



TCO/19310 - LB

Mr David Crawford
President
National Competition Commission
Level 9, 128 Exhibition Street
MELBOURNE VIC 3000

17 FEB 2008

Dear Mr Crawford

I am writing in response to your letters to Mr Paul Miller of this Department dated 13 January 2009 and 6 February 2009.

The National Competition Council has sought elaboration on a number of matters concerning the NSW Government's application for the NSW water industry infrastructure access regime (the "WIC Access Regime") to be certified as an effective access regime under the *Trade Practices Act 1974* (Cth).

I note that in the letter of 13 January 2009, the Council has stated that the matters raised may be important to its assessment of whether the WIC Access Regime provides an effective pathway for third party access.

I note that the role of the Council is to make a recommendation as to whether the WIC Access Regime constitutes an "effective access regime" within the meaning of section 44M of the *Trade Practices Act*. Section 44M(4) of the Act sets out an exhaustive list of the matters which the Council is required to take into account, and expressly stipulates that no other matters may be taken into account.

Some of the information the Council has now sought appears to be irrelevant to the criteria the Council is required to apply under section 44M. Nevertheless, the information may be of interest to some stakeholders and, for that purpose only, I have therefore set out in the attachment all of the further information the Council has requested.

Should you have any further questions, the contact officer is Mr Paul Miller, Senior Principal Legal Officer, Legal Branch (02 9228 4393).

Yours sincerely

Leigh Sanderson
Deputy Director General (General Counsel)