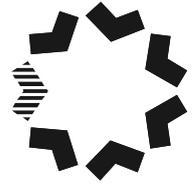


NATIONAL
COMPETITION
COUNCIL



Strategic Plan 2014-2017



April 2014

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1 Introduction

- 1.1 The National Competition Council (NCC or Council) is an independent statutory agency established by s29A of the *Competition and Consumer Act 2010* (CCA). Its functions and powers are set out in s29B of the CCA (see Box 1).

Box 1: Functions and powers of the National Competition Council (s29B of the Competition and Consumer Act 2010)

- (1) The Council's functions include:
- (a) carrying out research into matters referred to the Council by the Minister; and
 - (b) providing advice on matters referred to the Council by the Minister.
- (2) The Council may:
- (a) perform any function conferred on it by a law of the Commonwealth, or of a State or Territory; and
 - (b) exercise any power:
 - (i) conferred by that law to facilitate the performance of that function; or
 - (ii) necessary or convenient to permit the performance of that function.
- (2A) The Council must not, under subsection (2):
- (a) perform a function conferred on it by a law of a State or Territory; or
 - (b) exercise a power that is so conferred;
- unless the conferral of the function or power is in accordance with the Competition Principles Agreement.
- (2B) Subsection (2) does not apply to a State/Territory energy law.
- Note: Section 29BA provides that a State/Territory energy law may confer functions or powers, or impose duties, on the Council.
- (3) In performing its functions, the Council may co operate with a department, body or authority of the Commonwealth, of a State or of a Territory.

- 1.2 The NCC's principal activities are:

- making recommendations¹ in relation to applications for the declaration of services provided by monopoly infrastructure
- making recommendations in relation to applications for the certification of the effectiveness of state and territory access regimes
- making recommendations in relation to applications for services to be declared as ineligible services and thus exempt for declaration under Part IIIA for a period of at least 20 years

¹ NCC recommendations are provided to different Ministers in different circumstances. A table summarising which Minister is responsible for particular recommendations is contained in Appendix A.

- making recommendations under the National Gas Law (NGL) and National Gas Rules (NGR) relating to coverage of natural gas pipelines
- making recommendations under the NGL in relation to applications for greenfields pipeline incentives (including 15 year no-coverage determinations)
- determining the classification of natural gas pipelines
- deciding the form of regulation of a pipeline in relation to applications for a light regulation determination, and
- reporting on matters required by section 290(2) of the CCA including:
 - Court and Australian Competition Tribunal decisions interpreting various matters
 - impediments to the operation of Part IIIA of the CCA delivering efficient access outcomes
 - evidence of the benefits arising from Australian Competition and Consumer Commission (ACCC) access arbitration determinations
 - evidence of the costs of, or disincentives for investment in infrastructure used to provide declared services
 - implications for the operation of Part IIIA in the future.

1.3 In addition, the NCC may be called upon to carry out research and provide advice as requested by the Minister and to exercise other powers conferred on it in accordance with the Competition Principles Agreement.

2 Changes to the NCC's strategies

Provision of secretariat services

- 2.1 This plan provides for a significant change in the way NCC obtains secretariat services to support its recommendations, decisions and related functions.
- 2.2 Since its role in assessing the performance of Australian governments under the National Competition Policy (NCP) ended in 2005, the NCC has been confined to considering third party access related applications under Part IIIA of the CCA and similar applications under the NGL.
- 2.3 Consequently the NCC's workload is largely dependent on such applications being made. Such applications are sporadic, unpredictable and (as intended and appropriate) relatively infrequent. Prior to 2005 the NCC's assessment role in relation to NCP complemented the Council's application driven workload. Since that time, although the Council had undertaken a number of steps to mitigate the effects, it has become increasingly apparent that the level and nature of the NCC's activities means that maintaining a stand-alone body to provide secretariat services to the Council is inefficient and unsustainable.
- 2.4 As a result the NCC has considered alternative means of obtaining secretariat services and decided to replace its staff secretariat with an arrangement by which it would contract with another agency to provide it with secretariat services as part of a larger portfolio of work and scope of resources. Having considered a range of possible options, the NCC has identified the ACCC as the most suitable agency to provide these services. The NCC has therefore decided to enter into an agreement with the ACCC for provision of secretariat services.
- 2.5 The Council is aware that this decision may give rise to concerns about conflicts of interest or a loss of independence in the recommendations and decisions the Council is responsible for. The Council is particularly concerned to maintain its independence and avoid actual or apparent conflicts of interest and has taken a number of steps to address these issues.
- 2.6 The agreement with the ACCC includes provisions to address the risks of possible conflicts of interest and to provide appropriate oversight of work undertaken by ACCC staff for the NCC.
- 2.7 Under this agreement the NCC President and Councillors retain their existing responsibility for the NCC's recommendations and decisions and the independence of the NCC is maintained. However, rather than directly engaging staff (and other resources) to provide secretariat services, the ACCC provides day to day administration and secretariat services to the Council. The agreement provides that the Council pays for the ACCC to develop, maintain and make available sufficient capacity to deal with declaration and other applications when these occur and to undertake administrative services for the Council.

- 2.8 In the Council's view these arrangements preserve the Council's independence while providing it with access to high quality secretariat services on an efficient and sustainable basis.
- 2.9 For further detail on the agreement under which the NCC obtains secretariat services from the ACCC see paragraph 3.5 below.

Legislative amendments

- 2.10 The NCC also expects legislative amendments to the CCA following the Productivity Commission's 2013 Inquiry into the National Access Regime and as a result of the Root and Branch Review of the CCA in 2014.
- 2.11 This plan will be revised should these amendments substantially change the NCC's role or functions or otherwise require significant changes to the NCC's strategy.

3 Governance and organisation

The Council

- 3.1 The NCC is made up of a President and up to four other Councillors. The President and Councillors are 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.
- 3.2 The Council comprises:²
- David Crawford – President
 - Virginia Hickey
 - Prof Stephen King
 - Linda Evans.
- 3.3 The President and Councillors serve on a part-time basis. The Council routinely meets four times each year. Additional meetings are held in relation to specific applications as required. Council meetings are held on a face to face basis or by telephone conference as appropriate. The Council may also make decisions without meeting, by way of circular resolutions, where this is in accordance with an established protocol.

Secretariat services

- 3.4 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.
- 3.5 Appendix B contains an indicative list of the Secretariat and other services provided to the NCC by the ACCC.
- 3.6 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.

² 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 appearance of a conflict of interest.
- The level of secretariat services and payment to the ACCC for such services is predicated on the performance and activity levels set out in sections 4 and 5 of this plan. 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.

4 Outcome and performance information

4.1 The outcome that the activities of the NCC are directed to achieve is:

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

4.2 The NCC's key performance indicators (KPIs) are set out in *Annual Portfolio Budget Statements*.³ These are:

- recommendations on declaration applications made within statutory time guidelines⁴ and meet advice requirements of Ministers
- recommendations on certification applications made within statutory time guidelines and meet advice requirements of Ministers
- recommendations and decisions under the NGL made within statutory time guidelines and recommendations 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
- the NCC's Annual Report to the Parliament includes a comprehensive report that reports against the NCC's KPIs and meets the requirements of section 290(2) of the CCA and is provided within 60 days of the end of the financial year.

4.3 The NCC expects this outcome and the associated KPIs to endure for the period of this Strategic Plan.

4.4 During the period 2014-2017, the NCC will maintain its emphasis on the quality and timeliness of its recommendations and decisions. In particular the NCC will:

- ensure recommendations and decisions are made objectively and in accordance with the relevant statutory provisions
- maintain transparency in its deliberative processes
- maintain Council meeting arrangements that give priority to timely decision making
- seek to be consistent and predictable
- meet statutory time limits, except in extraordinary circumstances.

³ The NCC is an agency within the Treasury portfolio.

⁴ A summary of the statutory timeframes for various NCC recommendations and decisions is included in Appendix B.

5 Expected activity 2014-17

Access regulation

- 5.1 The NCC's work in relation to access regulation is driven by applications under the CCA and the NGL. The number and timing of such applications is largely determined by factors outside the NCC's influence. Accordingly, the estimates provided below are based on past experience. There is a significant risk that actual application numbers will differ from these estimates.
- 5.2 In the period 2014 to 2017 the NCC expects to receive up to three applications for declaration in each year.
- 5.3 It is not possible to predict the number of applications in relation to ineligible services the NCC may receive.
- 5.4 The NCC also expects to receive up to three new applications for certification of state and territory access regimes between 2014 and 2017.
- 5.5 It is unlikely the NCC will receive previously anticipated applications for the certification of access regimes implemented under co-operative arrangements for regulation of the electricity and gas sectors. These arrangements are likely to remain uncertified.
- 5.6 In the period 2014 to 2017, under the NGL, the NCC expects to receive:
- One or two applications for coverage or revocation of coverage of natural gas pipelines
 - One or two applications for a light regulation determination
 - two to four applications for 15 year no coverage determinations
- 5.7 The Council does not anticipate any requests for it to undertake research or provide advice under s29B(1) of the CCA or to have any additional functions conferred on it under s29B(2).
- 5.8 In summary:

Declaration applications	Up to 3pa (2014-2017)
Certification applications	Up to 3 from 2014-17
Pipeline coverage/revocation of coverage applications	1 – 2 from 2014-2107
Applications for light regulation determinations	1 – 2 from 2014-2017
Applications for 15 year no-coverage determinations	2 – 4 from 2014-2017

Communications

- 5.9 The NCC will continue to ensure businesses, policy makers and the wider community are accurately informed about access regulation. The NCC will also ensure its recommendations and decisions, and the reasons for these, are clearly communicated.

5.10 To achieve these aims, the NCC will:

- maintain its website as the principal means of communication with the public and interested parties
- maintain a suite of electronically available guides and other information materials.

Appendix A – Decision making Ministers and time limits for NCC recommendations and decisions

Type of application	Decision maker	Standard Period ⁵ for NCC recommendation or decision	Standard Period for relevant Minister to make decision
<i>Competition and Consumer Act 2010</i>			
Declaration of a service	Where service provider is State/Territory body: responsible Minister of that State/Territory. Otherwise: Commonwealth Minister	180 days	60 days, otherwise deemed to have decided not to declare
Certification of a state or territory access regime	Commonwealth Minister	180 days	60 days, otherwise deemed to have followed NCC recommendation
Service ineligible for declaration	Where service provider is state/territory body: responsible Minister of that state/territory. Otherwise: Commonwealth Minister	180 days	60 days, otherwise deemed to have followed NCC recommendation
<i>National Gas Law</i>			
Coverage (or coverage revocation) of a gas pipeline	Transmission pipelines: Commonwealth Minister, except if located within, or most closely associated with, WA or SA: then responsible Minister of that state	4 months	20 business days
	Distribution pipelines: Responsible Minister of state/territory the pipeline is located within, or most closely associated with		
Light regulation of a gas pipeline (and revocation thereof)	NCC	4 months	N/A
15 year no-coverage determination	Transmission pipelines: Commonwealth Minister, except if located within, or most closely associated with, WA or SA: then responsible Minister of that state	4 months	30 business days
	Distribution: Responsible Minister of state/territory the pipeline is located within, or most closely associated with		
Price regulation exemption for international pipeline	Commonwealth Minister	30 business days	10 business days
Gas pipeline reclassification	NCC	4 months	N/A

⁵ Standard periods may be extended in some circumstances and by various “stop-the-clock” provisions when additional information is sought or public consultation commenced.

Appendix B – Secretariat services

Advice and support in relation to NCC recommendations, decisions and reports

Receive applications under Part IIIA and the NGL (usually there will be pre-application discussions with intending applicants). This encompasses applications for:

- declaration of a service (and revocation of declaration)
- certification of state/territory access regimes
- ineligibility for declaration (and revocation of an ineligibility determination)
- coverage of pipelines (and revocation of coverage)
- form of regulation of covered pipelines (light regulation determinations are made by the Council)
- 15 year pipeline no-coverage determinations
- Classification and reclassification of pipelines

Advise the NCC on validity of applications

Arrange public notice of applications and publication on NCC website, advise service provider and other interested parties, advise decision making Minister

Advise the NCC on novel issues arising in applications and how these should be considered in accordance with the law, discuss approach to such issues and associated risks with the NCC as appropriate

Seek submissions on applications, publishing these on the website

Deal with applications for confidentiality in accordance with NCC policy

Investigate and research issues arising in applications, especially those relating to satisfaction of the relevant declaration or other decision criteria

Prepare a draft recommendation for consideration by the NCC, amend this as required following discussion with the NCC

Publish and distribute draft recommendation (incl on website), seek further submissions in response to draft recommendation

Finalise recommendation in conjunction with the NCC, provide to decision making Minister

Publish Minister's decision and NCC recommendation

Participate, and brief counsel and solicitors to participate, in reviews or appeals of decisions and other litigation in accordance with NCC policy and practice (It is the NCC's intention that it would directly engage (and pay for) independent experts, solicitors and counsel engaged in any review, appeal or similar proceedings)

Prepare and update guidelines and similar policy statements for approval by the NCC

Respond to inquiries in relation to possible applications and third party access to infrastructure generally

Undertake research and analysis to support the NCC's response to any requests for research or advice under ss29B (1) or (2) of the CCA

Prepare draft submissions and reports as directed by the NCC

Liaise with Commonwealth and State/Territory officials as required

Administration of the NCC

Maintain NCC website

Organise scheduled quarterly Council meetings and other meetings/teleconferences as required

Coordinate travel arrangements for NCC President and Councillors (The NCC will remain responsible for the costs of Councillor travel and accommodation)

Generally assist the NCC in meeting its statutory obligations, including in relation to freedom of information and privacy legislation

Prepare the NCC's Annual Report, including reporting required under s 29O(2) of the CCA.

Prepare responses to parliamentary questions

Prepare briefing material for the NCC President's attendance at Senate Estimates and other similar inquiries

Prepare speaking notes and conference presentations for the NCC President and councillors

Prepare and distribute NCC media releases (NCC media releases will generally be issued in the name of the Council President. Day to day media inquiries will be handled by the Executive Director and escalated to the President as required).

Maintain the NCC's financial records and payroll (the ACCC currently provides the NCC's financial and personnel administration, it is assumed that these functions would be as part of the provision of overall secretariat services)

Liaise with the NCC's auditors in relation to the NCC's financial statements

Liaise with Treasury and other agencies in relation to the NCC's budget and financial management

Coordinate the NCC's provision of information to and dealings with Treasury, Finance, Comcare, Comcover, APSC, Office of Legal Services Coordination, and other government agencies

Maintain NCC records in accordance with National Archives and other requirements