to adjust to full competition.

The Council noted that the regime provided for AlintaGas to operate under reduced ring-fencing requirements until 1 July 2002 or until it is privatised. The Council considered the reduced ring-fencing provisions still provided for a significant degree of accountability and limited the possibility of cross-subsidisation, and therefore accepted them as a transitional measure. (Subsequent to the Council's recommendation, the WA Government announced in July 2000 the sale of a cornerstone stake in AlintaGas.)

The ring-fencing provisions in the Regime varied to a minor extent from the ring-fencing provisions agreed nationally. The Council considered this variation was

likely to do no more than make explicit that the Regulator could take into account tax liabilities when deciding what ring-fencing provisions to order.

The Council examined AlintaGas's ten-year exclusive franchise in Kalgoorlie/Boulder. The Council considered this franchise had only a limited impact on competition since competitors could apply for access to AlintaGas's pipelines to supply these customers. The Council noted that a condition of the franchise was that AlintaGas must lay pipelines to all gas customers in the Kalgoorlie/Boulder region, ensuring no customers would be left without gas.

As a significant number of pipelines were not covered by the Regime until 1 January 2000, the Council considered it was appropriate not to recommend certification of the Regime until after 1 January 2000.

The Council recommended certification of the Regime as effective on 4 February 2000. The Minister for Financial Services and Regulation certified the Regime effective on 31 May 2000.

## B2.4 Overview of coverage activities under the National Gas Code

The Council plays a number of ongoing roles under the National Gas Code. In particular, the Council considers applications for coverage of a pipeline – and revocation of coverage.

The Council understands the need for certainty as to the likely coverage of new infrastructure and is available to advise investors on whether a proposed new pipeline would meet the coverage criteria. Alternatively, investors may seek coverage prior to construction of a new pipeline by submitting an access arrangement to the regulator or through adopting the competitive tender process of the Code. In the 1999-2000 financial year, the Council received one application for coverage of a new pipeline under the Code.

Conversely, revocation issues arise from, for example, technological innovation and changing market conditions. During the 1999-2000 financial year the Council received six applications for revocation of coverage under the Code.

## Coverage and revocation of gas pipelines

In assessing both coverage and revocation applications, the Council must consider whether the relevant pipelines meet or continue to meet the coverage criteria laid down in the National Code.

The Council must then make a recommendation to the relevant State, Territory or Federal Minister.

***Revocation of Tubridgi and Beharra Springs Pipelines (Western Australia)***

In May 1999, Boral Energy as the owner of the Tubridgi and Beharra Springs pipelines in Western Australia applied for revocation of coverage.

The Beharra Springs pipeline is a 1.6 kilometre pipeline built as part of the development of the Beharra Springs gas field. It connects the Beharra Springs gas plant to the Parmelia pipeline.

The Council concluded that access to the Beharra Springs pipeline would be unlikely to promote competition.

The applicant argued it was unlikely that a third party would be interested in seeking access to the Beharra Springs pipeline because 'there are no other gas fields adjacent to the pipeline which could require its use', 'the remaining field life is limited', and the entire output of the field was contracted to a single user.

The Council examined whether access to the pipeline may promote competition by providing access to the Beharra Springs field as a source of gas storage once the field became depleted. The Council considered access to one additional site of gas storage would be insufficient to promote competition in the relevant market.

Accordingly, the Council recommended revocation of coverage of the Beharra Springs pipeline.

The Tubridgi pipeline is located 25 kilometres south of Onslow in WA. It connects the Tubridgi off-shore gas field to the Dampier to Bunbury Natural Gas Pipeline.

The applicant argued access to the Tubridgi pipeline would not promote competition because parties could instead access the Griffin pipeline. The Griffin pipeline runs

parallel to the Tubridgi pipeline. However, Mobil, CMS, BHP, and Western Power opposed revocation.

The Council considered access to the Tubridgi pipeline may promote competition among producers to sell gas and develop additional gas fields. The Council considered the Griffin pipeline may be unable to fully satisfy demand for transport capacity given the size of potential new developments. The Council also recognised the Tubridgi pipeline could provide different services to the Griffin pipeline such as transport of gas of different specifications, or transport to the Tubridgi field for gas storage. The Council consequently recommended continued coverage of the Tubridgi pipeline.

The Council forwarded its recommendations in respect of both pipelines on 30 July 1999. The Council's recommendations were accepted by the WA Minister for Energy, Resources Development, and Education on 20 August 1999.

***Revocation of Karratha to Cape Lambert pipeline (Western Australia)***

On 22 June 1999, Robe River applied on behalf of the joint venture owners of the pipeline for revocation of coverage of the Karratha to Cape Lambert pipeline.

The pipeline runs from main line valve number seven near the head of the Dampier to Bunbury Natural Gas Pipeline to the Cape Lambert power station (which is owned by the joint venture). The pipeline was purpose-built to supply gas to the power station, which generates electricity for the township of Wickham, and for the joint venture's operations at Cape Lambert. The pipeline has one third party user.

Despite extensive consultation, no parties made submissions as part of the public process. The Council contacted the third party user, who did not oppose revocation of coverage. As there was no evidence that any other third party had any demand for access to the pipeline, the Council concluded that coverage would not promote competition. Accordingly, on 3 September 1999, the Council recommended revocation of coverage of the pipeline.

The WA Minister for Energy, Resources Development, and Education revoked coverage of the pipeline on 24 September 1999.

***Revocation of South East Pipeline System (South Australia)***

Epic Energy applied for revocation of coverage of the South East Pipeline System on 3 December 1999. Epic is the operator of the pipeline system.

The pipeline system transports gas from Katnook to Safries, Glencoe, Mt Gambier, and Snuggery in the south east corner of South Australia.

The Council examined whether access to the pipeline system might promote competition by encouraging new producers to develop new fields in the region of the pipeline, by enabling producers to undercut competing sources of energy (such as wood waste, LPG, or electricity), or encouraging other pipelines to interconnect with the pipeline system.

After examining the evidence, the Council concluded that there were at present no commercially developable gas discoveries in the region apart from those already under production. Nor was there sufficient evidence that the prospect of access would stimulate greater exploratory work for new fields in the region.

Due to the fact that Boral provides all the gas in the region, and has secured all the capacity in the pipeline system until 2011, the Council saw little prospect that access would drive down transport costs, making gas carried in the pipeline system more competitive with other sources of energy.

There was also little evidence that interconnection was likely in the long term.

The Council recognised that if the situation changed, parties could apply for re-coverage.

On 14 March 2000, the Council recommended revocation of coverage.

On 6 April 2000, the SA Minister for Minerals and Energy revoked coverage of the pipeline system.

***Coverage of the Eastern Gas Pipeline (Victoria and NSW)***

In January 2000, AGL Energy Sales and Marketing Ltd applied for coverage of the new Duke Energy Eastern Gas Pipeline being constructed between Longford in Victoria and Horsley Park in Sydney. Duke Energy opposed coverage of the

pipeline instead arguing it should be covered under an undertaking it had lodged with the ACCC.

The Council engaged in extensive public consultation to canvass the views of producers, pipeliners, users, and other interested parties.

The Council saw two possible approaches to defining the services of the Eastern Gas Pipeline for the purposes of the coverage criteria: in terms of the markets served by the pipeline; or in terms of the start and end regions served by the pipeline.

The Council preferred the second approach because:

- users are not indifferent to the identity of the selling producer, and therefore the origin point of the gas;
- the second approach did not rely on the fact that gas is homogeneous and was therefore more consistent with the application of access regulation in other industries;
- access to pipeline transmission services within a large geographic market may be needed to promote competition in that market, and access may in turn require such services to be covered; and
- the second approach promotes the objective of the National Code of ensuring efficient development and utilisation of pipelines.

Having arrived at this view of service, the Council examined whether a competing service was provided by an existing pipeline, or whether new pipelines could be developed to provide the service.

The Council considered that, while some parties may view the Moomba to Sydney pipeline and the Eastern Gas Pipeline as providing competing services, for many access-seekers they did not. This was because:

- for producers in each basin, the two pipelines did not provide competing services;
- the two pipelines may not provide effective substitute services where gas supply from one basin is more attractive than from another basin; and
- gas users' ability to switch readily between suppliers of both gas and gas transport services was limited by contractual arrangements.

The Council considered that while the Interconnect may provide a substitute service to the Eastern Gas Pipeline for some users, the capacity of the Interconnect was significantly constrained, and it was not likely to be economic to expand the pipeline. Also, it was clear from the route taken by the Interconnect to Sydney, that it could not provide a gas transportation service to all those potential users along the route of the Eastern Gas Pipeline

Further, the Council did not consider it was economic to build a new pipeline to provide a competing service to that of the Eastern Gas Pipeline.

The Council then examined whether access to the Eastern Gas Pipeline would promote competition in the South East Australian gas sales market. In assessing this question, the Council compared whether there would be a better environment for competition with access compared to without access.

The Council considered that the low risk of entry by another pipeline (due to the current overhang of capacity and the rate of growth of demand in the gas sales market) increases the likelihood that Duke may engage in a strategy of restricting output and pricing capacity above levels that would be expected in a competitive market in anticipation that the Moomba to Sydney pipeline will follow a similar strategy.

Particular features of the marketplace reinforced the feasibility of this strategy, including:

- as a sunk investment, neither pipeline could be driven out of business, making accommodation more likely;
- the large margin between average and marginal costs in pipeline services made a price war in bundled gas supply services highly unattractive to either pipeline;
- users switching from one pipeline to the other would also need to switch producers.

The Council noted that none of the submissions from producers or users supported non-coverage, and most strongly supported coverage.

The Council concluded that access to the Eastern Gas Pipeline would promote competition in the South East Australian gas sales market.

After considering the other coverage criteria, the Council concluded that the pipeline met the coverage criteria, and that it should recommend coverage.

On 30 June 2000, the Council made its recommendation to the Commonwealth Minister for Industry, Science, and Resources.

***Revocation of the Palm Valley to Alice Springs (transmission) pipeline and the Alice Springs gas distribution network (Northern Territory)***

On 20 April 2000, the Council received applications from Envestra Limited to revoke coverage under the Gas Pipelines Access (Northern Territory) Act 1998 (NT Act) of the following natural gas pipelines owned by Envestra:

- the Palm Valley to Alice Springs (transmission) pipeline; and
- the Alice Springs gas distribution network.

On 6 July, the Council released its recommendations that coverage of each pipeline be revoked. In essence, the Council was not satisfied that regulated access to the pipelines would promote competition in another market or confer net public interest benefits. The Council had considered prospects for access to promote competition in the markets in which electricity sales and gas sales take place. Further investigation, however, did not yield sufficient evidence to warrant regulated access under the Code.

On July 26 the NT Minister for Resource Development accepted the Council's recommendations. The Minister's decision to revoke coverage of the pipelines took effect in August 2000.

***Revocation of parts of the Moomba to Sydney Pipeline System***

On 28 April 2000, the Council received an application to revoke coverage of three trunk pipelines within the Moomba to Sydney Pipeline System: the main pipeline running from Moomba to Sydney (the Moomba to Wilton pipeline) and the transmission pipelines branching off it to Canberra (the Dalton to Canberra pipeline) and Culcairn (the Young to Culcairn pipeline).

The Council released its Draft Recommendation on the application on 11 August 2000. The Draft Recommendation is to retain coverage of the three pipelines.

## Table B2.2 Summary of applications for declaration dealt with by the Council

| Application | Service | Council recommendation | Minister's decision | Outcome |
|---|---|---|---|---|
| Australian Union Students (April 1996) | Payroll deduction service provided by DEETYA | Not to declare (June 1996) | Not to declare (August 1996) | AUS applied to the Tribunal for review of the Minister's decision.<br><br>Tribunal determined not to declare (July 1997). |
| Futuris Corporation (August 1996) | WA gas distribution service | | | Application withdrawn (November 1996) |
| Australian Cargo Terminal Operators (November 1996) | Qantas ramp and cargo terminal services at Melbourne and Sydney international airports (2 applications) | | | Application withdrawn |
| Australian Cargo Terminal Operators (November 1996) | Ansett ramp and cargo terminal services at Melbourne and Sydney international airports (2 applications) | | | Application withdrawn |
| Australian Cargo Terminal Operators (November 1996) | Particular airport services at Sydney International airport (3 applications) | To declare (May 1997) | To declare (July 1997) | FAC applied to the Tribunal for review of the Minister's decision.<br><br>Tribunal determined to declare the services for a period of five years from 1 March 2000 (March 2000). |
| Australian Cargo Terminal Operators (November 1996) | Particular airport services at Melbourne International airport (3 applications) | To declare (May 1997) | To declare for a period of 12 months (July 1997) | Services declared from August 1997 until 9 June 1998. Thereafter subject to access provisions of *Airports Act 1996* (Commonwealth). |
| Carpenteria Transport (December 1996) | Qld rail services, including above rail services | Not to declare (June 1997) | Not to declare (August 1997) | Carpenteria applied to Tribunal for review of Minister's decision. Application for review was subsequently withdrawn (August 1997). |

| Application | Service | Council recommendation | Minister's decision | Outcome |
|---|---|---|---|---|
| Standardised Container Transport (February 1997) | New South Wales rail track services (Sydney to Broken Hill) | To declare (June 1997) | Deemed to be not declared due to expiry of 60 day time limit (August 1997) | SCT applied to Tribunal for review of Minister's decision.<br><br>Application for review was subsequently withdrawn following successful access negotiations. |
| New South Wales Minerals Council (April 1997) | New South Wales rail track services in Hunter Valley | To declare (September 1997) | Deemed not to declare due to lapse of time (November 1997) | NSW Minerals Council applied to Tribunal for review of Minister's decision.<br><br>Application for review was withdrawn following the certification as 'effective' of the NSW Rail Access Regime. |
| Standardised Container Transport (July 1997) | (1) WA rail track services;<br>(2) arriving/ departing services;<br>(3) marshalling/shunting service;<br>(4) marshalling/ shunting access;<br>(5) fuelling service (5 applications) | To declare (1) rail service; not to declare other services (November 1997) | Not to declare any of the 5 services (January 1998) | SCT applied to the Tribunal for a review of the Minister's decision. Application for review was subsequently withdrawn following successful access negotiations. |
| Robe River (August 1998) | Hamersley rail track services | | | Federal Court decision that service not within Part IIIA (June 1999).<br><br>Federal Court decision appealed.<br><br>Application for declaration withdrawn by Robe prior to Full Federal Court hearing. Appeal stayed. |

## Table B2.3 Summary of certification applications dealt with by the Council

| Application | Service | Council recommendation | Minister's decision | Outcome |
|---|---|---|---|---|
| New South Wales Gas Distribution Networks Regime (October 1996) | Access to services of relevant gas pipelines | To certify (May 1997) | To certify (August 1997) | Certified; only intended as interim regime |
| Victorian commercial shipping channels (December 1996) | Access to commercial shipping channels leading into Melbourne Port | To certify (May 1997) | To certify (August 1997) | Certified |
| New South Wales Rail (June 1997) | Access to rail track services | To certify (April 1999) | To certify (November 1999) | Certified |
| South Australian Gas Access Regime (June 1998) | Access to services of relevant gas pipelines | To certify (September 1998) | To certify (December 1998) | Certified |
| Queensland Rail (June 1998) | Access to rail track services | | | Application withdrawn (February 1999) |
| Queensland Gas Access Regime (September 1998) | Access to services of relevant gas pipelines | Under consideration by Council | | |
| New South Wales Gas Access Regime (October 1998) | Access to services of relevant gas pipelines | Sent to Minister, but not publicly available (March 1999) | Postponed | Certification of Regime postponed pending resolution of cross-vesting issues |
| Australian Capital Territory Gas Access Regime (January 1999) | Access to services of relevant gas pipelines | Sent to Minister, but not publicly available (July 2000) | Under consideration by Minister | |
| Western Australian Gas Access Regime (March 1999) | Access to services of relevant gas pipelines | To certify (February 2000) | To certify (May 2000) | Certified |

| Application | Service | Council recommendation | Minister's decision | Outcome |
|---|---|---|---|---|
| Western Australian Rail (February 1999) | Access to rail track services | Under consideration by Council | | |
| Northern Territory/ South Australian Rail (March 1999) | Access to rail track services | To certify (February 2000) | To certify (March 2000) | Certified |
| Victorian Gas Access Regime (July 1999) | Access to services of covered pipelines | Sent to Minister, but not publicly available (April 2000) | Under consideration by Minister | |
| Northern Territory Electricity Access Regime (December 1999) | Access to services of electricity distribution networks | Under consideration by Council | | |

# Table B2.4 Summary of applications for coverage and revocation of coverage of pipelines under National Gas Code

| Applicant | Pipeline | Decision sought | Council Recommendation | Minister's Decision |
|---|---|---|---|---|
| Southern Cross Pipelines (March 1999) | Pipeline GGTP to Mt Keith Power Station (WA) | Revocation | To revoke coverage (June 1999) | To revoke coverage (July 1999) |
| Southern Cross Pipelines (March 1999) | GGTP to Leinster Power Station (WA) | Revocation | To revoke coverage (June 1999) | To revoke coverage (July 1999) |
| Southern Cross Pipelines (March 1999) | Kalgoorlie to Kambalda (WA) | Revocation | Not to revoke coverage (June 1999) | Not to revoke coverage (July 1999) |
| Southern Cross Pipelines (March 1999) | GGTP to Kalgoorlie Power Station (WA) | Revocation | To revoke coverage (June 1999) | To revoke coverage (July 1999) |
| SAGASCO South East (May 1999) | Tubridgi Pipeline (WA) | Revocation | Not to revoke coverage (July 1999) | Not to revoke coverage (August 1999) |
| Boral Energy Resources (May 1999) | Beharra Springs Pipeline (WA) | Revocation | To revoke coverage (July 1999) | To revoke coverage (August 1999) |
| Robe River Mining Company (June 1999) | Karratha to Cape Lambert Pipeline (WA) | Revocation | To revoke coverage (Sept 1999 | To revoke coverage (Sept 1999) |
| Epic Energy SA (December 1999) | South East Pipeline System (SA) | Revocation | To revoke coverage (March 2000) | To revoke coverage (April 2000) |
| AGL Energy Sales and Marketing (January 2000) | Eastern Gas Pipeline □ (Longford to Sydney) | Coverage | To cover (June 2000) | Under consideration by Minister |
| East Australian Pipeline Ltd (now Australian Pipeline Trust) (April 2000) | Moomba to Sydney Pipeline System (main trunk line from Moomba to Wilton) | Revocation | Council decision pending. Draft recommendation is not to revoke coverage (August 2000) | |
| East Australian Pipeline Ltd (now Australian Pipeline Trust) (April 2000) | Young to Culcairn lateral (NSW) | Revocation | Council decision pending. Draft recommendation is not to revoke coverage (August 2000) | |
| East Australian Pipeline Ltd (now Australian Pipeline Trust) (April 2000) | Dalton to Canberra lateral (NSW and ACT) | Revocation | Council decision pending. Draft recommendation is not to revoke coverage (August 2000) | |
| Envestra (April 2000) | Palm Valley to Alice Springs pipeline (NT) | Revocation | To revoke coverage (July 2000) | To revoke coverage (July 2000) |
| Envestra (April 2000) | Alice Springs distribution system | Revocation | To revoke coverage (July 2000) | To revoke coverage (July 2000) |

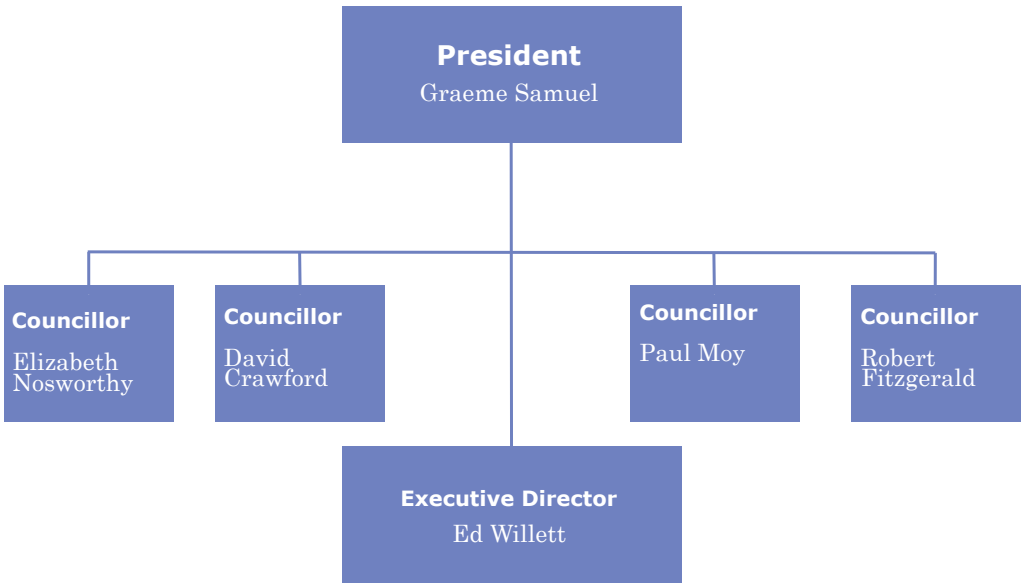
# Part C

# C1 Organisation

## C1.1 Structure

The National Competition Council currently comprises five part-time Councillors, with a secretariat of 22 staff located in Melbourne. The structure of the Council at 30 June 2000 is illustrated in Figure C1.1.

### Figure C1.1 National Competition Council organisation chart



# C1.2 The Council

## 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 are: Graeme Samuel (President); Robert Fitzgerald; David Crawford; Elizabeth Nosworthy; and Paul Moy.

***Graeme Samuel***

Graeme Samuel is a Company Director. He was a co-founder of Grant Samuel & Associates, corporate advisers.

From 1981 to 1986 Graeme Samuel 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 was also formerly a Trustee of the Melbourne Cricket Ground Trust (1992-98), President of the Australian Chamber of Commerce and Industry (1995-97); and Chairman of the Inner and Eastern Health Care Network.

Graeme Samuel attended Wesley College, Melbourne, and subsequently obtained a Bachelor of Laws from Melbourne University and a Master of Laws from Monash University, and in 1971 was awarded the Law Institute of Victoria Solicitor's Prize.

In 1998 he was appointed an Officer of the Order of Australia (AO).

***David Crawford***

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.

Between 1997 and 1998, David Crawford was Chief Operating Officer of Ranger Minerals NL. This was preceded by seven years with Wesfarmers Ltd, initially as Managing Director, Western Collieries Ltd and ultimately as Executive Director, Corporate Affairs, Wesfarmers Ltd.

Prior to this he spent twelve years with CSR Ltd, including five years as an economist and seven years with Western Collieries Ltd where he held several senior management positions. His previous committee memberships include the Australia India Business Council, Environmental Protection Authority Advisory Board, Pacific Basin Economic Council, Chamber of Mines and Energy Executive Council, WA Coal Industry Council and Australian Pacific Economic Cooperation Committee.

David Crawford has Bachelor of Economics (Hons) from the University of Queensland and an MA (Political Science) from the University of Toronto.

***Robert Fitzgerald***

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.

Robert Fitzgerald currently holds the appointment of Commissioner of Community Services in NSW. He was the Associate Commissioner on the Productivity Commission's National Inquiry into Australia's Gambling Industries in 1999.

His previous community positions include National President of the Australian Council of Social Services (1993-97), Commissioner NSW Catholic Commission on Employment Relations, State President St Vincent de Paul Society (NSW) (1989-

94), and Chairman, JOB Futures Ltd (a national network of community based employment services organisations).

He has also held other appointments including Chairman of the Franchise Code Administration Council, Chairman of the Commonwealth Franchising Task Force, member of the Advisory Council to the Law Foundation of NSW and member of the Special Policy Advisory Group to the Minister for Social Security, and Chairman of the Ministerial Task Force on Community Services (NSW).

He holds degrees in law and commerce from the University of NSW.

In 1994 he was appointed a Member of the Order of Australia (AM).

***Dr Paul Moy***

Paul Moy is an Executive Director of UBS Warburg.

His experience covers a wide range of economics and finance in the public and private sectors. Prior to joining the investment banking industry Paul Moy was Deputy Secretary of the New South Wales Treasury. He was also a key adviser in Heads of Government Meetings from 1990 to early 1994.

Paul Moy's involvement with industry and competition reform, both inside the public sector and as an adviser, spans a large number of sectors including electricity, water, rail, waste management, ports, forestry, telecommunications and grain handling. He is the Chair of the Fund Management Committee of the Industry Research and Development Board responsible for administering the Innovation Fund program, a venture capital fund targeting early stage innovation involvement.

Paul Moy has an Honours Degree and Phd in Economics.

***Elizabeth Nosworthy***

Elizabeth Nosworthy spent some 25 years as a partner in national legal practice, covering a wide range of commercial disciplines. She is currently a professional company director and a Fellow of the Australian Institute of Company Directors.

Elizabeth Nosworthy is Chairman of the Port of Brisbane Corporation. She is a Director of Telstra Corporation Limited, David Jones Limited, GPT Management

Limited, RP Data Limited, Brisbane Airport Corporation Limited, Queensland Treasury Corporation, Foundation for Development Co-operation Limited and City of Brisbane Arts and Environment Limited. She is also a Member of the Australian Greenhouse Office Experts Group on Emissions Trading, and Adjunct Professor of Law at the University of Queensland.

She holds degrees in arts and law from the University of Queensland and a Masters of Law from the London School of Economics.

## Council meetings

Table C1.1 lists the meetings of the Council held during 1999-00. While the Council generally meets on a monthly basis, its workload sometimes requires more frequent meetings. During 1999-00, the Council met on a total of 11 occasions. The Council held the meetings in Melbourne and made use of teleconference facilities to ensure the maximum number of Councillors possible were involved in the discussions.

### Table C1.1 National Competition Council meetings 1999–00

| Date of meeting | |
|---|---|
| 5 | August |
| 25 | August |
| 21 | September |
| 19 | October |
| 23 | November |
| 17 | December |
| 10 | February |
| 22 | March |
| 18 | April |
| 23 | May |
| 20 | June |

## C1.3 The Secretariat

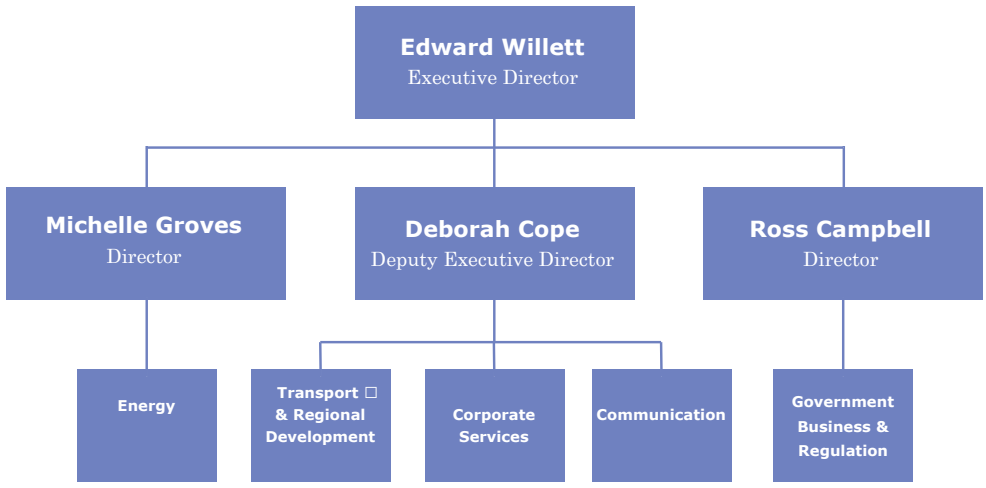
The Council is supported by a Secretariat that is located in Melbourne.

The Secretariat provides advice and analysis at the Council's direction on matters related to the implementation of NCP. It represents the Council in dealings with Commonwealth, State and Territory government officials and other parties with interests in competition policy matters.

It has been involved in several intergovernmental committees dealing with competition issues including the Gas Policy Forum, National Gas Pipelines Advisory Committee, and the Competitive Neutrality Roundtable Committee. Secretariat staff also present conference papers on issues related to the Council's work program and produce a range of publications, including community information papers which are all available on the Council's Website (http://www.ncc.gov.au).

The Council supports the consultative approach taken by the staff of the Secretariat in discussions on competition matters with officials from Commonwealth State and Territory governments, and interest groups.

### Figure C1.2 National Competition Council Secretariat organisation chart



## Overview of staffing developments

The number of Secretariat staff employed by the Council in 1999-00 increased to around 22 with the employment of two communications officers. The actual number of staff fluctuated slightly during the year. At 30 June 2000, the staff comprised the Executive Director, Deputy Executive Director, two section managers, ten research/policy officers, two communications officers, a Corporate Service Manager and three administrative staff.

The Council is a small organisation that covers a diverse range of issues, and has always drawn on the expertise of people in other organisations. As well as engaging consultants, sometimes under contract to work within the Council offices, the Council has seconded officers to work on specific projects from other government and private organisations.

The majority of Secretariat staff are employed under the Public Service Act 1999. During the year staff were covered by a Certified Agreement which governs the conditions of employment between them and Council for the period February 1999 to February 2001. Five officers have been employed on Australian Workplace Agreements and two on contracts. The Council has no inoperative staff. Information on staff profiles is provided in Tables C1.2 and C1.3 below.

## Table C1.2 Staff profile, 30 June 2000

| Level | Female | Male | Total |
|---|---|---|---|
| Senior Executive Service Band 2 & AWA | 0 | 1 | 1 |
| Senior Executive Service Band 1& AWA | 1 | 0 | 1 |
| Executive Level 2 & AWA | 5 | 6 | 11 |
| Executive Level 1 | 3 | 1 | 4 |
| Administrative Service Officer Grade 6 | 1 | 0 | 1 |
| Administrative Service Officer Grade 5 | 0 | 0 | 0 |
| Administrative Service Officer Grade 4 | 1 | 0 | 1 |
| Administrative Service Officer Grade 3 | 0 | 0 | 0 |
| Administrative Service Officer Grade 2 | 0 | 0 | 0 |
| Administrative Service Officer Grade 1 | 1 | 0 | 1 |
| Total | 12 | 8 | 20 |

## Table C1.3 Staff by employment status, 30 June 2000

| Level | Female | Male | Total |
|---|---|---|---|
| Full-time permanent | 9 | 7 | 16 |
| Full-time temporary | 2 | 0 | 2 |
| Part-time staff | 1 | 1 | 2 |
| Total | 12 | 8 | 20 |

## Senior Executive Service information

The Executive Director position is at the SES2 level and the Deputy Executive Director at SES1.

## Consultants

The Council utilised the services of consultants in 1999-00 where it considered it was efficient and cost-effective to do so. Table C1.4 lists the number and value of consultancies engaged. Some of these projects are ongoing so that the total cost will not be paid until 2000-2001. The value of consultants engaged in 1999-00, but paid in 2000-2001, was $ 31,040.

## Table C1.4 Summary of consultants engaged 1999-00

| Purpose | Number | Contract amount ($) |
|---|---|---|
| Legal advice | 3 | 163,352 |
| Economic Advice | 8 | 168,008 |
| Communications and corporate services | 3 | 32,741 |
| Computer | 1 | 6,000 |
| Total | 15 | 370,101 |

# C2 Functions

## Agency Overview

The role of the National Competition Council is to oversee and assist the implementation of national competition policy and related reforms outlined in frameworks developed and agreed by all Australian Governments. Its responsibilities include assisting public awareness of competition reform agendas, recommending on the design and coverage of infrastructure access regimes under Part IIIA of the TPA, and assessing whether States and Territories have made satisfactory progress towards competition policy reform.

The Council vision is that through constructive engagement with governments it will work towards completing the reform program originally envisaged in April 1995. The Council's second broad goal is to help the community to become better attuned to the scope and potential outcomes of competition reform. This approach will enable increased competition to be introduced where it will result in greater economic growth, less unemployment, better social outcomes and the better use of resources for all Australians.

The above vision is embodied in the Council's mission: 'To help raise the living standards of the Australian community ensuring that conditions for competition prevail throughout the economy that promote growth, innovation and productivity'.

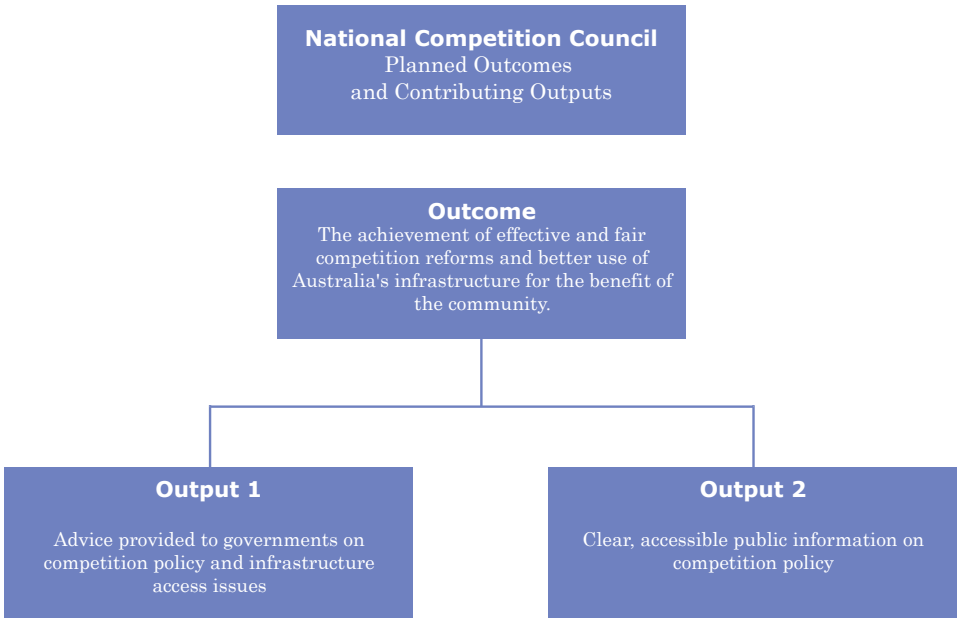
## C2.1 Agreed Outcomes and Outputs

The Council Outcomes and Outputs were developed and agreed through the Budget process and are represented in Figure C2.1.

The Council's Outcome relates to the High Level 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 C2.1 National Competition Council outcome and outputs




## C2.2 Specific functions

The Council has statutory responsibilities under both the TPA and the *Prices Surveillance Act* 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 ACCC.

Apart from these statutory responsibilities, the three NCP agreements establish a role for the Council in the following areas:

- advice on the progress made against the National Competition Policy Agreements;
- other work on competition policy as agreed by a majority of the stakeholder governments; and
- advice to the Commonwealth when considering overriding State or Territory exceptions from the TPA.

The Council also has an implied function of supporting the NCP process and appropriate reform more generally. This is reflected in its mission statement and the Council's goals set out in Box C2.1. In 1999-00 the Commonwealth Government directly recognised this role by providing the Council with $200,000 to fund its communications work.

The various functions and responsibilities of the Council are delivered through its work program areas. These are set out in Box C2.2.

**Box C2.1 The Council's goals are:**

- Facilitating timely implementation of effective and fair competition reforms by governments.
- Promotion of competition policy as an 'economic tool' for increasing the country's performance and productivity.
- Promoting better use of Australia's infrastructure.
- Building community awareness and support of National Competition Policy.
- Ensuring that the National Competition Council is a dynamic organisation, capable of providing a safe, healthy and professional work environment for its staff and developing their full potential.

### Box C2.2 The Council's work program includes:

- Facilitation and assessment of government's progress in implementing competition policy reforms.
- Provision of advice to governments on the design and coverage of infrastructure access regimes.
- Undertaking work allocated to the Council's work program by governments.
- Ongoing improvement of the Council's operational standards in leadership, strategic direction, information systems support services, resource allocation and staff development.
- Promotion of community understanding of National Competition Policy.

More information about the Council's statutory and other responsibilities, and the Council's actions in relation to them over the past year, is presented in Parts A and B of this report.

# C3 Management

## C3.1 Staff development and management

### Training

Excluding salary costs of staff undertaking training, a total of $40,350 (representing approximately 2.3 per cent of the Secretariat's salary costs), was devoted to staff training for 1999-00. All Secretariat staff received some training this year.

In-house training for all staff was held in occupational health and safety regarding staff workstations and posture, policy development, management development, strategic planning, risk management and computing skills. In addition, Secretariat staff spent 10 days in other training programs during the year. Seven staff participated in a variety of training programs in areas such as financial management, skills development, and professional development. All staff attended strategic development courses. In addition, Secretariat staff attended approximately 12 conferences on issues associated with competition policy and its implementation. Two officers are currently receiving assistance to undertake further tertiary education.

### Industrial democracy

***Industrial democracy plan***

The Council's *Industrial Democracy Plan* was the basis of its industrial democracy practices during the year. The Plan will be reviewed in 2000-01 to ensure it is meeting the needs of the Council and its staff. The Council's Deputy Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

***Consultative mechanisms***

The Secretariat Executive, which includes the Executive Director, Deputy Executive Director and the two section heads, meets weekly. Minutes of this meeting are circulated to all staff. All staff meet weekly to review the work priorities and discuss other management issues and Secretariat's work program.

These staff meetings are the principal source of informing Secretariat staff of Council decisions and inviting staff consideration of issues currently facing the Council. Proposed changes to research priorities, staffing arrangements, accommodation, office policies, information technology issues and training are discussed at these regular meetings. During 1999-00, all staff participated in decision making regarding information technology requirements (including training), planning and the roles and responsibilities of the staff meeting and the executive. Section meetings were also conducted during the year.

***Occupational health and safety***

During 1999-00, the Council undertook or continued the following initiatives to ensure the health and safety of its staff and contractors:

- participation in Occupational Health and Safety (OHS) training;
- operation of an OHS committee, which reports to the weekly staff meeting;
- encouragement of staff participation in lunch-time and after-hours exercise programs;
- eyesight testing for screen-based equipment users;
- appointment of fire wardens and fire safety training;
- the appointment of a trained First Aid Officer;
- advice on ergonomic furniture usage and posture; and
- purchase of ergonomic equipment where appropriate.

The Council received no accident/incident reports during 1999-00. There were no notices lodged or directions given to the Council under sections 30, 45, 46 or 47 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* during the year.

During the later part of 1999-00, an Occupational Health and Safety Agreement was drafted. The agreement is currently being discussed with Union representatives and it is expected that the Agreement will be finalised in the next financial year.

During the year Comcare was again consulted to advise upon the management risks associated with the Council's operations. A new set of insurance and risk management policies were implemented.

***Outsourcing (Corporate Services)***

During 1999-00 the first stages of the outsourcing of Corporate Services functions were undertaken with the following services outsourced or market tested:

- accounting and finance;
- mail out and printing;
- banking;
- payroll;
- Website restructure;
- Library services;
- maintenance of data bases; and
- personnel advice.

***Certified Agreement – 1999 to 2001***

A Certified Agreement prepared in accordance with the *Workplace Relations Act 1996* (section 170LK certification of agreement) was in operation for the 1999-00 financial year. The agreement was signed on the 12 February 1999 by the Commissioner of the Australian Industrial Relations Commission.

The purpose of the Agreement is to set out the terms and conditions of employment for Council employees below the SES level.

It details legal and administrative requirements, recognition and remuneration for performance, the working environment and redeployment, and retirement and redundancy.

***Finance and accounting***

During this financial year, the Council was required to adjust its accounting and budget systems and procedures to fall into line with accrual accounting implemented through a new Treasury[13] accounting system.

Treasury implemented the SAP (R3) Package Accounting Software and the Council's accounts have been processed on this system for the entire financial year.

The Council has worked with Treasury to implement GST. As a government body, the Council is required by the Department of Finance and Administration to reconcile its GST components on a monthly basis.

***Corporate governance***

During this period a series of policies and procedures were developed. Each staff member was issued with a Policy Manual and a separate Procedure Manual that detail the basic corporate governance matters of Council. Issues such as government values and what is expected of Commonwealth employees are detailed in these documents.

***Contracts***

During 1999-00 contracts were negotiated for the use of hire vehicle, graphic design, mailing and accounting services.

13 Treasury is contracted to provide financial services to the Council.

# C3.2 Equity matters

## Social justice

Within its work program, the Council addresses social justice issues in three main contexts.

First, in conducting its functions in relation to the National Access Regime, the Council must consider public interest issues. Matters that the Council may consider include, although are not limited to, the following:

- policies concerning occupational health and safety, 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 a class of consumers.

Second, as part of its role of assessing jurisdictions' progress in implementing the NCP reforms, the Council must consider the extent to which governments have undertaken bona fide reform processes. The NCP agreements allow governments to take into account 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 it also calls for an examination of whether the social justice objectives can be met through ways which do not restrict competition. At the same time, the NCP agreements recognise that many restrictions, by advantaging specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Third, where it conducts reviews under the NCP principles, the Council is also required to consider social justice issues. Council focus is towards maintaining an organisation's social responsibilities (and strengthening these responsibilities) whilst still maximising the benefits from competition.

The Council is in the process of completing the following guides which will be available in the next financial year on its Website (http://www.ncc.gov.au):

- Declaration of certain Services provided by Monopoly Infrastructure – A Guide to declaration under Part IIIA of the *Trade Practices Act 1974*; and
- Certification of Access Regimes - A Guide to certification under Part IIIA of the *Trade Practices Act 1974*.

## Access

Since its inception in November 1995, the Council has instituted open and transparent processes. For example, declaration and certification applications for third party access to essential facilities explicitly provide interested parties the opportunity to have their views considered by the Council, including through meetings with members of the Secretariat. The Council extensively uses the public consultation process to provide input into its reviews. The Secretariat and members of the Council have met with representatives of State, Local & Territory governments, community interest groups and private sector representatives and organisations on many competition policy matters during the year.

During the 1999-00 financial year, the Council released the following publications designed to assist community understanding of its role and functions:

- NCC Update (August 2000)
- Reforming the Professions (Community Information)
- Reform of the Legal Professions (Community Information)
- Reform of the Health Care Professions (Community Information)
- Securing the Future of Australian Agriculture: An Overview (Community Information)
- Securing the Future of Australian Agriculture: Barley (Community Information)
- Securing the Future of Australian Agriculture: Sugar (Community Information)
- National Competition Policy: An Overview (Community Information)
- Urban Water Reform (Community Information)

- Rural Water Reform (Community Information)
- Shop Trading Hours (Community Information)
- Improving our Taxis (Community Information)
- The International Context for Australia's Competition Reforms (Discussion Paper)
- National Competition Policy Supplementary Second Tranche Assessment Road Transport Reform, (March 00)
- Supplementary Second Tranche Assessment, (June 00)
- WA Gas Access Regime – Recommendation to Minister, (May 00)
- Annual Report 1998-99, (August 99)
- AustralAsia Rail Access Regime (NT/SA) – Draft Assessment (November 99), Recommendation to Minister (March 00)
- Legislation Review Compendium. Third Edition, (December 99)
- Supplementary Second Tranche Assessment Report, (December 99)
- NT Electricity Access Regime – Issues Paper (December 99)
- NSW Rail – Recommendation to Minister (November 99)
- WA Rail – Draft Recommendation (September 99)
- Victorian Gas Access Regime – Issues Paper (August 99)
- Moomba to Sydney Pipeline System (major pipeline and two laterals, SA, Qld, NSW) – Issues Paper (May 00), Draft Recommendation (August 00)
- Palm Valley to Alice Springs Pipeline (NT) – Issues Paper (May 00), Draft Recommendation (June 00), Final Recommendation to Minister (July 00)
- Alice Springs Distribution System (NT) – Issues Paper (May 00), Draft Recommendation (June 00), Final Recommendation to Minister (July 00)
- South East Pipeline System (SA) – Issues Paper (December 99), Draft Recommendation (February 00), Final Recommendation to Minister (March 00)
- Karratha to Cape Lambert Pipeline – Issues Paper (July 99), Draft Recommendation (August 99), Final Recommendation to Minister (September 99)

- Tubridgi Pipeline (WA) – Issues Paper (May 99), Final Recommendation to Minister (July 99)
- Beharra Springs Pipeline (WA) – Issues Paper (May 99), Final Recommendation to Minister (July 99)
- Eastern Gas Pipeline (NSW and Vic) – Issues Paper (January 00), Draft Recommendation (May 00), Final Recommendation to Minister (June 00)

The Council continually updates its web site at *http://www.ncc.gov.au*. This site contains all of the Council's publications and information on applications under Part IIIA of the TPA and current information on issues and matters the Council may be considering or has recently considered. The Website is being upgraded to enable more information to be made available to interested parties.

In 1999-00, Council and Secretariat staff presented the following conference papers:

- Deborah Cope, The National Access Regime and the Mining Sector, presented to the Australian Journal of Mining Conference - Global Iron and Steel Forecast, 8 July 1999.
- Graeme Samuel, Access Regimes: Parlous Social Planning or a Truly Competitive Australia, presented to Industry Economics Conference, 12 July 1999.
- Graeme Samuel, Progress of National Competition Policy, presented to Committee for Economic Development of Australia, 21 July 1999.
- Ross Campbell, Competitive Neutrality and Local Government, 4 August 1999.
- Ed Willett, Social and Economic Effects of NCP, presented to Competitive Tendering Conference, 12 August 1999.
- Michelle Groves, Commenting on paper entitled Contrasting Regimes of Utilities' Access, presented to Business Law Section of Law Council Trade Practices Seminar, 13 August 1999.
- Ed Willett, Commenting on paper entitled Contrasting Regimes of Utilities' Access, presented to Business Law Section of Law Council Trade Practices Seminar, 14 August 1999.

- Graeme Samuel, Competition, Marketing Regulation and Deregulation, presented to Agriculture Australia, 19 August 2000.
- Michelle Groves, Competition Policy and IP, presented to Intellectual Property Society of Australia and New Zealand 13th Annual Conference, 21 August 1999.
- Graeme Samuel, NCP: Queensland's electricity market and trading hours under the spotlight, presented to Property Council of Australia, 9 September 1999.
- Graeme Samuel, Adapting to Change – towards a fair and efficient Australia, presented to Western Australian Chamber of Commerce and Industry, 13 October 1999.
- Ed Willett, Free and Fair Trade in Gas: the Queensland Achievements, presented to Queensland Power and Gas Infrastructure Conference, 26 October 1999.
- Luke Berry, Current issues in Access to Infrastructure: a NCC Perspective, presented to Current Issues in Trade Practices and Access Conference, 29 October 1999.
- Jane Brockington, Assessing Progress in NCP for Australia, presented to IIR Progress with NCP Conference, 9 November 1999.
- Jane Brockington, NCP: review and reform of SMAs with appropriate structural adjustment assistance, presented to Deutsche Bank –Dairy Mark II Conference, 10 November 1999.
- Stephen Dillon, NCP: What has been achieved? presented to Victorian Commercial Teachers Association – Annual Conference, 22 November 1999.
- Simon Cohen, Competition in the Water Industry, presented to Institute of Water Administration, 26 November 1999.
- Deborah Cope, National Competition Policy: Finance, Taxation, Development & Local Government Infrastructure, presented to Australian Local Government Association National General Assembly, 30 November 1999.
- Ed Willett, Assessing the State of National Competition Policy for Rail, presented to Rail Competition, Privatisation & Access Conference, 18 February 2000.

- Ed Willett, Microeconomic Reform and Competition Policy, presented to Outlook 2000, 28 February 2000.
- Graeme Samuel, Introducing Competition in the Public Delivery of Health Care Services, presented to World Bank Human Development Week, 29 February 2000.
- Graeme Samuel, Competitive Neutrality – A Public Transport Perspective, presented to Australian Bus & Coach Association Annual Bus Conference, 13 March 2000.

## Workplace Diversity

The Council has implemented a Workplace Diversity Plan. All recruitment conducted during 1999-00 included a selection criterion relating to understanding of the principles and practical effects on workplace diversity policies. Selection panels included at least one male and one female and were recorded by a professional scribe. At 30 June 1999, 8 Secretariat staff identified themselves as members of an EEO group (see Table C3.1).

## Table C3.1 Staff by EEO group, 30 June 1999

| Level | Female | NESB 1a | NESB 2a | A&TSIb Disabilities |
|---|---|---|---|---|
| Senior Executive | 1 | | | |
| Senior Officer Grades A-C | 4 | | | |
| Administrative Service Officer Grades 1–6 | 3 | 1 | | |
| Total | 8 | 1 | | |

Source: Internal survey (response to this survey was optional).
*a* *Non-English speaking background (first and second generation)*
*b* *Aboriginal and Torres Strait Islanders*

The Council has identified and trained contact officers for both workplace diversity and sexual harassment issues, and distributed to staff information on a harassment free workplace.

There were no reported cases of workplace harassment during 1999-00.

## C3.3 Internal and external scrutiny

During 1999-00:

- the Council tested the market for certain corporate service functions;
- there were no cases of fraud involving the Council;
- there were no comments by the Ombudsman; and
- there was one decision involving the Council by an administrative tribunal.

Over the past few years there have been a number of reviews by the Australian Competition Tribunal of decisions made by the Treasurer or a Premier in response to recommendations by the Council on applications for access to infrastructure services. These reviews have been initiated by infrastructure owners when the decision was to declare services, and by applicants when the decision was not to declare. Reviews have occurred when the decision maker has both agreed and disagreed with the Council's decision.

On 1 March 2000, the Australia Competition Tribunal handed down its decision on its review of the Commonwealth Treasurer's decision to declare particular services at Sydney International Airport relating to ramp handling and cargo terminal operations. The Tribunal confirmed the Treasurer's decision, based on the Council's recommendation (see section B2.2 for more detail).

The Council is also subject to external scrutiny through the publication of its recommendations to all governments on matters relating to access and competition reforms, external publications and other work that may be placed on the work program from time to time.

During 1999-00, the Senate Select Committee on the Socio-economic Consequences of the National Competition Policy finalised its report. Also, the PC delivered its final report on the impact of competition policy reforms on rural and regional Australia.

A review of the Council is currently being undertaken in accordance with clause 11 of the CPA.

The Council's processes and procedures have been subject to audit by the Auditor General. In addition, during this period the Attorney-General's Office reviewed and approved the Council's Fraud Control Plan.

## C3.4 Other matters

### Freedom of information

The Council received no requests for documents under the *Freedom of Information Act 1982* (FOI Act) during 1999-00.

The following information is provided in accordance with subsection 8(1) of the FOI Act.

### Organisation of the Council

Details of the Council's organisational structure, role and functions are detailed:

- organisation in paragraph C1 ;
- structure in figures C1.1 and C1.2; and
- functions in paragraph C2.

### Arrangements for outside participation

People or organisations outside the Council are encouraged to participate in the formulation of Council advice on the design and coverage of infrastructure access regimes, the assessment of governments' progress in implementing competition reform and other work program matters, by making representations in person or in writing.

## Categories of documents held by the Council

The Council Secretariat holds the following three classes of documents.

First, it holds representations to the Council President, Executive Director and staff. The Council receives correspondence covering a number of aspects of government micro-economic policy and administration.

Second, it holds policy and administration files relevant to the Council's responsibilities. The documents on these files include correspondence, analysis and policy advice prepared by Secretariat officers. There are three main categories of working files:

- Council views on matters relating to competition reform implemented by Commonwealth, State and Territory governments;
- Council recommendations on applications for access declarations and certification of access regimes. The designated Ministers are required to publish their decisions on these applications. The Ministers must give reasons for the decision and provide a copy of the Council's recommendation to the service provider and the applicant. The Council makes its recommendations and reasons publicly available after the designated Minister has published a decision. In the case of a declaration application, if the designated Minister does not make a decision, the Council will publish its recommendation 60 days after it provided it to the Minister; and
- material relating to other work assigned to the Council. For example the review of the Australian Postal Corporation Act and the review of Sections 51(2) and 51(3) of the Trade Practices Act.

Third, the Council Secretariat holds documents on internal office administration. These include a broad range of documents relating to the personal details of staff and to the organisation and operation of the Council. These documents include personal records, 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 upon request

The following categories of documents are publicly available:

- the Council's annual reports to Parliament;
- speeches presented by Council and Secretariat staff;
- discussion papers and guides on specific competition policy issues;
- the Council's newsletter;
- the Council's corporate plans;
- applications received for declaration, certification or under the Gas Code and associated issues papers developed by the Council;
- submissions made by interested parties on access declaration or certification applications, applications under the Gas code or other reviews, where information contained is not commercial-in-confidence;
- assessments and recommendations to the Treasurer on state and territory progress in implementing competition policy;
- community information papers and press releases;
- issues papers, draft and final reports on other reviews that are referred to the Council; and
- documents outlining the Council's recommendations on declaration and certification applications.

These documents are available from various sources. The Council has as much material as possible available on its web site – *http://www.ncc.gov.au*. Most publications are available through the Commonwealth Government bookshops. Other documents, publications and speeches are available by contacting the Council directly.

## Facilities for access to Council documents

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

The Deputy Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Attention: Freedom of Information Coordinator

An application fee of $30 must accompany requests. Unless an application fee is received, or explicit waiver given, the request will not be processed. Telephone enquiries should be directed to the FOI Coordinator, telephone (03) 285 7484 between 9.00 am and 5.00 pm.

The Deputy Executive Director is authorised under section 23 of the FOI Act to make decisions to grant or refuse requests for access to documents. In accordance with Section 54 of the FOI Act, 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 FOI Act.

If access under the FOI Act is granted, the Council will provide copies of documents after receiving payment of all applicable charges. Alternatively, applicants may make arrangements to inspect documents at the National Competition Council office, Level 12, Casselden Place, 2 Lonsdale 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:

- section 74 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991;*
- section 50AA of the *Audit Act 1901;*
- the *Public Service Act 1999;*
- section 8 of the *Freedom of Information Act 1982;*
- section 29(O) of the *Trade Practices Act 1974;* and
- the guidelines issued by the Department of the Prime Minister and Cabinet.

A compliance index is provided below.

The contact officer for inquiries or comments concerning this report, and for inquiries about any Council publications, is:

Deputy Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477

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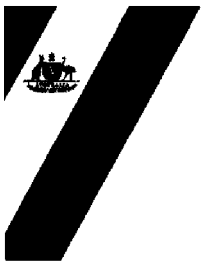
# C4 Financial Statements

## Financial statements
## for the year ended 30 June 2000




**INDEPENDENT AUDIT REPORT**

**To the Treasurer**

**Scope**

I have audited the financial statements of the National Competition Council for the year ended 30 June 2000. The financial statements comprise:

- Statement by the Council President and Principal Accounting Officer;
- Operating Statement;
- Balance Sheet;
- Statement of Cash Flows;
- Schedule of Commitments;
- Schedule of Contingencies; and
- Notes to and forming part of the Financial Statements.

The Council's President is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Standards, other mandatory professional reporting requirements and statutory requirements in Australia so as to present a view of the Council which is consistent with my understanding of its financial position, its operations and its cash flows.

The audit opinion expressed in this report has been formed on the above basis.

GPO Box 707 CANBERRA ACT 2601
Centenary House 19 National Circuit
BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

**Audit Opinion**

In my opinion,

(i) the financial statements have been prepared in accordance with Schedule 2 of the Finance Minister's Orders; and

(ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 2 of the Finance Minister's Orders, of the financial position of the National Competition Council as at 30 June 2000 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office

Allan M. Thompson
Executive Director

Delegate of the Auditor-General

Canberra
30 August 2000

**National Competition Council**
Casselden Place Level 12 2 Lonsdale Street Melbourne 3000 Australia
GPO Box 2508 Melbourne 3001 Australia
Telephone 03 9285 7474 Facsimile 03 9285 7477

## STATEMENT BY THE COUNCIL PRESIDENT AND PRINCIPAL ACCOUNTING OFFICER

In our opinion the attached financial statements for the financial year 1 July, 1999 to 30 June, 2000 give a true and fair view of the matters required by Schedule 2 to the Finance Minister's Orders made under section 63 of the *Financial management Accountability Act 1997*.

Mr. Graeme Samuel
**President**

30.8.00
Date

Mr. Edward Willett
**Executive Director**

30.8.00
Date

**NATIONAL COMPETITION COUNCIL**
**AGENCY OPERATING STATEMENT**
**For the year ended 30 June 2000**

| | Notes | 1999-00 $ | 1998-99 $ |
|---|---|---|---|
| **Operating Revenues** | | | |
| Revenues from Governments | 14 | 3,271,000 | 2,651,105 |
| Resources Received Free of Charge | | - | 51,550 |
| Sales of Goods and Services | | 66,985 | 13,423 |
| ***Total Operating Revenues*** | | **3,337,985** | **2,716,078** |
| **Operating Expenses** | | | |
| Employees | 3 | 1,787,974 | 1,547,976 |
| Suppliers | 4 | 1,161,543 | 1,253,466 |
| Depreciation and Amortisation | 5 | 110,100 | 114,727 |
| Net Losses from sale of assets | 6 | - | 7,928 |
| ***Total Operating Expenses*** | | **3,059,617** | **2,924,097** |
| ***Operating Surplus (Deficit) before extraordinary Items*** | | ***278,368*** | ***(208,019)*** |
| Gain on extraordinary items | | - | - |
| Net Surplus (Deficit) after extraordinary items | | ***278,368*** | ***(208,019)*** |
| Accumulated surpluses (or deficits) at beginning of reporting period | | (20,086) | 187,933 |
| ***Total available for appropriation*** | | 258,282 | (20,086) |
| **Accumulated surpluses (or deficits) at the end of the reporting period** | | **258,282** | **(20,086)** |

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

**NATIONAL COMPETITION COUNCIL**
**AGENCY BALANCE SHEET**
***as at* 30 *June* 2000**

| | Notes | 1999-00 $ | 1998-99 $ |
|---|---|---|---|
| **ASSETS** | | | |
| ***Financial Assets*** | | | |
| Cash | | 545,303 | 500 |
| Receivables | 10 | 111,323 | 135,318 |
| ***Total financial assets*** | | **656,626** | **135,818** |
| ***Non-financial assets*** | | | |
| Land and Buildings | 11,12 | 84,977 | 133,947 |
| Plant and Equipment | 11,12 | 103,122 | 136,501 |
| Inventories - held for sale | 2.12 | - | 51,205 |
| Other – prepayments | | 8,896 | 2,679 |
| ***Total non-financial assets*** | | **196,995** | **324,332** |
| **Total Assets** | | **853,621** | **460,150** |
| **LIABILITIES** | | | |
| ***Provisions and payables*** | | | |
| Employees | 7 | 503,983 | 393,761 |
| Suppliers | 8 | 91,356 | 86,475 |
| Other | | - | - |
| ***Total provisions and payables*** | | 595,339 | 480,236 |
| **Total Liabilities** | | **595,339** | **480,236** |
| **EQUITY** | | | |
| Accumulated surpluses (deficits) | 9 | (20,086) | 91,834 |
| Appropriations | | - | 96,099 |
| Current Year Profit / deficit | | 278,368 | (208,019) |
| **Total Equity** | | 258,282 | (20,086) |
| **Total Liabilities and Equity** | | **853,621** | **460,150** |
| **Current Liabilities** | | 132,055 | 264,572 |
| **Non-current Liabilities** | | 463,284 | 215,664 |
| **Current assets** | | 592,497 | 189,702 |
| **Non-current assets** | | 261,124 | 270,448 |

*The above Statement should be read in conjunction with the accompanying notes*

**NATIONAL COMPETITION COUNCIL**
**AGENCY STATEMENT of CASH FLOWS**
***for the year ended* 30 *June* 2000**

| | Notes | 1999-00 $ | 1998-99 $ |
|---|---|---|---|
| OPERATING ACTIVITIES | | | |
| Cash received | | | |
| Appropriations | | 3,271,000 | 2,762,886 |
| Sales of Goods & Services | | 90,980 | |
| Other | | - | 20,117 |
| Total cash received | | 3,361,980 | 2,783,003 |
| Cash used | | | |
| Employees | | (1,677,752) | (1,520,702) |
| Suppliers | | (1,093,848) | (1,207,883) |
| Total cash used | | 2,771,600 | 2,728,585 |
| Net cash from operating activities | 13 | 590,380 | 54,418 |
| INVESTING ACTIVITIES | | | |
| Total cash received | | - | - |
| Cash used | | | |
| Purchase of property, plant and equipment | | (45,577) | 54,418 |
| Total cash used | | (45,577) | 54,418 |
| Net cash from investing activities | | (45,577) | (54,418) |
| Net (decrease)/increase in cash held | | 544,803 | - |
| Cash at the beginning of the reporting period | | 500 | 500 |
| Cash at the end of the reporting period | | 545,303 | 500 |

*The above Statement should be read in conjunction with the accompanying notes*

**NATIONAL COMPETITION COUNCIL**
**SCHEDULE OF COMMITMENTS**
**As at 30 June 2000**

| | Agency 1999-00 $ | 1998-99 $ |
|---|---|---|
| BY TYPE | | |
| OTHER COMMITMENTS | | |
| Operating Leases | 257,984 | 455,913 |
| Total Other Commitments | 257,984 | 455,913 |
| COMMITMENTS RECEIVABLE | | |
| Net commitments | 257,984 | 455,913 |
| BY MATURITY | | |
| Operating Lease Committments | | |
| One year or less | 106,752 | 103,452 |
| From one to five years | 151,232 | 352,461 |
| Net commitments | 257,984 | 455,913 |

**NATIONAL COMPETITION COUNCIL**
**SCHEDULE OF CONTINGENCIES**
**As at 30 June 2000**

| | Agency 1999-00 $ | 1998-99 $ |
|---|---|---|
| Contingent Losses | - | - |
| Contingent Gains | - | - |

*The above Statements 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 2000*

## Note 1 Aim and 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 Council's aim is to help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy which promote growth innovation and productivity.

The Council's program objectives are:

- to promote micro-economic reform within the community, including by research and providing advice to governments on competition policy matters;
- to recommend on applications for declaration of access to services provided by nationally significant infrastructure and the certification of access regimes under Part IIIA of the Trade Practices Act;
- to assess progress with agreed competition policy reforms, and to recommend to the Commonwealth prior to July 1997, July 1999 and July 2001 whether the conditions for National Competition Policy payments to the States and Territories have been met; and
- to recommend on whether State and Territory government businesses should be declared for prices surveillance by the Australian Competition and Consumer Commission, and to report on the costs and benefits of legislation reliant on section 51 of Trade Practices Act.

# Note 2 Summary of Significant Accounting Policies

## 2.1 Basis of Accounting

The production of the financial statements is required by section 49 of the *Financial Management and Accountability Act 1997*. The statements have been prepared in accordance with Schedule 2 to the Financial Management and Accountability (FMA) Orders made by the Minister for Finance and Administration. Schedule 2 requires that the financial statements are prepared:

- in compliance with Australian Accounting Standards and Accounting Guidance Releases, the Consensus Views of the Urgent Issues Group and other authoritative pronouncements of the Australian Accounting Standards Boards; and
- having regard to Statements of Accounting Concepts and the Explanatory Notes to Schedule 2 issued by the Department of Finance and Administration.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention. They have not been adjusted to take account of either changes in the general purchasing power of the dollar or changes in the prices of specific assets.

The continued existence of the Council in its present form is dependent on Government policy and on continuing appropriations by Parliament for the Council's administration.

## 2.2 'Agency' and 'Administered' Items

A distinction is required to be made within the financial statements between 'agency' items and 'administered' items.

'Administered' items represent those assets, liabilities, expenses and revenues which are controlled by the Government and managed in a fiduciary capacity by the Council.

'Agency' items represent those assets, liabilities, expenses and revenues which are controlled by the Council.

The purpose of this distinction is to enable an assessment to be made of the efficiency of the Council in providing goods and services ('Agency' items), while at the same time enabling accountability by the Council for all resources administered by it.

The Council did not manage 'administered' items on behalf of the Government in relation to the reporting period.

## 2.3 Taxation

The Council is exempt from all forms of taxation except fringe benefits tax and the Goods and Services Tax.

## 2.4 Insurance

In accordance with Commonwealth Government policy, assets are insured with Comcover over the level of policy excess and those under that level are losses that are expensed as they are incurred.

The Council carries Professional Indemnity Insurance with Comcover.

## 2.5 Comparative figures

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

## 2.6 Program Statements

The Council represents a component of a sub-program within the Department of the Treasury portfolio. As a result there is no requirement for a program statement to be included in the financial statements.

## 2.7 Appropriations

Appropriations for agency operations are recognised as revenue when the Council obtains control over the funds. Control is obtained at the time of expending the funds.

Appropriations for agency running costs operations are recognised in accordance with their nature under the Running Costs Arrangements. Under these arrangements, the Council receives a base amount of funding by way of appropriation for running costs each year. The base amount may be supplemented in any year by a carryover from the previous year of unspent appropriations up to allowable limits, as well as by borrowings at a discount against future appropriations of the base amount. The repayment of a borrowing is effected by an appropriate reduction in the appropriation actually received in the year of repayment.

The Council recognises, in relation to agency running costs:

- as revenue an amount equal to the appropriation spent during the financial year;
- as a receivable an amount equal to the unspent appropriation carried over to the next year; and

## 2.8 Employee Entitlements

The liability for employee entitlements includes all employee benefits including: salaries and wages, annual leave, and long service leave.

No provision has been made for sick leave as all leave is non-vesting and the value of sick leave estimated to be taken in the future is expected to be less than the entitlement that will accrue to Council staff in those future periods.

The non-current portion for the liability for long service leave reflects the present value of the estimated future cash flows to be made in respect of all employees.

In determining the value of the liability, the Council has taken into account attrition rates and pay increases through promotion and inflation.

The determination of current and non-current liability portions of the long service leave provision is based on a staff survey. The value of long service leave entitlements estimated to be taken within the next twelve months are classified as current.

Annual leave entitlements are classified as current liabilities.

## 2.9 Superannuation

Staff of the Council contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Superannuation contributions made by the Council on behalf of staff in relation to these schemes have been expensed in these financial statements.

A liability is not shown for unfunded superannuation liability that exists in relation to Council staff as the employer contributions fully extinguish the accruing liability assumed by the Commonwealth.

There is no liability for unfunded superannuation.

## 2.10 Resources Received Free of Charge

Resources received free of charge which cannot be reliably measured are disclosed in the notes.

No resources were received free of charge for the period.

## 2.11 Cash

For the purposes of the Statement of Cash Flows, cash includes notes, coins and cheques on hand.

## 2.12 Inventory

In 1999 inventories held for sale were valued at the lower of cost and net realisable value. In 2000 there was a change in Accounting Policy (refer Note 2.19) and the costs of publications expensed as incurred.

## 2.13 Capitalisation Threshold – Property Plant & Equipment

All items of computers, plant and equipment with historical cost equal to or in excess of $1,000 are capitalised in the year of acquisition. The items below this threshold are expensed in the year of acquisition.

All items of leasehold improvements controlled by the Council and with historical costs equal to or in excess of $5,000 are capitalised in the year of acquisition.

The capitalisation threshold is applied to the aggregate cost of each functional asset.

## 2.14 Measurement of Property Plant & Equipment

All property, plant and equipment assets in excess of the capitalisation threshold are recorded at cost, except in circumstances in which acquisitions are made at no cost from other Commonwealth controlled entities. In such circumstances property, plant and equipment are recorded at the amounts at which they were recognised in the transferor's books immediately prior to transfer.

## 2.15 Depreciation and Amortisation of Property Plant & Equipment

Depreciable property, plant and equipment are depreciated over their estimated useful lives. The useful life of an asset reflects the life of the asset to the Council.

Depreciation is calculated using the straight-line method which reflects the pattern of usage of the Council's depreciable property, plant and equipment. The rates used were those applied by Treasury.

Leasehold Improvements are amortised over the estimated useful life of each improvement, or the unexpired period of the lease, whichever is shorter.

## 2.16 Revaluation of Property Plant & Equipment

All items of leasehold improvements and with historical costs equal to or in excess of $5,000 and all items of computer, plant and equipment were revalued in accordance with the 'deprival' method (replacement cost) of valuation on 1 July 2000 and thereafter will be revalued progressively on that basis every three years.

The Council reviewed the valuations for:

Leasehold improvements were initially acquired in November 1995 in connection with the leasehold and valued on 30/6/00 at cost. The valuation represented by the written down value was considered to approximate the 'deprival' value. They are expected to be revalued during the 2000/01 year; and

Most computers were replaced late in June 2000 and therefore are carried at cost as at 30/6/00. The valuation represented by the written down value was considered to approximate the 'deprival' value (replacement).

The financial effect of the move to progressive revaluations is that the carrying amounts of assets will reflect current values and that depreciation charges will reflect the current cost of the service potential consumed in each period.

## 2.17 Leases

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased plant and equipment asset and operating leases under which 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 inception of the lease and a liability recognised for the same amount. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are charged to the Agency Operating Statement.

## 2.18 Lease Incentives

The value of rent which would otherwise have been incurred during a rent free period, provided by building owners, is initially recognised as a liability. This liability is reduced once the rent free period ceases by allocating payments between rental expense and reduction of the liability.

## 2.19 Change in Accounting Policy

Council now provides the bulk of its publications free of charge which means the publications do not have a realisable value. Because of this Council has changed its Accounting Policy relating to inventories of publications. The cost of the publications are now expensed as incurred. As a result of this change $64,129 of expenditure which would have been shown as inventory on the balance sheet was expensed in the current year and reduced the operating surplus.

| | 1999-00 $ | 1998-99 $ |
|---|---|---|

## Note 3 Employee Expenses

| | | |
|---|---|---|
| Basic Remuneration (for services provided) | 1,787,974 | 1,547,976 |
| Total | 1,787,974 | 1,547,976 |

## Note 4 Suppliers Expenses

| | | |
|---|---|---|
| Supply of goods and services | 909,652 | 1,053,873 |
| Stock writedown | 137,023 | 90,906 |
| Operating lease rentals | 114,868 | 108,687 |
| Total | 1,161,543 | 1,253,466 |

## Note 5 Depreciation and Amortisation

| | | |
|---|---|---|
| Depreciation of property, plant and equipment | 110,100 | 114,727 |
| Total | 110,100 | 114,727 |

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

| | | |
|---|---|---|
| Leasehold improvements | 17,578 | 17,560 |
| Leasehold improvements - received free of charge | 31,390 | 43,902 |
| Computers, plant and equipment | 11,077 | 4,321 |
| Computers, plant and equipment - received free of charge | 50,055 | 48,944 |
| Total | 110,100 | 114,727 |

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

| | 1999-00 $ | 1998-99 $ |
|---|---|---|

## Note 6 Expenses: Net Losses from Sale of Assets

| | | |
|---|---|---|
| Non-financial Assets: | | |
| Inventories- held for sale | - | 7,928 |
| Total | - | 7,928 |

## Note 7 Provisions and Payables: Employees

| | | |
|---|---|---|
| Salaries and wages | 39,624 | 85,024 |
| Leave | 386,070 | 306,027 |
| Superannuation | 1075 | 2,710 |
| Oncosts | 77,214 | - |
| Aggregate employee entitlement liability | 503,983 | 393,761 |

## Note 8 Provisions and Payables: Suppliers

| | | |
|---|---|---|
| Trade creditors | 91,356 | 86,475 |

| | 1999-00<br>$ | 1998-99<br>$ |
|---|---|---|

## Note 9 Equity: Accumulated Results

| | | |
|---|---|---|
| Opening balance | (20,086) | 91,834 |
| Appropriations | - | 96,099 |
| Add. Operating result | 342,497 | (208,019) |
| Closing balance | 322,411 | (20,086) |

## Note 10 Financial Assets: Receivables

| | | |
|---|---|---|
| Goods and services | 15,224 | 39,219 |
| Appropriations | 96,099 | 96,099 |
| Total | 111,323 | 135,318 |

No component of the above receivables was overdue at the end of the reporting period. In addition no component of the receivables was considered doubtful.

## Note 11 Non Financial Assets: Property Plant & Equipment

| | 1999-00 $ | 1998-99 $ |
|---|---|---|
| LAND AND BUILDINGS | | |
| Leasehold improvements - at cost | 122,922 | 122,922 |
| Less: accumulated amortisation | 65,853 | 48,274 |
| | 57,069 | 74,648 |
| Leasehold improvements - received free of charge | 219,511 | 219,511 |
| Less: accumulated amortisation | 191,603 | 160,212 |
| | 27,908 | 59,299 |
| Total land and buildings | 84,977 | 133,947 |
| PLANT AND EQUIPMENT | | |
| Plant and equipment - at cost | 289,559 | 206,254 |
| Less: accumulated depreciation | 187,540 | 74,120 |
| | 102,019 | 132,134 |
| Plant and equipment - received free of charge | 25,137 | 25,137 |
| Less: accumulated depreciation | 24,034 | 20,770 |
| | 1,103 | 4,367 |
| Total infrastructure, plant and equipment | 103,122 | 136,501 |

## Note 12 Analysis of Property Plant & Equipment

| | Land and buildings $ | Plant and equipment $ | Total $ |
|---|---|---|---|
| AGGREGATE | | | |
| Gross value as at 1 July 1999 | 342,433 | 231,391 | 573,824 |
| Acquisition of New Assets | - | 45,577 | 45,577 |
| Disposals | - | (19,434) | (19,434) |
| Prior Year Adjustments | - | 57,162 | 57,162 |
| Gross value as at 30 June 2000 | 342,433 | 314,696 | 657,129 |
| Accumulated depreciation/ amortisiation as at 1 July 1999 | 208,486 | 94,890 | 303,376 |
| Depreciation/ amortisation charge for assets held as at 1 July 1999 | 48,970 | 60,385 | 109,355 |
| Depreciation/ amortisation charge for additions | - | 745 | 745 |
| Adjustment for disposal /scrappings | - | (19,434) | (19,434) |
| Prior Year Adjustments | - | 74,988 | 74,988 |
| Accumulated depreciation/ amortisation as at 30 June 2000 | 257,456 | 211,574 | 469,030 |
| Net book value as at 30 June 2000 | 84,977 | 103,122 | 188,099 |
| Net book value as at 1 July 1999 | 133,947 | 136,501 | 270,448 |

## Note 13 Cash Flow Reconciliation

| | 1999-00 $ | 1998-99 $ |
|---|---|---|
| Reconciliation of net cost of services to net cash provided by operating activities : | | |
| Net cost of services | (2,992,632) | (2,910,674) |
| Extraordinary items | - | - |
| Loss on sale of property, plant and equipment | - | - |
| Depreciation/ Amortisation | 110,100 | 114,727 |
| Revenue from government | 3,271,000 | 2,702,655 |
| Change in accounting policy | - | - |
| Changes in disclosure of Carry over (Appropriation) | - | 96,099 |
| Changes in assets and liabilities | - | - |
| (Increase)/decrease in receivables | 23,995 | 22,376 |
| (Increase)/decrease in other assets | 11,609 | 27,944 |
| (Increase)/decrease in inventories | 51,205 | (44,752) |
| Increase/(decrease) in provisions and payables | 115,103 | 46,043 |
| Net cash from operating activities | 590,380 | 54,418 |

## Note 14 Reconciliation of Agency Running Costs

| | Expenditure 1999-00 $ | Expenditure 1998-99 $ |
|---|---|---|
| ORDINARY ANNUAL SERVICES OF GOVERNMENT APPROPRIATION ACT NOS I & 3 | | |
| Division 676 National Competition Council | | |
| 1.Running Costs | 3,271,000 | 2,783,003 |
| less appropriations under FMA ,Act section 31 | - | (140,102) |
| | 3,271,000 | 2,642,901 |
| add carryover 30 June | - | - |
| less carryover 1 July | - | 151,000 |
| add Carry over received | - | 157,000 |
| add Funding Net Adjustments | - | 2,204 |
| Revenue from Government | | |
| - ordinary annual services | 3,271,000 | 2,651,105 |
| Total | 3,271,000 | 2,651,105 |

## Note 15 Appropriations

APPROPRIATION ACT NOS 1 & 3

Annual Appropriations for Departmental Items (price of outputs)

| 1999/00 Basic Approp | 1999/00 Additional Approp | 1999/00 Advance from Minister for Finance | 1999/00 Total Approp | 1999/00 Total Expend | 1999/00 Balance |
|---|---|---|---|---|---|
| 1.Running Costs | | | | | |
| $ | $ | $ | $ | $ | $ |
| 3,271,000 | - | - | 3,271,000 | 2,995,488 | 275,512 |

## Note 16 Services provided by the Auditor General and Comcover

a. Audit services are provided free of charge by the Auditor-General. The fair value of audit services provided in relation to the reporting period is $20,000 ( 1998-99 $ 20,000). Other services provided by the Auditor General in relation to the reporting period is $nil (1998-99 $nil).

b. Com Cover Insurance $56,467 (1998-99 $48,484).

## Note 17 Executive Remuneration

The number of executive officers who received or were due and receivable to receive fixed remuneration of more than $ 100,000 or more:

| | 1999/00 Number | 1998/99 Number |
|---|---|---|
| $100,000 to $110,000 | - | - |
| $110,001 to $120,000 | 1 | 1 |
| $120,001 to $130,000 | - | 1 |
| $130,001 to $140,000 | 1 | - |
| The aggregate amount of fixed remuneration of executive officers shown above | $250,000 | $250,000 |

## Note 18 Act of Grace Payments Waivers and Amounts Written Off

No Act of Grace payments were made pursuant to sub-section 34A(1) of the Audit Act 1901 during the reporting period.

No waivers of amounts owing to the Commonwealth were made pursuant to sub section

70C(2) of the Audit Act 1901 during the reporting period nor pursuant to any other legislation.

## Note 19 Events Occurring After Balance Date

No events of a material nature have occurred since the end of the reporting period (1998-99: Nil) which warrant disclosure within the financial statements.

## Note 20 Average Staffing Levels

Average staffing levels for the Council are as follows:

| | 1999-00 Number | 1998-99 Number |
|---|---|---|
| National Competition Council | 21.8 | 20.8 |

# Note 21 Financial Instruments

## a) Terms, conditions and accounting policies

| Financial Instruments | Notes | Accounting Policies and Methods (including recognition criteria and measurement basis). | Nature of underlying Instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows). |
|---|---|---|---|
| Financial Assets | | | |
| Cash | | Deposits are recognised at their normal amounts. | |
| Receivables for goods and services | 10 | These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. | Deposits are non interest bearing. All receivables are with the Commonwealth and /or other external entities. |
| Financial Liabilities | | | |
| Trade Creditors | 8 | 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). | All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days. |

## b) Interest Rate Risk: Agency

| Financial Instrument | Note | Non – Interest Bearing | |
|---|---|---|---|
| | | 99-00 | 98-99 |
| Financial Assets | | | |
| | | $ | $ |
| Cash at Bank | | 545,303 | 500 |
| Receivables for goods and services | 10 | 111,323 | 13,423 |
| Total Financial Assets | | 656,626 | 135,818 |
| Total Assets | | 853,621 | 460,150 |
| Financial Liabilities | | | |
| Trade Creditors | 8 | 91,356 | 86,475 |
| Total Financial Liabilities (Recognised) | | 91,356 | 86,475 |
| Total Liabilities | | 595,339 | 480,236 |

The Council does not have any interest bearing risks.

## c) Net Fair Value of Financial Assets and Liabilities

| | Note | 1999-00 Total carrying Amount | 1999-00 Aggregate net Fair value | 1998-99 Total carrying Amount | 1998-99 Aggregate net fair value |
|---|---|---|---|---|---|
| Department Financial Assets | | | | | |
| Cash at Bank | | 545,303 | 545,303 | 500 | 500 |
| Receivables for Goods and Services | 10 | 111,323 | 111,323 | 13,423 | 13,423 |
| Total Financial Assets | | 656,626 | 656,626 | 135,818 | 135,818 |
| Financial Liabilities (recognised) | | | | | |
| Trade Creditors | 8 | 91,356 | 91,356 | 86,475 | 86,475 |
| Total Financial Liabilities (recognised) | | 91,356 | 91,356 | 86,475 | 86,475 |

### Financial assets

The net fair value of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

### Financial Liabilities

The net fair values for trade creditors are short-term in nature, and are approximated by their carrying amounts.

## d) Credit Risk Exposures

The Agency's maximum exposures 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 Assets and Liabilities.

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

# Competition Policy Units

For further information about National Competition Policy, please contact the National Competition Council or the relevant Commonwealth, State or Territory competition policy unit.

## National

National Competition Council
Level 12, Casselden Place
2 Lonsdale Street
MELBOURNE VIC 3000
Telephone: (03) 9285 7474
Facsimile: (03) 9285 7477
www.ncc.gov.au

## Commonwealth

Structural Reform Division
Markets Group
The Treasury
Parkes Place
PARKES ACT 2600
Telephone: (02) 6263 3758
Facsimile: (02) 6263 2937
www.treasury.gov.au

## New South Wales

Intergovernmental & Regulatory
ReformBranch
The Cabinet Office
Lvl 37, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone: (02) 9228 5414
Facsimile: (02) 9228 4408

## Victoria

Markets and Regulation Strategy Branch
Dept. of Treasury and Finance
5th Flr, 1 Treasury Place
MELBOURNE VIC 3002
Telephone: (03) 9651 2060
Facsimile: (03) 9651 5575
www.vic.gov.au/ncp

## Queensland

National Competition Policy Unit
Queensland Treasury
100 George Street
BRISBANE QLD 4000
Telephone: (07) 3224 4285
Facsimile: (07) 3221 0181
www.treasury.qld.gov.au

## Western Australia

Competition Policy Unit
WA Treasury
Level 12, 197 St George's Tce
PERTH WA 6000
Telephone: (08) 9222 9816
Facsimile: (08) 9222 9914
www.treasury.wa.gov.au

## South Australia

Economic Reform Branch
Dept. of Premier and Cabinet
State Administration Centre
200 Victoria Square
ADELAIDE SA 5000
Telephone: (08) 8226 0903
Facsimile: (08) 8226 1111
www.premcab.sa.gov.au

## Tasmania

Economic Policy Branch
Department of Treasury and Finance
Franklin Square Offices
21 Murray Street
HOBART TAS 7000
Telephone: (03) 6233 3100
Facsimile: (03) 6233 5690
www.tres.tas.gov.au

## Northern Territory

Policy & Coordination Division
Dept. of Chief Minister
4th Flr, NT House
22 Mitchell Street
DARWIN NT 0800
Telephone: (08) 8999 7097
Facsimile: (08) 8999 7402
www.nt.gov.au/ntt/

## Australian Capital Territory

Micro Economic Reform Section
Dept. of Treasury and Infrastructure
Lvl 1, Canberra-Nara Centre
1 Constitution Avenue
CANBERRA CITY ACT 2600
Telephone: (02) 6207 5904
Facsimile: (02) 6207 0267
www.act.gov.au

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