

# ***NCC UPDATE***

## **The Newsletter of the National Competition Council**

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This newsletter provides an update on the National Competition Council's work under the National Access Regime (Part IIIA of the Trade Practices Act 1974).

The Regime provides a legal avenue for businesses to gain access, on reasonable terms and conditions, to essential service infrastructure such as railways, gas pipelines and electricity transmission wires.

### **Publications**

In addition to this newsletter the National Competition Council produces a range of information relating to National Competition Policy. A number of recent speeches, community information papers and reports are listed below and can be accessed at [www.ncc.gov.au](http://www.ncc.gov.au).

- Annual Report 1999-2000
- National Competition Policy Supplementary Second Tranche Assessment (June 2000)
- Workers Compensation Insurance (Community Information)
- Compulsory Third Party Motor Vehicle Insurance (Community Information)
- Local Government & Competition Policy (Community Information)
- Road Transport Reform (Community Information)
- The Future of National Competition Policy – Address to National Competition Policy Conference (20-21 November 2000)

### **Certifications & Declarations – CD Rom**

The Council is currently considering producing a CD-ROM that would enable electronic access to a range of information relating to Part IIIA of the *Trade Practices Act*.

A flyer providing further details and a registration of interest form has been enclosed to determine the level of interest in purchasing a CD of this sort. Any decision to pursue production will be dependent on the subsequent response.

### **New Website**

The Council will shortly be launching a new upgraded and improved website at [www.ncc.gov.au](http://www.ncc.gov.au). The site is designed to be more user friendly and will be easier to navigate than the previous site. It also incorporates a powerful search engine.

*The Council also provides an email notification service for new listings on the website. If you would like to be added to this notification list please email: [info@ncc.gov.au](mailto:info@ncc.gov.au).*

## **PROJECT UPDATES**

### **CERTIFICATION OF STATE AND TERRITORY ACCESS REGIMES**

#### **NSW GAS**

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*

#### **QLD GAS**

The Queensland Government sought certification of its gas pipelines access regime in September 1998. The application characterised the regime as Queensland's implementation of the National Gas Pipelines Access Code (National Code). The Council had previously assessed in September 1997 that the National Code satisfies the certification requirements set out in the Competition Principles Agreement.

The Queensland Regime, however, includes a number of derogations (variations) affecting major transmission pipelines. The derogations cover matters such as access prices and information flows to access seekers. Given that Queensland sought certification of its regime as its implementation of the National Code, it was necessary for the Council to consider whether the derogations remain broadly consistent with that Code. If so, the Council could still draw on its earlier assessment that the Code is an effective regime.

To progress this matter, the Council engaged the Australian Competition and Consumer Commission (ACCC) to advise whether regulatory processes – including tariff outcomes – for the derogated pipelines are broadly consistent with the National Code, and the extent to which differences are significant. At the same time, the Council launched a public consultation process.

The ACCC completed a substantial report in April 2000, available on the Council's website. The ACCC reported that the derogations significantly alter a number of regulatory processes, tariff and other outcomes from those in the National Code. The Council considers the variations to be sufficiently material that it cannot regard the Queensland Regime as a consistent application of the National Code.

As such, the Council has been obliged to consider the regime on a stand-alone basis. Following consideration of public submissions, consultancy work undertaken for the Council by the ACCC, and its own deliberations, the Council considers that the Queensland Regime does not currently satisfy the certification principles. Fundamental concerns include the impact of the derogations on regulatory and dispute resolution processes, information flows to access seekers and review arrangements. To date, Queensland has not proposed any changes to meet the Council's concerns. The Council is unlikely to recommend that the regime be certified as effective in its current state.

The Council notes that, while the regime is not certified, it became operational in May 2000 and obligations on pipeline owners now apply.

#### **QUEENSLAND PIPELINES SUBJECT TO DEROGATIONS**

<b>Pipeline License (PPL) Number</b>	<b>Description of Pipeline</b>	<b>Revisions commencement date (derogation terminates)</b>
2	Wallumbilla to Brisbane	29 July 2006
24	Ballera to Wallumbilla	30 December 2016

30	Wallumbilla to Rockhampton via Gladstone	The sooner of: (a) the date the capacity of the pipeline exceeds the nominal capacity specified in the pipeline license or (b) the date the regulator approves revisions that must be submitted by 31 August 2016
41	Ballera to Mt Isa	1 May 2023

## ***WESTERN AUSTRALIAN RAIL***

The Western Australian Government applied for certification of the WA Rail Access Regime in February 1999. The Council's public process identified a number of issues, subsequently addressed by Western Australia. Among the refinements agreed to by the State were the creation of an independent rail access regulator with broad powers to enforce compliance with the Regime.

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 the processes, the Council identified a number of additional concerns. The Council reached agreement with Western Australia on most of these issues.

The Council was not able to reach agreement with WA on a way to resolve issues relating to interstate rail operators. This left a significant issue outstanding. The WA government withdrew its application for certification in November 2000.

## ***NORTHERN TERRITORY ELECTRICITY***

In December 1999, the NT Government lodged a Regime covering its electricity network, requesting that the Council consider recommending to the Minister that he certify the Regime.

The Council subsequently issued an issues paper and called for public comment on the Regime. It received submissions from potential new entrants and significant users of NT electricity.

The Council reviewed these submissions and a report from its consultant, Network Economics Consulting Group Pty Ltd, and outlined a range of concerns to the NT Government.

The Government proposed a number of changes to the regime to address many of these concerns. However, there were a number of outstanding issues not resolved before the Council put out its draft recommendation to not certify the regime in September 2000. These relate primarily to the introduction of retail contestability and pricing of out-of-balance energy.

The Council has now received a number of submissions on its draft recommendation and will continue discussions with the NT Government.

## ***NATIONAL GAS CODE***

### ***EASTERN GAS PIPELINE AND MOOMBA TO SYDNEY PIPELINE SYSTEM FINAL DECISIONS***

On 16 October 2000, the Commonwealth Minister for Industry, Science, and Resources, Senator the Hon Nick Minchin, decided to cover the Eastern Gas Pipeline under the National Gas Pipelines Code.

The Eastern Gas Pipeline transports natural gas between Longford, Victoria and Horsley Park in Sydney. The Minister's decision followed on application on 7 January 2000 for coverage by AGL Energy Sales and Marketing Ltd.

On 27 October 2000, the owner of the Eastern Gas Pipeline, Duke Energy, lodged with the Australian Competition Tribunal an application for review of the Minister's decision.

Also on 16 October 2000, the Minister decided against revocation of coverage under the Code of parts of the Moomba to Sydney pipeline system. East Australian Pipeline Ltd had applied for revocation of these parts of the pipeline on 28 April 2000.

The Minister's decisions in the case of both pipelines were in accordance with recommendations by the National Competition Council.

### **QUEENSLAND GAS PIPELINES – REVOCATION APPLICATIONS**

The Council received applications in August 2000 to revoke coverage of four gas pipelines from the provisions of the *Gas Pipelines Access (Queensland) Act 1997*.

The applications relate to the following pipelines, all located in Queensland:

<b>Pipeline Licence</b>	<b>Name/ Route</b>	<b>Operator</b>
PL 61	Peabody-Mitsui Pipeline	Peabody Moura Mining Pty Ltd
PPL3	Kincora to Wallumbilla	Oil Company of Australia Ltd
PPL26	Dawson Valley to Duke Queensland Gas Pipeline	Oil Company of Australia
	Dalby Gas Distribution Network	Dalby Town Council

On 3 November 2000, the Council recommended that coverage of each pipeline be revoked. The Council found that regulated access was unlikely to promote competition in another market and was contrary to the public interest, as the costs outweighed the benefits of regulation.

The Council's final recommendation in respect of the three transmission pipelines was made to Senator The Hon. Nick Minchin, Commonwealth Minister for Industry, Science and Resources.

The Council's final recommendation in respect of the Dalby Distribution System was made to The Hon. Tony McGrady MLA, Queensland Minister for Mines and Energy.

Under the National Code, the Ministers have 21 days to make their respective decisions from the date they receive the Council's recommendations.

While the Council dealt with the applications jointly as a matter of convenience, the applications were separate matters, and the Council made separate recommendations in relation to each application. Two reports have been provided: one on the transmission pipelines, and one on the Dalby network.

On 23<sup>rd</sup> November, the Hon. Senator Nick Minchin, Federal Minister for Industry, Science and Resources, decided to revoke coverage of the three transmission pipelines.

On 28<sup>th</sup> November, the Hon. Tony McGrady MLA, QLD Minister for Mines and Energy, decided to revoke coverage of the Dalby network.

All decisions were in accordance with the Council's recommendations.

**MATTERS BEFORE THE AUSTRALIAN COMPETITION TRIBUNAL**

On 27<sup>th</sup> October 2000, Duke Energy made an application to the Australian Competition Tribunal for review of the decision to cover the Eastern Gas Pipeline under the National Gas Code.

The Australian Competition Tribunal has listed the matter for hearing for two weeks commencing Monday 29<sup>th</sup> January 2001.

**The aim of the National Competition Council is.....**

**“To help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy that promote growth, innovation and productivity.”**

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