

**NATIONAL
COMPETITION
COUNCIL**



Corporate Plan 2023-24

August 2023

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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 2023–24 to 2026–27, as required under paragraph 35(1) (b) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act).



Julie-Anne Schafer
President
National Competition Council

7 August 2023

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 2023-24:

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 Access (Western Australia) Law (WA NGL)¹:

- 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 WA NGL where it makes recommendations on the coverage of natural gas pipeline systems in Western Australia. Under the WA 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 WA 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.

¹ In Western Australia access to gas pipelines is governed by the National Gas Access (Western Australia) Law (WA NGL). The WA NGL adopts version 1 of the National Gas Rules (NGR) whereas the rest of the participating jurisdictions have adopted the current (as of May 2023) version 70 of the NGRs. On 2 March 2023 the South Australian Government introduced an amendment to the NGRs which removed the powers of the National Competition Council (contained in versions 1-67 of the NGRs) to determine whether third parties should be granted access to gas pipelines. The current NGRs provide the Australian Energy Regulator with power to determine which form of regulation should apply, by applying the form of regulation test (rather than the coverage test). The result of these changes is that the NCC only has access determination powers in relation to gas pipelines in Western Australia.

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 WA NGL 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 2023-24 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)², a successor to the *Competition Principles Agreement (CPA)*³ between the Commonwealth and the states and territories was announced. The new *Intergovernmental Agreement on Competition and Productivity - Enhancing Reforms (IGA)*,⁴ 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.

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.

² COAG is now known as the National Federation Reform Council as of 29 May 2020.

³ [Competition Principles Agreement](#).

⁴ [Intergovernmental Agreement on Competition and Productivity - enhancing Reforms](#).

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.

3.2. Capabilities

Governance

3.10 The NCC comes under the portfolio responsibilities of the Treasury. The NCC's responsible Minister is the Treasurer.

3.11 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.

3.12 The NCC presently comprises:⁵

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

3.13 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

3.14 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. Rather than directly engaging staff and other resources, the NCC has contracted with the ACCC for the provision of its corporate and professional services.

3.15 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.

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

⁵ A list of current Council Members and associated biographies is available on the NCC's [website](#).

- The NCC remains an independent entity with its President and Councillors retaining responsibility for NCC recommendations, decisions and other functions under the CCA and WA NGL.
- 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.

Resources

3.17 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 2023-24 and forward years of the budget estimates.

Budgeted expenses for Outcome 1

	2023-24 Budget	2024-25 Forward estimate	2025-26 Forward estimate	2026-27 Forward estimate
	\$'000	\$'000	\$'000	\$'000
Departmental expenses				
Departmental appropriation	1,727	1,764	1,788	1,824
Expenses not requiring appropriation in the Budget year (ANAO audit services)	34	34	34	34
Total program expenses	1,761	1,798	1,822	1,858

Source: [Portfolio Budget Statements 2023-24](#)

3.3. Risk oversight and management

3.18 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).

- 3.19 The NCC has also established a Risk Management Plan, a Fraud Control Plan and a Systems of Internal Control document. These documents were last reviewed, and where necessary, updated in June 2023.
- 3.20 The NCC and the ACCC have arrangements in place for handling confidential information and managing conflicts of interest.
- 3.21 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.
- 3.22 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.
- 3.23 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 WA 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 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 Portfolio Budget Statement 2023-24⁶ 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’ provisions⁷) 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
- 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 s290 of the CCA and is provided within the timeframe required by the PGPA Act 2013 (for example, by the 15th day of the fourth month after the end of the reporting period).
- recommendations and decisions under the WA NGL made within specified time limits and recommendations under the WA NGL meet the advice requirements of Ministers.

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 2023–24 to 2027–28.

⁶ Portfolio Budget Statements 2023-24.

⁷ 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.