



Making a submission: certification

The National Competition Council is responsible for considering a variety of types of applications under Part IIIA of the *Trade Practices Act 1974* (Cth) (TPA) and in relation to gas pipelines. The Council considers the views of interested parties when considering these applications by inviting public submissions wherever appropriate and practicable.

Generally the Council's process for considering an application for certification under the TPA involves the following steps:

- Upon receipt of an application, the Council publishes the application on its website (www.ncc.gov.au).
- The Council advises likely interested parties that it has received the application.
- The Council publishes a call for **written submissions on the application** on its website and in *The Australian* newspaper (or another newspaper with national circulation) and provides a period for submissions. The notice will specify a closing deadline for submissions on the application.
- The Council publishes the submissions on the application on its website as soon as practicable after the closing date.
- The Council prepares and releases a draft recommendation setting out its analysis and conclusions based on information received and gathered to this point.
- The Council seeks **written submissions on the draft recommendation** and specifies a closing deadline for the submissions.
- The Council publishes the submissions on the draft recommendation on its website as soon as practicable after the closing date.
- The Council prepares its final recommendation.
- The Council provides its final recommendation to the designated Minister.¹

Timing for Council recommendations

Section 44NC of the TPA requires the Council to make its recommendation on an application for certification within 180 days of receipt of the application, with provision to stop the clock on this period in certain circumstances. The Council may also extend the period for making its recommendation in certain circumstances, for example if an application is particularly complex or where significant public holidays such as the Christmas/New Year period or other factors restrict the Council's ability to gather information.

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

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

The Council allows appropriate opportunities for submissions where possible. Given the timing obligations imposed by the TPA, the Council necessarily imposes deadlines for submissions, which it expects to be met. When calling for submissions the Council will specify the date by which submissions must be received.

The Council will take account of all submissions received by a deadline.

Requests for extensions to deadlines will be considered on a case by case basis. Any request should be made as early as possible in the submission period and establish exceptional circumstances in support of the request. Extensions granted to a specific party will not necessarily be extended to other parties unless the basis for granting an extension applies broadly.

Late submissions may or may not be accepted at the discretion of the Council. Where the Council accepts a late submission it may, at its discretion, afford that submission less weight given the Council will have a more limited opportunity to test and consider the submission.

What should a submission contain?

The Council will publish a notice in a nationally circulating newspaper inviting submissions from interested parties on the application for certification. Upon release of its draft recommendation the Council will again call for submissions via its website and by notification to interested parties. The public notice/call for submissions will provide brief details of the application, details of where additional information can be obtained (usually from the Council's website), and the closing date for submissions.

There is no prescribed format for a submission.

A submission should:

- Address the criteria applicable to the recommendation sought by an applicant. A discussion of the law and the relevant principles (the clause 6 principles) is available on the Council's website (see the Council's guide to certification).
- Assertions and conclusions within a submission should be supported by relevant facts and analysis.
- Where statistics, prices, output volumes and similar factual information are provided the sources of that information should be supplied.
- Where estimates are provided, or economic, cost or other models are used, the critical assumptions used to make the estimates and in any models should be disclosed.
- Where submissions include material provided by economic or other independent experts, these should meet the requirements of the Federal Court's *Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia*.²
- Submissions should be supplied to the Council in identical electronic and print form. Electronic form is required to facilitate the publication of submissions on

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

the Council's website. Electronic documents should be in pdf format, or another format that can be read by MS Word 2007 – where this poses particular difficulties or submissions are expected to contain maps, or other exhibits that cannot readily be reproduced, this should be discussed with Council staff prior to the submission deadline.

- Submissions should contain numbered paragraphs to assist in referencing the submission in the Council's recommendation. Pages should also be numbered.
- A complete and signed Submission Cover Sheet in the form set out at the end of these guidelines must be provided with each submission.
- Relevant contact details that allow verification of the authenticity of the submission should be supplied. These include the name of the person providing the submission, the organisation represented and position details (where relevant) and a phone contact, email and postal address.

Parties submitting information to the Council should note that the giving of false or misleading information is a serious offence. In particular, s 137.1 of the Commonwealth Criminal Code makes it a criminal offence for a person to supply information to a Commonwealth body knowing that the information is false or misleading in a material particular or omitting any matter or thing without which the information is misleading in a material particular.

Submissions on the application should address the basis on which the applicant has sought certification and in particular the objects of Part IIIA of the TPA and the clause 6 principles of the Competition Principles Agreement. Further information is available in the Council's guide to certification.

Submissions on the draft recommendation should focus on the preliminary conclusions in the recommendation and the reasons for these and seek to provide additional information and analysis to that already available to the Council. In most cases the Council expects that all significant issues should have been highlighted in the application, earlier submissions and discussions with Council staff. If new issues are to be raised at this stage the relevant submission should address why the matter could not have been raised earlier.

Submissions on the draft recommendation also provide the applicant and interested parties with an opportunity to respond to the submissions and factual material provided to the Council up to this point. Repetition of points that have been made earlier is unlikely to be of assistance.

Lodging a submission on the South Australian Ports Access Regime certification application

All submissions should be sent both electronically to:

Email: saports@ncc.gov.au

and in hard copy to:

Submissions — SA Ports
National Competition Council
GPO Box 250
Melbourne VIC 3001

Publication of submissions and requests for confidentiality

The Council will publish each submission on its website as soon as practicable after the submission period has closed. Generally, the Council will publish all submissions following the deadline for providing submissions – that is, when all submissions have been lodged.

The Council encourages submitting parties to ensure their submissions are public documents. The Council may give less weight to information that it is unable to test through a public process.

Anyone intending to request that part of a submission be treated in confidence should first discuss the matter with Council staff. Specific reasons for confidentiality will need to be provided. The Council considers that it would be unlikely for a situation to arise where a party could claim confidentiality over a submission in its entirety, but some specific commercially valuable information may be withheld. If the Council refuses a request for confidentiality, it will advise the relevant party of its decision and will return the whole or part of the submission to the interested party in accordance with section 44NE(6) of the TPA.

A submission containing confidential information should have the confidential sections clearly identified and marked 'confidential'. A second copy of the submission, with all the confidential material removed, should also be provided to the Council. The Council will publish this 'non-confidential' copy of the submission.

Notwithstanding this, the Council may be required to make available any information held by it, including confidential information, in accordance with the provisions of the [Freedom of Information Act 1982](#), orders of a court or tribunal or as otherwise authorised or required by law.

Other matters

Where a submission is made by an individual, the Council will remove all identifying details from the submission, other than the individual's name and their state or territory of residence, before publishing it on the Council's website.

Copyright in submissions resides with the author(s). The Council accepts no responsibility for the content or accuracy of any information contained in submissions.

Any queries should be directed to the Council Secretariat on (03) 9285 7474.



SUBMISSION COVER SHEET

**APPLICATION FOR CERTIFICATION OF THE SOUTH AUSTRALIAN PORTS
ACCESS REGIME**

Please complete and submit this form along with your submission by no later than 5.00pm
on 22 November 2010 as follows:

1. By email to:
saports@ncc.gov.au

AND

2. In hard copy to:
Submissions – SA Ports
National Competition Council
GPO Box 250
Melbourne VIC 3001

Individual/
Organisation/
Company:

Address:

Suburb/town:

State:

Postcode:

Principal contact:

Position/title:

Telephone:

Fax:

Email address:

Declaration

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

Signature of authorised person

Office held/title/position

(Print) Name of authorised person

Date

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

Confidential information

Please indicate if your submission:

contains NO confidential material

contains SOME confidential material (in which case please provide two copies of the submission – one with all of the confidential information removed and this copy with the confidential information clearly identified and marked)