



Making a submission: declaration

(December 2017)

1 Background

- 1.1 The National Competition Council is responsible for considering a variety of types of applications under Part IIIA of the *Competition and Consumer Act 2010* (Cth) (**CCA**) and in relation to gas pipelines under the National Gas Law. The Council considers the views of interested parties when considering these applications by inviting public submissions wherever appropriate and practicable.
- 1.2 Generally, the Council's process for considering an application for declaration under the CCA involves the following steps:

Upon receipt of an application, the Council will consider whether the service specified in the application for declaration cannot be declared because it falls within one of the categories listed in s 44F(1) of the CCA.

If the service in question is not valid for declaration, the Council will notify the applicant.

If the service is not excluded under s 44F(1) of the CCA, the Council then publishes the application on its website (www.ncc.gov.au) and notifies the relevant service provider(s).

The Council advises likely interested parties that it has received the application.

The Council publishes a call for **written submissions on the application** on its website and in *The Australian* newspaper (or another newspaper with national circulation) and usually provides a period of 30 days for submissions. The notice will specify a closing deadline for submissions.

The Council publishes the submissions on the application on its website as soon as practicable after the closing date.

The Council prepares and releases a draft recommendation setting out its analysis and conclusions based on information received and gathered to this point.

The Council seeks **written submissions on the draft recommendation** and usually provides a period of 30 days for submissions.

The Council publishes the submissions on the draft recommendation on its website as soon as practicable after the closing date.

The Council prepares its final recommendation.

The Council provides its final recommendation to the designated Minister.¹

¹ Recommendations under the CCA are generally provided to the designated Minister without being made public and remain confidential until the Minister makes his or her decision, at which time the Minister's decision, the Minister's reasons for decision, and the Council's recommendation are made public.

2 Timing for Council recommendations

- 2.1 The CCA provides for the Council to make a recommendation on an application for declaration within six months (180 days) of receipt of the application. While the Council endeavours to make its recommendations consistent with the CCA timeframe, it may need to extend the period for applications that are particularly complex or where significant public holidays such as the Christmas/New Year period or other factors restrict the Council's ability to gather information.

Public consultation periods, time extensions and the treatment of late submissions

- 2.2 The Council allows appropriate opportunities for submissions where possible. Given the timing obligations imposed by the CCA, the Council necessarily imposes deadlines for submissions, which it expects to be met. When calling for submissions the Council will specify the date by which submissions must be received.
- 2.3 The Council will take account of all submissions received by a deadline.
- 2.4 Requests for extensions to deadlines will be considered on a case by case basis. Any request should be made as early as possible in the submission period and establish exceptional circumstances in support of the request. Extensions granted to a specific party will not necessarily be extended to other parties unless the basis for granting an extension applies broadly.
- 2.5 Late submissions may or may not be accepted at the discretion of the Council. Where the Council accepts a late submission it may, at its discretion, afford that submission less weight given the Council will have a more limited opportunity to test and consider the submission.

3 What should a submission contain?

- 3.1 The Council will publish a notice in a nationally circulating newspaper inviting submissions from interested parties on the application for declaration. Upon release of its draft recommendation the Council will again call for submissions via its website and by notification to interested parties. The public notice/call for submissions will provide brief details of the application, details of where additional information can be obtained (usually from the Council's website), and the closing date for submissions.
- 3.2 There is no prescribed format for a submission.
- 3.3 A submission should:

Address some or all of the criteria applicable to the recommendation sought by an applicant. The Council's *Guide to Declaration* provides a detailed discussion of the declaration criteria and the Council has also prepared a template for applications for declaration. Both of these documents are available on the Council's website. While the template is designed for

applicants, it may also assist interested parties in highlighting the issues and factors the Council expects an application to address and which the Council will consider in its assessment and analysis of an application.

In many cases the Council's recommendation will be largely determined by only some of the criteria, with the analysis of other criteria being relatively uncontroversial. Submissions should generally focus on the key criteria applicable to a particular application.

Assertions and conclusions within a submission should be supported by relevant facts and analysis.

Where statistics, prices, output volumes and similar factual information are provided the sources of that information should be supplied.

Where estimates are provided, or economic, cost or other models are used, the critical assumptions used to make the estimates and in any models should be disclosed.

Where submissions include material provided by economic or other independent experts, these should meet the requirements of the Federal Court's Practice Note CM 7 - *Expert witnesses in proceedings in the Federal Court of Australia*.²

Submissions should be supplied to the Council in identical electronic and print form. Electronic form is required to facilitate the publication of submissions on the Council's website. Electronic documents should be in Adobe PDF format, or another format that can be read by MS Word 2007 – where this poses particular difficulties or submissions are expected to contain maps, or other exhibits that cannot readily be reproduced, this should be discussed with Council staff prior to the submission deadline.

Submissions should contain numbered paragraphs to assist in referencing the submission in the Council's recommendation. Pages should also be numbered.

A complete and signed Submission Cover Sheet in the form set out at the end of these guidelines must be provided with each submission.

Relevant contact details that allow verification of the authenticity of the submission should be supplied. These include the name of the person providing the submission, the organisation represented and position details (where relevant) and a phone contact, email and postal address.

- 3.4 Parties submitting information to the Council are advised that the giving of false or misleading information is a serious offence. In particular, s 137.1 of the Commonwealth Criminal Code³ makes it a criminal offence for a person to supply information to a Commonwealth body knowing that the information is false or

² Available for download at www.fedcourt.gov.au.

³ *Criminal Code Act 1995* (Cth).

misleading in a material particular or omitting any matter or thing without which the information is misleading in a material particular.

- 3.5 **Submissions on the application** should address the basis on which the applicant has sought a declaration and the relevant criteria in s 44CA(1) of the CCA.
- 3.6 **Submissions on the draft recommendation** should focus on the preliminary conclusions in the recommendation and the reasons for these and seek to provide additional information and analysis to that already available to the Council. In most cases the Council expects that all significant issues should have been highlighted in the application, earlier submissions and discussions with Council staff. If new issues are to be raised at this stage the relevant submission should address why the matter could not have been raised earlier.
- 3.7 Submissions on the draft recommendation also provide the applicant and interested parties with an opportunity to respond to the submissions and factual material provided to the Council up to this point. Repetition of points that have been made earlier is unlikely to be of assistance.

4 Lodging a submission

- 4.1 All submissions should be sent both electronically to:

Email: [project name]@ncc.gov.au

and in hard copy to:

Submissions – [Project name]
National Competition Council
GPO Box 250
Melbourne VIC 3001

5 Publication of submissions and requests for confidentiality

- 5.1 The Council will publish each submission on its website as soon as practicable after the submission period has closed. Generally, the Council will publish all submissions following the deadline for providing submissions – that is, when all submissions have been lodged.
- 5.2 Where a submission is made by an individual, on his or her own behalf, the Council identifies the submission on its website by publishing the individual's name, any affiliation the individual advises the Council and the individual's state or territory of residence.
- 5.3 The Council encourages submitting parties to ensure their submissions are public documents. The Council may give less weight to information that it is unable to test through a public process.
- 5.4 Anyone intending to request that part of a submission be treated in confidence should first discuss the matter with Council staff. Specific reasons for confidentiality will need

to be provided. The Council considers that it would be unlikely for a situation to arise where a party could claim confidentiality over a submission in its entirety, but some specific commercially valuable information may be withheld.

- 5.5 If the Council refuses a request for confidentiality, it will advise the relevant party of its decision and will return the whole or part of the submission to the interested party in accordance with s 44GB(6) of the CCA.
- 5.6 A submission containing confidential information should have the confidential sections clearly identified and marked 'confidential'. A second copy of the submission, with all the confidential material removed, should also be provided to the Council. The Council will publish this 'non-confidential' copy of the submission.
- 5.7 The Council will make confidential submissions available to the designated Minister (and the Minister's advisors) at the time it provides its final recommendation.
- 5.8 The Council may also be required to make available any information held by it, including confidential information, in accordance with the provisions of the *Freedom of Information Act 1982* (Cth), orders of a court or tribunal or as otherwise authorised or required by law.
- 5.9 The Council takes all reasonable measures to protect information given to it in confidence from unauthorised use or disclosure.

Other matters

- 5.10 Copyright in submissions resides with the author(s). The Council accepts no responsibility for the content or accuracy of any information contained in submissions.
- 5.11 Any queries should be directed to the NCC Inquiry Line on 1800 099 470.



SUBMISSION COVER SHEET

**APPLICATION FOR DECLARATION OF THE
[NAME OF SERVICE]**

Please complete and submit this form along with your submission by no later than **5.00pm** on _____ as follows:

1. **By email to:**
[project name]@ncc.gov.au

AND

2. **In hard copy to:**
Submissions – [Project name]
National Competition Council
GPO Box 250
Melbourne VIC 3001

**Individual/Company/
Organisation:** _____

Address: _____

Suburb/town: _____ **State:** _____ **Postcode:** _____

Principal contact: _____

Position/title: _____

Telephone: _____ **Fax:** _____

Email address: _____

Declaration

I declare that, to the best of my knowledge and belief, the information provided in the submission is true, correct and complete, that complete copies of supporting materials or evidence have been provided and/or clearly identified, and that all estimates are identified as such and are the best estimates of the underlying facts and that all the opinions expressed are sincere.

Signature of authorised person

Office held/title/position

(Print) Name of authorised person

Date

Note: If the submitting party is a corporation or organisation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the submitting party, this fact must be stated.

Confidential information

Please indicate if your submission:	
<input type="checkbox"/>	contains NO confidential material
<input type="checkbox"/>	contains SOME confidential material (in which case please provide two copies of the submission – one with all of the confidential information removed and this copy with the confidential information clearly identified and marked)