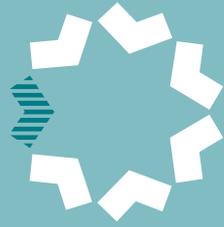
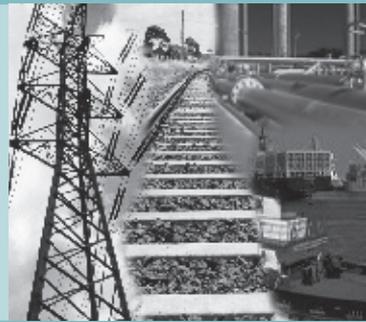


NATIONAL
COMPETITION
COUNCIL



ANNUAL REPORT



2006–2007

© Commonwealth of Australia 2007

ISBN 978-0-9775368-7-0

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, the work may be reproduced in whole or in part for study or training purposes, subject to the inclusion of an acknowledgement of the source. Reproduction for commercial use or sale requires prior written permission from the Attorney General's Department. Requests and inquiries concerning reproduction and rights should be addressed to the Commonwealth Copyright Administration, Attorney General's Department, Robert Garran Offices, National Circuit, Barton ACT 2600 or posted at <http://www.ag.gov.au/cca>.

Inquiries or comments on this report should be directed to:

National Competition Council
Level 9
128 Exhibition Street
MELBOURNE VIC 3000
Ph: (03) 9285 7474
Fax: (03) 9285 7477
Email: info@ncc.gov.au

An appropriate citation for this paper is:

National Competition Council 2007, *Annual Report 2006-2007*, Melbourne.

The National Competition Council

The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Australian Government and state and territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

Information on the National Competition Council, its publications and its current work program can be found on the internet at www.ncc.gov.au or by contacting NCC Communications on (03) 9285 7474.

National Competition Council

Level 9, 128 Exhibition Street Melbourne 3000 Australia
GPO Box 250B Melbourne 3001 Australia
Telephone 03 9285 7474 Facsimile 03 9285 7477



**Office of
Council President**

30 August 2007

The Honourable Peter Costello MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

In accordance with section 290 of the *Trade Practices Act 1974* the National Competition Council is pleased to present you with its twelfth annual report covering the Council's operations for the year 2006-07.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Crawford'.

**David Crawford
President**

A handwritten signature in black ink, appearing to read 'Doug McTaggart'.

**Doug McTaggart
Councillor**

A handwritten signature in black ink, appearing to read 'Rod Sims'.

**Rod Sims
Councillor**

A handwritten signature in black ink, appearing to read 'Virginia Hickey'.

**Virginia Hickey
Councillor**

Table of contents

Abbreviations	vii
About this report	ix
1 President's review	1
2 Operation of the National Access Regime	3
2.1 Recommendations and timing	4
2.2 Recent legislative developments	7
2.3 The operation of Part IIIA	11
3 The National Competition Policy	21
3.1 NCP implementation 1995-2005	21
3.2 The National Reform Agenda	25
3.3 NCP legacy website	28
4 Organisation and governance	31
4.1 Agency overview	31
4.2 Corporate governance	35
5 Financial statements	55
References	89
Index	91

Boxes

4.1	National Competition Council's mission, goals and work program	33
4.2	National Competition Council output performance indicators	33
4.3	Councillor profiles	36

Figures

3.1	Governments' progress with completing their priority legislation review and reform matters, 2003-05	22
4.1	National Competition Council's outcome and contributing outputs	32
4.2	National Competition Council secretariat organisation chart, 30 June 2007	38

Tables

4.1	Summary of resourcing for NCC outcome 2006-07	34
4.2	Resourcing for NCC outcome by output groups, 2005-06, 2006-07	35
4.3	National Competition Council meetings, 2006-07	37
4.4	Staff profile, 30 June 2007	43
4.5	Staff by employment status, as at 30 June 2006 and 30 June 2007	43
4.6	Staff by equal employment opportunity (EEO) group, 30 June 2007	46
4.7	Summary of expenditure on all consultancy contracts during 2004-05, 2005-06 and 2006-07	50

Abbreviations

ACCC	Australian Competition and Consumer Commission
ANAO	Australian National Audit Office
BHPBIO	BHP Billiton Iron Ore
COAG	Council of Australian Governments
DBCT	Dalrymple Bay Coal Terminal
ESCOSA	Essential Services Commission of South Australia
FCA	Federal Court of Australia
Gas Code	National Third Party Access Code for Natural Gas Pipeline Systems
NCC	National Competition Council
NCP	National Competition Policy
OHS	Occupational health and safety
PC	Productivity Commission
RTIO	Rio Tinto Limited
SACL	Sydney Airport Corporation Limited

About this report

The structure of this report follows the outcome and output structure of the National Competition Council (NCC) portfolio budget statement 2006-07.

National Competition Council Outcome

The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community

The outcome relates to the high level Australian Government outcome of 'well functioning markets', which is part of the overall government outcome of 'strong, sustainable economic growth and the improved wellbeing of Australians'.

In reporting performance information the structure of this annual report is aligned with the NCC's two output groups.

Output 1: advice to governments on competition policy and infrastructure access issues

Output 2: clear accessible public information on competition policy

Chapter 1 provides the President's review of significant events and actions relevant to the NCC during 2006-07.

Chapters 2 and 3 report on the NCC's performance during the year in achieving its outcome and the efficiency of its two outputs. Chapter 2 discusses third party access regulation while chapter 3 discusses the now-concluded National Competition Policy program.

Chapter 4 provides an overview of organisational performance and chapter 5 the audited financial statement for 2006-07.

Summary resources for the two output groups are tabulated on page 34 (table 4.1).

Compliance with the Department of the Prime Minister and Cabinet requirements for annual reports is shown on pages 52-53.

1 President's review

Established in 1995 by agreement of the Council of Australian Governments (COAG), the National Competition Council (NCC) is a research and advisory body. Its main functions have been to assess the performance of Australia's governments (Australian and state/territory) in meeting the agreed reform commitments under the National Competition Policy (NCP) and to recommend on the regulation of third party access to services provided by monopoly infrastructure.

The NCP program ended in 2005-06 and COAG subsequently agreed to a new National Reform Agenda (to be supervised by the COAG Reform Council) at meetings during 2006. The NCC finalised its NCP assessment work and focused on access regulation. On 13 April 2007, COAG confirmed that, under the National Reform Agenda, the NCC would continue responsibility for third-party access regulation.

Access regulation seeks to promote effective competition in markets that depend on using the services of infrastructure that cannot be economically duplicated. The intended outcome is competition in dependent markets and avoidance of inefficient duplication of costly facilities, while ensuring that facility owners receive appropriate payment from facility users. Such payment includes a commercial return on investment, but not monopoly profits that were previously available because of the lack of competition in dependent markets.

Australia's national regime for regulating third party access is set out in Part IIIA of the *Trade Practices Act 1974*. There are three pathways for a party seeking access to an infrastructure service: by seeking declaration of a service so that it and other users have a legal right to negotiate terms and conditions for access with the service provider, by using an existing effective access regime (certified regime) or under terms and conditions in a voluntary undertaking by a service provider that is approved by the Australian Competition and Consumer Commission.

Under Part IIIA of the Trade Practices Act, the NCC has a role in the declaration of services and the certification of access regimes. Upon a party applying for declaration or certification, the NCC recommends to a decision-making Minister (the Australian Government Treasurer or another Minister, or to a state or territory Minister depending on the subject). The NCC has a similar role under the National Third Party Access Code for Natural Gas Pipeline Systems in relation to gas pipelines. This annual report discusses the NCC's work during 2006-07 in these areas in chapter 2.

As a result of a recent amendment to the Trade Practices Act, the NCC must report annually on the national access regime, including recent legislative developments and the operation and effectiveness of the regime. Chapter 2 discusses these matters. There are several areas where the Australian Government has amended the Trade Practices Act to improve the operation of Part IIIA. In addition to these, the NCC considers there would be value in a further amendment to Part IIIA requiring that deemed decisions—those where the decision maker does not determine an application within 60 days of receiving the NCC's recommendation—be in accord with the NCC's recommendation. This would provide a benefit because it would avoid decisions and reviews of decisions for which there is no statement of reasons. (At present, the Trade Practices Act provides that a deemed decision is a refusal of the application. In such cases of deemed refusal, there is no statement of reasons by the decision maker.)

With its NCP assessment role completed, the NCC will not retain specific capabilities in this area. It will however seek to preserve the intellectual legacy from the NCP process to ensure that the knowledge and experience it has gained remains available to inform ongoing reform activity. There is a final discussion of NCP matters that were outstanding at the end of the NCP program in chapter 3 of this annual report.

As the role intended by governments for the NCC has become clearer, the NCC has sought to identify its future strategic challenges and the action needed to meet those challenges. Regarding access regulation, there are several issues. First, recent and proposed legislative changes emphasise the importance of timeliness of processes and fine tune criteria and procedures. Second, the Ministerial Council on Energy is undertaking progressive reform of energy sector regulation, which will include revision and certification of regimes for regulating third party access to gas and electricity transmission and distribution infrastructure. Third, state and territory governments have committed to certify as effective all their existing access regimes by 2010.

Given the ongoing consideration of its role during 2005-06 and 2006-07 and the unpredictability in the timing of applications for declaration and certification, the NCC has been operating with fewer staff than previously. With the clarification of the NCC's role and the foreshadowed future certification work, the NCC will review staffing and work arrangements to ensure it maintains the necessary expertise to deliver on government, business and community objectives for third party access regulation.

Further, the NCC is seeking to ensure that it meets governments' objectives on timing, and that legislators, policy makers, the business community and the broader community have accurate and timely information on access regulation. Guides, application templates and reports will be available electronically, assisting stakeholders by ensuring up to date advice and a comprehensive means of making applications for declaration and certification are available. While its recommendations are sometimes unavoidably delayed by external factors, the NCC is streamlining its processes to improve their timeliness. The NCC has addressed work, process and staffing matters in a new strategic plan publicly released in 2007.

David Crawford
President

2 Operation of the National Access Regime

The National Access Regime, established by Part IIIA of the *Trade Practices Act 1974*, provides a legal avenue through which a party (a business or individual or other organisation) can share the use of infrastructure services on commercial terms and conditions. It is a mechanism that is available when attempts at commercially negotiated access fail.

A party seeking access may apply for the designated government Minister to 'declare' a service, defined in the Trade Practices Act to include the use of an infrastructure facility such as a railway line, handling or transporting things such as goods or people and a communications service or similar service. Services do not include the supply of goods or the use of intellectual property or the use of a production process, except to the extent that these are an integral but subsidiary part of a service.

When an application for declaration is made, the National Competition Council (NCC) must consider the matter against the criteria in Part IIIA of the Trade Practices Act and recommend to the designated Minister whether the service to which access is sought should be declared or not declared. If the designated Minister makes a decision to declare the service, then access seekers acquire a legal right to negotiate access with the service provider. If necessary, the Australian Competition and Consumer Commission (ACCC), through arbitration, will determine the request for access.

The National Access Regime provides for a state or territory access regime to take its place, where the regime is certified as effective. The NCC considers applications for the certification of access regimes against the principles in clause 6 of the Competition Principles Agreement, assessing whether the access regime has an appropriate framework to promote competitive outcomes. Because certification removes the entitlement to seek a recommendation for declaration, the NCC seeks to ensure that state/territory access regimes provide a viable (if different) pathway to access. Where there is an 'effective' access regime, a business seeking access must use that regime.¹

The NCC also has a recommendatory role in relation to third party access to natural gas transmission and distribution pipelines under the National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code). Under the Gas Code, the NCC's role is to advise relevant Ministers on whether particular gas pipelines should be covered under the Gas Code (including whether coverage of covered pipelines should be revoked). The NCC will have a similar role under the new regime for gas market regulation currently being developed by the Ministerial Council on Energy.

In this chapter, the NCC has reported against its two planned outputs on the efficiency of its performance in its role of recommending to Ministers on applications for declaration and certification and on applications regarding coverage or revocation of coverage under the Gas

1 Part IIIA also allows infrastructure providers to develop terms and conditions on which they will provide access and voluntarily submit these to the ACCC for approval as an access undertaking. Where the ACCC accepts an access undertaking, the service(s) that are subject to the undertaking cannot be declared. Recent amendments to the Trade Practices Act also allow owners or operators of declared facilities to submit access undertakings.

Code. The chapter also provides the NCC's report on matters relating to the effectiveness of the National Access Regime required under section 290 of the Trade Practices Act.

2.1 Recommendations and timing

In this section, the NCC has reported on new and ongoing third party access matters during 2006-07, describing the recommendation and outcome (where the matter was finalised during the year). A register summarising all third party matters considered by the NCC since the commencement of Part IIIA of the Trade Practices Act is available on the NCC's website at www.ncc.gov.au.

In 2006-07 the NCC received one new application under Part IIIA, being for the declaration of a service provided by the Tasmanian railway network. There was one ongoing matter (in the Australian Competition Tribunal), being the application by Fortescue Metals Group Limited. The NCC received no new applications and had no ongoing matters regarding the certification of state and territory access regimes. There were no new applications under the Gas Code, although one matter currently with the decision maker remains to be decided.

Declaration activities

Application for declaration of a service provided by the Tasmanian railway network

On 2 May 2007, the NCC received an application from the Tasmanian Department of Industry, Energy and Resources Rail Unit for declaration of a service provided by the Tasmanian railway network. The application seeks declaration under Part IIIA of the use of the rail tracks and associated infrastructure, relating to each of the identified line segments of the Tasmanian railway network (other than the Melba line) for the purpose of operating a rail service on the Tasmanian network.²

The NCC provided its recommendation to the designated Minister (being the Premier of Tasmania) on 15 August 2007. This is within the target time of 120 days prescribed by s44GA of the Trade Practices Act. The Premier's decision to declare or not to declare the service is due to be made by mid October 2007.

Fortescue Metals Group Limited's application for declaration of services provided by the Mt Newman and Goldsworthy railway lines

On 15 June 2004, the NCC received an application under Part IIIA from Fortescue Metals Group for declaration of a service described as the use of the facility, being that part of:

² Operation of a rail service includes, without limitation, loading and unloading freight, making up trains, shunting and other activities necessary for the efficient haulage of freight by rail.

- the Mt Newman railway line that runs from a rail siding that will be constructed near Mindy Mindy in the Pilbara to port facilities at Nelson Point in Port Hedland, and is approximately 295 kilometres long, and
- the Goldsworthy railway line that runs from where it crosses the Mt Newman railway line to port facilities at Finucane Island in Port Hedland, and is approximately 17 kilometres long.

The applicant identified the service provider as BHP Billiton Minerals Pty Ltd, Mitsui-Itochu Iron Pty Ltd and CI Minerals Australia Pty Ltd trading as joint venturers and BHP Billiton Iron Ore Pty Ltd (BHPBIO).

On 15 December 2004, following the release of an issues paper and public consultation, the NCC released decisions on two preliminary issues in relation to the Fortescue Metals Group application. In those decisions, the NCC concluded that the two railway lines each provided a separate service and that the Mt Newman line service was capable of being considered further for declaration, while the Goldsworthy line was not because it was part of a production process.

On 24 December 2004, BHPBIO applied to the Federal Court for a declaration that the use of the Mt Newman railway line is not a service for which a declaration under Part IIIA can be sought, given that the service is part of a production process. On 25 February 2005, Fortescue Metals Group applied to the Federal Court for a declaration that the use of the Goldsworthy railway line is a service for which declaration under Part IIIA can be sought given that the service is not part of a production process.

In the absence of any interim orders from the court on the above matters, the NCC proceeded to consider Fortescue Metals Group's application for declaration of the use of the Mt Newman railway line. The NCC released an issues paper for public consultation on 11 March 2005 and a draft recommendation on 4 November 2005, also for public consultation, that recommended declaration of the Mt Newman service. In addition, the NCC engaged an independent expert to advise it on railway capacity (including the capacity of the Mt Newman railway line) and the likely means and cost of augmenting the Mt Newman railway line (including the cost of building another facility to provide the service that is the subject of the Fortescue Metals Group declaration application). The NCC released the independent expert's report for public comment.

The NCC provided its recommendation, recommending declaration for a period of 20 years, to the Parliamentary Secretary to the Treasurer on 24 March 2006. The NCC therefore took 647 days from the date of receipt of the application to provide its recommendation. This period included extensions to allow more time for provision of submissions and other information, at the request of participants.

The Australian Treasurer, who assumed responsibility as the decision maker for this matter, did not publish a decision within 60 days of receiving the NCC's recommendation. Pursuant to section 44H(9) of the Trade Practices Act, on 23 May 2006, the Australian Treasurer was therefore deemed to have decided not to declare the service. On 9 June 2006, Fortescue Metals Group applied to the Tribunal for a review of the deemed decision not to declare the service provided by the use of that part of the Mt Newman railway line from near Mindy Mindy to port facilities at Port Hedland.

The Federal Court proceedings concerning the NCC's decision on the services were heard in October 2006, with the Federal Court delivering its decision in December 2006. BHPBIO appealed the Federal Court decision, and the Full Court of the Federal Court heard the appeal on 30 April 2007. Judgment was reserved. The Tribunal is expected to hear Fortescue Metals Group's review application in 2008.

On 4 July 2007 Rio Tinto Limited applied to the Full Court of the Federal Court of Australia for an order by way of prohibition against the Tribunal, which if granted would restrain the Tribunal from further considering Fortescue Metals Group's review application. Rio Tinto submitted that the Tribunal does not have jurisdiction to undertake the review because the service in Fortescue Metals Group's application differs from the service in its June 2004 application for declaration. Further, Rio Tinto submitted that the NCC had not made a 'valid' recommendation to the designated Minister because the service in its recommendation was not the same as the service in Fortescue Metals Group's June 2004 application. It is expected that this matter will be set down to be heard by the Full Federal Court sometime in November 2007.

Gas Code coverage and coverage revocation activities

Epic Energy South Australia application for revocation of coverage of the Moomba to Adelaide Pipeline System

On 15 March 2005, the NCC received an application from Epic Energy for revocation of coverage under the *Gas Pipelines Access (South Australia) Act 1997* and the Gas Code of the transmission pipelines within the Moomba to Adelaide Pipeline System. The system comprises the main transmission pipeline that runs from Moomba to Adelaide in South Australia and laterals.

Epic Energy sought revocation of coverage on the basis that the system no longer meets all of the criteria for coverage under the Gas Code.³ Epic Energy argued that changed market conditions, including the commissioning of the SEA (South East Australia) Gas Pipeline, provide incentives for it to offer market based price and service offerings, such that the coverage criteria are no longer satisfied.

The NCC released a draft recommendation on 16 November 2005 that coverage of the system be revoked. After considering submissions on the draft recommendation, the NCC released its recommendation on 14 December 2005, therefore taking 274 days to make its recommendation. The recommendation was that coverage of the Moomba to Adelaide Pipeline System be revoked.

The NCC forwarded its recommendation to the decision-maker, who is the South Australian Minister for Energy, the Hon Patrick Conlon. At 30 June 2007 (563 days after the NCC forwarded its recommendation), the Minister had made no decision on the NCC's recommendation.

3 Section 1.9(a) of the Gas Code requires 'that access (or increased access) to services provided by means of the pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the services provided by means of the pipeline'. Section 1.9(b) requires 'that it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the pipeline'. Section 1.9(d) requires 'that access (or increased access) to the services provided by means of the pipeline would not be contrary to the public interest'.

2.2 Recent legislative developments

Trade Practices Amendment (National Access Regime) Act 2006

The *Trade Practices Amendment (National Access Regime) Act 2006* (Amending Act) was proclaimed and commenced in October 2006, amending existing provisions and inserting new provisions into Part IIIA of the Trade Practices Act. The Amending Act arose following consideration by the Council of Australian Governments (COAG) of the Productivity Commission's 2001 review of the National Access Regime, the report of which was released in September 2002 (PC 2001).

Objects clause (s44AA)

The Amending Act inserted a new objects clause for Part IIIA at section 44AA. The objects of Part IIIA are to:

- (a) *promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and*
- (b) *provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry.*

The NCC must have regard to the objects of Part IIIA when making its recommendation on an application for declaration and on an application for certification of an access regime as effective. Similarly, the designated Minister is to have regard to the objects of Part IIIA when he or she makes their decision to declare or not declare a service or to certify or not certify an access regime following receipt of the NCC's recommendation.

Promotion of competition (s44G(2)(a) and s44H(4)(a))

The Amending Act amended declaration criterion (a) as follows to clarify that declaration should result in a material increase in competition:

- (a) *that access (or increased access) to the service would promote a material increase in competition in at least one market (whether or not in Australia), other than the market for the service;*

The amendment arose from the recommendations of the Productivity Commission's inquiry into the National Access Regime.

The purpose of the amendment is to provide that declaration will only occur where the promotion of competition in a dependent market is non-trivial. The explanatory memorandum to the Amending Act explained that the original drafting of criterion (a) did "... *not sufficiently address the situation where ... declaration would only result in marginal increases in competition. The change will ensure access declarations are only sought where increases in competition are not trivial.*"⁴

⁴ Trade Practices Amendment (National Access Regime) Bill 2005, Explanatory Memorandum at item 16 on p. 21.

Target time limits

The NCC is now subject to target time limits.

Applications for declaration (s44F)

Pursuant to s44GA, the NCC must use its best endeavours to make a recommendation on an application for declaration within a standard period of four months (approximately 120 days) (standard period). The standard period commences on the day the NCC receives an application. While extensions are available, the NCC has undertaken to make recommendations within the standard period unless the application is particularly complex or gives rise to particular issues that inhibit the NCC's ability to comply with the standard period.

Applications for certification on the effectiveness of an access regime (s44M)

Pursuant to s44NC, the NCC must use its best endeavours to make a recommendation on an application for certification as to the effectiveness of an access regime within six months (approximately 180 days). Extensions to the standard period are available.

Reviews by the Australian Competition Tribunal (s44ZZOA)

Target time limits also apply to decisions of the Tribunal under Part IIIA, including applications for review by the Tribunal of a designated Minister's decision on an application for declaration or certification. The Tribunal must now use its best endeavours to make a decision on a review under Part IIIA within a standard period of four months. Multiple extensions to the standard period, with notice, are available.

Other amendments to Part IIIA

The Amending Act also contained other operational amendments including:

- new legislative provisions permit the NCC to invite public input on declaration (s44NE) and certification application (s44NE) where it is reasonable and practical for the NCC to do so (which has been the NCC's practice to date)
- obligations on the NCC (s44NF) and the designated Minister (s44NG) to publish the reasons for recommendations and decisions (which has been part of the NCC's process to date) and
- the ACCC is now subject to a six month target time frame for its arbitration and determination of an access dispute and must publish a report on the outcome of an arbitration, including the principles and methodology applied in making the determination (sections 44XA and 44ZNB).

National Competition Council annual report

The Amending Act also amended section 290 of the Trade Practices Act inserting a new subclause (2) providing for the matters that the NCC must include in its annual report. The NCC has discussed these matters below in section 2.3 entitled *The operation of Part IIIA of the Trade Practices Act*.

Gas access legislation

The Gas Code is an industry specific regime for third party access to natural gas transmission and distribution pipelines. A new national gas law, including regulations and rules, are currently being drafted. The new national gas law will consist of scheme law which will require South Australia to enact the 'lead' legislation. That legislation will then be adopted and passed by each other state and territory and the Commonwealth to enable the law to be applied in all jurisdictions. It is anticipated that the new national gas law will be passed by all jurisdictions during 2007.

The new national gas law will have several consequences for the NCC. The NCC will:

- need to certify as effective all access regimes under the new laws and rules of each jurisdiction
- also have a direct role under the new national gas law which is both reflective of and an extension of its current roles under the Gas Code.

The NCC will be required to use its best endeavours to comply with the six month target time limit prescribed by s44NC of the Trade Practices Act. The NCC anticipates that it will receive the applications for certification in 2008.

The new national gas law provides for gas pipelines to be either covered and subject to regulation or not covered and therefore beyond the regulatory scheme providing for access prices. Where a pipeline is covered, there are two forms of regulation—"heavy" and "light" regulation. A "heavy" regulated pipeline largely reflects the current regulatory scheme of the Gas Code as it requires access arrangements to be agreed by the Australian Energy Regulator. A pipeline that is subject to "light" regulation will be subject to a negotiate-arbitrate regime similar to that provided for in Part IIIA. A covered pipeline can apply to be "light" regulated or the form of regulation can be determined at the time of an application for coverage.

As is the case under the current Gas Code, the NCC will have the role of advising the relevant Ministers on coverage matters, including whether pipelines are a distribution or transmission facility. Where a pipeline exists across more than one jurisdiction, the NCC will determine the jurisdiction with which it is most closely connected. This decision will also identify the relevant Minister for coverage purposes.

The NCC will determine the form of regulation (heavy or light) for pipelines by applying the form of regulation criteria that will be specified in the new gas law.

In accord with the *Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Act 2006* and similar provisions to be included in the new national gas law, the NCC will also assess applications for (1) a binding no-coverage determination (for a greenfield pipeline) and make a recommendation to the relevant Minister or (2) for a price regulation exemption for an international pipeline and make a recommendation to the Minister of the Commonwealth administering the *Australian Energy Market Act 2004 (Cwlth)*. A binding no-coverage determination will exempt a greenfield transmission pipeline or distribution network from regulation for 15 years. A price regulation exemption will exempt a greenfield international pipeline from price regulation for 15 years. Where a price regulation exemption is granted, the recipient must submit to the Australian Energy Regulator a limited access arrangement that governs regulation of non-price access provisions and meets certain transparency requirements.

Recent case law developments

BHP Billiton Iron Ore Pty Ltd v The National Competition Council and Fortescue Metals Group Limited

The NCC determined its jurisdiction concerning the Fortescue Metals Group application in 2004 for declaration of two services provided by railways in the Pilbara region of Western Australia. The NCC concluded that one (the Mt Newman railway line) was a service for the purposes of Part IIIA and the other (the Goldsworthy railway line) was not as it comprised the use of a production process which made it exempt under paragraph (f) in the definition of 'service' in s44B of the Trade Practices Act. BHPBIO challenged the NCC's conclusion contending that the NCC erred in concluding that the Mt Newman railway line was not part of a production process. Fortescue Metals Group also lodged a challenge on the basis that the NCC erred in concluding that the Goldsworthy railway line was part of a production process.

These matters were heard in the Federal Court of Australia in October 2006. Judgment was handed down in December 2006. His Honour, Justice Middleton, found that neither railway line was a production process and therefore both the Mt Newman railway line and the Goldsworthy railway line were services for the purposes of Part IIIA. In so finding Justice Middleton stated that the decision in *Hamersley Iron Pty Ltd v NCC* [1999] FCA 867 was clearly wrong in the approach taken to defining 'the use of a production process'. His Honour stated that:

A production process is the creation or making of a product or the transforming of one thing into another. To use a production process is to employ, apply or exploit a process for this purpose. [BHPBIO 1764 at 152]

The issue of whether or not the infrastructure facility sought to be accessed is the use of a production process can be answered by reference to whether the process is actually creating or making a product or transforming one thing into another. The rail service involves the use of infrastructure or a facility that enables the transportation of one production from one location to another, but the infrastructure facility (the railway line and associated infrastructure) does not transform the product into something different. [BHPBIO 1764 at 153]

BHPBIO appealed the Federal Court's decision to the Full Court of the Federal Court of Australia. The appeal was heard on 30 April 2007 and judgment was reserved.

Rio Tinto Limited v Australian Competition Tribunal

On 4 July 2007 Rio Tinto applied to the Full Court of the Federal Court of Australia for an order by way of prohibition against the Tribunal, which if granted would restrain the Tribunal from further consideration of Fortescue Metals Group's review application. Rio Tinto submitted that the Tribunal does not have jurisdiction to undertake the review because the service in Fortescue Metals Group's application differs from the service in its June 2004 application for declaration. Furthermore, Rio Tinto submitted that the NCC had not made a 'valid' recommendation to the designated Minister because the service in the NCC's recommendation was not the same as the service in Fortescue Metals Group's June 2004 application for declaration. It is anticipated that this matter will be heard by the Full Court in November 2007.

Sydney Airport Corporation Limited v Australian Competition Tribunal

Sydney Airport Corporation Limited (SACL) applied to the Full Court of the Federal Court of Australia on 6 January 2006 seeking judicial review of the Tribunal's December 2005 decision to declare a service (upon application by Virgin Blue Airlines Pty Limited) provided by the use of facilities at Sydney Airport for a period of five years from 9 December 2005 until 8 December 2010. Broadly, SACL claimed that the Tribunal had erred in its consideration of s44H(4)(a), specifically the meaning of the words "access (or increased access)" contained in that section, and that therefore the Tribunal's decision should be set aside.

This matter was heard by the Full Federal Court in May 2006 and judgment was delivered in October 2006. The Full Federal Court did not accept SACL's submission that in considering s44H(4)(a) it was necessary to analyse whether the supply of the service had been restricted or denied. Furthermore, the Full Federal Court rejected the established approach of both the NCC and the Tribunal to assessing s44H(4)(a) which involved (1) a considering of the impact of regulated access (that is, declaration) under Part IIIA and (2) the factual/counterfactual analysis, being a consideration of the future with and the future without declaration. In effect, "access" in this context was interpreted as referring to the right to negotiate access to a declared service under Part IIIA.

In rejecting this approach, the Full Federal Court found that access should be given its ordinary meaning and, as such, is not synonymous with declaration. This was the position espoused by Virgin Blue. The Full Federal Court held that the appropriate criterion (a) enquiry involves:

... comparison between access and no access and limited access and increased access. [SACL 146 at 81]

... a comparison of the future state of competition in the dependent market with a right or ability to use [the] service and the future state of competition in the dependent market without any right or ability or with a restricted right or ability to use the service. [SACL 146 at 83]

SACL applied for special leave to appeal the decision to the High Court of Australia in November 2006. The special leave application was heard by the High Court in March 2007 with the application being dismissed.

In responding to the Productivity Commission's inquiry on the price regulation of airport services, the Australian Government has stated its intention to amend Part IIIA to reinstate the interpretation of 'access' to that which prevailed prior to the Full Federal Court's decision (Costello 2007). This would have the effect of restoring the approach adopted by the NCC and Tribunal prior to the Federal Court judgment (see above).

2.3 The operation of Part IIIA of the Trade Practices Act

Following the 2006 amendments to the Trade Practices Act, the NCC now reports annually on aspects of the operation of Part IIIA. The report considers matters that have impeded the operation of Part IIIA, the time taken for recommendations, effects of any access dispute arbitrations undertaken by the ACCC, potential effects on investment and matters concerning the future operation of Part IIIA.

Matters impeding the operation of Part IIIA

Over recent years, governments have identified and are addressing impediments to the operation of Part IIIA. Broadly, the actions taken to date and proposed place increased priority on the timeliness of access processes, finetune criteria and procedures and seek to improve the operation of regimes.

As discussed above, the Amending Act, proclaimed on 1 October 2006 addresses matters relating to the timing of the process and the operation of access arrangements. The Act:

- required that declaration must promote a material increase in competition in another market
- imposed 'best endeavours' standard periods for various stages of the declaration process, including four months for the NCC to recommend on applications for declaration and six months to recommend on applications for certification
- established that the object of Part IIIA is to promote the economically efficient operation and use of, and investment in, essential infrastructure services and encourage a consistent approach to access regulation across industries
- introduced access pricing principles including that access prices be at least sufficient to meet the efficient costs of providing access, and allow investment returns commensurate with regulatory and commercial risks.

On 13 April 2007 COAG amended the Competition Principles Agreement, with the objective of streamlining merits reviews of regulatory decisions. The amendment to the Competition Principles Agreement provides that where merits review of regulatory decisions is available, such as in the Part IIIA declaration process, the review is to be limited to the information submitted to the original decision maker except that the review body may request new information where it considers this would assist it, and may allow new information where it considers that the information could not have reasonably been made available to the original decision maker. It remains necessary however for the Australian Government to amend the Trade Practices Act to give effect to the COAG change to the Competition Principles Agreement.

The NCC's judgment from its experience to date is that the changes introduced by the Amending Act and amendment to the Competition Principles Agreement (when implemented via amendment of the Trade Practices Act) will help to streamline regulatory processes, improve the timeliness of decision making and reduce regulatory uncertainty.

- The two ongoing matters (the declaration application by Fortescue Metals Group and the Epic Energy application for revocation of Gas Code coverage of the Moomba to Adelaide Pipeline System) demonstrate the desirability of improving timeliness. At 30 June 2007, the time elapsed since the Fortescue Metals Group and Epic Energy applications totaled 1111 and 837 days respectively.
- The NCC noted in its 2005-06 annual report, in relation to the application for declaration of certain airside services at Sydney Airport, that the existing de novo merits review process provides incentives for 'gaming' the Part IIIA declaration process. In the Sydney Airport matter one party chose to defer provision of important evidence until the time of the merits review in the Australian Competition Tribunal rather than provide this evidence to the NCC at the time it was formulating its recommendation.

To assist in meeting objectives regarding timing, the NCC has revised its processes and introduced a template for parties making application for a recommendation for the

declaration of a service.⁵ The template contains an indicative timeline for how the NCC will consider an application and the process it will follow in making a recommendation within the standard period.

While the template significantly expands the information applicants are requested to provide at the time of their application, it is structured to assist applicants to make a prima facie case for declaration. Inevitably many applicants face an information asymmetry when seeking a declaration recommendation, but if they are able to demonstrate a sound basis for declaration they can maximise the likelihood of a successful application, and may also be able to pre-empt delays. The NCC has dispensed with production of an issues paper at the commencement of consideration of applications for declaration. The enhanced application will now form the basis on which public submissions are sought.

Other developments that should improve the operation of third party access regulation are the decision by state and territory governments to refine all their access regimes and to have these regimes certified by 2010 (COAG 2006), and the work currently being undertaken by the Ministerial Council on Energy to reform regulation in the energy sector. As a part of this, states and territories will revise their regimes for regulating third party access to gas and electricity transmission and distribution infrastructure, and have these regimes certified as effective.

There is a further matter concerning the operation of Part IIIA that the NCC considers warrants attention. At present, the Trade Practices Act provides that where a decision maker does not determine an application within 60 days, the decision is deemed to be a refusal of the application. In such cases of deemed refusal, there is no statement of reasons by the decision maker. The NCC considers that there would be benefits if the deemed decision reflected the NCC's recommendation (rather than being a refusal in all cases) because this would avoid decisions and reviews of decisions for which there are no statements of reasons.

Australian Competition and Consumer Commission arbitration determinations under Part IIIA

Part IIIA of the Trade Practices Act establishes an arbitration framework available for resolving disputes concerning the supply of services that have been declared. The arbitration framework reflects the negotiate/arbitrate model with the centrepiece being that access to a service will be on fair and reasonable terms. Such an outcome is achieved if the access terms and conditions are commercially agreed between a third party and the service provider, which is often possible where parties have a commercial relationship.

Sometimes however a commercially agreed outcome may not be achieved, for example where a service provider has no commercial incentive to provide access on reasonable terms to an access seeker. In the event that a third party and the provider of a declared service are unable to agree on one or more aspects of access to the service, then either the third party or provider may notify the ACCC that an access dispute exists. Where the ACCC is notified of an access dispute it is required to determine the matter, unless it decides to terminate the arbitration or the party notifying the dispute otherwise seeks to withdraw its notification.

Arbitrations are undertaken privately between the ACCC, the access seeker and the service provider. The ACCC is required to use its best endeavours to arbitrate an access dispute within six months of its notification, although it may extend this time. The six-month target

⁵ The NCC placed the declaration application template on its website in October 2006 and revised the application template in December 2006 in light of the amendments to Part IIIA of the Trade Practices Act.

reflects the desirability of resolving matters as quickly as possible while ensuring there is sufficient flexibility to deal with questions arising from the nature of the dispute, the complexity of the issue and the conduct of the parties in providing necessary information in a timely manner. Arbitration by the ACCC is generally considered to be the final stage of the dispute resolution process, although if either party to a dispute is dissatisfied with the ACCC's determination it can seek review by the Tribunal.

During 2006-07 two matters were notified to the ACCC for determination by arbitration under Part IIIA. These were the first two notifications to the ACCC for arbitration (of 13 declared services) since the enactment of Part IIIA in 1995.⁶

Access dispute notified by Virgin Blue Airlines Pty Limited

On 29 January 2007, Virgin Blue Airlines Pty Limited (Virgin Blue) notified the ACCC under Part IIIA of an access dispute concerning the declared service (the Airside Service) with the provider of the service, SACL, seeking arbitration of the dispute by the ACCC. The dispute related to the method of allocating costs for access to the Airside Service between airline users of that service and the basis on which the price for access to the Airside Service should be levied.

On 22 May 2007, Virgin Blue withdrew its notification of an access dispute as the parties had been able to independently negotiate a commercial settlement. This outcome reflects the intent of the Part IIIA model, which is premised first and foremost on encouraging effective commercial negotiations and access on fair and reasonable terms, with regulatory avenues being available to the parties in the event of dispute.

Access dispute notified by Services Sydney Pty Ltd

On 15 November 2006, Services Sydney Pty Ltd (Services Sydney) notified the ACCC under Part IIIA of an access dispute concerning the declared service with the provider of the service, Sydney Water Corporation. The dispute related to the methodology for pricing access to declared sewage transportation services supplied by Sydney Water by means of its North Head, Bondi and Malabar sewerage reticulation networks.

On 22 June 2007, the ACCC determined that the access price that Sydney Services is to pay to Sydney Water in respect of customers supplied by Services Sydney is Sydney Water's regulated retail price for those customers minus Sydney Water's avoidable costs plus any facilitation costs associated with providing access. The ACCC published its final arbitration report pursuant to s44ZNB of the Trade Practices Act on 19 July 2007.

The ACCC took approximately one month longer than the best endeavours standard period of six months for making an access determination, notifying an extension of time as required by the Trade Practices Act. The NCC regards the additional time taken as understandable particularly noting that the determination was the first made by the ACCC in respect of Part IIIA of the Trade Practices Act, and the first application of access pricing to the water and sewerage industry in Australia.

⁶ Since Part IIIA was enacted the NCC has received 20 applications for declaration of a service(s) involving some 38 services. Of the 38 services the subject of declaration applications, 13 services were declared. Declaration was refused in 14 cases and nine matters were withdrawn. As at the time of the preparation of this report two matters were yet to be finally determined.

Services Sydney has applied to the Tribunal for review of the ACCC's determination. The ACCC determination will have no effect until the Tribunal makes its determination on the review.

While the application for review of the ACCC's determination indicates that the arbitrated outcome (the terms and conditions of access) did not satisfy Services Sydney, the NCC notes that Services Sydney has been able to use Part IIIA to its full effect and intent in seeking access on fair and reasonable terms to Sydney Water's declared services. First, Services Sydney was able to apply to the NCC for a recommendation to declare the Sydney Water services, and subsequently to the Tribunal when there was a deemed decision by the then New South Wales Premier not to declare the Sydney Water services. (The then New South Wales Premier had not announced a decision after the expiry of 60 days following the NCC's recommendation resulting in a deemed no declaration outcome. However, arising from Services Sydney's review application, the Tribunal determined that certain services provided by Sydney Water should be declared.) Second, after failing to reach agreement with Sydney Water on access pricing, Services Sydney was able to have the matter arbitrated by the ACCC, with the dispute determined close to the best endeavours six month target. Finally, Services Sydney is now seeking review of the ACCC's determination by the Tribunal, a course of action available under Part IIIA of the Trade Practices Act. The Tribunal is subject to a best endeavours time limit of four months.

Evidence on the costs or, or disincentives for, investment in the infrastructure by which declared services are provided

Access regulation inevitably involves judgments about costs and benefits. Parties seeking access argue that where an existing facility has spare capacity and all users can be supplied at lower cost if the facility is shared, then it is not sensible to force investment in high cost new infrastructure. On the other hand, some infrastructure owners argue that the costs of regulated access (including the threat of regulation) outweigh the benefits, and that one cost is that they are deterred from investing in infrastructure.

Elements of the mining industry—particularly BHPBIO and Rio Tinto—have been the most vocal critics of Part IIIA in relation to its costs, including claimed adverse effects on investment. BHPBIO has quoted some very large numbers that it says will be the cost of allowing other miners to use its Newman to Port Hedland railway line. The costs claimed by BHPBIO are based on its assumption that, even at a time of record iron ore prices, allowing (or even considering) third party access to the track will disrupt its operations and investment plans such that it will be unable to operate efficiently and will delay investment to increase capacity. In short, BHPBIO (and Rio Tinto) have argued that the introduction of competition should not be considered because this would significantly disrupt their business.

In recommending on an application for declaration of the Mt Newman railway—which might lead to one additional train running daily (at most an increase of 4 per cent in current use) — the NCC considered the assumption behind the BHPBIO arguments. The NCC acknowledged the issues underlying BHPBIO's concerns but found that:

Any deterrent of declaration on efficient investment would be mitigated by negotiated or arbitrated outcomes that account for the costs of access (including diseconomies of shared use) and which provide certainty to the parties on the allocation of costs of future capacity and technology investment.

... they (BHPBIO and RTIO) have asked the Council to assume that the mere fact of declaration or the use of the Mt Newman line would be sufficient for BHPBIO to decide to delay the implementation of a significant capacity expansion project in a

period of unprecedented global demand for Australian iron ore—that is, to act irrationally. (NCC 2006)

Given that almost all asset owners oppose declaration to some degree and can threaten, if they are prepared to disregard their own commercial interests, to refuse to undertake commercially advantageous investments, the NCC did not give significant weight to the claims. The NCC found that there would be benefits from declaration including the promotion of competition in the Pilbara rail haulage and tenements markets and economic and environmental benefits from avoiding the unnecessary duplication of rail infrastructure. While acknowledging there were mixed views on whether the shared use of railways or the development of multiple railways would better support growth in iron ore exports, the NCC was not persuaded that declaration under Part IIIA would have a negative impact on the industry's performance. The matter is now before the Tribunal (comprising a Federal Court judge and economic and business experts), which will reconsider whether third parties should be allowed the opportunity to use the Newman to Port Hedland railway line.

Aggregate investment data would appear not to support an argument that the potential for regulation under Part IIIA has constrained investment in infrastructure. Investment in economic infrastructure—utilities and non-dwelling construction—was 4.5 per cent of Gross Domestic Product in June 2006, compared with 3.2 per cent in June 1987 (Coombs and Roberts 2007).⁷ At the (now regulated) Dalrymple Bay Coal Terminal at the port of Hay Point in Queensland, which was the focus of considerable media attention in 2005 when an unexpected spike in world demand for coal led to significant queuing of ships, there has been a capacity expansion program over a long period of time both prior to and following regulation. The NCC understands that the stage 7 expansion currently underway (to be commissioned on 31 December 2008) involves virtually a 50 per cent increase in the size of the existing facility—to three (currently two) inloading pits, inloading conveyors and outloading conveyors, a larger stockyard and duplication of the existing 3.85 kilometre jetty (DBCT accessed 23 August 2007).

Moreover, the private sector's contribution to infrastructure investment has grown substantially, from under 1 per cent of GDP in the mid-1990s to just less than 2.8 per cent in June 2006 (Perkins, Nadarajah and McInerney 2007). The shift in infrastructure investment from a public to private focus is to be expected following the NCP structural reform program (and the introduction of competition in markets previously served by public monopolies) and recent privatisations. There is broad agreement that these reforms have benefited Australia (see chapter 3 of this report).

In 2005, the Prime Minister convened a taskforce to identify bottlenecks—either physical or regulatory—in the operation of Australia's infrastructure that may be impeding Australia realising its export opportunities (Exports and Infrastructure Taskforce 2005). COAG considered the taskforce report in June 2005, agreeing in principle to a simpler and consistent national system of regulation for ports and export-related infrastructure. It noted that all governments were undertaking significant investment in infrastructure and agreed there is no national infrastructure crisis.

⁷ There is a need for caution in drawing conclusions on the basis of aggregate data on investment. The data pertain to both the regulated and unregulated sectors. Many factors influence investment decisions. For example, the structure of Australia's economy is changing away from manufacturing towards the less infrastructure intensive services sector, and growth in productivity means that a given level of output can be produced with a lower level of infrastructure. Part IIIA aims to promote the economically efficient operation and use of, and investment in, essential infrastructure services (so avoiding wasteful duplication of facilities). In addition, there is uncertainty as to the 'counterfactual'—the outcomes that would have been observed in the absence of the Part IIIA.

COAG further agreed in principle to:

- hasten long-term planning under Auslink⁸
- extend Auslink planning and coordination to ports and associated shipping channels
- each jurisdiction providing a report to COAG every five years on infrastructure
- the Commonwealth facilitating the establishment of groups to coordinate logistics chains of national importance
- reinvigorate the agenda for harmonising road and rail regulations
- establish 'one-stop shops' in each jurisdiction for project facilitation and approvals (COAG 2005).

Arising from its 2005 decisions, COAG considered in 2007 a report on Australia's national infrastructure stock, the demands it faces, its performance and the investments being made or required (COAG 2007). The 2007 report concluded that regulation is one of several elements that are relevant to Australia's approach to future infrastructure demand. The report identified as important:

- a stocktake of physical infrastructure including good information on its performance
- effective management of the infrastructure and factors influencing user demand
- a comprehensive planning framework, which identifies future demands and challenges
- a regulatory and pricing framework that encourages increasingly efficient use of infrastructure and timely investment in new and updated infrastructure, where this is the best option for responding to particular needs.

Investment issues in relation to natural gas pipelines are being addressed via greenfields pipeline incentives intended to encourage pipeline developments. Regulation of pipelines under the Gas Code has usually involved a pipeline operator setting standard access terms and reference tariffs which it submitted to the ACCC for approval. The new national gas law, which will replace the Gas Code, will provide an option for 'light regulation' involving a negotiate-arbitrate approach similar to that for services declared under the National Access Regime.

In addition, changes to the Gas Code have introduced the possibility of 15 year price regulation exemptions for new pipeline developments. The decision making Minister may grant a price regulation exemption after receiving a recommendation from the NCC. The NCC and the decision maker, in making their recommendation and decision respectively, must have regard to a number of factors including the national gas objective and the implications of an exemption for affected markets and the public interest.⁹ Pipelines that receive a price

⁸ AusLink is Australia's intergovernmental cooperative transport planning arrangement. Core components include:

- a defined national network of important road and rail infrastructure links and their intermodal connections
- a National Land Transport Plan that integrates planning and investment on the national network
- earmarked funding for local and regional transport improvements.

⁹ The national gas objective is to promote efficient investment in, and efficient operation and use of, natural gas services for the long term interests of consumers of natural gas with respect to price, quality, safety, reliability and security of supply of natural gas.

regulation exemption are required to lodge limited access arrangements that do not include price or revenue regulation. For international pipeline developments that link international gas sources to Australian markets, a 15 year binding no coverage ruling is also available. As yet there have been no applications seeking either a price regulation exemption or a no coverage ruling (for international pipelines).

One suggestion from some infrastructure owners is that there should be an override capacity within the National Access Regime to refuse access per se on the ground that it would be contrary to the national interest. In the NCC's view, this suggestion does not take sufficient account of the already comprehensive nature of the declaration criteria. It is important, in the NCC's view, to distinguish between arguments for a general override within the national regime and arguments in a particular case that declaration would be contrary to the national interest. Proper application of the declaration criteria provides for the latter outcome.

The NCC considers, based on its experience to date, that the Part IIIA declaration process allows appropriately for consideration of costs and benefits. The Part IIIA criteria necessitate that the NCC and the decision maker identify and balance all costs and benefits and test analysis through a public processes. Declaration decisions are also subject to merits review. The existence of potential costs (such as adverse effects on investment incentives) is an argument for ensuring that costs (and benefits) are properly considered in deciding whether or not to regulate. It is not a reason to eschew beneficial regulation. If governments were to consider specific action to address incentives to invest in infrastructure, then there is a need to ensure that actions taken address identified problems and do not undermine important regulatory safeguards.

In this regard, it is noteworthy that the existence of Part IIIA appears to have prompted better state and territory regulation of services provided by monopoly infrastructure, and therefore may have improved the climate for investment particularly in activities that depend on the use of these services. In areas such as ports, grain handling and railways, access is regulated by state and territory regimes that have not been certified as effective and so are open to applications for declaration under Part IIIA. There have however been very few declaration applications relating to these services. In the rail sector, where there were several declaration applications in the early years of the National Access Regime, the applications appear to have been aimed at encouraging adequate state and territory regulation.

Implications for the future operation of Part IIIA

Since 1995 when the National Access Regime in Part IIIA of the Trade Practices Act came into force, there have been some 20 applications for declaration covering some 38 services across sectors including rail, airports, water and wastewater, gas transport (outside the Gas Code), electricity transmission and data processing. Of these, 13 services—in the rail, airports and water and wastewater industries—have been declared.¹⁰ There have been two notifications to the ACCC of an access dispute, one of which was withdrawn.

Australia's experience to date is that the National Access Regime has operated as might be expected. Most of the industries and facilities subject to applications have exhibited natural monopoly characteristics and applications have generally focussed on facilities where an owner or operator is vertically integrated and access is considered to be necessary to overcome incentives to limit competition in upstream or downstream markets. The very few

¹⁰ The scope of access regulation extends beyond declaration under Part IIIA. Gas pipelines are regulated under a set of state and territory access regimes, most of which have been certified as effective and therefore operate to the exclusion of declaration. Electricity transmission and distribution services are also separately regulated through access undertakings accepted by the ACCC and the telecommunications sector is subject to an industry specific regulatory scheme.

access disputes to date notified to the ACCC suggests that access issues are being determined in the main through commercial dealings between access seekers and service providers. This would suggest that the National Access Regime is broadly meeting COAG's objectives for third party access.

Arising from decisions of COAG, the Australian Government has amended the Trade Practices Act to finetune the National Access Regime, including specifying pricing principles and strengthening timing obligations on regulators and decision makers. Timely implementation by the Ministerial Council on Energy of current work on energy regulation (scheduled for completion in 2008) and by governments on the review and certification of their existing access regimes (scheduled for completion by 2010) will also assist.

COAG's April 2007 decision that the NCC should continue its access regulation role ensures that the process of determining what is subject to regulation remains separate from the administration of regulation. Except in the case of telecommunications, Ministers (or the Tribunal on review) are responsible for declaration decisions and a body other than a regulator advises the relevant ministerial decision maker on whether access to the services of a particular infrastructure facility should be regulated. These institutional arrangements reduce incentives for regulatory creep and ensure decision makers have access to independent advice developed through transparent public processes.

3 The National Competition Policy

Governments agreed in 1992 to establish a National Competition Policy (NCP) commissioning the Independent Committee of Inquiry into a national competition policy for Australia (Hilmer Report), which reported in 1993. Subsequently, leaders of governments signed the April 1995 NCP agreements in which they undertook to implement commitments (develop policies, publish annual reports and specific review reports and implement reforms). The National Competition Council (NCC) undertook multi-jurisdictional assessments of progress in 1997, 1999 and annually from 2001 to 2005. These assessments formed the basis of decisions by the Australian Government on competition payments by it to the states and territories.

In this chapter, the NCC has reported on the efficiency of its performance in its role of assisting the implementation of the NCP program against its two planned outputs. This annual report provides the NCC's final annual report statement on the outcomes of its role under the now-concluded program.

3.1 NCP implementation 1995-2005

The NCP spanning 1995-2005 is widely recognised as having made a significant contribution to Australia's welfare—for example, the Productivity Commission (PC 2005) found that NCP had delivered substantial benefits to the Australian community which, overall, had greatly outweighed any transactional or adjustment costs. In its final (2005) assessment of government's progress in implementing the NCP and related reforms the NCC found that all governments had made substantial progress in meeting their agreed NCP commitments.

- All state and territory governments had extended the Trade Practices Act prohibitions against anticompetitive behaviour to all persons, including the Crown (in so far as it carries on a business) within a jurisdiction's reach.
- All governments had established independent prices oversight arrangements.
- Major government business enterprises had been corporatised, other significant businesses exposed to competitive neutrality principles, and competitive neutrality complaints units established.
- Governments had generally removed regulatory functions from government businesses and reviewed the merits of separating monopoly elements before privatising their public monopolies or introducing competition.
- The objective of national free and fair trade in gas had been largely realised and considerable progress made towards achieving the goal of a fully competitive national electricity market. The road transport reform commitments had been essentially completed.
- In its 2003 and 2004 assessments, the NCC found that all governments had made progress towards effective and efficient water management although jurisdictions were at

different stages of implementation. Notably, urban pricing was achieving at least the lower bound of cost recovery and elements of the rural reform program were underway. The Council of Australian Governments (COAG) reached the Intergovernmental Agreement on a National Water Initiative in 2004 under which the National Water Commission took over responsibility for assessing in 2005 jurisdictions' compliance with water reform commitments.

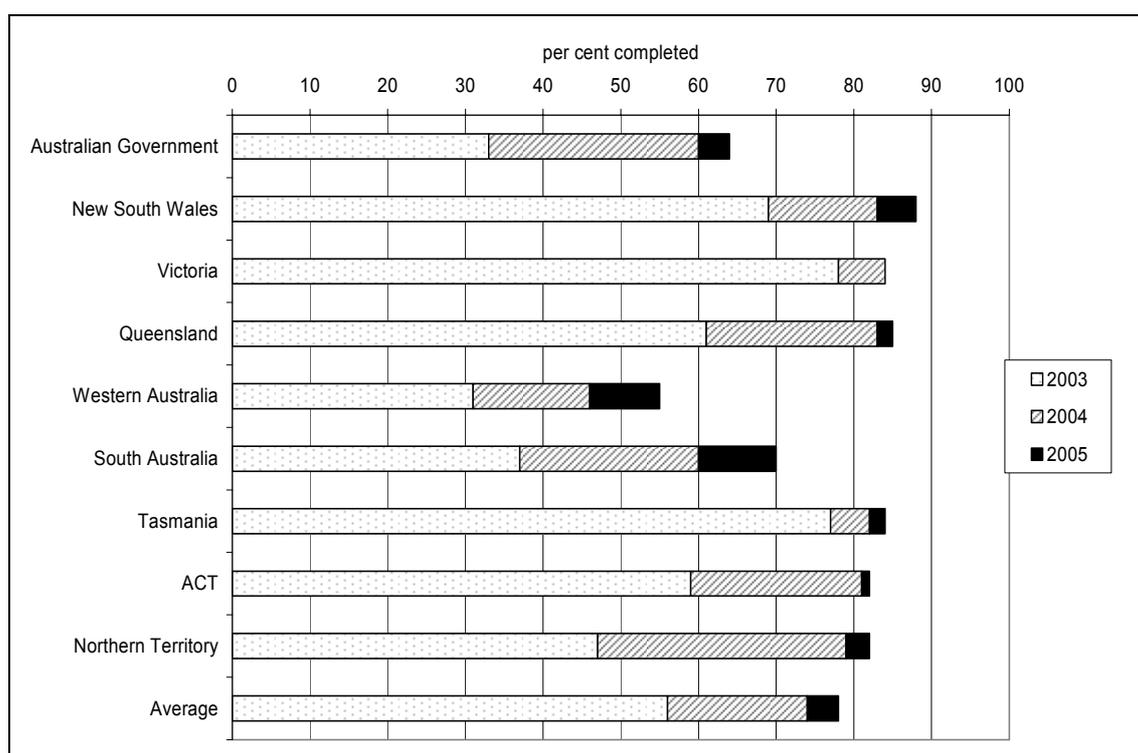
- Leaving aside water management, the main outstanding issues from the NCP agenda were in the area of legislation review and reform.

Legislation review under the NCP

Under the NCP, governments undertook to review all legislation containing competition restrictions (as at 1996) to ensure that the restrictions were in the public interest and remove those restrictions that were not. Governments also undertook to ensure that all new legislation that restricts competition is in the public interest

By the conclusion of the NCP legislation review program, governments had reviewed and, where appropriate, reformed around 85 per cent of their nominated legislation. For priority legislation the rate of compliance was around 78 per cent (see figure 3.1).¹¹

Figure 3.1: Governments' progress with completing their priority legislation review and reform matters, 2003–05



11 Recognising the burden on governments from conducting reviews and implementing reforms, and that the greatest community benefit would arise from prioritising legislation with most impact on competition, the NCC nominated priority areas of regulation (NCC 2003). It scrutinised around 800 pieces of priority legislation and monitored outcomes in a further 1000 non-priority areas.

In its final assessment of governments' progress in implementing the NCP, the NCC identified the areas where governments had not satisfactorily completed the legislation review program and in some cases recommended reductions in competition payments. In addition, the NCC observed that in connection with new legislation, governments' gatekeeping mechanisms could be improved substantially (NCC 2005).

Post 2005 developments in legislation review

While all governments committed in 2006 to complete reviews of priority legislation as part of the new National Reform Agenda (see below), developments in the following priority areas since the conclusion of NCP in 2005 indicate that progress has been uneven.

Australian Government: Wheat marketing

The *Wheat Marketing Act 1989* provides AWB International Limited with an effective monopoly of bulk wheat exports. The NCP review of the Act considered that introducing more competition was likely to deliver greater net benefits to growers and the wider community than continuing the export controls (Irving et al. 2000).

The review found that:

- any price premiums earned by virtue of the single desk are likely to be small (estimated at around US\$1 per tonne in the period 1997–99)
- the single desk inhibits innovation in marketing and cost savings in the grain supply chain.

The review committee felt, however, that it would be premature to repeal the Act without a further relatively short evaluation period. It recommended that the Australian Government retain the single desk until the 2004 review required by the Act and that this review incorporate NCP principles. The government retained the single desk and did not conduct the 2004 review under NCP principles. As a result, the NCC found that the Australian Government had not met its NCP commitment.

On 12 January 2007 the Australian Government established the Wheat Export Marketing Consultation Committee to consult with the Australian wheat industry, particularly growers, about future wheat export marketing arrangements. The terms of reference given to the committee were not those of an NCP review—that is, the committee was not required to assess whether the competition restrictions that underpin the single desk provide a net public benefit.

On 22 May 2007, the government announced that it was giving growers until 1 March 2008 to create a new entity to take over management of the single desk and that AWB International Limited would continue to manage and market the 2007-08 wheat harvest. Once growers have established their company, the government will introduce legislation to confer single desk status to that entity.

Western Australia: Liquor licensing

The *Liquor Licensing Act 1988* contained a needs test, whereby a licence application can be rejected because the area has incumbent liquor outlets. The Act also discriminated between hotels and liquor stores, with only hotels able to trade on Sundays. The Australian

Government, acting upon the NCC's finding that Western Australia had not complied with its NCP commitments, imposed deductions to the state's 2003-04, 2004-05 and 2005-06 competition payments.

In July 2005, the Western Australian Government released the report of a second liquor review for public comment. The review found that the restrictions on competition are unwarranted and should be reformed. The findings are consistent with the state's previous liquor review (and all other NCP reviews of liquor licensing conducted across jurisdictions). Following community consultation, the government introduced the *Liquor and Gaming Legislation Amendment Bill 2006* which was passed by the Parliament in December 2006 and contains the following reforms:

- The replacement of the needs test by a public interest test. Applicants are now required to demonstrate that the application is in the public interest, and the licensing authority must consider the application on the basis of its social, community, economic and health implications and/or benefits.
- Increased Sunday trading hours (10 am to 10 pm) for metropolitan liquor stores. In country areas the status quo continues—Sunday packaged liquor sales are restricted to hotels unless the Director of Liquor Licensing grants an extended trading permit to a liquor store.

South Australia: Barley Marketing

The *Barley Marketing Act 1993* prohibited the sale or delivery of barley grown in South Australia to anyone other than the Australian Barley Board.

In 1997 an NCP review of the South Australian Act and Victoria's matching legislation estimated that the Acts imposed a net cost on the community. The review recommended that the two governments:

- remove the domestic barley marketing monopoly and retain the export barley marketing monopoly for only the 'shortest possible transition period' and
- restructure the Australian Barley Board as a private grower-owned company.

The Victorian Government accepted the review recommendations, removing the domestic barley marketing monopoly on 1 July 1999 and the export barley marketing monopoly on 1 July 2001. Victorian barley growers have since had unrestricted choice as to whom they sell their barley.

By mid-1999, the South Australian Government had removed the domestic marketing monopoly, transferred the Australian Barley Board to grower ownership as ABB Grain Limited and amended the Act to sunset the export monopoly over barley from July 2001. Subsequently, however, it replaced the proposed sunset with a requirement for a further review after two years.

The second review reported in June 2003 and found no evidence that the single desk delivered benefits to the Australian community as a whole that outweighed its costs, or that the objectives of the legislation could be achieved only by restricting competition. The review recommended 'controlled deregulation' in which ABB Grain Ltd would retain a principal barley export licence and, a year after the passage of reform legislation, an independent authority would license barley exports by other marketers that the authority determines do not threaten the price premiums that ABB Grain Ltd achieves as a result of its market power. Following the review, the South Australian Government introduced a reform package but the legislation did not have sufficient support to pass through Parliament.

The NCC found that South Australia had not met its NCP commitments because it had not implemented the recommendations of the two reviews. Arising from the NCC's 2005 assessment, the Australian Government deducted 5 per cent of South Australia's competition payments in relation to this matter.

In June 2006, the South Australian Government established a working group to reexamine the bulk barley export monopoly. The report recommended that barley marketing arrangements be deregulated following a transitional step of licensing accredited exporters through the use of the Essential Services Commission of South Australia (ESCOSA) as independent regulator. The *Barley Exporting Act 2007* establishes ESCOSA as the export licensing body. The new Act requires a review of the new arrangements within two years of their commencement and will expire in 2010.

South Australia: Trading hours

Prior to 2003, South Australia's *Shop Trading Hours Act 1977* imposed complex restrictions on trading hours that discriminated between retailers according to their size, location and products sold. Most notably, the Act limited evening and Sunday trading by larger general retailers and allowed longer trading hours for retailers located in the central business district and Glenelg tourist precincts.

- In June 2003, the South Australian Government legislated to substantially reform trading hours. Commencing in July 2003, Sunday trading was extended to suburban areas between 11 am and 5 pm, and week night shopping was allowed until 9 pm in all areas. Some discrimination against larger retailers remained. Unlike their smaller, specialist competitors, larger general retailers are not permitted to trade after 9 pm on weekdays, 6 pm on Saturdays or 5 pm on Sundays.
- The NCC included the Act in a pool of South Australian legislation that it considered did not meet NCP obligations. South Australia's failure to address the remaining competition restrictions in the Shop Trading Hours Act, together with the restrictions contained in other pool legislation, attracted a deduction of 5 per cent of 2005-06 competition payments.

Although the South Australian Government did not provide a public interest case to support the remaining restrictions, it indicated that it intended to review the Act after the 2003 reforms had been in operation for three years. This review commenced in August 2006 and reported to the South Australian Government in February 2007. The review concluded that the Act 'strikes a satisfactory balance between the competing interests of the various sectors of the retail industry and the larger interests of the community' and recommended that the current restrictions be retained 'with the possibility of consideration being given to a later Sunday closing time' (Moss 2007, p. 52).

3.2 The National Reform Agenda

On 10 February 2006, COAG agreed to a new National Reform Agenda and supporting institutional arrangements, recognising particularly the challenges of Australia's ageing population and intensified global competition. The three-pronged objective of the new agenda is to enhance the nation's human capital and to continue competition reform and regulatory reform to help underpin Australia's future prosperity (COAG 2006a). On 14 July 2006, COAG reaffirmed its commitment to progress the National Reform Agenda, stating that it recognised the benefits to the economy and community of progressing the three streams of

reforms (COAG 2006b). The broad parameters of the reform program were outlined in the NCC's 2005-06 Annual Report.

The importance of further reform was emphasised by a Productivity Commission report in February 2007 that found that the National Reform Agenda has the potential to significantly raise national output and incomes (PC 2007 p. xxviii). The study examined the benefits potentially available in the long term from further enhancing competition in key infrastructure areas, reducing regulatory burdens on business, achieving more cost-effective health services and raising workforce participation and productivity.

The Productivity Commission found that reforms aimed at improving productivity and efficiency in energy, transport and related infrastructure and reducing the regulatory burden on business, if fully implemented, could increase Gross Domestic Product in time by up to around \$17 billion or nearly 2 per cent. The Productivity Commission also considered that there was potential for a 5 per cent improvement in the productivity of health service delivery which, if achieved, would increase Gross Domestic Product by some 0.4 per cent.

In addition, 'human capital' reforms to enhance workforce participation and productivity — targeting health promotion and disease prevention, education and training, and work incentives — could potentially yield even larger gains, depending on program implementation costs.

The Productivity Commission found that all jurisdictions would receive increased tax revenues flowing from reform-induced growth.

Institutional arrangements to support the National Reform Agenda

The importance of the institutional arrangements to accompany the National Reform Agenda was recognised by the Productivity Commission, which concluded that:

....successful implementation of the agenda will depend crucially on effective leadership and robust and transparent processes that: facilitate the analysis required to develop well-founded guiding principles and specific reform options; provide for rigorous independent monitoring of progress in implementing changes and reform outcomes; avoid fragmentation of reform effort; and prevent backsliding (PC 2005).

The COAG meeting of 13 April 2007 (COAG 2007) clarified the supporting institutional arrangements. COAG agreed that the COAG Reform Council's role will be to monitor progress in implementing reform and to assess the costs and benefits of the reforms referred to it unanimously by COAG. The NCC will continue to undertake functions under Part IIIA of the *Trade Practices Act 1974* in relation to third-party access to infrastructure.

COAG confirmed that once consolidated, new, national reform initiatives are agreed by COAG, COAG will consider referring them to the COAG Reform Council. The COAG Reform Council will monitor the implementation of those reforms and provide COAG with annual reports on progress. As reforms are implemented and economic, fiscal and other benefits are realised, the COAG Reform Council will provide COAG with a broad ex-post assessment of the costs and benefits of individual reform packages, giving consideration to the differences between jurisdictions. Unlike the NCP, government funding for the National Reform Agenda will not include generic up front payments.

Competition and infrastructure regulation

The COAG meeting of 13 April 2007 agreed to a series of competition reforms to enhance productivity and the efficient functioning of markets. On energy, COAG will establish a National Energy Market Operator for both electricity and gas, encompassing a new national transmission planning function. COAG also endorsed a staged approach for the national mandated roll out of electricity smart meters to areas where benefits outweigh costs, as indicated by the results of the cost-benefit analysis to be completed by the end of 2007.

On transport, COAG agreed to a three-phased reform program to provide better price signals for transport freight infrastructure providers and users to enable Australia to meet more efficiently the forecast growth in the national freight task, in parallel with implementing road transport productivity enhancing reforms.

COAG also agreed a series of timelines and milestones to meet previous COAG commitments to ensure a simpler and consistent national approach to the economic regulation of nationally-significant infrastructure, including specific measures to enhance regulatory outcomes for nationally significant ports and rail networks and the streamlining of third-party access regimes. This includes a commitment that each jurisdiction undertake public reviews of the regulation and effectiveness of competition in significant ports by the end of 2007.

Continuing regulatory reform

Building on commitments made on 10 February 2006, COAG agreed on 13 April 2007 to the following actions to address various regulatory 'hot-spots', including:

- implementation of national rail safety legislation and a nationally-consistent rail safety regulatory framework
- establishment of a national system of trade measurement
- in-principle agreement to the establishment of a national system for registration of personal property securities by 2009
- a timetable for achieving national occupational health and safety (OHS) standards and harmonising elements in principal OHS Acts
- development of a more harmonised and efficient system of environmental assessment and approval as soon as possible
- ensuring best practice regulation making and review processes apply to the Building Code of Australia and removing unnecessary state-based variations to the code
- a process for developing a model to deliver a seamless, single online registration system for Australian Business Numbers and business names, including trademark searching and
- development by the states and territories of a uniform approach to product safety within 12 months.

COAG considered the Productivity Commission's report on performance benchmarking of business regulation, the first stage of a COAG commissioned study (PC 2007). The report outlines a common framework for benchmarking, measuring and reporting on regulatory burden on business, including a range of feasible quantitative and qualitative performance indicators. COAG agreed to the Productivity Commission benchmarking compliance costs of

regulations in targeted areas, with the Australian Government funding the benchmarking exercise.

COAG agreed to refer the following proposals to the COAG Reform Council initially for monitoring of progress and subsequently for assessment, consistent with the process set out below:

- transport pricing reform
- electricity smart meters
- the new National Energy Market Operator and new transmission planning function, and related reforms
- infrastructure regulation
- implementation of national rail safety legislation and a nationally consistent rail safety regulatory framework
- establishment of a national system of trade measurement administered by the Australian Government and
- ensuring best practice regulation making and review processes apply to the Building Code of Australia and removing unnecessary state-based variations to the code.

Human capital

The COAG meeting of 13 April 2007 agreed to a number of significant actions in the area of human capital. These actions cover type 2 diabetes, vocational education and training, literacy and numeracy, and early childhood and child care.

3.3 NCP legacy website

The NCP represented the most comprehensive, integrated and systematic reform program covering all governments in Australia's history. The NCC considers that there would be benefit if the knowledge and experience gained during the NCP process were available as a resource for the community. To this end, it is developing a website that will preserve and make available the intellectual legacy from NCP. The website will document the history of governments' development of, agreement to and implementation and outcomes of the NCP, including the outcomes of the NCC's regular assessments of progress. The NCC's objective is to establish a website that is innovative, appealing and readily interrogated. The website, which will link to the existing NCC agency website, will contain among other things:

- material relevant to the establishment of NCP including the Hilmer Report, the August 1994 COAG communiqué recognising the need for a NCP, and the full suite of NCP agreements, spanning
 - competitive neutrality
 - structural reform of public monopolies

- legislation review and reform and legislation gatekeeping arrangements
- conduct code arrangements
- reforms to electricity, gas, water and road transport
- subsequent COAG communiqués that altered the scope of the policy and fine-tuned the assessment criteria
- jurisdictions’ policy statements and annual reports on progress
- the NCC’s assessment reports and a history of competition payments outcomes
- NCC commissioned reports, occasional series and staff papers on legislation review and other matters
- a selection of jurisdictions’ legislation review reports, particularly for priority legislation areas.

The NCC’s ongoing role as an access regulator under Part IIIA of the Trade Practices Act will continue to be covered on a separate web site.

4 Organisation and governance

4.1 Agency overview

Role and functions

The National Competition Council (NCC), established in 1995 by agreement of the Council of Australian Governments (COAG), is an independent research and advisory body for all Australian governments. Its functions and powers are set out in section 29B of the *Trade Practices Act 1974*.

The NCC's functions include carrying out research into and providing advice on matters referred to it by the Minister. Since establishment, the NCC's main work has been to assess the performance of Australia's governments (Australian and state/territory) in meeting the agreed reform commitments under the National Competition Policy (NCP) and to recommend on the regulation of third party access to services provided by monopoly infrastructure under Part IIIA of the Trade Practices Act (declaration and certification) and under the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code).¹²

The NCP program ended in 2005-06 and COAG subsequently agreed, at meetings during 2006, to the new National Reform Agenda (to be supervised by the new COAG Reform Council). This year the NCC has focused on its role regarding third party access regulation. On 13 April 2007, COAG confirmed that, under the new National Reform Agenda, the NCC would continue responsibility for access regulation.

Vision and mission

The NCC's vision is to provide objective and constructive advice to governments to help achieve outcomes that benefit the community as a whole. This incorporates building community understanding of, and support for, national access regulation.

Appropriate application of the national access regime and the Gas Code encourages competition in markets that depend on the use of monopoly infrastructure. This facilitates economic growth, employment growth, optimal resource use and improved social outcomes for all Australians.

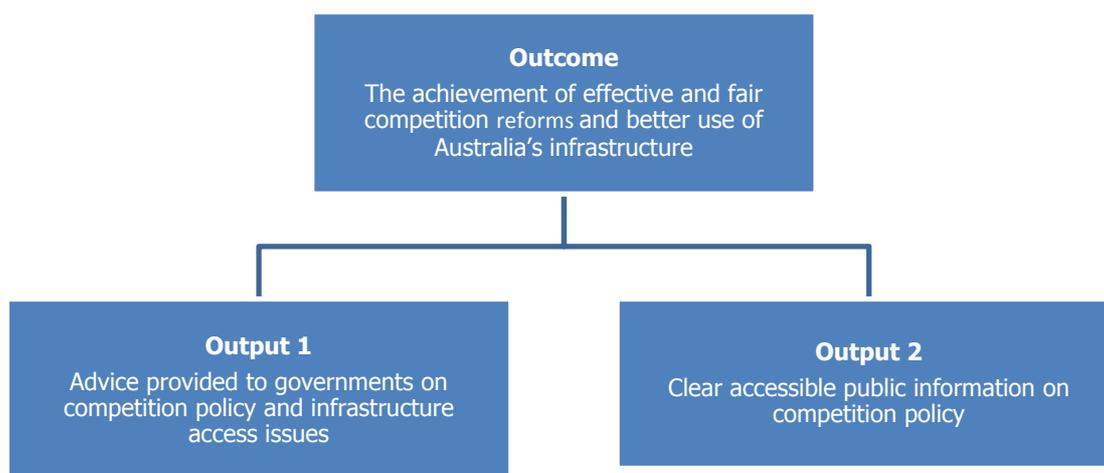
The NCC's vision is embodied in its mission: 'To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest'.

¹² Recommendations are made to the Australian Government Treasurer or other Ministers, or to state or territory Ministers depending on the particular subject matter.

Outcome and outputs

The NCC has one outcome and two contributing output groups, as developed and agreed on through the portfolio budget process. The outcome relates to the high level Australian Government outcome of 'well functioning markets', which is part of the overall government outcome of 'strong, sustainable economic growth and the improved wellbeing of Australians'. The NCC outcome and contributing outputs, which are unchanged from those in the NCC's 2006-07 portfolio budget statement, are shown in figure 4.1.

Figure 4.1: National Competition Council's outcome and contributing outputs



The NCC delivers its outcome by providing advice to governments on the design and coverage of infrastructure access regimes and on competition policy, and by providing public information on competition policy issues, including as part of its third party access regulation role. The NCC's responsibility under the Trade Practices Act to make recommendations to relevant governments on infrastructure access regimes requires it to consult with stakeholders by inviting submissions and providing public reports. The NCC's functions and responsibilities are delivered through its work program areas (see box 4.1).

Box 4.1: National Competition Council’s mission, goals and work program

Mission:

To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest

Goals:

To facilitate timely implementation of effective and fair competition reforms by governments

To promote better use of Australia’s resources

To build community awareness and understanding of, and support for, the National Access Regime

To ensure the NCC is a dynamic organisation, capable of providing a safe, healthy and professional work environment for its staff and developing their full potential

Work program:

Recommend to governments on access to infrastructure

Build community understanding of, and support for, the National Access Regime

Continue to improve its operational standards in leadership, strategic direction, information systems, support services, resource allocation and staff development

Indicators of performance

Information on performance efficiency for the NCC’s two output groups is provided in chapters 2 and 3 of this annual report. Chapter 2 considers the NCC’s third party access regulation role while chapter 3 provides the NCC’s final annual report statement on the outcomes of its role in the now-concluded NCP program. The performance indicators for assessing the NCC’s outputs are set out in box 4.2.

Box 4.2: National Competition Council output performance indicators

Output 1.1.1: Advice provided to governments on competition policy and infrastructure access issues

Advice and recommendations meet criteria of robustness, quality and timeliness

Advice and recommendations take into account all relevant considerations and meet ministers’ needs

Recommendations to governments and representations to the Australian Competition Tribunal on access to essential infrastructure services, and responses to reviews requested by governments, are effective and timely

Output 1.1.2: Clear accessible public information on competition policy

Publications and explanatory material, including the annual report and the NCC’s website, are comprehensive and meet deadlines, and information provided is effective in promoting understanding of competition reform, policy and processes

Resources used in performing the NCC outcome

The total price of the two NCC outputs in 2006-07 was \$2 992 967, which represented a variation from the portfolio budget statement estimate of 25.8 per cent. The variation arose primarily because the NCC’s actual staffing level was less than that on which the budget was developed. When the NCP reform program ended, the NCC decided that it should not recruit to fill vacancies until the extent of its role was clearer. In addition, expenditure on economic experts was less than anticipated. As a result, in 2006-07 the NCC recorded an operating

result of \$1 061 862. Table 4.1 reports the financial resources used by the NCC in 2006-07 in performing its outcome.¹³

Table 4.1: Summary of resourcing for NCC outcome 2006-07

	<i>Budget 2006-07 (\$000)</i>	<i>Actual 2006-07 (\$000)</i>	<i>Variation (per cent)</i>	<i>Budget estimate 2007-08 (\$000)</i>
Total administered expenses	0	0	-	0
Price of Output Group 1.1 National Competition Council				
Output 1.1.1: Advice provided to governments	3 824	2 847	25.5	3 825
Output 1.1.2: Clear public information	207	146	29.5	200
Sub-total Output Group 1.1	4 031	2 993	25.8	4 025
Revenue from government (appropriation)	4 031	4 031	-	4 025
Revenue from other sources	52	24	53.8	24
Total resources for NCC Outcome	4 083	4 055	0.7	4 049
Average staffing level (secretariat)	15	8.6	42.7	9

Table 4.2 provides a summary comparison of the resources used by the NCC in 2005-06 and 2006-07, by output groups. Work demands and staff levels were relatively similar in each of the two years, so the resources used to deliver the NCC's outputs did not vary greatly between the two years.

¹³ See also the audited financial statement for 2006-07.

Table 4.2: Resourcing for NCC outcome by output groups, 2005-06 and 2006-07

<i>NCC Outcome</i>	<i>Output Group 1.1.1</i>		<i>Output Group 1.1.2</i>		<i>Total</i>	
	<i>2005-06</i> <i>(\$000)</i>	<i>2006-07</i> <i>(\$000)</i>	<i>2005-06</i> <i>(\$000)</i>	<i>2006-07</i> <i>(\$000)</i>	<i>2005-06</i> <i>(\$000)</i>	<i>2006-07</i> <i>(\$000)</i>
	<i>NCC expenses</i>					
Employees	1 287	1 352	203	71	1 490	1 423
Suppliers	1 596	1 426	18	75	1 614	1 501
Depreciation, amortisation & write-downs	71	69	-	-	71	69
Total expenses	2 954	2 847	221	146	3 175	2 993
	<i>NCC revenues</i>					
Revenue from government	3 747	3 829	207	202	3 954	4 031
Other non-taxation revenues	67	24	-	-	67	24
Total revenues	3 814	3 853	207	202	4 021	4 055

4.2 Corporate governance

The NCC's corporate governance framework establishes accountability and decision-making processes to effectively and efficiently manage its resources and allocate those resources to its statutory priorities. The NCC has embraced the management, accountability, financial and employment reforms applicable to government agencies.

The NCC's outcome and outputs are agreed with the Department of Finance and Administration and reported in the portfolio budget statements. The Australian Government funds the NCC through budget appropriations. The NCC also levies an application fee in relation to its work recommending on coverage or revocation of coverage of gas pipelines under the Gas Code. The charge of \$7 500 per application represents partial cost recovery.

The NCC is responsible for its activities, consistent with the requirements of the Trade Practices Act. Decisions are made at NCC meetings (see table 4.3) and day to day management is undertaken by an executive team. The NCC is accountable for its decisions through the courts, tribunals, parliament and the Commonwealth Ombudsman.

National Competition Council structure

The NCC comprises the President and up to four other councillors appointed by the Governor-General, with appointments — generally for three-year periods — supported by a majority of state and territory governments. Part IIA of the Trade Practices Act specifies the processes for appointing councillors, conducting NCC meetings and disclosing interests by councillors. The NCC is supported by a secretariat located in Melbourne. At 30 June 2007 the secretariat comprised nine staff.

The President and councillors

At 30 June 2007, there were four councillors, including a President. The councillors were David Crawford (President), Doug McTaggart, Rod Sims and Virginia Hickey (box 4.3). The councillors are drawn from across Australia and different industry and community sectors to provide a range of skills and experience. The terms of office of all the existing councillors end on 17 December 2009. David Crawford's term as President ends on 17 December 2009.

The councillors endorse the operating policies of the NCC, and consider, review and approve all of the NCC's recommendations and major publications before release. The councillors also consider governance issues, including performance against budget.

Box 4.3: Councillor profiles

Mr David Crawford

Mr David Crawford is the President of the National Competition Council and Chairman of the Airstralia Development Group Pty Ltd, Westralia Airports Corporation Pty Ltd, PAPT Holdings Pty Ltd, PAPT Nominees Pty Ltd, Export Grains Centre Ltd, HRZ Wheats Pty Ltd, and Canola Breeders Western Australia Pty Ltd.

He is a director of Grain Biotech Australia Pty Ltd, Grain Foods CRC Ltd, Grain Foods Solutions Pty Ltd, Canola Breeders International Pty Ltd, Lignor Limited and Pinnacle Corporate Pty Ltd. Mr Crawford is also Chair of the Board of Advisors of Curtin University Graduate School of Business, and a management committee member of both educational and service organisations.

Mr Crawford was previously the corporate affairs director of Wesfarmers Limited, managing director of Western Collieries Ltd, chief operating officer of Ranger Minerals NL and managing director of Abosso Goldfields Limited. Mr Crawford has also been a member and/or chair of a number of government and non-government committees in the agriculture and mining industries.

Mr Crawford has an Honours degree in Economics from the University of Queensland and a Master of Arts (Political Science) from the University of Toronto. He is also a Fellow of the Australian Institute of Company Directors (AICD).

Dr Doug McTaggart

Dr Doug McTaggart is currently Chief Executive of QIC, a councillor of the National Competition Council, a councillor of the Council of Australian Governments Reform Council and a council member of the Queensland University of Technology.

Dr McTaggart has held various positions as an academic economist, most recently Professor of Economics and Associate Dean at Bond University. He was previously the Under Treasurer of the Queensland Department of Treasury. He has been president of the Economic Society of Australia and a member of the Australian Accounting Standards Board.

Dr McTaggart holds an Honours degree in Economics from the Australian National University and a Masters degree and PhD from the University of Chicago.

Mr Rod Sims

Mr Rod Sims is a director of Port Jackson Partners Limited, which he joined in 1994. In addition to his role as a councillor with the National Competition Council, Mr Sims is also the chair of Inglewood Farms in Queensland and the chair of Sustainable Energy Limited based in Papua New Guinea. From 1996 to 2003, he was the chair of the NSW Rail Access Corporation and later chair of the Rail Infrastructure Corporation. Mr Sims was appointed by the Australian Government as a member of the panel reviewing Australia's energy policy for the Council of Australian Governments in 2002.

Mr Sims previously worked for the Australian Government for over eight years, including as the deputy secretary in the Department of Prime Minister and Cabinet. During this period, he also occupied the position of deputy secretary responsible for Transport in the Department of Transport and Communications. From 1988 to 1990, Mr Sims was the economic advisor to the Prime Minister and prior to that worked for nine years overseas as an economic advisor to governments.

Mr Sims holds a first class honours degree in Commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Box 4.3: continued

Ms Virginia Hickey

Virginia Hickey is director of @ the Board Table, a corporate governance consulting business. She is also the chair of TransAdelaide, board member of Flinders Ports, Medical Insurance Group Australia and TransitPlus. Ms Hickey was formerly a Commissioner of the National Transport Commission through which role she was involved in the Council of Australian Governments national reform agenda. Other previous board positions include member of the Council of the University of South Australia, Vice President Australian Institute of Company Directors SA & NT Division and board member of Playford Capital and the Art Gallery of South Australia.

Ms Hickey was formerly a partner of Finlaysons Lawyers in Adelaide with particular expertise in corporate governance, accountants' and directors' liability and general commercial litigation including actions under the Trade Practices Act and the Corporations Law.

She was appointed as a councillor of the National Competition Council in December 2003.

Ms Hickey has a Bachelor of Arts from Monash University, a Bachelor of Laws from University of Melbourne and is a Fellow Australian Institute of Company Directors (AICD).

National Competition Council meetings

During 2006-07, councillors met on four occasions, including twice by teleconference. All councillors attended the four meetings. In-face meetings were held in the NCC's Melbourne office.

The number and timing of meeting in 2006-07 were determined largely on the basis of the NCC's work priorities. Table 4.3 lists the dates of the meetings in 2006-07 and councillors' attendance. In 2006-07, there were fewer meetings than in previous years reflecting that the NCP program had been completed in 2005-06 and that there were fewer current applications under Part IIIA of the Trade Practices Act and the Gas Code.

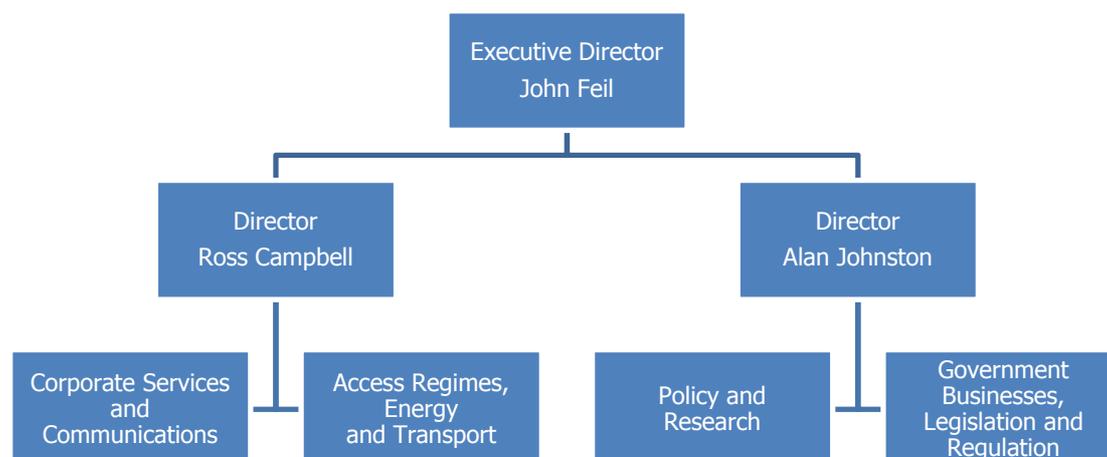
In addition to the meetings, councillors received and considered each month out of session a financial statement of the NCC's performance against budget.

Table 4.3: National Competition Council meetings, 2006-07

<i>Meeting date</i>	<i>Attendance</i>
22 August 2006	attended by all
5 December 2006	attended by all
14 March 2007	attended by all
29 May 2007	attended by all

The secretariat

The secretariat provides advice and analysis at the councillors' direction on competition matters, primarily matters related to Part IIIA of the Trade Practices Act and similar functions under the Gas Code. It represents the NCC in dealings with officials from the Australian, state and territory governments and with other parties that have relevant interests in the services provided by monopoly infrastructure. Figure 4.2 depicts the structure of the secretariat at 30 June 2007.

Figure 4.2: National Competition Council secretariat organisation chart, 30 June 2007

Day-to-day management of the NCC secretariat is the responsibility of the Executive Director and directors, who comprise the executive team. The executive team is also responsible for forward planning and for policy and expenditure decisions. The executive team met regularly with secretariat staff during 2006-07 to consider work and organisational issues.

Internal and external scrutiny

Internal scrutiny is undertaken via regular meetings of councillors (see above) and through the NCC's Audit and Risk Management Committee.

Mechanisms for external scrutiny include: formal reviews of the national access regime and the Gas Code, and the role of the NCC; legal mechanisms (courts and tribunals) for reviewing ministers' decisions arising from NCC recommendations; and the Commonwealth Ombudsman. The NCC is subject to external scrutiny more generally through its published recommendations to governments on matters relating to access determinations and through its processes for engaging with stakeholders.

Audit and Risk Management Committee

The NCC's Audit and Risk Management Committee oversees the organisation's financial statements, audit functions, risk management fraud control and business continuity planning. At 30 June 2007 the Audit and Risk Management Committee comprised councillors Dr Doug McTaggart (Chair) and Ms Virginia Hickey. The committee met twice during 2006-07.

On 22 August 2006 the committee considered the NCC's draft audited financial statements for 2005-2006. The committee noted that there had been a significant increase in monies received, which had been transferred to the Office of Public Accounts. The committee also noted the requirement for certification of financial compliance by *Financial Management and Accountability Act 1997* agencies, commencing in relation to 2006-07, and agreed the basis on which the NCC should certify compliance.

On 5 December 2006 the committee updated and endorsed the NCC's Audit and Risk Management Charter and policies governing risk management and fraud control.

Both members of the Audit and Risk Management Committee attended the two meetings. Secretariat members John Feil (Executive Director) and Ross Campbell (Director) also attended the two meetings.

Formal reviews

Following the end of the NCP program in 2005-06 and a review by the Productivity Commission, COAG agreed at two meetings during 2006 to continue reform via a new National Reform Agenda aimed at, among other things, providing a supportive market and regulatory framework for investment in energy, transport and other export-oriented infrastructure, and its efficient use, by improving pricing and investment signals and establishing competitive markets. There was also agreement to reduce the regulatory burden on business (COAG 2006a and COAG 2006b).

At its meeting on 13 April 2007, COAG agreed that the NCC should continue to undertake functions under Part IIIA of the Trade Practices Act in relation to third-party access to infrastructure (COAG 2007).

Legal mechanisms for reviewing National Competition Council decisions

Under both Part IIIA of the Trade Practices Act and the Gas Code, an applicant or service provider may seek review by the Australian Competition Tribunal of Ministers' decisions (made in response to a recommendation from the NCC) by the designated Australian Government decision maker or state premier.¹⁴ Chapter 2 reports on the NCC's work relating to Part IIIA and the Gas Code, including where parties sought review of Ministers' decisions and the outcomes of those reviews.

Other reviews

There were no reports or comments during 2006-07 by the Australian Government Ombudsman or by a parliamentary committee, and no decisions by administrative tribunals involved the NCC.

Engagement with stakeholders

During 2006-07, the NCC provided submissions to:

- the Productivity Commission review of the Price Regulation of Airport Services (July 2006 and October 2006)
- the Wheat Marketing Consultation Committee—on National Competition Policy and wheat marketing (January 2007).

¹⁴ The Australian Competition Tribunal is the appellate body for decisions on declaration, certification and coverage/revocation of coverage except that under the Gas Code, the appellate body in Western Australia is the Western Australian Gas Review Board and in South Australia the appellate body is the Administrative and Disciplinary Division of the District Court.

The NCC also published a new template for applications for declaration under Part IIIA of the Trade Practices Act in December 2006. Following recent amendments to the Trade Practices Act and judgments by courts and tribunals, the NCC is updating its guides to declaration and certification.

All of the NCC's research papers are available on its website (www.ncc.gov.au).

Financial management

The financial management of the NCC was undertaken on a sound basis involving budget setting, variance analysis and reporting for the organisation as a whole. Financial monitoring and reporting against budget occurred on a monthly basis, and involved all councillors considering a financial report.

The NCC continued to work with the Treasury, Department of Finance and Administration, the Australian Competition and Consumer Commission (ACCC) (as the outsourced provider of financial services) and the Australian National Audit Office (ANAO) as key stakeholders to ensure that financial performance aligns with expectations.

The NCC received audit clearance of its financial statements from the ANAO on 29 August 2007. The ANAO issued an unqualified audit report.

Outsourced services

The NCC undertakes purchasing in accord with the *Commonwealth procurement guidelines* and *Best practice guidance*. The key elements of these guidelines are value for money, efficiency and effectiveness, accountability and transparency, ethics and industry development.

The NCC has assurance and reporting processes in place to ensure compliance with requirements. These include the publication of an annual procurement plan and significant procurements on AusTender, and the listing of contracts that exceed \$100 000 on the NCC website in accord with the Senate Order on departmental and agency contracts.

In this regard, the NCC listed a new procurement for the provision of services for the design and development of a new website intended to publicise the development and implementation of the NCP program on AusTender in June 2007.

The NCC purchases legal services from its panel of legal services providers that it developed on the basis of an open tender process notified on AusTender. It purchases expert economic advice endeavouring to use a select tender process. (See the discussion under Consultants.)

During 2006-07, the NCC purchased the following corporate services:

- finance and accounting
- printing of NCC publications
- payroll and human resource management
- website and information technology support
- document management and storage software

- library services and information
- document storage
- supply and maintenance of indoor plants
- internal office maintenance.

The ACCC is contracted to provide all financial services to the NCC, and processed the NCC's accounts during 2006-07. As an Australian Government body, the NCC is required by the Department of Finance and Administration to reconcile its GST components on a monthly basis.

During 2006-07, the NCC renegotiated contracts for the continuation of the financial services agreement with the ACCC, the lease agreement for the NCC office, the library service agreement with the Productivity Commission and the employee assistance agreement.

Risk management and fraud control

The NCC has in place a risk management framework, including a business continuity plan and a fraud control policy. These frameworks have been developed taking account of relevant legislation and standards including the *Australian Government Information Technology Security Manual*, the *Protective Security Manual* and the *Commonwealth Fraud Control Guidelines*.

During 2006-07, the executive member with operational responsibility for risk management and fraud control attended relevant training provided by Comcover.

The NCC reviewed its risk management arrangements including its business continuity plan, and developed a contingency plan for operating in the event of an influenza pandemic. The NCC has identified further work, to be undertaken in 2007-08, regarding the documentation and monitoring of its risk management activity.

The *Fraud Control Policy* was reviewed in 2006-07 and is reviewed every 12 months, or earlier if there is a significant change in the NCC's structure or functions, or if incidents indicate the need for revision. Management functions that have an impact on the effectiveness of the NCC's fraud control measures included:

- the NCC's encouragement of ethical behaviour by staff, including by emphasising the importance of the Australian Public Service Code of Conduct
- arrangements for financial authorisations such that dual authorisation is required for all expenditures
- provisions aimed at ensuring information and information technology security
- appropriate written delegations
- protective security.

As part of its asset management and security arrangements, the NCC undertakes a regular audit of the laptop computers that it holds for use by its staff. In October 2006 the NCC could not account for one laptop computer. The NCC reported the matter to the Victoria Police. The NCC also reviewed its security arrangements and upgraded arrangements for the storage of

laptops and their issue to staff. This matter was considered by the Audit and Risk Management Committee, which noted the actions taken and agreed that the missing laptop should be written off.

Certificate of Fraud Measures

I certify that, as at 30 June 2007, the National Competition Council (the NCC) had completed its fraud risk assessments and fraud control plan. I also certify that the NCC has in place appropriate fraud detection, prevention, investigation, reporting and data collection procedures and processes that meet the specific needs of the organisation and comply with the *Commonwealth fraud control guidelines*.



John Feil
Executive Director

People management

Staffing

At 30 June 2007 the secretariat had 8.6 full time equivalent staff and there were four councillors, such that the NCC's average staffing level was 12.6. All secretariat staff were located at the NCC's office at level 9, 128 Exhibition Street, Melbourne Victoria.

The secretariat staff comprised the Executive Director, two directors, four project managers (Executive, level 2) and two administrative staff (Administrative Service Officer, grade 6) (table 4.4). These staff comprised eight on-going and one non-ongoing staff. One project manager worked part-time. There was no change in the number of secretariat staff from the previous year and no staff turnover during the year. The only change in the staffing profile in 2006-07 was the appointment of one non-ongoing staff member as ongoing (see table 4.5).

Because of the changing role of the NCC following the end of the NCP reform program and with the Ministerial Council on Energy process of reform of energy regulation ongoing, the NCC operated in 2005-06 and 2006-07 with fewer secretariat staff than previously. The 13 April 2007 decision of COAG that the NCC should continue to perform duties relating to third party access regulation has clarified the NCC's role, although the NCC will defer recruitment of staff until there has been further progress on energy regulation reform.

Table 4.4: Staff profile, 30 June 2007

<i>Level</i>	<i>Salary range^a</i> <i>(\$'000)</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
Senior Executive Service, band 2	Up to 218		1	1
Senior Executive Service, band 1	Up to 159		2	2
Executive, level 2	98–105	2	1.6 ^b	4
Administrative Service Officer, grade 6	78	2		2
Total		4	4.6	8.6

a The salary structure reflects comparative salaries in similar Australian Public Service agencies. NCC staff do not receive performance pay.

b One staff member worked part time.

Table 4.5 Staff by employment status, as at 30 June 2006 and 30 June 2007

<i>Employment status</i>	<i>2006</i>	<i>2007</i>
<i>Female</i>		
Full-time ongoing	3	4
Full-time non-ongoing	1	-
<i>Male</i>		
Full-time ongoing	4	3
Full-time non-ongoing	1	1
Part-time ongoing	-	1
Total	9	9

Staff remuneration and conditions

In 2006-07, every staff member of the NCC secretariat was employed under an Australian Workplace Agreement, with those agreements operating for a period of one year. The agreements established the salary paid to each staff member performing at a satisfactory standard and set other terms and conditions.

Salary remuneration (excluding superannuation contributions) to Senior Executive Service (SES) staff was approximately \$540 000, while that to non SES staff was \$534 000. The range of salaries paid in 2006-07 to executive and secretariat staff is shown in table 4.4. Salary sacrifice arrangements are available. Remuneration to councillors in 2006-07 was approximately \$136 000.

Salary levels for all secretariat staff including the executive are determined by reference to the comparative remuneration available in similar Australian Public Service and Victorian Public Service agencies, in particular those agencies seeking staff with skills and experience in law and/or economics. The NCC supports maximum possible flexibility in conditions and working arrangements, with the objective of encouraging the recruitment and retention of staff with appropriate skills.

The NCC has never provided for the payment of performance related bonuses to NCC staff at any level. However, the Australian Workplace Agreements that preceded the current agreements provided for payment of a one-off bonus payable to staff who, having been employed at the NCC at the time of signing their agreement, had continued in employment with the NCC until at least 31 August 2006. The bonuses, of \$3 000 to non SES staff and

\$7 500 to SES staff, were paid in the first pay period after 31 August 2006. In aggregate, the bonuses paid in 2006-07 totalled \$30 000.

The decision to offer this 'retention bonus' reflected a judgment by the NCC that an additional salary incentive was an important incentive for retaining staff after the conclusion of the NCP reform program and pending clarification by COAG of the NCC's future role. The Australian Workplace Agreements currently in operation do not provide for any form of bonus.

Other significant conditions provided for include an annual leave entitlement of 20 days and a personal leave entitlement of 20 days. Reflecting the closure of the NCC office over the period between Christmas Day and New Year's Day, the agreements also provided staff with an additional two days leave over the Christmas-New Year period. Staff may also purchase additional leave.

Administrative service officers had access to flex time and executive level officers have access to time off in lieu, on the basis that officers record their time at work. Expenditure incurred by staff on official travel was reimbursed in accord with the rates set by the Department of Employment and Workplace Relations. The NCC Australian Workplace Agreements also specified that a discrimination free workplace be available to staff and provided a procedure for dispute settlement should a grievance arise between employer and employee.

Staff training

NCC staff are eligible for study assistance in the form of study leave and partial reimbursement of tuition fees for approved courses of study. Fee assistance (upon successful completion of a course of study) is provided where the study or training undertaken is directly relevant to the work of the NCC or relevant more generally to the Australian Public Service.

During the year, one staff member received assistance by way of leave for study purposes and financial assistance to undertake further tertiary education in an area that was directly relevant to the work of the NCC. Staff also participated in training for skill and professional development, including executive and leadership development, and attended conferences and seminars on issues associated with competition policy and competition law.

Excluding the salary costs of staff undertaking training, the NCC devoted a total of \$16 282 to staff training and development in 2006-07.

Industrial democracy

The NCC's *Industrial Democracy Plan* was the basis of its industrial democracy practices during the year. The Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

Being a collocated small agency, NCC executive and secretariat staff were able to meet regularly during the year to consider work program and other organisational issues. These meetings were the principal means of enabling staff consideration of issues facing the NCC, and typically considered proposed changes to work and agency priorities, staffing arrangements, accommodation, office policies, occupational health and safety, information technology issues and training. Project teams also met to discuss specific work priorities and progress.

All staff were invited to attend meetings with NCC councillors and had access to the minutes of NCC meetings.

During the year, executive and staff developed and agreed a policy on *Preventing Bullying in the Workplace*. The NCC also updated, using a consultative process, its risk management framework, including its *Fraud Control Policy* and its *Business Continuity Plan*.

All staff have a copy of the NCC's *Policy Manual* and its *Office Procedures* document and are provided with copies of policies as they are reviewed and updated.

Equity matters

Social justice

Within its work program, the NCC addressed social justice issues when conducting its functions related to the National Access Regime and the Gas Code. The NCC may consider public interest issues, including:

- policies concerning OHS, industrial relations, access to justice and other government services, and equity in the treatment of different persons
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers.

Application of the Australian Government disability strategy

The Australian Government disability strategy recognises that many programs, services and facilities have an impact on the lives of people with disabilities. The strategy is about enabling the full participation of people with disabilities. It obliges Australian Government organisations to remove barriers that prevent people with disabilities from having access to these programs, services and facilities.

As noted, the NCC's mission is to improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest. The NCC's third party access recommendations affected the broad community because they had a positive economic benefit, so the impact on sections of the community was not necessarily specific. The NCC's policies did not discriminate against any group within the community. The NCC thus met the performance criterion for the year, because its policies did not isolate people in the community with disabilities.

Further, the NCC's consultation process does not discriminate against any group within the community, satisfying that performance criterion in 2006-07. Similarly, the NCC's recruitment policy does not discriminate on the basis of race, disability, colour, gender or religion. Recruitment information is available in electronic and hard copy formats.

The NCC developed its workplace, including office facilities and workstations, with the aim of reducing barriers to access by people with disabilities. NCC reports are available in hard copy and electronically; on request, they can be supplied in MS Word format to facilitate the use of computer programs designed to assist people with a visual impairment.

Workplace diversity

The NCC continued to apply its *Workplace Diversity Plan* in 2006-07. All staff have an understanding of the principles and practical effects of workplace diversity policies and selection criteria for positions within the NCC make clear that this is a required attribute.

No workplace harassment was reported during 2006-07.

At 30 June 2007, secretariat staff identified themselves as members of an equal employment opportunity group as set out in table 4.6.

Table 4.6: Staff by equal employment opportunity (EEO) group, 30 June 2007

<i>Level</i>	<i>Female</i>	<i>NESB 1^a</i>	<i>NESB 2^b</i>	<i>ATSI^c</i>	<i>Persons with disabilities</i>
Senior Executive Service	-	1	-	-	-
Executive, levels 1-2	2	-	-	-	-
Administrative Service Officer, grades 1-6	2	-	-	-	-
Total	4	1	-	-	-

a Non-English speaking background, first generation.

b Non-English speaking background, second generation.

c Aboriginal or Torres Strait Islander.

Other matters

Occupational health and safety

During 2006-07, the NCC continued to place significant weight on providing a safe and healthy work environment for its staff. Reports on monthly testing of cooling towers for legionella and other bacteria were circulated to the Occupational Health and Safety (OHS) Committee and to staff. Fire extinguishers and emergency exit lights were checked every six months. Fire wardens participated in regular briefing and training sessions and fire evacuation exercises involving all staff were undertaken.

The NCC also offered all staff access to screen based eyesight testing, the review by an ergonomist of work stations and the flu vaccine. Staff members also continued to have access annually to the confidential health appraisal and advisory program and the Employee Assistance Program.

The OHS Committee met on a quarterly basis during the year, inviting staff to contribute to its agenda and circulating its minutes to all staff. Training was undertaken by the new OHS committee member and the new First Aid Officer. OHS was a standing agenda item at the NCC's staff meetings.

The NCC received no accident/incident reports during 2006-07. No notices were lodged and no directions were given to the NCC under sections 30, 45, 46 or 47 of the *Occupational Health and Safety Act 1991* during the year.

Freedom of information

The NCC received one request for the release of documents under the *Freedom of Information Act 1982* during 2006-07. This request was transferred to the Department of the Prime Minister and Cabinet for consideration.

Categories of documents held by the NCC

The secretariat holds three classes of document. First, it holds representations to the NCC's President, Executive Director and staff. The NCC receives correspondence covering aspects of government microeconomic policy and administration, primarily matters relating to the now concluded NCP reform program and to third party access regulation. Second, it holds files relevant to the NCC's operations. The documents on these files include correspondence, analysis and policy advice prepared by secretariat officers. Four main categories of file are relevant to the NCC's operations:

1. NCC views on the progress of the Australian, state and territory governments in implementing the now concluded NCP reform program.
2. NCC recommendations on applications for declaration of services for third party access and the certification of access regimes. The designated Ministers are required to publish their decisions on these applications. The NCC makes its recommendations and reasons publicly available after the designated decision maker has published a decision. In the case of a declaration application, if the decision maker does not determine the matter within 60 days of receiving the NCC's recommendation, then the decision is deemed to be not to grant access, and the NCC will publish its recommendation.
3. NCC recommendations on coverage or revocation of coverage under the Gas Code, which are made public when sent to the relevant decision maker.
4. material relating to other work assigned to the NCC.

Third, the NCC holds documents on internal office administration. They include personal details of staff, organisation and staffing records, financial and expenditure records, and internal operating documentation such as office procedures and instructions.

Documents open to public access subject to a fee or available free of charge on request

The following categories of document are publicly available:

- the NCC's annual reports to Parliament
- speeches by councillors and secretariat staff
- research papers and guides on specific competition policy issues
- submissions by the NCC
- the NCC's corporate plan and strategic plan
- applications received for declaration or certification, or coverage or revocation of coverage under the Gas Code

- submissions by interested parties on access declaration or certification applications, applications under the Gas Code, and other reviews and matters considered in the annual NCC assessments of governments' compliance with the NCP and related reforms (where information contained is not commercial-in-confidence)
- the NCC's issues papers and recommendations on applications for declaration, certification and coverage or revocation of coverage under the Gas Code
- assessments and recommendations to the Australian Government Treasurer on governments' progress in implementing the NCP
- media releases
- issues papers, draft reports and final reports on other reviews referred to the NCC.

These documents are usually available in both hard copy and electronic form. The NCC places as much material as possible on its website (www.ncc.gov.au). Documents, publications and speeches can be obtained directly from the NCC.

Facilities for access to NCC documents

Applicants seeking access under the Freedom of Information Act to documents in the possession of the NCC should apply in writing to:

Director (Freedom of Information Request)
National Competition Council
GPO Box 250
Melbourne VIC 3001
Attention: Freedom of Information Coordinator

An application fee of \$30 must accompany requests. Unless an application fee is received or an explicit waiver is given, the request will not be processed. Telephone enquiries should be directed to the Freedom of Information Coordinator (telephone 03 9285 7474) between 9.00 am and 5.00 pm, Monday to Friday.

The Director (Freedom of Information Request) is authorised under s23 of the Act to grant or refuse requests for access to documents. In accordance with s54, an applicant may apply to the Executive Director within 28 days of receiving notification of a decision under the Act, seeking an internal review of a decision to refuse a request. The application should be accompanied by a \$40 application review fee, as provided for in the Act.

If access under the Act is granted, then the NCC will provide copies of documents after receiving payment of all applicable charges. Alternatively, applicants may arrange to inspect documents at the National Competition Council office, level 9, 128 Exhibition Street, Melbourne, between 9.00 am and 5.00 pm, Monday to Friday.

Advertising and market research

The NCC made no payments during 2006-07 to advertising agencies, market research organisations, polling organisations, direct mail organisations or advertising agencies that place government advertising in the media.

Expenditure on advertising during 2006-07 totalled \$1 455. This expenditure was solely for the purpose of public consultation regarding NCC consideration of third party access matters in line with the NCC's statutory obligations under the Trade Practices Act.

Ecologically sustainable development and environmental performance

The NCC aims to operate in an ecologically sustainable manner and to provide an environmentally sound workplace that conforms with its OHS obligations. The NCC has adopted practices designed to minimise adverse effects on the environment subject to assessment of the financial costs or savings involved. To minimise its environmental impact, the NCC:

- procured and used office equipment with low energy use and power saving modes
- recycled paper and cardboard products including pulping of classified waste
- installed tap flow restrictors to reduce water use
- used LCD computer screens
- disposed of cartridges through a recycling outlet
- encouraged staff to minimise their use of energy and paper and to use water wisely
- disposed of mobile phones and batteries through a recycling outlet
- when replacing its computing and other equipment, made available to schools and other organisations the replaced equipment
- increased its reliance on electronic publication of documents via its website (rather than paper documents)
- is implementing a new electronic document retention and management system so reducing reliance on paper files.

No NCC staff member opted for a Commonwealth funded vehicle as part of their remuneration package.

The NCC buys goods and services in accord with the environmental purchasing guides promoted by the Department of Environment and Heritage such that it endeavoured to purchase goods and services that are:

- environmentally sound in manufacture
- reusable or recyclable
- designed for reliability and longer life
- best practice in energy efficiency.

Energy use by the NCC in 2006-07 was 21 per cent lower than in 2005-06.

Discretionary grants

The NCC does not administer discretionary grants.

Use of consultants

The NCC used the services of consultants for legal, economic and communications advice when the required specialist expertise was not available within the NCC, and when it was efficient and cost-effective to do so.

The NCC had previously established a panel of five legal services providers, comprising Allens Arthur Robinson, the Australian Government Solicitor, Clayton Utz, Gilbert + Tobin and DLA Phillips Fox using an open tender process notified on AusTender. Where the NCC requires specialist legal services, it draws from these panel firms. The choice of panel firm is constrained by the need to avoid conflicts of interest. During 2006-07, the NCC had two ongoing legal services contracts involving total actual expenditure of \$882 679. During 2006-07, the NCC engaged one of its panel firms to provide advice on guidelines relating to the application of Part IIIA of the Trade Practices Act following legislative amendments. The value of this contract was less than \$10 000.

The NCC endeavours to use a select tendering process when engaging economic consultants. The tendering process is constrained by the requirement that consultants have specialist economic or technical expertise and by the need to avoid conflicts of interests. The NCC engages consultants directly where choice is extremely limited. During 2006-07, the NCC entered no new contracts for the provision of economic advice.

The NCC continued an ongoing contract for the provision of communications and media advisory services during 2006-07. The value of this contract in 2006-07 was \$13 270. There were no new contracts entered for communications and media advisory services.

Table 4.7 lists the type and value of consultancies engaged in 2006-07, and provides a comparison with the preceding two financial years.

Table 4.7: Summary of expenditure on all consultancy contracts during 2004-05, 2005-06 and 2006-07

<i>Purpose</i>	<i>2004-05</i>	<i>2005-06</i>	<i>2006-07</i>
Legal (new)	5 659	17 883	5 383
Legal (ongoing)	613 524	439 267	882 679
Economic (new)	45 000	293 135	-
Economic (ongoing)	111 700	-	56 765
Communications (new)	-	107 822	-
Communications (ongoing)	-	-	13 270
Total	775 883	858 107	958 097

Note: All figures are GST inclusive

Annual reporting requirements and aids to access

Information contained in this annual report is provided in accordance with:

- s74 of the *Occupational Health and Safety Act 1991*
- s50AA of the *Audit Act 1901*
- the *Public Service Act 1999*
- s8 of the *Freedom of Information Act 1982*
- s29(O) of the *Trade Practices Act 1974*
- the guidelines issued by the Department of the Prime Minister and Cabinet.

An index of compliance with the Department of the Prime Minister and Cabinet annual reporting requirements is provided at the end of this chapter.

For inquiries or comments concerning this report or any other NCC publications, please contact:

Executive Director
National Competition Council
GPO Box 250
Melbourne VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477
Email: info@ncc.gov.au.

Information on the National Competition Council can be found on the internet at www.ncc.gov.au.

This annual report is available at www.ncc.gov.au.

Compliance index

<i>Requirement</i>	<i>Page</i>
Annual report administration	
Abbreviations	vii
About this report (structure and content compliance)	ix
Annual reporting requirements and aids to access	51
Contact officer for further information	51
Index	91-93
Internet home address and address for report	51
Letter of transmittal to the Treasurer	iii
Table of contents	v-vi
Review by agency head	
President's review	1-2
Agency overview	
Organisational structure: councillors	35-37
Organisational structure: secretariat	37-38
Outcome and outputs	32-33
Role and functions	31
Senior management structure	38
Summary of resources used by outcome	33-34
Vision and mission	31
Agency performance	
Indicators of performance	33
Analysis of performance against target outputs	3-29
Summary of resources use to deliver outputs	33-34
Audited financial statements	59-87
Social justice and equity outcomes	45-46
Management accountability	
Corporate governance: main practices	35-51
Financial management	40-42
Risk management and fraud control	41-42
Internal and external scrutiny	38-40
Human resources management	
Staffing overview	42-45
Training and development	44
Industrial democracy	44-45
Australian Workplace Agreements main features	43-44
Staffing statistics	42-43

Workforce planning, turnover and retention	42-43
Remuneration and bonuses	43-44
Workplace diversity	46
Consultants	50
Other information	
Advertising and market research	48-49
Discretionary grants	50
Ecologically sustainable development and environmental performance	49
Freedom of information	47-48
Occupational health and safety	46
Outsourced services	40-41
Application of the Commonwealth disability strategy	45

5 Financial statements

Financial statements for the year ended 30 June 2007



INDEPENDENT AUDITOR'S REPORT

To the Treasurer

Matters relating to the Electronic Presentation of the Audited Financial Statements

This auditor's report relates to the financial statements published on the website of the National Competition Council for the year ended 30 June 2007. The National Competition Council's President and Executive Director are responsible for the integrity of the web site.

This auditor's report refers only to the primary statements, schedules and notes named below. It does not provide an opinion on any other information which may have been hyperlinked to/from the audited financial statements.

If users of this report are concerned with the inherent risks arising from electronic data communications they are advised to refer to the hard copy of the audited financial statements in the National Competition Council's annual report.

Scope

I have audited the accompanying financial statements of the National Competition Council for the year ended 30 June 2007, which comprise: a statement by the Council President and Executive Director, and Chief Finance Officer; Income Statement; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedules of Commitments, Contingencies and Administered Items; a summary of significant accounting policies; and other explanatory notes.

The Responsibility of the Council President and Executive Director for the Financial Statements

The National Competition Council's President and Executive Director are responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997* and the Australian Accounting Standards (including the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the National Competition Council's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the National Competition Council's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the National Competition Council's Council President and Executive Director, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

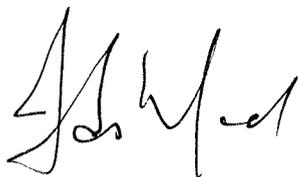
In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

Auditor's Opinion

In my opinion, the financial statements of the National Competition Council:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, and the Australian Accounting Standards (including the Australian Accounting Interpretations); and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the National Competition Council's financial position as at 30 June 2007 and of its financial performance and its cash flows for the year then ended.

Australian National Audit Office



Jocelyn Ashford
Executive Director

Delegate of the Auditor-General

Canberra

29 August 2007

National Competition Council

Level 9, 128 Exhibition Street Melbourne 3000 Australia
GPO Box 250B Melbourne 3001 Australia
Telephone 03 9285 7474 Facsimile 03 9285 7477



**Office of
Council President**

**NATIONAL COMPETITION COUNCIL
STATEMENT BY THE COUNCIL PRESIDENT AND
THE EXECUTIVE DIRECTOR**

In our opinion, the attached financial statements for the year ended 30 June 2007 have been prepared based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders under the *Financial Management and Accountability Act 1997*, as amended.

**David Crawford
President**

**John Fell
Executive Director**

Dated: **29 AUG 2007**

Dated: **29 AUG 2007**

**NATIONAL COMPETITION COUNCIL
INCOME STATEMENT**

for the year ended 30 June 2007

	Notes	2007	2006
		<u>\$</u>	<u>\$</u>
INCOME			
Revenue			
Revenue from Government	3A	4,031,000	3,954,000
Other revenue	3B	29	15,171
Total Revenue		<u>4,031,029</u>	<u>3,969,171</u>
Gains			
Other gains	3C, 12	23,800	51,503
<i>Total Gains</i>		<u>23,800</u>	<u>51,503</u>
TOTAL INCOME		<u>4,054,829</u>	<u>4,020,674</u>
EXPENSES			
Employee benefits	4A	1,423,199	1,490,268
Suppliers	4B	1,501,152	1,614,329
Depreciation and amortisation	4C	67,977	70,668
Write-down and impairment of assets	4D	639	-
TOTAL EXPENSES		<u>2,992,967</u>	<u>3,175,265</u>
Surplus		<u>1,061,862</u>	<u>845,409</u>

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
BALANCE SHEET**

as at 30 June 2007

	Notes	2007	2006
		\$	\$
ASSETS			
Financial Assets			
Cash and cash equivalents	5A	22,207	157,524
Trade and other receivables	5B	2,629,101	1,474,081
Total Financial Assets		2,651,308	1,631,605
Non-Financial Assets			
Buildings – Leasehold Improvements	6A,C	96,717	29,503
Infrastructure, plant and equipment	6B,C	20,306	36,099
Other non-financial assets	6D	2,168	12,037
Total Non-Financial Assets		119,191	77,639
TOTAL ASSETS		2,770,499	1,709,244
LIABILITIES			
Payables			
Suppliers	7A	29,403	151,882
Total Payables		29,403	151,882
Provisions			
Employees	8A	301,067	291,621
Other provisions	8B	8,000	8,000
Total Provisions		309,067	299,621
TOTAL LIABILITIES		338,470	451,503
NET ASSETS		2,432,029	1,257,741
EQUITY			
Reserves		115,133	2,707
Retained surpluses		2,316,896	1,255,034
TOTAL EQUITY		2,432,029	1,257,741
Current assets		2,653,476	1,643,642
Non-current assets		117,023	65,602
Current liabilities		315,133	437,016
Non-current liabilities		23,337	14,487

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
STATEMENT OF CHANGES IN EQUITY**

for the year ended 30 June 2007

	Accumulated Results		Asset Revaluation Reserves		TOTAL EQUITY	
	2007	2006	2007	2006	2007	2006
	\$	\$	\$	\$	\$	\$
Opening Balance	1,255,034	409,625	2,707	2,707	1,257,741	412,332
Income and Expense						
Revaluation adjustment	-	-	112,426	-	112,426	-
Subtotal income and expenses recognised directly in equity	-	-	112,426	-	112,426	-
Surplus for the period	1,061,862	845,409	-	-	1,061,862	845,409
Total income and expenses	1,061,862	845,409	-	-	1,061,862	845,409
Closing balance as at 30 June	2,316,896	1,255,034	115,133	2,707	2,432,029	1,257,741

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
CASH FLOW STATEMENT**
for the year ended 30 June 2007

	Notes	2007	2006
		<u>\$</u>	<u>\$</u>
OPERATING ACTIVITIES			
Cash Received			
Appropriations		2,875,000	3,954,000
Goods and services		283	15,611
Net GST received		142,868	164,556
Total Cash Received		<u>3,018,151</u>	<u>4,134,167</u>
Cash Used			
Employees		1,406,347	1,529,738
Suppliers		1,739,509	1,796,550
Cash transferred to the Official Public Account (OPA)		-	1,200,000
Total Cash Used		<u>3,145,856</u>	<u>4,526,288</u>
Net Cash From or (Used by) Operating Activities	9	<u>(127,705)</u>	<u>(392,121)</u>
INVESTING ACTIVITIES			
Cash Used			
Purchase of property, plant and equipment		7,612	-
Total Cash Used		<u>-</u>	<u>-</u>
Net Cash From or (Used by) Investing Activities		<u>(7612)</u>	<u>-</u>
Net Increase or (Decrease) in Cash Held		(135,317)	(392,121)
Cash at the beginning of the reporting period		157,524	549,645
Cash at the End of the Reporting Period	5A	<u>22,207</u>	<u>157,524</u>

The above statement should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS**

As at 30 June 2007

	2007	2006
	<u>\$</u>	<u>\$</u>
BY TYPE		
Other Commitments		
Operating leases ¹	125,416	106,882
Total other commitments	125,416	106,882
Commitments receivable - GST	11,401	9,716
Net commitments by type	114,015	97,166
BY MATURITY		
Operating lease commitments		
One year or less	114,015	97,166
From one to five years	-	-
Over five years	-	-
Total operating lease commitments by maturity	114,015	97,166
Net commitments by maturity	114,015	97,166

NB: All commitments are GST inclusive where relevant.

¹ Operating leases included are effectively non-cancellable and comprise:

<i>Nature of lease</i>	<i>General description of leasing arrangement</i>
Lease for office accommodation	The current lease expires on 9 May 2008. There is no annual increase in accordance with movements in the Consumer Price Index.

The above schedule should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
SCHEDULE OF CONTINGENCIES**
as at 30 June 2007

Contingent Liabilities	Claims For Damages or Costs	
	2007	2006
	\$	\$
Balance from previous period	-	-
New	-	-
Re-measurement	-	-
Liabilities crystallised	-	-
Obligations expired	-	-
Total Contingent Liabilities	-	-

Contingent Assets	Claims For Damages or Costs	
	2007	2006
	\$	\$
Balance from previous period	-	-
New	125,000	-
Re-measurement	-	-
Liabilities crystallised	-	-
Obligations expired	-	-
Total Contingent Assets	125,000	-

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 14: Contingent Liabilities and Assets

The above schedule should be read in conjunction with the accompanying notes.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Note

- 1 Summary of Significant Accounting Policies
- 2 Events after the Balance Sheet Date
- 3 Income
- 4 Expenses
- 5 Financial Assets
- 6 Non-Financial Assets
- 7 Payables
- 8 Provisions
- 9 Cash Flow Reconciliation
- 10 Executive Remuneration
- 11 Councillors Remuneration
- 12 Remuneration of Auditors
- 13 Average Staffing Levels
- 14 Contingent Liabilities and Assets
- 15 Financial Instruments
- 16 Appropriations
- 17 Compensation and Debt Relief
- 18 Reporting of Outcomes

Note 1: Summary of Significant Accounting Policies**1.1 Objectives of the National Competition Council**

The National Competition Council (the Council) was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments. The Council is an independent advisory body for all governments on implementation of the national competition policy reforms.

The role of the Council is to oversight and assist the implementation of National Competition Policy and related reforms outlined in frameworks developed and agreed by all Australian Governments. Its responsibilities also include assisting public awareness of governments' competition reform agendas, recommending on the design and coverage of infrastructure access regimes under Part IIIa of the Trade Practices Act 1974, and assessing whether the Commonwealth, States and Territories have made satisfactory progress towards their commitments to competition policy reform.

The Council's outcome is: The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community.

The Council's activities contributing toward this outcome are classified as Departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Council in its own right.

The Council's outcome is separated into two sub-output groups as follows:

Output Group 1.1

Advice provided to governments on competition policy and infrastructure access issues.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Output Group 1.2

Clear, accessible public information on competition policy.

The continued existence of the Council in its present form and with its present programs is dependent on Government Policy and on continuing appropriations by Parliament for the Council's administration and programs.

1.2 Basis of Preparation of the Financial Report

The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are a General Purpose Financial Report.

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (FMOs), for reporting periods ending on or after 1 July 2006; and
- Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial report has been prepared on an accrual basis and is in accordance with the historical cost convention, except for certain assets at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

The financial report is presented in Australian dollars and values are rounded to the nearest dollar unless otherwise specified.

Unless an alternative treatment is specifically required by an Australian Accounting Standard or the FMO's, the Council's assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrealised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 14).

Unless an alternative treatment is specifically required by an accounting Standard, revenues and expenses are recognised in the Income Statement when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

1.3 Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in this note, the Council has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of Leasehold Improvements has been taken to be the market value of similar properties as determined by an independent valuer.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next accounting period.

1.4 Statement of Compliance

Australian Accounting Standards require a statement of compliance with International Financial Reporting Standards (IFRSs) to be made where the financial report complies with these standards. Some Australian equivalents to IFRSs and other Australian Accounting Standards contain requirements specific to not-for-profit entities that are inconsistent with IFRS requirements. The Council is a not-for-profit entity and has applied these requirements, so while

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

this financial report complies with Australian Accounting Standards including Australian Equivalents to International Financial Reporting Standards (AEIFRSs) it cannot make this statement.

Adoption of new Australian Accounting Standard requirements

No accounting standard has been adopted earlier than the effective date in the current period.

The following amendments, revised standards or interpretations have become effective but have had no financial impact or do not apply to the operations of the Council.

Amendments:

- 2005-1 Amendments to Australian Accounting Standards [AASBs 1, 101, 124]
- 2005-4 Amendments to Australian Accounting Standards [AASBs 139, 132, 1, 1023 1038]
- 2005-5 Amendments to Australian Accounting Standards [AASB 1 & AASB 139]
- 2005-6 Amendments to Australian Accounting Standards [AASB 3]
- 2006-1 Amendments to Australian Accounting Standards [AASB 121]
- 2006-3 Amendments to Australian Accounting Standards [AASB 1045]

Interpretations:

- UIG 4 Determining whether an Arrangement contains a Lease
- UIG 5 Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds
- UIG 7 Applying the Restatement Approach under AASB 129 Financial Reporting in Hyperinflationary Economies
- UIG 8 Scope of AASB 2
- UIG 9 Reassessment of Embedded Derivatives

UIG 4 and UIG 9 might have impacts in future periods, subject to existing contracts being renegotiated.

Future Australian Accounting Standard requirements

The following new standards, amendments to standards or interpretations have been issued by the Australian Accounting Standards Board but are effective for future reporting periods. It is estimated that the impact of adopting these pronouncements when effective will have no material financial impact on future reporting periods.

Financial instrument disclosure

AASB 7 Financial Instruments: Disclosures is effective for reporting periods beginning on or after 1 January 2007 (the 2007-08 financial year) and amends the disclosure requirements for financial instruments. In general AASB 7 requires greater disclosure than that presently. Associated with the introduction of AASB 7 a number of accounting standards were amended to reference the new standard or remove the present disclosure requirements through 2005-10 Amendments to Australian Accounting Standards [AASB 132, AASB 101, AASB 114, AASB 117, AASB 133, AASB 139, AASB 1, AASB 4, AASB 1023 & AASB 1038]. These changes have no financial impact but will affect the disclosure presented in future financial reports.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Other

The following standards and interpretations have been issued but are not applicable to the operations of The Council.

- AASB 1049 Financial Reporting of General Government Sectors by Governments
- UIG 10 Interim Financial Reporting and Impairment

1.5 Revenue

Revenue from Government

Amounts appropriated for departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

Appropriations receivable are recognised at their nominal amounts.

Other types of Revenue

Revenue from the sale of goods is recognised when:

- the risks and rewards of ownership have been transferred to the buyer;
- the seller retains no managerial involvement nor effective control over the goods;
- the revenue and transaction costs incurred can be reliably measured; and
- it is probable that the economic benefits associated with the transaction will flow to the Council.

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- the probable economic benefits with the transaction will flow to the Entity.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any provision for bad or doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is no longer probable.

1.6 Gains

Resources Received Free of Charge

Resources received free of charge are recognised as gains when and only when a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7)

Resources received free of charge are recorded as either revenue or gains depending on their nature ie. Whether they have been generated in the course of the ordinary activities of the Council.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Sale of Assets

Gains from disposal of non-current assets is recognised when control of the asset has passed to the buyer.

1.7 Transactions with the Government as Owner**Equity injections**

Amounts appropriated which are designated as 'equity injections' for a year (less formal reductions) are recognised directly in Contributed Equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Australian Government Agency or Authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

1.8 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for 'short-term employee benefits' (as defined in AASB 119) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

The liability for employee benefits includes provision for annual leave and long service leave. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Council is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the Council's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The Liability for Long service Leave has been calculated using the Australian Government short hand method. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Superannuation

Staff of the Council are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

The liability for defined benefits is recognised in the Financial Statements of the Australian Government and is settled by the Australian Government in due course.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

The Council makes employer contributions to the Employee Superannuation Scheme at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Council's employees.

The Council accounts for the contributions as if they were contributions to defined contribution plans.

From 1 July 2005, new employees are eligible to join the PSSap Scheme.

The liability for superannuation recognised as at 30 June 2007 represents outstanding contributions for the final fortnight of the year.

1.9 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and rewards incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability is recognised at the same time and for the same amount.

The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

1.10 Borrowing costs

All borrowing costs are expensed as incurred.

1.11 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

No interest is earned on the Council's bank balances.

1.12 Financial Risk Management

The Council's activities expose it to normal commercial financial risk. As a result of the nature of the Council's business and internal and Australian Government policies, dealing with the management of financial risk, the Council's exposure to market, credit, liquidity and cash flow and fair value interest rate risk is considered to be low.

1.13 Derecognition of Financial Assets and Liabilities

Financial assets are derecognised when the contractual rights to the cash flows from the financial assets expire or the asset is transferred to another Entity. In the case of a transfer to another Entity, it is necessary that the risks and rewards of ownership are also transferred.

Financial liabilities are derecognised when the obligation under the contract is discharged, cancelled or expires.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

1.14 Impairment of Financial Assets

Financial assets are assessed for impairment at each balance date.

If there is objective evidence that an impairment loss has been incurred, the amount of the loss is assessed as the difference between the asset's carrying amount and the present value of estimated future cash flows of the asset discounted at the current market rate for similar assets.

1.15 Interest bearing loans and borrowings

Government loans are carried at the balance yet to be repaid. Interest is expensed as it accrues.

1.16 Supplier and other payables

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

1.17 Contingent Liabilities and Contingent Assets

Contingent Liabilities and Contingent Assets are not recognised in the Balance Sheet but are reported in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability or asset, or represent an existing liability or asset in respect of which settlement is not probable or the amount cannot be reliably measured. Contingent assets are reported when settlement is probable, and contingent liabilities are recognised when settlement is greater than remote. Details of each class of contingent liabilities and assets are shown in Note 14.

1.18 Acquisition of Assets

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and revenues at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor Agency's accounts immediately prior to the restructuring.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

1.19 Property, Plant and Equipment (PP&E)

Asset Recognition Threshold

Purchases of property, plant and equipment are recognised initially at cost in the Balance Sheet, except for purchases costing less than \$2,000, which are expensed in the year of acquisition (other than where they form part of a group of similar items which are significant in total).

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'makegood' provisions in property leases taken up by the Council where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Council's leasehold improvements with a corresponding provision for the 'makegood' taken up.

Revaluations

Fair value of each class of assets are determined as shown below:

Asset Class	Fair value measured at:
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

Following initial recognition at cost, property plant and equipment are carried at fair value less accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reverses a previous revaluation decrement of the same asset class that was previously recognised through the operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset and the asset restated to the revalued amount.

Depreciation and Amortisation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Council using, in all cases, the straight line method of depreciation. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives) and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate. Depreciation and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Asset Class	2007	2006
	Total useful life	Total useful life
Leasehold improvements	Lease term	Lease term
Plant and equipment	3 to 7 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4C.

Impairment

All assets were assessed for impairment at 30 June 2007. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs to sell and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's liability to generate future cash flows, and the asset would be replaced if the Council was deprived of the asset, its value in use is taken to be its depreciated replacement cost.

1.20 Inventories

The Council provides the bulk of its publications free of charge which means the publications do not have a realisable value. As a result of this, the Council expenses the cost of publications as incurred.

1.21 Taxation/ Competitive Neutrality

The Commission is exempt from all forms of taxation except fringe benefits tax (FBT) and the goods and services tax (GST).

Revenues, expenses and assets are recognised net of GST:

- except where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- except for receivables and payables.

Competitive Neutrality

The Commission provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Note 2: Events after the Balance Sheet Date

No events have occurred after the balance date that would have an impact the financial position of the Council.

	2007	2006
	\$	\$

Note 3: Income

Revenues

3A Revenues from Government

Appropriations for outputs	4,031,000	3,954,000
Total revenues from government	4,031,000	3,954,000

3B Other Revenues

Applications under the National Gas Code	-	15,000
Other revenue	29	171
Total other revenues	29	15,171

Gains

3C Other gains

Resources received free of charge	23,800	22,000
Change in useful life of leasehold improvements *	0	29,503
	23.800	51,503

* The change in useful life of leasehold improvements has been treated as a revaluation adjustment in 2006-07. This differs to the treatment in 2005-06 where a gain was recognised on the re-life of the leasehold asset. The 2005-06 comparative has not been restated. It has been determined that it is impractical to restate the comparatives.

Note 4: Expenses

4A Employee benefits

Wages and Salary	1,110,399	1,147,863
Superannuation	182,216	179,374
Leave and other entitlements	110,227	112,221
Separation and redundancies	-	4,965
Other employee expenses	20,357	45,845
Total employee benefits	1,423,199	1,490,268

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

	2007	2006
	\$	\$
<u>4B Suppliers Expenses</u>		
Provision of goods - related entities	7,000	10,045
Provision of goods - external entities	67,662	40,543
Rendering of services - related entities	231,487	360,693
Rendering of services - external entities	1,071,193	1,083,751
Operating lease rentals-*minimum lease payments	120,205	111,395
<i>Workers compensation premium</i>	3,605	7,902
Total supplier expenses	1,501,152	1,614,329
* These comprise minimum lease payments only.		
<u>4C Depreciation and Amortisation</u>		
<i>(i) Depreciation</i>		
Infrastructure, plant and equipment	22,765	25,644
<i>(ii) Amortisation</i>		
Leasehold improvements	45,212	45,024
Total depreciation and amortisation	67,977	70,668
<u>4D Write-down and impairment of assets</u>		
Write off of plant and equipment	639	-

Obsolete computer equipment was written off during the year. The recoverable amount of the asset was determined as its net selling price which was nil.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

	2007	2006
	\$	\$
Note 5: Financial Assets		
<u>5A Cash and cash equivalents</u>		
Cash at bank and on hand	22,207	157,524
Total cash	22,207	157,524

<u>5B Receivables</u>		
GST receivable from the Australian Taxation Office	27,101	28,081
Appropriations receivable	2,602,000	1,446,000
Total receivables (gross)	2,629,101	1,474,081

All receivables are current assets.

Receivables (gross) are aged as follows:

Current	2,629,101	1,474,081
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
	-	-
Total receivables (gross)	2,629,101	1,474,081

Note 6: Non-Financial Assets

6A Buildings

Leasehold improvements

At fair value	112,426	98,000
Less: Accumulated amortisation	15,709	68,497
Total leasehold improvements	96,717	29,503
Total Land and Buildings (non-current)	96,717	29,503

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

All revaluations are in accordance with the revaluation policy stated at Note 1.20. In 2006-07, a revaluation of leasehold improvements was completed by Management with the application of a building cost index to the results of an independent valuation carried out in 2004-05.

	2007	2006
	\$	\$
<u>6B Infrastructure, Plant and Equipment</u>		
Infrastructure, plant and equipment		
At fair value	100,237	96,825
Less: Accumulated depreciation	79,931	60,726
Total Infrastructure, Plant and Equipment (non-current)	20,306	36,099

6C Analysis of Property, Plant, and Equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2006-07)

Item	Leasehold improvements \$	Infrastructure plant and equipment \$	TOTAL \$
As at 1 July 2006			
Gross book value	98,000	96,825	194,825
Accumulated depreciation/amortisation	(68,497)	(60,726)	(129,223)
Net book value 1 July 2006	29,503	36,099	65,602
Additions by purchase	-	7,612	7,612
Revaluations and impairments through equity	112,426	-	112,426
Depreciation/amortisation expense	(45,212)	(22,765)	(67,977)
Write off of assets	-	(4,200)	(4,200)
Write back of depreciation	-	3,560	3,560
Change in useful life	-	-	-
Net book value 30 June 2007	96,717	20,306	117,023

**Net book value as of 30 June 2007
represented by:**

Gross book value	112,426	100,237	212,663
Accumulated depreciation/amortisation	(15,709)	(79,931)	(95,640)
	96,717	20,306	117,023

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2005-06)

Item	Leasehold improvements \$	Infrastructure plant and equipment \$	TOTAL \$
As at 1 July 2005			
Gross book value	98,000	96,905	194,905
Accumulated depreciation/amortisation	(52,976)	(35,162)	(88,138)
Net book value 1 July 2005	45,024	61,743	106,767
Depreciation/amortisation expense	(45,024)	(25,644)	(70,668)
Change in useful life	29,503	-	29,503
Net book value 30 June 2006	29,503	36,099	65,602

**Net book value as of 30 June 2006
represented by:**

Gross book value	98,000	96,825	194,825
Accumulated depreciation/amortisation	(68,497)	(60,726)	(129,223)
	29,503	36,099	65,602

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

	2007	2006
	\$	\$
<u>6D Other Non-Financial Assets</u>		
Prepayments	2,168	12,037

Other non-financial assets are current assets.

Note 7: Payables

7A Supplier Payables

Trade creditors and accruals	29,403	151,882
------------------------------	---------------	---------

All supplier payables are current liabilities.

Trade creditor's standard settlement terms are 30 days.

Note 8: Provisions

8A Employee Provisions

Salaries and wages	8,921	8,883
Superannuation	1,408	1,382
Annual Leave	88,613	103,214
Long Service Leave	202,125	178,143
Aggregate employee benefit liability and related on-costs	301,067	291,621

Current	277,730	277,134
Non-current	23,337	14,487
Aggregate employee benefit liability and related on-costs	301,067	291,621

The classification of current includes amounts for which there is an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date \$83,620(2006: \$217,447), in excess of one year \$94,406 (2006: \$197,215).

8B Other Provisions

Provisions for 'Makegood' on leasehold improvements	8,000	8,000
---	--------------	-------

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

	Provision for restoration
	\$
Carrying amount 1 July 2006	8,000
Additional provisions made	-
Amounts used	-
Amounts reversed	-
Unwinding of discount or change in discount rate	-
Closing balance 30 June 2007	8,000

The Council currently has an agreement for the lease of premises which has a provision requiring the Council to restore the premises to its original condition at the conclusion of the lease. The Council has made a provision to reflect the present value of this obligation.

	2007	2006
	\$	\$
Note 9: Cash Flow Reconciliation		
Reconciliation of operating result to net cash from operating activities:		
Operating Result	1,061,862	845,409
Depreciation / amortisation	67,977	70,668
Net write down of non financial assets	639	-
Gain on change in useful life of leasehold improvements	-	(29,503)
(Increase) / decrease in net receivables	(1,155,019)	(1,188,958)
(Increase) / decrease in prepayments	9,869	(689)
Increase / (decrease) in employee provisions	9,446	(1,575)
Increase / (decrease) in supplier payables	(122,479)	(87,473)
Net cash from operating activities	(127,705)	(392,121)

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Note 10: Executive Remuneration

The number of executives who received or were due to receive total remuneration of \$130,000 or more:

	2007	2006
	Number	Number
\$160,000 to \$174,999	1	1
\$190,000 to \$204,999	1	1
\$235,000 to \$249,999	1	1
	3	3
	\$629,087	\$603,992
	-	-

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Note 11: Councillors Remuneration

The Councillors during the year were:

President: David Crawford

Councillors: Virginia Hickey
Doug McTaggart
Rod Sims

The number of Councillors who received or were due to receive remuneration are shown in the following bands:

	2007	2006
	Number	Number
\$0 to \$14,999	-	-
\$15,000 to \$29,999	3	3
\$45,000 to \$59,999	1	1
	4	4
	\$145,269	\$141,810

The aggregate amount of total remuneration of Councillors shown above.

Note 12: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Council by the Australian National Audit Office (ANAO).

	2007	2006
	\$	\$
The fair value of the services provided was:	23,800	22,000

No other services were provided by the Auditor-General.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

	2007	2006
	Number	Number
<u>Note 13: Average Staffing Levels</u>		
The average staffing levels for the Council during the year were:	12.6	13.2

Average staffing levels includes the Councillors.

Note 14: Contingent Liabilities and Assets

Quantifiable Contingencies

There were no quantifiable liabilities as at 30 June 2007 (2006: \$nil).

The Schedule of Contingencies reports contingent assets in respect of claims for damages/costs of \$125,000 (2006: \$nil).

Unquantifiable Contingencies

As at 30 June 2007, the Council had 3 matters (2006: 0 matters) scheduled to appear before the courts. In the event of an unfavourable judgement by the court, the Council may have costs and disbursements awarded against it. It is not possible to determine the costs and disbursements that may be awarded in relation to this matter.

Remote Contingencies

There were no remote contingencies at 30 June 2007 (2006: \$nil).

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS

for the year ended 30 June 2007

Note 15: Financial Instrument

Note 15A Interest Rate Risk

Financial Instrument	Note	Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		2007	2006	2007	2006	2007	2006
		\$	\$	\$	\$	%	%
Financial Assets							
Cash and cash equivalents	5A	22,207	157,524	22,207	157,524		n/a
Total		22,207	157,524	22,207	157,524		n/a
Total Assets				2,770,499	1,709,244		
Financial Liabilities							
Trade creditors	7A	29,403	151,882	29,403	151,882		n/a
Total		29,403	151,882	29,403	151,882		n/a
Total Liabilities				338,470	451,503		

Note 15B Fair Values of Financial Assets and Liabilities

	Notes	2007		2006	
		Total Carrying amount \$	Aggregate Fair Value \$	Total Carrying amount \$	Aggregate Fair Value \$
Departmental					
Financial Assets					
Cash and cash equivalents	5A	22,207	22,207	157,524	157,524
Total Financial Assets		22,207	22,207	157,524	157,524
Financial Liabilities (Recognised)					
Suppliers	7A	29,403	29,403	151,882	151,882
Total Financial Liabilities (Recognised)		29,403	29,403	151,882	151,882

15C Credit Risk Exposures

The Council's maximum exposure to credit risk at reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Balance Sheet.

The Council has no significant exposures to any concentrations of credit risk.

All figures for credit risk referred to do not take into account the value of any collateral or other security.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

Note 16: Appropriations

Table A Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

	2007	2006
	Departmental Outputs	Departmental Outputs
	\$	\$
Balance carried from previous year	1,631,605	834,768
Appropriation Act:		
Appropriation Act (No.1)	4,031,000	3,954,000
Appropriation Act (No.3)	-	-
Comcover receipts (Appropriation Act s13)	-	-
Reductions:		
- prior years	-	-
- current year	-	-
FMA Act:		
Refunds credited (FMA s30)	2,500	6,782
Appropriations to take account of recoverable GST (FMAA s30A)	141,888	153,514
Annotations to 'net appropriations' (FMAA s31)	273	15,611
Total appropriations available for payments	5,807,266	4,964,675
Cash payments made during the year (GST inclusive)	(3,155,968)	(3,333,070)
Balance of Authority to Draw Cash from the Consolidated revenue Fund for Ordinary annual Services	2,651,298	1,631,605
Represented by:		
Cash	22,207	157,524
Departmental appropriations receivable	2,602,000	1,446,000
GST receivable from ATO	27,101	28,081
Payable to OPA	(10)	-
Total	2,651,298	1,631,605

NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS
for the year ended 30 June 2007

16B Special Accounts

Services for other Governments & Non-Agency Bodies Account

The Council has a Services for other Government & Non-Agency Bodies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997* (FMA Act). For the years ended 30 June 2006 and 2007 the account had a nil balance and there were no transactions debited or credited to it.

The purpose of the Services for other Government & Non-Agency Bodies Special Account is for expenditure in connection with services performed on behalf of other Governments and bodies that are not Agencies under the FMA Act.

Other Trust Monies Special Account

The Council has an Other Trust Monies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997*. For the years ended 30 June 2006 and 2007, the account had a nil balance and there were no transactions debited or credited to the account.

The purpose of the Other Trust Monies Special Account is for the receipt of monies temporarily held on trust or otherwise for the benefit of a person other than the Australian Government.

Note 17: Compensation and Debt Relief

No Acts of Grace payments were made during the reporting period (2006: No payments made).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2006: No waivers made).

No ex-gratia payments were made during the reporting period (2006: No payments made).

No payments were made under the 'Defective Administration Scheme' during the reporting period (2006: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2006: No payments made).

Note 18: Reporting of Outcomes

The Council attributes its outcome between its two output groups on the basis of identifiable actual costs. The \$0.2 million attributed to Output Group 1.2 primarily covers direct costs of these activities. Expenditure on this output group is small in total and as a proportion of the Council's total costs. The Council has concluded that it is not cost effective to allocate overheads to this output group. This basis of attribution is consistent with that used in the 2006-06 budget.

**NATIONAL COMPETITION COUNCIL
NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**

for the year ended 30 June 2007

18(a) – Net Cost of Outcome Delivery

	Outcome 1		Total	
	2007 \$	2006 \$	2007 \$	2006 \$
Departmental expenses	2,992,967	3,175,265	2,992,967	3,175,265
Total expenses	2,992,967	3,175,265	2,992,967	3,175,265
Costs recovered				
Departmental	0	15,000	0	15,000
Total costs recovered	0	15,000	0	15,000
Other external revenues				
Departmental				
Other	23,830	51,674	23,830	51,674
Total other external revenues	23,830	51,674	23,830	51,674
Net cost/(contribution) of outcome	2,969,137	3,108,591	2,969,137	3,108,591

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome

Note 18(b) - Major Departmental Income and Expenses by Output Groups and Outputs

Outcome 1	Output Group 1.1		Output Group 1.2		Total	
	2007 \$	2006 \$	2007 \$	2006 \$	2007 \$	2006 \$
Departmental expenses						
Employees	1,352,039	1,287,055	71,160	203,213	1,423,199	1,490,268
Suppliers	1,426,095	1,596,154	75,057	18,175	1,501,152	1,614,329
Depreciation & amortisation	67,977	70,668	-	-	67,977	70,668
Write-down of assets	639	0			639	0
Total departmental expenses	2,846,750	2,953,877	146,217	221,388	2,992,967	3,175,265
Funded by:						
Revenue from government	3,829,450	3,747,000	201,550	207,000	4,031,000	3,954,000
Other non-taxation revenues	23,830	66,674	-	-	23,830	66,674
Total departmental revenues	3,853,280	3,813,674	201,550	207,000	4,054,830	4,020,674

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

References

- COAG (Council of Australian Governments) 2005, *Communiqué*, 3 June.
- 2006a, *Competition and Infrastructure Reform Agreement*, 10 February.
- 2006b, *Communique*, 14 July.
- 2007, *Australia's Infrastructure National Overview Report*, April.
- Coombs, G. and Roberts, C. 2007, Trends in infrastructure, in Commonwealth Treasury 2007, *Economic Roundup Summer*, Canberra, February, pp. 1-16.
- DBCT 7X Project, <http://www.dbctexpansion.com.au/expansion/default.aspx>, accessed 23 August 2007.
- Exports and Infrastructure Taskforce 2005, *Australia's Export Infrastructure*, Report to the Prime Minister, Canberra, May.
- Irving, M, Arney, J. and Lindner, B. 2000, *National Competition Policy review of the Wheat Marketing Act 1989*, NCP-WMA Review Committee, Canberra.
- Moss Alan, LLB, *Report of the 2006/07 Review of the Shop Trading Hours Act 1977*, http://www.safework.sa.gov.au/uploaded_files/shop_trading_report.pdf, accessed 5 June 2007.
- NCC (National Competition Council) 2003, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2003*, Melbourne.
- 2005, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2005*, Melbourne.
- 2006, *Fortescue Metals Group Ltd Application for declaration of a service provided by the Mt Newman railway line under section 44(F)(1) of the Trade Practices Act 1974*, Key findings from the final recommendation, 23 March.
- PC (Productivity Commission) 2001, *Review of the National Access Regime*, Report no. 17, Ausinfo, Canberra.
- 2005, *Review of National Competition Policy reforms*, Report no. 33, Melbourne.
- 2007a, *Potential Benefits of the National Reform Agenda*, Report to the Council of Australian Governments, Canberra.
- 2007b, *Performance Benchmarking of Australian Business Regulation*, Research Report, Melbourne.
- Perkins, F. Nadarajah, C. and McInerney, L. 2007, Australia's infrastructure policy and the COAG National Reform Agenda, in Commonwealth Treasury 2007, *Economic Roundup Summer*, Canberra, February, pp. 17-50.

Treasurer (Costello, P) 2007, Press Release, *Productivity Commission Report – Review of Price Regulation of Airport Services*, no. 032, 30 April 2007.

Tribunal and court decisions

Application by Services Sydney Pty Limited [2005] ACompT 7 (21 December 2005).

BH Billiton Iron Ore Pty Ltd v The National Competition Council [2006] FCA 1764.

Hamersley Iron Pty Ltd v The National Competition Council [1999] FCA 867.

Sydney Airport Corporation Limited v Australian Competition Tribunal [2006] FCAFC 146.

Virgin Blue Airlines Pty Limited [2005] ACompT 5 (12 December 2005).

Acts and other instruments

Australian Energy Market Act 2004 (Cwlth)

Barley Marketing Act 1993 (South Australia) (ceased)

Gas Pipelines Access (South Australia) Act 1997

Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Act 2006

Liquor and Gaming Legislation Amendment Bill 2006 (Western Australia)

Liquor Licensing Act 1988 (Western Australia)

Shop Trading Hours Act 1977 (South Australia)

Trade Practices Act 1974 (Cwlth)

Trade Practices Amendment (National Access Regime) Act 2006 (Cwlth)

Wheat Marketing Act 1989 (Cwlth)

Index

A

access to infrastructure, 1-2, 3-19
 see also application template,
 arbitration determinations, declaration
 activities, certification, form of gas
 regulation, Gas Code, coverage,
 revocation, meaning of 'access',
 National Access Regime, National
 Third Party Access Code for Natural
 Gas Pipeline Systems, Part IIIA of the
 *Trade Practices Act 1974, Trade
 Practices Amendment (National Access
 Regime) Act 2006*

agreements (COAG), 1, 3, 12, 31
 see competition and infrastructure
 regulation reform, Competition
 Principles Agreement, National Reform
 Agenda

advertising and market research (NCC) 48-49

application template (declaration), 12-13

arbitration determinations (under Part IIIA),
13-15

Audit and Risk Management Committee (NCC),
38-39

Australian Competition and Consumer
Commission (ACCC), 3, 8, 13-15

B

barley marketing legislation (South Australia),
24-25

BHP Billiton Iron Ore, 4-6, 10, 15

binding no coverage ruling, 9

C

certification, 3, 8

communications (NCC),
 see stakeholder engagement

Competition and infrastructure regulation
reform (National Reform Agenda), 27

Competition Principles Agreement, 3, 12

compliance index, 52-53

consultants, 50

corporate governance, 35-51

councillors (NCC), 35-37

Council of Australian Governments (COAG), 12-
13, 16-17, 19, 25-28

coverage (Gas Code), 3, 6, 9

criterion (a) Part IIIA of the *Trade Practices Act
1974*, 7

D

Dalrymple Bay Coal Terminal, 16

declaration activities, 4-5
 see also Fortescue Metals Group
 application, Tasmanian railway network
 application

deemed decision on declaration application, 2,
13

disability strategy (NCC), 45

discretionary grants (NCC), 50

E

ecologically sustainable development and
environmental performance (NCC), 49

Epic Energy application for revocation of
coverage, 6

equity matters, 45-46

F

Federal Court of Australia, 5-6, 10-11

financial statements (NCC), 59-87

form of gas regulation, 9, 17

Fortescue Metals Group access application, 4-6,
10

fraud control (NCC)
 see risk management

freedom of information, 47-48

functions (NCC), 31

G

gas access legislation, 9
 see also binding no coverage
 determination, form of regulation,
 price regulation exemption

gas pipeline coverage, revocation (under Gas
Code), 1, 9
 Epic Energy application for revocation,
 6

Gas Pipelines Access (South Australia) (Greenfields Pipeline Incentives) Amendment Act 2006,

see greenfields pipeline incentives
greenfields pipeline incentives, 9

H

Hamersley decision, 10

human capital reform (National Reform Agenda), 28

I

industrial democracy, 44-45

infrastructure bottlenecks, regulation

see access to infrastructure

infrastructure investment, disincentives
declared services, 15-18

see also greenfields pipeline incentives

institutional arrangements to support national reform, 26

L

legislation review and reform, 22-25

liquor retailing (Western Australia), 23-24

M

meaning of 'access', 11

meetings (NCC), 37

mission and vision (NCC), 31, 33

Moomba to Adelaide Pipeline System,

see Epic Energy application for revocation

N

National Access Regime, 2-19

National Competition Policy implementation outcomes, 21-23

National Third Party Access Code for Natural Gas Pipeline Systems (Gas Code), 3, 6-12

National Reform Agenda, 25-28

NCC submissions to public inquiries, 87, 98

O

objects clause, Part IIIA of the *Trade Practices Act 1974*, 7, 12

occupational health and safety, 46

outcome and outputs (NCC), ix, 32

see also resources used in performing outcome

outsourced services (NCC), 40-41

P

Part IIIA of the *Trade Practices Act 1974*, 1, 3, 7-8, 10-19

see also access to infrastructure

performance indicators (NCC), 33

people management (NCC), 42-46

publications (NCC),

see stakeholder engagement

price regulation exemption, 9

'production process', meaning of in Part IIIA of the *Trade Practices Act 1974*, 10

President's review, 1-2

promotion of competition, 7, 12

R

regulatory reform under the National Reform Agenda, 27-28

resources used in performing outcome (NCC), 33-34

retail trading hours legislation (South Australia), 25

revocation of coverage (Gas Code),

see Epic Energy application for revocation

Rio Tinto Limited, 6, 10, 15

risk management (NCC), 41-42

role and functions (NCC), 31

S

scrutiny (internal, external), 38-39

secretariat (NCC), 37-38

Services Sydney Pty Ltd, 14

single desk

see wheat marketing legislation,
barley marketing legislation

social justice, 45

staff (profile), 42-43, (remuneration), 43-44,
(development), 44

stakeholder (engagement) 39-40

Sydney Airport Corporation Limited application for judicial review, 11

Sydney Water Corporation, 14

T

target time limits (access regulation), 8, 12-13

Tasmanian railway network access application, 4

Trade Practices Amendment (National Access Regime) Act 2006, 7-8

training (NCC staff), 44

U

undertaking, 1

V

Virgin Blue Airlines Pty Limited, 14

W

website development (NCP legacy), 28-29

wheat marketing legislation, 23

workplace diversity, 46

National Competition Council
Level 9/128 Exhibition Street
Melbourne Vic 3000
P: [03] 9285 7474
F: [03] 9285 7477
E: info@ncc.gov.au
W: <http://www.ncc.gov.au>

