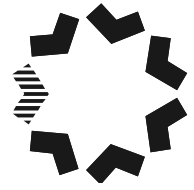


NATIONAL
COMPETITION
COUNCIL



Corporate Plan 2016-17



August 2016

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1 Introduction

- 1.1 As the accountable authority of the National Competition Council (NCC), I present the NCC Corporate Plan 2016–17, which covers the periods of 2016–17 to 2019–20, 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 2016-17:
- 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.

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. The new arrangements are structured so as to maintain the NCC's independence, and to enable the NCC to respond to access issues and provide high quality and timely recommendations.
- 3.4 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

- 3.5 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.
- 3.6 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. In particular, the Review Panel proposed incorporating the NCC into a larger Access and Pricing Regulator (APR).
- 3.7 A Government response was released in November 2015. At the time of writing, no decisions regarding the proposed APR have been made.

Other potential policy changes

- 3.8 The Government response to the Competition Policy Review also included a response to the Productivity Commission's 2013 review of the National Access Regime. Overall, the Government's position was to support twelve Productivity Commission recommendations, note one, and support the Harper Review's recommendation in part.

- 3.9 If they come into force, these amendments will make some changes to the provisions administered by the NCC. This may or may not increase the number of applications submitted to the NCC, but the NCC will in any event update its relevant guidance material.
- 3.10 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.
- 3.11 On 19 August 2016, the COAG Energy Council announced that a Gas Market Reform Group would be formed with Dr Michael Vertigan AC as the Independent Chair. As a first step, in consultation with stakeholders and working with the ACCC findings, Dr Vertigan is expected to draw together a report on what needs to be done with the coverage criteria under the National Gas Law. It is expected that Ministers will consider Dr Vertigan's report at the meeting of the COAG Energy Council in December 2016.
- 3.12 Recommendations of the Gas Market Reform Group 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.

Performance measurement

- 4.3 The NCC Budget Statement 2016-17 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 29O(2) of the CCA and is provided within 60 days of the end of the financial year.
- 4.4 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 2016–17 to 2019–20.

5 Capability

Governance

- 5.1 The NCC comes under the portfolio responsibilities of the Treasury. The responsible minister is the Hon Scott Morrison MP, Treasurer.
- 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:¹
- 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.

Secretariat services

- 5.5 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.
- 5.6 The agreement between the NCC and ACCC for provision of secretariat services is available in full on the NCC website. The key elements of the agreement are:
- 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.

¹ An up to date list of Council Members and associated biographies is available on the NCC's website – www.ncc.gov.au.

- 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.
- The agreement is intended to be ongoing but is subject to regular review.

Resources

5.7 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 2016–17 and forward years of the budget estimates.

Table 5.1 Programme expenses

	2015-16 Estimated actual \$'000	2016-17 Budget \$'000	2017-18 Forward estimate \$'000	2018-19 Forward estimate \$'000	2019-20 Forward estimate \$'000
Annual departmental expenses:					
Departmental item	1,740	1,727	1,710	1,720	1,737
Total programme expenses	1,772	1,759	1,742	1,752	1,769

Source: Portfolio Budget Statements 2016-17

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 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

Some minor modifications to standard ACCC processes may be made, as required, to make them fit for purpose for the NCC.

7 Contact the NCC

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

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