

**NATIONAL  
COMPETITION  
COUNCIL**



**Corporate Plan 2021-22**

**August 2021**

## Contents

1. Introduction .....	2
2. Key activities to achieve our purpose .....	3
3. Operating context .....	4
3.1. Environment .....	4
Variable workload .....	4
Recommended changes to national competition policy .....	4
Upcoming and potential policy changes .....	5
3.2. Capabilities .....	6
Governance .....	6
Corporate and professional services .....	7
Resources .....	8
3.3. Risk oversight and management .....	8
4 Performance .....	9
Strategy and program deliverables .....	9
Performance measurement .....	9

# 1. Introduction

- 1.1 As the accountable authority of the National Competition Council (NCC), I present the NCC Corporate Plan 2021-22, which covers the financial years over the period 2021–22 to 2024–25, as required under paragraph 35(1) (b) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).

A handwritten signature in black ink, appearing to read 'Julie-Anne Schafer', is positioned above the printed name.

**Julie-Anne Schafer, President of the NCC**

## 2. Key activities to achieve our purpose

2.1 The NCC is a Commonwealth statutory agency established by section 29A of the *Competition and Consumer Act 2010* (CCA). It was created in 1995 following agreement by the Council of Australian Governments (COAG) to a National Competition Policy (NCP). NCP places competition at the forefront as a means of promoting productivity and economic growth to enhance the economic welfare of Australians.

2.2 The NCC's main function is to advise on the regulation of third party access to services provided by monopoly infrastructure. The outcome that the activities of the NCC are directed to achieve is specified in the NCC Portfolio Budget Statement 2021-22:

*Outcome 1: Competition in markets that are dependent on access to nationally significant monopoly infrastructure, through recommendations and decisions promoting the efficient operation of, use of and investment in infrastructure.*

2.3 The NCC makes recommendations under the National Access Regime in Part IIIA of the CCA and recommendations and decisions under the National Gas Law (NGL)<sup>1</sup>:

- The National Access Regime provides for access to the services of infrastructure facilities on appropriate terms, through the declaration of services. The NCC's role is to make recommendations to designated ministers in relation to applications for declaration of services and also the certification of state or territory access regimes.
- The NCC has a similar role under the NGL, contained in the Schedule to the *National Gas (South Australia) Act 2008*, where it makes recommendations on the coverage of natural gas pipeline systems. Under the NGL, the NCC also has the tasks of deciding the form of regulation of natural gas pipeline systems (light or full regulation); classifying pipelines (as transmission or distribution); and making recommendations in relation to various exemptions for greenfields gas pipelines.

2.4 Both the National Access Regime and the NGL seek to promote the efficient operation of, use of, and investment in significant bottleneck infrastructure; and to promote competition, efficiency and productivity in markets that depend on the use of services provided by significant bottleneck infrastructure facilities.

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<sup>1</sup> In May 2021, Energy Ministers released a decision RIS setting out an agreed package of reforms in relation to gas pipeline regulation. Under the agreed new arrangements, the Council's role under the NGL will be removed. This is expected to take effect from 2022 subject to completion of the necessary legislative amendments.

## 3. Operating context

### 3.1. Environment

3.1 Key factors that will influence the way the NCC operates over the next four years are set out below.

#### Variable workload

3.2 Access applications under Part IIIA of the CCA and the NGL<sup>2</sup> are sporadic and, as a consequence, the NCC's current workload is highly variable. To maintain the sustainability and efficiency of its operations, the NCC entered into a memorandum of understanding with the Australian Competition and Consumer Commission (ACCC), with effect from 1 July 2014, whereby the ACCC provides the NCC with corporate and professional services. This arrangement is reviewed every two years; and is next due to be reviewed during the 2022-23 financial year.

3.3 The NCC remains an independent entity with its current responsibilities and membership. However, rather than directly engaging staff (and other resources) to provide corporate and professional services, it draws on ACCC resources as required. To date, these arrangements have allowed the NCC to maintain its independence, and to respond to access issues and provide high quality and timely recommendations.

3.4 The NCC will continue to review its processes and the structure of its recommendation reports and decisions. It will also review its published guidelines and other information in relation to access regulation to ensure these remain up-to-date.

#### Recommended changes to national competition policy

3.5 On 31 March 2015, the Competition Policy Review Panel's final report was released. The review panel, chaired by Professor Ian Harper, undertook a review of Australia's competition policy framework.

3.6 A key recommendation of the review related to Australia's competition policy, including the role of the NCC.

#### *New Intergovernmental Agreement on Competition and Productivity - Enhancing Reforms*

3.7 At the December 2016 meeting of the then Council of Australian Governments (COAG)<sup>3</sup>, a successor to the *Competition Principles Agreement (CPA)*<sup>4</sup> between the Commonwealth and the states and territories was announced. The new *Intergovernmental Agreement on Competition and Productivity - Enhancing Reforms (IGA)*<sup>5</sup> which contains amendments to the CPA, commenced on 9 December 2016 upon signature by the Commonwealth and four states and territories. As at the end of June 2021, however, Victoria, Queensland and South Australia have not signed the new IGA.

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<sup>2</sup> In May 2021, Energy Ministers released a decision RIS setting out an agreed package of reforms in relation to gas pipeline regulation. Under the agreed new arrangements, the Council's role under the NGL will be removed. This is expected to take effect from 2022 subject to completion of the necessary legislative amendments.

<sup>3</sup> COAG is now known as the National Federation Reform Council as of 29 May 2020.

<sup>4</sup> [Competition Principles Agreement](#).

<sup>5</sup> [Intergovernmental Agreement on Competition and Productivity - enhancing Reforms](#).

- 3.8 The CPA sets out principles relating to competition policy, including in respect of access to services provided by significant infrastructure facilities, competitive neutrality, reform of public monopolies and price oversight of government business enterprises.
- 3.9 The IGA contains revised principles in relation to access to services provided by means of significant infrastructure facilities, including principles to be applied by the NCC and the relevant Minister when making recommendations and decisions in relation to applications for certification of the effectiveness of access regimes under Part IIIA of the CCA. However, given the IGA has not been agreed by all head of governments, and that the clause 6 principles in the CPA have not been revoked, those principles will continue to have effect until the IGA has been signed by all signatories. Should the IGA come into effect, the NCC will update its relevant guidance material.

## Upcoming and potential policy changes

### *Gas pipeline regulation reforms*

- 3.10 During 2017-18, the Australian Energy Market Commission (AEMC) completed a review into the economic regulation for covered pipelines. During its review, the AEMC examined the new regime's interaction with the pre-existing regulatory framework and, without making any firm recommendations, canvassed potential options to re-design the overarching regulatory framework, in part administered by the NCC. This included potentially changing the processes and criteria by which the NCC makes recommendations regarding coverage of pipelines and decisions regarding the forms of regulation.
- 3.11 In December 2018, the then COAG Energy Council's Senior Committee of Officials was tasked to prepare a Regulatory Impact Statement (RIS) to further review the issues highlighted in the AEMC review and consider further reform options. On 1 November 2019, the then COAG Energy Council published its RIS which examined options to deliver a more effective and well integrated regulatory framework for gas pipelines. The RIS also reviewed the effectiveness and appropriateness of the Part 23 regime. The NCC provided two submissions addressing governance arrangements under the NGL and the broader design of the gas regulatory regime.
- 3.12 In May 2021, Energy Ministers<sup>6</sup> released a decision regulatory impact statement setting out an agreed package of reforms in relation to gas pipeline regulation. Under the agreed new arrangements, the Council's role in providing independent expert advice under the NGL will be removed.
- 3.13 This new regulatory framework is expected to commence in 2022 subject to completion of the necessary legislative amendments. Following this, the NCC will update its guidelines accordingly.

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<sup>6</sup> In October 2020 the former COAG Energy Council was replaced by an Energy Ministers' Meeting.

### *National Access Regime reforms*

- 3.14 In March 2021, the Treasury commenced a review into the timeliness of processes under the National Access Regime and sought views on options to streamline and add greater certainty to decision made under the regime.
- 3.15 Following the review, in May 2021 the Government announced it would implement the following reforms to the National Access Regime to improve timeliness of decision making:
- removing merits review by the Australian Competition Tribunal of declaration decisions
  - limiting new applications for declaration, or revocation of a declaration, of infrastructure where the infrastructure has been the subject of previous declaration or revocation process.
- 3.16 These reforms are consistent with the views the NCC set out in the submission it made to the review (available on the NCC [website](#)).
- 3.17 The timeframe for making the legislative amendments to Part IIIA of the CCA required to implement these changes is not yet known. The Council will continue to follow the progress of these reforms and will update its guidelines once any legislative changes are implemented.

### *Review of the regulatory frameworks for stand-alone power systems*

- 3.18 In August 2018, the COAG Energy Council tasked the AEMC to provide advice on the regulatory arrangements required to allow for the use of Stand Alone Power System (SAPS). The review was conducted as SAPS are becoming an increasingly viable option for providing electricity services to some groups of customers and are generally not regulated by national energy laws and rules under the National Electricity Market (NEM).
- 3.19 In October 2019, the AEMC concluded its review of the regulatory frameworks for stand-alone power systems. One of the key recommendations made by the AEMC is that SAPS should be the subject of a 'coverage test'. The coverage test would determine whether a third-party SAPS should be subject to access requirements and price regulation under the national rules. The AEMC proposed a role for the NCC to undertake the coverage test, consistent with its role in respect of the National Access Regime under Part IIIA of the CCA and the National Gas Regime under the NGL. The NCC will closely follow these processes during the period of this corporate plan. If the review results in an additional role for the NCC, the NCC will update its website and guidelines accordingly.

## **3.2. Capabilities**

### **Governance**

- 3.20 The NCC comes under the portfolio responsibilities of the Treasury. The NCC's responsible Minister is the Treasurer.
- 3.21 The NCC consists of a President and up to four other part-time Councillors appointed by the Governor-General for their expertise or experience in industry, commerce, economics, law, consumer protection or public administration. Appointments to the NCC are made on the recommendation of the Commonwealth Government which must be supported by a majority of the states and territories.

3.22 The NCC presently comprises:<sup>7</sup>

- Julie-Anne Schafer – President
- Martin Wallace
- Katrina Groshinski
- Michael Borsky

3.23 The NCC meets a minimum of four times each year, with additional meetings scheduled to consider specific applications or other matters as required. NCC meetings are held on a face to face basis, by video conference or by telephone conference as appropriate. The NCC may also make decisions without meeting, by way of circular resolutions, in accordance with its established protocols.

## Corporate and professional services

3.24 As noted earlier, the NCC employs a contractual approach to the provision of the corporate and professional services it requires to fulfil its roles under the CCA and NGL. Rather than directly engaging staff and other resources, the NCC has contracted with the ACCC for the provision of its corporate and professional services.

3.25 The agreement between the NCC and ACCC for provision of corporate and professional services, which was originally entered into in 2014, is available in full on the NCC website. The key elements of the agreement are summarised below.

3.26 *Key elements of ACCC-NCC Memorandum of Understanding*

- The NCC President and Councillors remain responsible for NCC recommendations and decisions.
- The ACCC will ensure that staff and other related resources are available to provide corporate and professional services to the NCC so that the NCC is able to meet statutory and other agreed deadlines and are of a quality acceptable to the NCC.
- Corporate and professional services provided to the NCC by ACCC officers will be provided in accordance with NCC policies and procedures (and joint protocols between the ACCC and the NCC), and under the direction of the NCC President and Councillors.
- An identified ACCC officer will be designated as Executive Director of the NCC and will act as the principal link with the NCC President and Councillors and have day to day responsibility for directing the provision of corporate and professional services.
- In assigning officers to provide secretariat services to the NCC, regard will be had to the need for transparency in decision making, and avoidance of any actual conflict of interest or the appearance of a conflict of interest.
- In determining payment to the ACCC for the provision of corporate and professional services, regard will be had to the period the MOU agreement has been in operation; the total number of applications over that period; the nature of applications received; and the anticipated level of work required.

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<sup>7</sup> An up to date list of Council Members and associated biographies is available on the NCC's [website](#).

## Resources

3.27 Four-year budget estimates for the NCC are published annually in The Treasury's Portfolio Budget Statements. The following table sets out the NCC's funding for 2021-22 and forward years of the budget estimates.

### Budgeted expenses for Outcome 1

	2021-22 Budget	2022-23 Forward estimate	2023-24 Forward estimate	2024-25 Forward estimate
	\$'000	\$'000	\$'000	\$'000
<b>Departmental expenses</b>				
<b>Departmental appropriation</b>	1,731	1,755	1,763	1,769
<b>Expenses not requiring     appropriation in the Budget year     (ANAO audit services)</b>	34	34	34	34
<b>Total program expenses</b>	<b>1,765</b>	<b>1,789</b>	<b>1,797</b>	<b>1,803</b>

Source: [Portfolio Budget Statements 2021-22](#)

### 3.3. Risk oversight and management

3.28 The NCC has established Accountability Authority Instructions and an Audit Committee as required under the PGPA Act and *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

3.29 The NCC has also established a Risk Management Plan, a Fraud Control Plan and a Systems of Internal Control document. The Risk Management Plan and the Fraud Control Plan were last updated in May 2020 (and are published on the NCC's website) and the Systems of Internal Control document was first established in May 2020.

3.30 The NCC and the ACCC have arrangements in place for handling confidential information and managing conflicts of interest.

3.31 The NCC has also put in place protocols regarding Councillors' employment and remuneration arrangements under the *Remuneration Tribunal Act 1973*. In particular, the protocols highlight provisions set out by the Act which limit the circumstances when NCC Councillors may be paid for their duties as an NCC Councillor if they also hold office on a full-time basis, outside of the NCC, in the service of the Commonwealth.

3.32 Under the current memorandum of understanding arrangements, to a considerable extent, the NCC's plans rely upon the policies, procedures, management principles and systems put in place by the ACCC to meet Commonwealth requirements, including in relation to:

- Budget estimates under the PGPA Act
- Annual financial statements under the PGPA Act
- Procurement under the PGPA Act
- Commonwealth Protective Security Policy Framework

- Reporting under the *Legal Services Directions 2017* and *Freedom of Information Act 1982*
- Workplace Health and Safety
- Workplace Diversity
- Privacy obligations.

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

## 4 Performance

### Strategy and program deliverables

4.1 The NCC's strategy to achieve its outcome is to provide comprehensive, objective, timely and transparent recommendations and decisions that accord with the relevant law (including time limits) and good regulatory practice.

4.2 The program deliverables for the NCC are to:

- make recommendations to the designated Ministers pursuant to Part IIIA of the CCA in relation to applications for the declaration of services provided by monopoly infrastructure and the certification of state and territory access regimes
- make recommendations to the designated Ministers pursuant to the NGL relating to the coverage of natural gas pipelines; price regulation and greenfields pipeline incentives; and on the form of regulation and classification of natural gas pipelines<sup>8</sup> advise the Parliament on the operation of the National Access Regime in accordance with section 290 of the CCA
- engage in policy debates where appropriate and relevant to the Council's functions.

### Performance measurement

4.3 The NCC Budget Statement 2021-22 sets out the following key performance criteria:

- recommendations on declaration applications made within statutory time limits (consideration period of 180 days, subject to 'clock stopping' provisions<sup>9</sup>) and meet the advice requirements of Ministers
- recommendations on certification applications made within statutory time limits (consideration period of 180 days, subject to 'clock stopping' provisions) and meet the advice requirements of Ministers

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<sup>8</sup> In May 2021, Energy Ministers released a decision RIS setting out an agreed package of reforms in relation to gas pipeline regulation. Under the agreed new arrangements, the Council's role under the NGL will be removed. This is expected to take effect from 2022 subject to completion of the necessary legislative amendments.

<sup>9</sup> Further to 'clock stopping' provisions, under s 44NC of the CCA, the Council may also extend the consideration period in certain circumstances, for example if an application is particularly complex or other factors restrict the Council's ability to gather information.

- recommendations and decisions under the NGL made within specified time limits and recommendations under the NGL meet the advice requirements of Ministers<sup>10</sup>
- accessible information on all access regulation matters for which the NCC is responsible is provided on the NCC website
- up-to-date and informative guidelines on all the NCC's areas of responsibility are maintained on the NCC website
- case law developments, legislative amendments and developments in the NCC's processes or policies are reflected in the NCC's information resources within 30 days
- the NCC's annual report to the Parliament includes a comprehensive report that meets the requirements of section 29O of the CCA and is provided within the timeframe required by the PGPA Act.

4.4 These performance criteria are linked to the NCC's strategy and program deliverables to support its purpose. Actual results will be reported at the end of each financial year in the NCC's annual performance statement, to be included in the NCC Annual Report for the periods from 2021–22 to 2024–25.

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<sup>10</sup> In May 2021, Energy Ministers released a decision RIS setting out an agreed package of reforms in relation to gas pipeline regulation. Under the agreed new arrangements, the Council's role under the NGL will be removed. This is expected to take effect from 2022 subject to completion of the necessary legislative amendments.