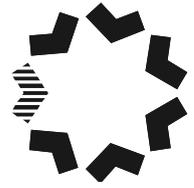


NATIONAL  
COMPETITION  
COUNCIL



## Corporate Plan 2017-18



**August 2017**

# Table of Contents

<b>1 Introduction .....</b>	<b>2</b>
<b>2 Purposes .....</b>	<b>3</b>
<b>3 Environment.....</b>	<b>5</b>
Variable workload.....	5
Changes to national competition policy .....	5
Other potential policy changes.....	7
<b>4 Performance.....</b>	<b>9</b>
Strategy and programme deliverables.....	9
Performance measurement.....	9
<b>5 Capability.....</b>	<b>11</b>
Governance.....	11
Secretariat services.....	11
Resources.....	12
<b>6 Risk oversight and management .....</b>	<b>14</b>
<b>7 Contact the NCC .....</b>	<b>15</b>

## **1 Introduction**

- 1.1 As the accountable authority of the National Competition Council (NCC), I present the NCC Corporate Plan 2017–18, which covers the periods of 2017–18 to 2020–21, as required under paragraph 35(1)(b) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

**Julie-Anne Schafer, President of the NCC**

## 2 Purposes

2.1 The NCC is a Commonwealth statutory agency established by section 29A of the *Competition and Consumer Act 2010* (CCA). It was created in 1995 following agreement by the Council of Australian Governments (COAG) to a National Competition Policy (NCP). NCP places competition at the forefront as a means of promoting productivity and economic growth to enhance the economic welfare of Australians.

2.2 The NCC's main function is to advise on the regulation of third party access to services provided by monopoly infrastructure. The outcome that the activities of the NCC are directed to achieve is specified in the NCC Portfolio Budget Statement 2017-18:

Competition in markets that are dependent on access to nationally significant monopoly infrastructure, through recommendations and decisions promoting the efficient operation of, use of and investment in infrastructure.

2.3 The NCC makes recommendations under the National Access Regime in Part IIIA of the CCA and recommendations and decisions under the National Gas Law (NGL). The National Access Regime provides for access to the services of infrastructure facilities on appropriate terms, through the declaration of services. The NCC's role is to make recommendations to relevant ministers in relation to applications for declaration of services and also the certification of state or territory access regimes.

2.4 The NCC has a similar role under the National Gas Law (NGL), contained in the Schedule to the *National Gas (South Australia) Act 2008*, where it makes recommendations on the coverage of natural gas pipeline systems. Under the NGL, the NCC also has the tasks of deciding the form of regulation of natural gas pipeline systems (light or full regulation), classifying pipelines (as transmission or distribution) and recommending in relation to various exemptions for greenfields gas pipelines.

2.5 Both the National Access Regime and the NGL seek to promote the efficient operation of, use of, and investment in significant bottleneck infrastructure, and to promote competition, efficiency and productivity in markets that depend on the use of services provided by significant bottleneck infrastructure facilities.

2.6 In May 2017, the Commonwealth Government announced additional funding for the NCC as part of its 2017-18 Budget. As announced, the funding will enable the NCC to:

- support the implementation of the Intergovernmental Agreement on Competition and Productivity-Enhancing Reforms, announced by COAG on 9 December 2016; and

- assist with the implementation and ongoing assessment of state and territory performance under the new National Housing and Homelessness Agreement to be in place by 1 July 2018.

2.7 At the time of writing, the abovementioned agreements are still subject to negotiation between the Commonwealth and state and territory governments. While the Council has commenced preliminary consideration of how it will operationalise its new roles and functions, as announced, it may take some time for the scope of those roles to become clear and for the Council to make its decisions.

### **3 Environment**

- 3.1 Below are some of the key environmental factors that will influence the way the NCC operates over the next four years.

#### **Variable workload**

- 3.2 Access applications under Part IIIA and the NGL are sporadic, and, as a consequence, the NCC's current workload is highly variable. To maintain the sustainability and efficiency of its operations, the NCC entered into an arrangement with the Australian Competition and Consumer Commission (ACCC), with effect from 1 July 2014, whereby the ACCC provides the NCC with secretariat services.
- 3.3 The NCC remains an independent entity with its current responsibilities and membership but rather than directly engaging staff (and other resources) to provide secretariat services, it draws on ACCC resources as required. To date, these arrangements have allowed the NCC to maintain its independence, and to respond to access issues and provide high quality and timely recommendations.
- 3.4 The announcement of new functions and funding for the NCC as part of the 2017-18 Commonwealth Budget will likely require the NCC and ACCC to review the terms of the current arrangements. At the time of writing, and with precise roles for the NCC still to be clarified, it is too early to make significant decisions to this end.
- 3.5 The NCC will continue to review its processes and the structure of its recommendation reports and decisions. It will also review its published guidelines and other information in relation to access regulation to ensure these remain up-to-date.

#### **Changes to national competition policy**

- 3.6 On 31 March 2015, the Competition Policy Review Panel's final report was released. The review panel, chaired by Professor Ian Harper, undertook a review of Australia's competition policy framework.
- 3.7 As a result of the recommendations of the review, Australia's competition policy, including the role of the NCC, could change over the next four years. Further detail on possible changes is set out below.

#### *Competition Institutions*

- 3.8 One recommendation of the Review Panel was that the NCC should be incorporated into a larger Access and Pricing Regulator (APR).

- 3.9 A government response was released in November 2015. At the time of writing, no decisions regarding the proposed APR have been made.

*New Intergovernmental Agreement on Competition and Productivity - Enhancing Reforms*

- 3.10 At the December 2016 meeting of the Council of Australian Governments (COAG), a successor to the *Competition Principles Agreement* (CPA)<sup>1</sup> between the Commonwealth and the states and territories was announced. The new *Intergovernmental Agreement on Competition and Productivity - Enhancing Reforms* (IGA),<sup>2</sup> which contains amendments to the CPA, commenced on 9 December 2016 upon signature by the Commonwealth and four states and territories. At the time of writing, however, Victoria, Queensland and South Australia had not signed the new IGA.
- 3.11 The CPA sets out principles relating to competition policy, including in respect of access to services provided by significant infrastructure facilities, competitive neutrality, reform of public monopolies and price oversight of government business enterprises.
- 3.12 The IGA (at Appendix C.1) contains revised principles in relation to access to services provided by means of significant infrastructure facilities, including principles to be applied by the NCC and the relevant Minister when making recommendations and decisions in relation to applications for certification of the effectiveness of access regimes under Part IIIA of the CCA. However, it is not clear that Appendix C.1 will in practice replace clause 6 of the CPA until agreed by all parties to the CPA. Should this further agreement occur, the NCC will update its relevant guidance material.

*Competition and Consumer Amendment (Competition Policy Review) Bill 2017*

- 3.13 In March 2017 the Treasurer, the Hon. Scott Morrison MP, introduced the *Competition and Consumer Amendment (Competition Policy Review) Bill 2017* into Parliament. At the time of writing, the Bill is still before the Parliament.
- 3.14 The Bill responds to the recommendations of the Harper Review (completed in 2015) and the Productivity Commission's review of the National Access Regime (completed in 2014). The majority of the amendments included in the Bill were supported by the Council's submissions to the respective reviews.
- 3.15 If the amendments are legislated as drafted, they will make some important changes to the provisions administered by the NCC. Schedule 12 of the Bill:

<sup>1</sup> The CPA was agreed by the Commonwealth and all the States and Territories in 1995. It has been amended most recently in 2007

<sup>2</sup> [www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-competition-and-productivity-enhancing-reforms](http://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-competition-and-productivity-enhancing-reforms)

- amends Part IIIA of the *Competition and Consumer Act 2010*, which contains the National Access Regime, to implement the recommendations made by the Productivity Commission.
- amends and clarifies the declaration criteria used by the NCC and the designated Minister in determining whether a service should be declared.
- introduces a new power for the Minister to revoke certification of a state access regime.

3.16 Again, the NCC will update its relevant guidance material should the legislation be passed.

## **Other potential policy changes**

### *Gas market reforms*

3.17 In early 2016, the ACCC concluded an inquiry into east coast natural gas markets. The ACCC concluded that there were few constraints on the behaviour of existing pipeline operators and evidence of the exercise of market power. One of the ACCC recommendations was that the COAG Energy Council should agree to replace the current test for the regulation of gas pipelines (the coverage criteria) in the *National Gas Law* with a new test.

3.18 The coverage criteria guide the NCC in making coverage recommendations to the relevant Minister, so any changes could have implications both for the NCC's approach to such matters and its consequent workload.

3.19 In August 2016, the COAG Energy Council established a Gas Market Reform Group, led by Dr Michael Vertigan AC, to examine the current regulatory test for the regulation of gas pipelines.

3.20 Dr Vertigan undertook an examination of the current test for the regulation of gas pipelines between August and December 2016 and recommended that:

- the disclosure and transparency of pipeline service pricing and contract terms and conditions be enhanced, including requiring the provision of information on the full range of pipeline services which are available or sought.
- a framework for binding arbitration, available to all open access pipelines in the event parties are unable to reach a commercial agreement, be introduced into the National Gas Law.

3.21 COAG Energy Council endorsed the recommendations in December 2016 and in February 2017, Ministers agreed changes to the *National Gas Law* to implement the new commercial arbitration framework and information disclosure requirements.

- 3.22 In July 2017, the COAG Energy Council further announced that it has asked the Senior Committee of Officials to report by the end of 2017 on further regulatory options to strengthen pipeline regulation.
- 3.23 Recommendations of the Gas Market Reform Group and/or the Senior Committee of Officials may, in time, affect provisions administered by the NCC, and necessitate the NCC updating its relevant guidance material.

## 4 Performance

### Strategy and programme deliverables

- 4.1 The NCC's strategy to achieve its outcome is to provide comprehensive, objective, timely and transparent recommendations and decisions that accord with the relevant law (including time limits) and good regulatory practice.
- 4.2 The programme deliverables for the NCC are to:
- make recommendations to Ministers pursuant to Part IIIA of the CCA in relation to applications for the declaration of services provided by monopoly infrastructure and the certification of state and territory access regimes;
  - make recommendations to Ministers pursuant to the NGL relating to the coverage of natural gas pipelines and on price regulation and greenfields incentives;
  - make decisions pursuant to the NGL relating to the form of regulation and classification of natural gas pipelines; and
  - advise the Parliament on the operation of the National Access Regime in accordance with section 29O(2) of the CCA.
- 4.3 The NCC's programme aims, as set out in the 2017-18 portfolio budget statements, do not outline the new functions announced for the NCC in the 2017-18 Budget. The scope of programme deliverables associated with the new functions may be identified in future NCC portfolio budget statements and subsequently corporate plans.

### Performance measurement

- 4.4 The NCC Budget Statement 2017-18 sets out the following key performance criteria:
- recommendations on declaration applications made within statutory time limits (consideration period of 180 days) and meet advice requirements of Ministers;
  - recommendations on certification applications made within statutory time limits (consideration period of 180 days) and meet advice requirements of Ministers;
  - recommendations and decisions under the NGL made within specified time limits and recommendations under the NGL meet advice requirements of Ministers;

- accessible information on all access regulation matters for which the NCC is responsible is provided on the NCC website;
  - up-to-date and informative guidelines on all the NCC's areas of responsibility are maintained on the NCC website;
  - case law developments, legislative amendments and developments in the NCC's processes or policies are reflected in the NCC's information resources within 30 days; and
  - the NCC's annual report to the Parliament includes a comprehensive report that meets the requirements of section 290(2) of the CCA and is provided within 60 days of the end of the financial year.
- 4.5 These performance criteria are linked to the NCC's strategy and programme deliverables to support its purpose. Actual results will be reported at the end of each financial year in the NCC's annual performance statement, to be included in the NCC Annual Report for the periods from 2017–18 to 2020–21.
- 4.6 The performance criteria, as set out in the 2017-18 portfolio budget statements, do not outline the material new functions announced for the NCC in the 2017-18 Budget. The scope of performance criteria may be identified in future budget statements and subsequently corporate plans.

## 5 Capability

### Governance

- 5.1 The NCC comes under the portfolio responsibilities of the Treasury. The responsible minister is the Treasurer, the Hon Scott Morrison MP.
- 5.2 The NCC consists of a President and up to four other part-time Councillors appointed by the Governor-General for their expertise or experience in industry, commerce, economics, law, consumer protection or public administration. Appointments to the NCC are made on the recommendation of the Commonwealth Government which must be supported by a majority of the states and territories.
- 5.3 The NCC comprises:<sup>3</sup>
- Julie-Anne Schafer – President
  - Linda Evans
  - Martin Wallace
- 5.4 The NCC routinely meets four times each year. Additional meetings are held in relation to specific applications as required. NCC meetings are held on a face to face basis or by telephone conference as appropriate. The NCC may also make decisions without meeting, by way of circular resolutions, where this is in accordance with its established protocol.
- 5.5 The announcement of additional funding for the NCC as part of the Commonwealth Government's 2017-18 Budget may result in changes to the NCC's governance arrangements through 2017-18, including the possibility of additional Councillor appointments.

### Secretariat services

- 5.6 . As noted earlier in this plan, the NCC has revised its approach to the provision of the secretariat services it requires to fulfil its roles under the CCA and NGL. Rather than directly engaging staff and other resources, the NCC has contracted with the ACCC for provision of its secretariat services.
- 5.7 The agreement between the NCC and ACCC for provision of secretariat services, which was entered into in 2014, is available in full on the NCC website. The key elements of the agreement are summarised below.

---

<sup>3</sup> An up to date list of Council Members and associated biographies is available on the NCC's website – [www.ncc.gov.au](http://www.ncc.gov.au).

- 5.8 At the time of its commencement, the agreement was intended to be ongoing but subject to regular review.
- 5.9 The 2017-18 Budget announcements of material new functions for the NCC may change the current arrangements, however no decisions will be made until the scope of the NCC's new functions are clearer.
- 5.10 *Key elements of ACCC-NCC Memorandum of Understanding (current at July 2017)*
- The NCC President and Councillors remain responsible for NCC recommendations and decisions.
  - The ACCC will ensure that staff and other related resources are available to provide secretariat services to the NCC so that the NCC is able to meet statutory and other agreed deadlines and are of a quality acceptable to the NCC.
  - Secretariat services provided to the NCC by ACCC officers will be provided in accordance with NCC policies and procedures, and under the direction of the NCC President and Councillors.
  - An identified ACCC SES officer will be designated as Executive Director of the NCC and will act as the principal link with the NCC President and Councillors and have day to day responsibility for directing the provision of secretariat services.
  - In assigning officers to provide secretariat services to the NCC, regard will be had to the need for transparency in decision making, and avoidance of any actual conflict of interest or the appearance of a conflict of interest.
  - The level of secretariat services and payment to the ACCC for such services is predicated on consideration of up to six applications under the CCA or NGL each year and the ACCC undertaking all required administration of the NCC. The agreement includes provision for additional payments in the event that activity levels are greater than reasonably anticipated.

## **Resources**

- 5.11 Four-year budget estimates for the NCC are published annually in The Treasury's Portfolio Budget Statements. The following table sets out the NCC's funding for 2017-18 and forward years of the budget estimates.
- 5.12 The budgeted amounts for 2017-18 and forward estimates reflect the announcement of two new roles for the NCC.

**Table 5.1 Programme expenses**

	2016-17 Estimated actual \$'000	2017-18 Budget \$'000	2018-19 Forward estimate \$'000	2019-20 Forward estimate \$'000	2020-21 Forward estimate \$'000
Annual departmental expenses:					
Departmental item	1,727	5,970	5,312	5,298	5,305
<b>Total programme expenses</b>	<b>1,759</b>	<b>6,002</b>	<b>5,344</b>	<b>5,330</b>	<b>5,337</b>

Source: Portfolio Budget Statements 2017-18

## 6 Risk oversight and management

- 6.1 The NCC has established Accountability Authority Instructions and an Audit Committee as required under the PGPA Act and *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).
- 6.2 The NCC has also established a Risk Management Plan and a Fraud Control Plan, both of which were updated in February 2016.
- 6.3 Under the current memorandum of understanding arrangements, to a considerable extent, the NCC's plans rely upon the risk oversight and management principles and systems put in place by the ACCC to meet Commonwealth requirements, including in relation to:
- Risk management
  - Budget estimates under the PGPA Act
  - Annual financial statements under the PGPA Act
  - Fraud control & fraud risk assessment under the PGPA Act
  - Procurement under the PGPA Act
  - Commonwealth Protective Security Policy Framework
  - Reporting under the *Legal Services Directions 2005* and *Freedom of Information Act 1982*
  - Workplace Health and Safety
  - Workplace Diversity
  - Strategic Workforce Plan 2015–18
- 6.4 Some minor modifications to standard ACCC processes may be made, as required, to make them fit for purpose for the NCC.
- 6.5 In light of the new functions announced for the NCC in the 2017-18 Budget, the NCC will consider its current risk management policies and practices as part of any operational decisions that are made.

## **7 Contact the NCC**

The NCC's office is currently located at the ACCC's Melbourne office.

Telephone: 1800 099 470

Email: [info@ncc.gov.au](mailto:info@ncc.gov.au)

Website: [www.ncc.gov.au](http://www.ncc.gov.au)

Mailing address:       GPO Box 250  
                              Melbourne Vic 3001

Delivery address:       Please refer to the NCC website for current office details.

National Competition Policy Website: [www.ncp.ncc.gov.au](http://www.ncp.ncc.gov.au)