National Competition Council

Annual Report

2000 – 2001

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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 Commonwealth, 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 'help raise the living standards of the Australian community by ensuring that conditions for competition prevail throughout the economy which promote growth, innovation and productivity'.

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.

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Office of
Council President

31 August 2001

The Honourable Peter Costello MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

In accordance with section 29O of the *Trade Practices Act 1974* the National Competition Council is pleased to present you with its sixth annual report, covering the Council's operations for the year 2000-2001.

Yours sincerely

Graeme Samuel
President

David Crawford
Councillor

Robert Fitzgerald
Councillor

Doug McTaggart
Councillor

Wendy Craik
Councillor

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Overview

In 1995, governments agreed on the National Competition Policy (NCP) for an initial period of five years with reviews of the NCP agreements and the role of the National Competition Council (the Council) to be conducted at the end of that time. The reviews have been completed and governments have endorsed NCP with some refinements to commitments and processes. Part A of this annual report starts with an explanation of these reviews and details the amendments made to the NCP agreements. Part A also reports on some of the key issues raised through five years of NCP implementation:

- the importance of robust application of the public interest test in NCP reform implementation and of the identification and effective management of associated change;

- the recognition of water reform as addressing Australia's most important economic, social and environmental problems; and

- the dramatic progress in reform of Australia's energy and transport industries and the benefits to Australian businesses and households as a consequence of that reform.

Part B outlines the Council's activities over the last financial year.

Part C meets the formal reporting responsibilities in relation to the organisation, functions, management and financial accounts of the Council.

Part A

A1 National Competition Policy: changes following the Council of Australian Governments review

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A1 National Competition Policy: changes following the Council of Australian Governments review

Governments established the National Competition Policy (NCP) in 1995 by agreement, with a review after five years. Following this review in 2000, the Council of Australian Governments (CoAG) made several changes to both the NCP agreements and the role of the National Competition Council. These changes are intended to clarify obligations in the 1995 agreements and the arrangements underpinning the NCP assessment process. The changes are also aimed at addressing the community concerns identified in the Productivity Commission's 1999 review of the impacts of competition policy reforms on rural and regional Australia and in the review of the Senate Select Committee on the Socioeconomic Consequences of the National Competition Policy (Commonwealth of Australia 2000).

Governments introduced the NCP in 1995 to improve the performance of the economy

Australia's governments introduced the NCP following a national review that found that a competition policy reform program would improve Australia's international competitiveness (Commonwealth of Australia 1993) so helping to improve Australia's living standards. Governments considered improved competitiveness to be important because it increases Australia's productive base, and thus provides higher returns to producers and higher real wages to workers. Greater competitiveness also drives innovation, encouraging the development of new and better products and the creation of new jobs and industries. Competitive firms are also more resilient and better able to adjust to changes in the world economy.

The national review found three overriding reasons for a national approach. First, Australia is really one market: advances in transport and communications mean that even the smallest firms are able to operate across State borders. Second, (unlike the traded sector), significant parts of the domestic economy were sheltered from competition, so had little incentive to reduce costs and prices or to produce better products. Third, despite

competition having been introduced to significant sectors of the domestic economy (such as aviation and telecommunications), a more consistent, nationally coordinated approach was needed.

Governments established the NCP by agreement

Following the national review, governments reached the three agreements establishing the NCP: (1) the Competition Principles Agreement, (2) the Agreement to Implement the National Competition Policy and Related Reforms and (3) the Conduct Code Agreement. Under these agreements, governments are seeking to encourage competition by:

- extending the reach of the *Trade Practices Act 1974* (TPA) prohibitions on anticompetitive conduct to cover virtually all businesses;
- establishing a legal regime in the TPA to provide for third party access to the services provided by nationally significant infrastructure;
- reviewing, and where appropriate, reforming all laws that restrict competition, to ensure that restrictions are in the public interest and are needed to achieve the objective of the legislation, and to ensure that all new laws that restrict competition meet these tests;
- applying competitive neutrality principles to significant government business activities to ensure such businesses do not have unfair advantages when competing with private businesses;
- restructuring public monopolies when considering privatisation or the introduction of competition to ensure the (former) public monopoly does not have unfair advantages over its existing and potential competitors;
- considering whether prices oversight arrangements should be applied to certain State and Territory government businesses; and
- implementing previously agreed 'related' reforms in important infrastructure areas, including electricity, gas, water and road transport.

There are a number of policies commonly attributed to the NCP that are not a requirement of the NCP. The NCP does not, for example, require asset sales and privatisation. Nor does it require governments to adopt compulsory competitive tendering and/or contract out the provision of goods and services. The NCP also does not impose any requirements as to the size of the public sector and the provision of government services. These policies are adopted at the discretion of governments.

Most importantly, the NCP sets competition as a means to an end, not an end in itself. All governments recognise that, in some circumstances, the benefits to the community from regulation will outweigh the costs. This is reflected in the Competition Principles Agreement. Clause 1(3) of this agreement lists the environment, social welfare and equity, economic and regional development including employment and investment growth, consumer interests, business competitiveness, economic efficiency, and government policies on matters such as occupational health and safety, as factors that should be taken into account (where relevant) in determining the merits of particular policy actions. The list is inclusive — that is, any other community goal relevant to the matter under consideration can be taken into account in determining the public interest.

The States and Territories receive financial dividends from reform

Although the States and Territories are responsible for significant elements of the NCP, much of the direct financial return accrues to the Commonwealth Government via the increases in taxation revenue that flow from greater economic activity. Recognising this, the Commonwealth provides competition payments to the States and Territories as a means of distributing the reform dividends to the community. The NCP agreements do not hypothecate the competition payments to particular areas of reform.

To receive full competition payments, States and Territories must achieve satisfactory progress against the agreed reform agenda. Governments are entitled to choose to *not* implement elements of the NCP, but in so doing may not receive full competition payments. This is a logical approach because a decision not to introduce reforms that benefit the community potentially reduces economic growth and the financial dividend available for distribution.

Reform progress is assessed by the National Competition Council

The National Competition Council assesses whether governments have complied with the obligations set by the NCP agreements.[1] It undertakes this role in consultation with all governments, considering each government's

[1] The Council's other main roles are to administer the national third party access regime and to assist in explaining and promoting the NCP to the community.

progress against the NCP and related reform obligations. There have been three assessments so far: in June 1997, June 1999 and June 2001.

The Council is independent of governments, but works with them closely in interpreting reform obligations and assessment benchmarks. To guide the 2001 NCP assessment, for example, the Council published a framework (developed in consultation with governments) of relevant matters and assessment benchmarks. The Council encouraged governments to address these matters and to make publicly available as much information on relevant NCP activity as possible. The Council's focus has always been on encouraging implementation of beneficial change, rather than on recommending reductions in competition dividends.

Governments evaluated the NCP in 2000 and recommitted for a further five years

When they adopted the NCP, Australia's governments acknowledged the importance of assessing whether the principles and procedures underpinning the NCP continued to be relevant after a period of operation. Accordingly, they reviewed the NCP in 2000 — five years after its introduction. This review drew on the findings and recommendations of the Productivity Commission's 1999 report on the impact of competition policy reforms in rural and regional Australia and the report of the Senate Select Committee on the Socioeconomic Consequences of the National Competition Policy (Commonwealth of Australia 2000).

Following the five-year review of the NCP, all governments affirmed the importance of the NCP in sustaining the competitiveness and flexibility of the Australian economy and contributing to higher standards of living (CoAG 2000). They recommitted to the NCP for a further five years and scheduled another review of the NCP agreements and the role of the National Competition Council before September 2005. They asked the Council to undertake, following the NCP progress assessment in 2001, annual assessments of each government's performance in meeting its reform obligations and to recommend on the level of competition payments to be made to each State and Territory.

Governments also agreed on several measures (described in the following sections) to clarify and finetune the arrangements for implementing the NCP. Their objective was to establish a practical framework for the effective implementation of the NCP, while demonstrating their ongoing commitment to upholding the policy and to safeguarding the benefits that the policy delivers to Australia. Governments also sought to address community concerns about the implementation of the NCP that had been identified in the Productivity Commission and Senate Select Committee reviews

(CoAG 2000, p. 4). These concerns included: a lack of community understanding of the NCP generally (and of the constitution and implementation of the public interest test particularly); difficulties with the way in which particular reviews had been conducted, and the infrequent use of national review processes for matters relevant across jurisdictions; perceived deficiencies in governments' oversight of the NCP and the Council; and adverse impacts on regions and deficiencies in structural adjustment and transitional arrangements.

Improving understanding of the NCP and the public interest test

CoAG decided that governments, when taking decisions that involve examining the public interest — such as decisions on legislation review and reform, the application of competitive neutrality principles and the structural reform of public monopolies — should document the reasons supporting their decisions and make these available to interested parties and the public. The purpose is to achieve greater transparency in governments' decision making.

Taking account of regional impacts and structural adjustment

While the benefits from reform are considerable in aggregate, they are usually also widespread — so the per capita benefit from individual reforms is often relatively small. In addition, the gains from some reforms frequently take time to become fully available. Conversely, the costs of some changes can be highly concentrated and fall swiftly on the people who are directly affected. Recognising this, governments undertook to consider identifying the likely impacts of reform measures on specific industry sectors and communities, including the expected costs of adjusting to change, when examining the public interest matters in Competition Principles Agreement clause 1(3). While consideration of the impact on industry sectors and communities was always implicit in the NCP public interest test, this decision makes such consideration explicit, addressing any perceptions that NCP processes ignore the impacts of change.

Improving the legislation review process and clarifying the legislation review obligation

Clause 5 of the Competition Principles Agreement sets out the threshold legislation review and reform obligation facing governments — to review all legislation that restricts competition and remove restrictions that are not shown to be in the public interest. CoAG amended clause 5 to direct the Council to consider, when assessing governments' compliance with this

obligation, 'whether the conclusion reached in the [review] report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process'. CoAG stipulated that it is a matter for the relevant government to determine, within this range of outcomes, what policy is in the public interest.

CoAG also extended the deadline for completion of the legislation review and reform program. The 1995 NCP agreements set 2000 as the target date for completion. Now the obligation is to complete reviews and implement appropriate reforms by 30 June 2002. There is also provision for phased reform outcomes that extend implementation beyond June 2002, where a government has a firm transitional approach justified by a public interest assessment, acknowledging the need for strategies to assist adjustment to change. The extension also recognises that governments face a significant task in completing the legislation review and reform program; overall, the program involves reviewing and reforming some 1700 laws.

Clarifying the competitive neutrality obligation

Competitive neutrality principles require governments to ensure, where appropriate, that their significant businesses do not have an advantage over competitors simply as a result of government ownership. Government businesses might have an advantage for example if they are not subject to full taxes and charges (or equivalents) or rate of return and regulatory requirements as their private sector competitors. Clause 3 of the Competition Principles Agreement sets out the competitive neutrality obligations under the NCP.

CoAG clarified several aspects of clause 3. It stipulated that the Council should take a 'best endeavours' approach to assessing compliance where a government business is not subject to executive control by government. Where a government is a minority shareholder in a business that was part privatised before the NCP was introduced, for example, the minimum obligation is to provide a transparent statement of competitive neutrality obligations to the business.

CoAG also made clear that the competitive neutrality requirement of 'full cost attribution' accommodates a range of costing methods, including fully distributed cost, marginal cost and avoidable cost, depending on the circumstances of a particular business. Where a business has spare capacity, for example, the appropriate basis is avoidable cost because prices will be set at a level that allows the spare capacity to be used commercially rather than remain idle. The cost incurred by a government business in producing a good or service is important because it represents the minimum level of income consistent with competitive neutrality.

CoAG also clarified the means of delivery of community service obligations as this relates to the competitive neutrality obligation. Community service obligations are goods and/or services that a business would not provide if it

considered only its commercial interests (or it would provide only at higher prices), but that government considers are necessary to achieve particular social objectives. A well known example is the requirement that Australia Post provide a standard letter delivery service throughout Australia for a uniform postage rate.

Governments' decisions to deliver particular social objectives by providing community service obligation payments to public businesses have led private sector competitors of those public businesses to question whether the prices charged by the public business providing the community service obligation comply with competitive neutrality requirements. For purposes of competitive neutrality, governments decided that they should be free to decide how to deliver community service obligations and to determine who should receive a community service obligation payment or subsidy. Such payments or subsidies should be transparent, appropriately costed and directly funded by government. CoAG determined that the NCP does not require governments to adopt a competitive process for the delivery of community service obligations.

Strengthening oversight by governments

CoAG made changes in a number of areas to confirm the role of governments as managers of the NCP process. In addition to clarifying the legislation review and competitive neutrality obligations (see above), CoAG directed that the Council develop its forward work program in consultation with governments. CoAG also guides the interpretation of reform commitments under the NCP and related reform agreements, including interpretation of the assessment benchmarks used by the Council.

Determining when reductions in competition payments are warranted

CoAG directed the Council on the nature of any financial penalty or suspension for identified noncompliance with the NCP. Thus, in its recommendations to the Federal Treasurer on competition payments penalties, the Council must consider:

- the extent of the relevant State or Territory's overall commitment to the implementation of the NCP;
- the effect of one State or Territory's reform efforts on other jurisdictions; and
- the impact of a State or Territory's failure to undertake a particular reform.

Where the Council recommends a penalty, it must publish its reasons in the assessment report.

A2 Assessing whether reform is in the public interest

Australia's governments unanimously recognise that policies aimed at achieving an efficient economy (and equity objectives), including removing unjustified restrictions on competition, are important drivers of economic growth. They recognise that a competitive economy encourages businesses to use resources more efficiently and be more responsive to consumer choices, and that a competitive economy acts as a spur for better service provision and lower prices. Governments consider that these outcomes are particularly important for a country such as Australia whose welfare heavily depends on an internationally competitive export sector.

While governments formally agreed to the National Competition Policy (NCP) in 1995 and recommitted to it in 2000, the policy can be traced back to 1974 when the Commonwealth Government introduced the *Trade Practices Act 1974* (TPA). The TPA is designed to improve public welfare by prohibiting anticompetitive behaviour, unless an independent authority (the Australian Competition and Consumer Commission or the Australian Competition Tribunal) agrees that the benefits of the anticompetitive behaviour outweigh the costs. Just as the architects of the TPA recognised that there may be circumstances in which anticompetitive conduct is in the public interest, Australia's governments recognised that some policy actions that restrict competition may be in the public interest.

Governments set out the benchmarks for assessing whether an action is in the public interest in clause 1(3) of the Competition Principles Agreement. In November 2000, governments augmented the concept of the public interest as it relates to the NCP, by recognising the need to consider the likely impacts of reform measures on specific industry sectors and communities and the expected costs in adjusting to change.

What is the public interest under the NCP?

The concept of the 'public interest' is, seemingly, straightforward: the 'interests' of the overall community — that is, the public — should be paramount in policy decisions. Clause 1(3) of the Competition Principles Agreement lists the factors that governments should consider (where relevant) in assessing the costs and benefits or merits of a particular policy or course of action, or in assessing the most appropriate means of achieving a

policy objective. These are augmented by the Council of Australian Governments (CoAG) decision that governments should consider identifying the impacts of reform and the costs of change. Thus, the NCP does not seek to achieve competition for competition's sake, but rather to ensure a competitive economy as a means of maximising community welfare.

Box A2.1 The National Competition Policy public interest test

Under the Competition Principles Agreement governments take into account the following factors (where relevant) when assessing the merits of reform:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

The list of public interest factors is open ended: a government can also consider any other relevant factor when assessing competition questions.

Under CoAG's November 2000 changes to the arrangements that underpin the NCP, governments should give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including the expected costs in adjusting to change.

Intrinsically, each element of the public interest test has equal status. Each should be quantified if the relevant data are available or otherwise qualitatively evaluated. This does not mean, for a particular reform proposal, that every identified cost and benefit is quantitatively or qualitatively equal in value. Matters of judgment usually arise in weighing costs and benefits, meaning that public interest assessments must be done on a case by case basis. Different members of the community commonly give different priority to each public interest factor. For some people, concern about one factor will override their support for all others: for example, there are both economic and environmental considerations in relation to the regulation of timber logging activities. In addition, the importance of each public interest factor can change over time as community concerns ebb and flow over issues such as the economy, jobs, social cohesion and environmental health.

The significant areas of the NCP for which government actions involve an assessment of the public interest are (1) competitive neutrality policy, (2) the structural reform of public monopolies and (3) the legislation review and reform program. For the first two areas, a government's decision to proceed with reform depends on its assessment of the merits of the reform action. Where the assessment shows the community benefit outweighs the cost, the government is expected to implement the policy action. The approach to the legislation review and reform commitment is somewhat different. Evidence shows that a competitive environment is typically in the public interest, so

the NCP places the onus on advocates of legislative restrictions to show that these will benefit the community. This is a reversal of the traditional onus of proof in that the proponents of the status quo, to ensure a restriction is retained, must show that the restriction provides a net community benefit. Nonetheless, many reviews have recommended that restrictions on competition be retained because the restrictions offer a net benefit to the community. Such outcomes satisfy obligations under the NCP if the review adopts transparent, independent and objective processes, such that the relevant parties are consulted and there is robust analysis of all relevant evidence.

Box A2.2 Public interest case studies: competition restrictions retained in health legislation and building trades legislation

Health professions

Reviews of legislation regulating the health professions in New South Wales considered general provisions that reserved areas of practice to practitioners holding certain qualifications. General reservations of practice impose broad restrictions, whereby only registered professionals holding prescribed qualifications can provide the service. While there may be justifications for general reservations for some professions (to safeguard patients' wellbeing), there is a risk for some professions that a broad reservation prevents other trained practitioners from offering part (or all) of a service, without this restriction benefiting patients.

The New South Wales reviews recommended removing general restrictions on practice, finding these are anticompetitive and do not confer a net community benefit. The reviews recommended better-targeted regulation — that is practice restrictions that apply only where there is significant potential for harm. For example, the reviews identified spinal manipulation as such an activity and recommended that legislation restrict its practice to appropriately trained practitioners (New South Wales Health 2000).

The New South Wales Government accepted the review recommendation to restrict the practice of spinal manipulation in this way. Given that practitioners in a number of disciplines — chiropractic work, medicine, osteopathy and physiotherapy — are trained in spinal manipulation, the Government amended the *Public Health Act 1991* to define the restriction on practice clearly and to ensure consistency across the disciplines.

Building and related occupations

The ACT reviewed occupational legislation covering builders, electricians and plumbers legislation (the *Building Act 1972*, the *Electricity Act 1971* and the *Plumbers, Drainers and Gasfitters Board Act 1982*). The public review, undertaken by the Allen Consulting Group, found that building and related trades regulation protects public health and safety by overcoming information asymmetries (where consumers lack the information to assess whether a tradesperson has the skills to perform a task safely) and negative externalities (where the work may harm third parties, for example as a result of electrical accidents or building collapses, if it is not performed satisfactorily) (Allen Consulting Group 2000). The Tasmanian review of the *Plumbers and Gas-fitters Registration Act 1951* found that licensing of the plumbing and gasfitting trades is justified because it protects public health and safety and the integrity of the water, sewerage and drainage infrastructure (Plumbers and Gasfitters Registration Review Group 1998).

The ACT Government accepted the review recommendation to retain licensing of builders, electricians and plumbers. The Tasmanian Government is considering the recommendations of its review.

Economic reform and management of change

CoAG's November 2000 decision that governments 'should give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change', reflects the community concerns identified by the Productivity Commission and the Senate Select Committee reviews. Both reviews noted concerns, particularly in rural areas, that the NCP reforms had not brought major benefits and represent a threat to the viability of communities. Part of this concern arose because change appears to be much more rapid today than it has been in the past, and that the costs of change in particular areas — falling real estate prices, the closure of businesses, the loss of services such as health and transport, and the movement of people out of the area — were not being appropriately considered.

These concerns are not new. Economic development, throughout history, has brought change. As technology develops, old skills and methods are abandoned in favour of better and more productive alternatives. The increased mechanisation of farming and mining, for example, means that these industries no longer require as many workers or particular occupations, and that the workers who are needed are generally more highly trained. As these changes have occurred, people — particularly those whose skills are no longer needed — have had to adapt or risk being unemployed.

There are also other sources of pressure. The Productivity Commission review found that the fortunes of rural Australia, in addition to reflecting technological advance, are affected by changes in people's tastes and lifestyles, trends in the prices of some agricultural commodities, and broad government policy changes such as lowering of trade barriers, deregulation of the financial sector and the increased use of regulation to protect the environment. The Productivity Commission found that these forces have contributed to significant changes in the composition of Australia's economic activity, with differing regional implications across the country. Many of these forces are long term in nature and beyond government control. Moreover, some aspects of the broader policy framework within which the NCP sits (for example particular social and environmental policies and policy instruments) affect different communities in different ways. It is important that the impacts of these broader social and environmental policies are not confused with the impacts of the NCP.

There is little doubt that Australia has benefited significantly from the economic reforms of the 1980s and 1990s. By the end of 1999-2000, Australia had completed nine years of continuous growth, the longest period of expansion since the 1960s, despite the collapse of key markets in Asia. Over the nine-year period, the growth in output averaged just over 4 per cent per year and growth in real per capita income just under 3 per cent per year. This compares favourably with most other OECD countries. The economic upswing

was accompanied by solid employment gains and a reduction in unemployment (OECD 2001).

Official Australian Bureau of Statistics measures show Australia's productivity growth accelerated to a record underlying rate from the mid-1990s (with labour productivity growth of 3.1 per cent a year and multi-factor productivity[2] growth of 1.7 per cent a year from 1993-94 to 1999-2000) (PC 2001). This growth is important because it is the major source of growth in living standards. Productivity growth means that more value is added in production, per unit of input. At the national level, productivity increases raise living standards because people have more income and so have a greater ability to purchase goods and services, to increase leisure, to improve health, education and social welfare, and to reduce poverty. For example, the Productivity Commission noted that, if Australia's productivity had grown in the 1990s at its previous trend rate, annual income in 2000 would have averaged around $2700 less per person or roughly $7000 less per household (Banks 2001).

The Productivity Commission's modelling of the regional effects of the NCP reforms showed that, although the early outcomes had benefited metropolitan areas more than rural and regional areas, there are benefits for regional Australia. The modelling showed that all except one of 57 regions will gain from the NCP in terms of output, and that all 57 regions will gain in terms of average income per person employed. While the estimates show that 14 regions (collectively about 6 per cent of national employment) are expected to suffer job losses from the NCP (PC 1999), five of these regions will recoup these losses after five years of relatively slow economic growth.[3]

More broadly, the sound long-term macroeconomic environment (arising at least in part from a more competitive economy) and the current low value of the Australian dollar are delivering substantial benefits to rural Australia. The more competitive economy has helped to sustain a combination of low inflation and low interest rates, and the competitive exchange rate has provided a substantial boost to exporters' incomes. The Australian Bureau of Agricultural and Resource Economics has forecast Australia's commodity exports to achieve record earnings of $92.6 billion in 2001-02, with the increase 'underpinned by a relatively low Australian dollar and greater export volumes shipped' (ABARE 2001). The bureau estimated that earnings for the farm sector will be $29.8 billion in 2001-02, with increased earnings from wheat, barley, rice, beef and veal, live cattle, sugar and wine.

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2 Labour productivity is the ratio of the value of output to labour inputs. Multi-factor productivity (or total factor productivity) is the ratio of the value of output to labour and capital inputs combined.

3 The Productivity Commission's modelling showed that nine regions that lost jobs over the decade to the mid-1990s (that is, prior to the NCP) would experience further job losses from the NCP.

Managing change

Australia's microeconomic reform program, including the NCP, originated from the need to ensure that Australia's exports could compete in often very competitive world markets and that Australia's economy is sufficiently resilient to withstand global shocks. Societies that are economically strong are in a better position to avoid or ameliorate hardships. A key role of the NCP, therefore, is to assist with change.

While the reform program has benefited Australia as a whole, there is no doubt that the effects of change sometimes fall (at times, quite swiftly and severely) on particular industries, regions and/or communities. Whether these changes are the result of microeconomic reform or wider social or economic forces, an important role for governments is to help individuals and their communities adjust to change. There are also some in the community who do not believe that the NCP program is necessary and/or beneficial. Thus, efforts by governments to explain reforms (and the reasons for them) and to assist with adjustment to change where necessary are integral steps in the successful implementation of the NCP.

Community consultation

The complexity of many NCP issues highlights the importance of open and consultative processes and independent and objective analysis in the consideration of public interest matters. These features are essential to maintain confidence that the interests of all in the community have been objectively examined, not just the interests of particular groups. Transparency is also important — the community must know and understand the reasons for government decisions if they are to support those decisions.

The NCP water reform program explicitly obliges governments and service providers to consult the community when contemplating change and/or new initiatives involving water resources. As part of this consultation, governments are required to develop public education programs on water use and on the need for, and the benefits from, water reform. These public education programs are extensive. Water agencies work with education authorities to develop resource materials on water for schools. The agencies also develop material to show the relationship between infrastructure performance, service standards and costs, to promote levels of service that represent the best value for money for the community.

Unlike for the water reform program, the other elements of the NCP include no explicit obligation to consult the community or conduct public education programs. However, governments have recognised that the success of the broad NCP program can hinge on consulting the community and explaining decisions. The CoAG November 2000 changes to NCP processes require that review processes be 'properly constituted' and that the outcomes of legislation reviews be 'within a range of outcomes that could reasonably be reached on

the basis of the information available to a properly constituted review process'. They also oblige governments, when applying the NCP public interest test in Competition Principles Agreement clause 1(3), to document and make publicly available the reasons for their decisions.

The appropriate process for reviewing anticompetitive legislation often involves a balance of judgment. The Council generally advocates that governments adopt open public processes where the impact of a restriction and/or likely reform action is significant (that is, depending on matters such as the range of affected stakeholders, community sensitivity, and likely regional disparities in the effects of policy change). Given that some 1700 pieces of legislation are being reviewed, however, adoption of a public review process in every case would place considerable resource pressure on governments. The Council considers, therefore, that it is appropriate for governments to review relatively minor matters internally, provided interested parties have an opportunity to participate. It is not appropriate to exempt significant areas from reform without first conducting a rigorous public interest analysis. To do otherwise would invite claims that reform has been suppressed to satisfy particular interests. Similarly, where the net public benefit is unclear, or where there are claims that reform is against the public interest, decisions should be based on an open and objective assessment of the facts.

Where public interest considerations are openly and objectively assessed, the decisions on reform implementation are made clearer. As a result, the public interest is best served if governments adopt the recommendations of their reviews. But governments sometimes choose not to accept review outcomes. The CoAG changes to the NCP mean that governments have a responsibility to explain to the community the reasons for their decisions, particularly if a government does not accept review recommendations. Such consultation and explanation is integral to the success of the NCP program.

Adjustment assistance

Understanding and analysing the distributional and adjustment implications of the NCP are key to determining appropriate policy directions. CoAG recognised this link in the changes it made to NCP arrangements in November 2000. These changes ask that governments, when determining the public interest associated with particular reforms, give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including the expected costs of adjusting to change.

Notwithstanding the adjustment measures that are generally available (such as social welfare payments, unemployment benefits and, in some cases, redundancy arrangements), assistance targeted to the people directly affected by change may be warranted in some cases. The provision of such assistance is recognition of an obligation on the part of government to address particular economic circumstances that could arise as a result of change. Any assistance

provided should be directed to managing or facilitating change; adjustment assistance should not be about preventing change.

Governments' approach under the NCP program has generally been to focus on whether there are sound social benefit arguments for providing adjustment assistance to people affected by reform. Significant assistance has been provided in some cases, but assistance has been limited or has not been provided in other cases. The key considerations in determining whether adjustment assistance is warranted are the severity, speed and permanence of the effects of change, and whether significant hardship would be likely to result in the absence of assistance. Determining the level and form of assistance is complex because assistance often needs to be provided before the full effects of a change are evident: to maximise the efficacy of the assistance and ensure the reform program is not jeopardised.

Assistance need not necessarily be monetary. The provision of advice on financial and business management, retraining and skill development, and priority access to relevant services are ways that governments can assist people to adapt to change. Adjustment assistance also includes phasing the implementation of particular reforms or providing a period of grace before a change is implemented to allow affected parties to plan for the new environment. Both approaches delay the achievement of full reform benefits, but provide additional time for the parties that are most directly affected to establish arrangements more suited to the new operating environment.

Adjustment assistance should be distinguished from the payment of compensation for changes in government regulatory policy, particularly where people have invested largely or solely on the basis of regulatory restrictions. People undertake such investments knowing that government policies can and do change. There is also a strong argument that the adoption of the NCP in 1995 was a clear signal from all governments that existing regulatory regimes may not endure, particularly given the underlying premise of the legislation review program that competition should not be restricted unless there is a strong public interest justification. Compensation in these circumstances needs to be carefully justified.

A role for corporate business

Adjustment assistance is not just a matter for governments. Businesses, too, have a responsibility to the community, including sensible socially responsible change management. This is not to say that business decisions should be guided entirely by social considerations. Indeed, the capacity of business to generate national wealth derives significantly from its ability to respond quickly and innovatively to market conditions. But for decisions likely to impinge on community sensitivities, business needs to account for socioeconomic impacts.

What is the role of business in dealing with change management? It is probably easier to identify what the role does not entail. It does not entail, for example:

- advocating government policies regardless of their impact on the broader community or,
- exhorting a government in private to 'do the right thing', then failing to support the reforms in public;
- avoiding issues of public importance merely because taking a stand may involve some inconvenience or minor risks; or
- avoiding public accountability for actions that have pervasive impacts on the community: like governments, businesses have an obligation to explain the changes they make.

The important contribution that the corporate sector can make is to assist the achievement of sensible, socially responsible change management. This is, in turn, part of the broader issue of the social responsibility of business as a full participant in the Australian community. A sound community requires more of its citizens than adherence to the rules and action only where it is necessary. A sound community relies on the acceptance of, and practical support for, the social and economic objectives behind the rules — that is, it relies on business being a good corporate citizen.

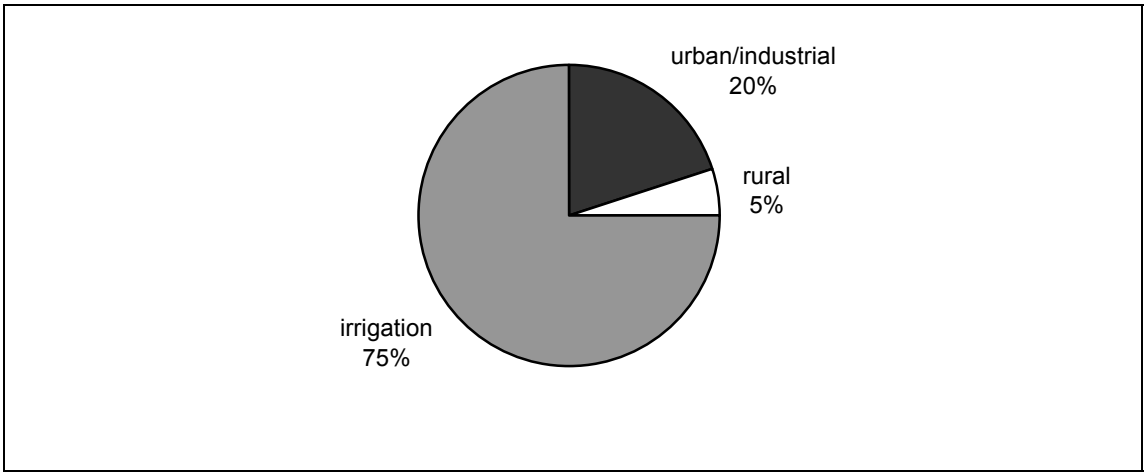
A3 Water reform

Background

Water is an important economic and environmental resource. Australia's water use is growing rapidly, largely as a result of increases in irrigated agriculture. (Water use in other sectors has remained fairly static.) The irrigated agriculture sector accounts for 75 per cent of Australia's total water use (figure A3.1).

Storing, transporting, treating and disposing of water is a significant industry with infrastructure assets of over $90 billion (in replacement cost terms).

Figure A3.1: Annual water use, by category, 1996-97



Source: National Land and Water Resources Audit (2001).

Australia's water sector faces significant and complex environmental problems. The median annual flow of the Murray River is estimated to be only just over 20 per cent of the natural flow. Moreover, all of the rivers in the Murray Darling Basin (except the Ovens River in Victoria) are regarded as stressed. Salinity provides a graphic example of the interplay of water use and past farming practices. Rising watertables, partly caused by land clearing and irrigation, have led to a $700 million loss in land capital values and an estimated $130 million loss in annual agricultural output as a consequence of land degradation. Australia has 2.5 million hectares of severely salt affected land now and could have more than 15 million hectares in 50 years. The financial loss alone from land and water degradation is estimated at $2 billion per year. To put this loss into perspective, this loss is equivalent, on average, to nearly half the gross annual value of Australian wheat production.

The water resources reform policy agreed by the Council of Australian Governments (CoAG) in 1994 was designed to address these problems. Already this policy, under the auspices of the NCP, has fundamentally changed the way in which water is allocated, delivered and paid for, and will continue to invoke change. Major elements of the reform framework include:

- water pricing based on full cost recovery and the amount of water used;
- the establishment of clearly specified water entitlements and the arrangements to enable trade of those entitlements;
- the allocation of water to the environment;
- the establishment of regulatory and water service institutions that have clear roles and responsibilities; and
- public consultation and education.

In addition to the NCP water reform arrangements, complementary national water reform initiatives include the Great Artesian Basin Strategic Management Plan, the Snowy River initiative and the National Action Plan for Salinity and Water Quality (box A3.1).

Box A3.1: Recent national initiatives relating to the water sector

Great Artesian Basin Strategic Management Plan

The Commonwealth, New South Wales, South Australia and Northern Territory governments released this plan in September 2000. The plan guides governments, water users and other stakeholders on policies, programs and actions necessary to attain economic, social and environmental benefits from the groundwater resources in the Great Artesian Basin. The plan is expected to be implemented over the next 15 years at a cost of $286 million.

Snowy River Initiative

The Commonwealth, New South Wales and Victorian governments announced a $375 million initiative in October 2000 to restore the Snowy River. The initiative involves a long term target of restoring 28 per cent of the Snowy River's natural flows while protecting other river systems and water users. The initiative sets a target flow rate of 21 per cent to be returned to the Snowy River over 10 years. The remaining 7 per cent is expected to be achieved through the development of new infrastructure projects involving the private sector.

National Action Plan for Salinity and Water Quality

In November 2000 CoAG endorsed a proposal for an action plan to address salinity (particularly dryland salinity) and deteriorating water quality. The action plan builds on the achievements of the Natural Heritage Trust, initiatives by individual jurisdictions, the CoAG water reforms and the work of the Murray Darling Basin Commission. It involves new expenditure by Commonwealth, State and Territory governments of $1.4 billion over the next seven years.

Achievements so far

Governments have achieved considerable progress in implementing water reforms over the past seven years. These achievements are an evolutionary response to the many economic and environmental pressures confronting the water industry.

Pricing and cost reforms

Previously, water prices have not fully reflected the value of services provided. Reforms have involved pricing water by accounting for the cost of water delivery and the environmental cost of water use. Consumption based water pricing, implementing full cost recovery and removing or making transparent any subsidies (including cross-subsidies) have been the key aspects of these reforms.

All States and Territories have made substantial progress towards water pricing reforms in the urban sector (including major cities, provincial centres and country towns). These reforms have involved calculating water bills on the basis of water use and the cost of supply rather than, for example, property values. Further, States and Territories have continued to eliminate free water allowances by the urban water service providers.

Urban water reforms have meant that the cost of water has increased for some customers and decreased for others. Customers now have far greater control over their water bills, as well as a financial incentive to use water efficiently. Water use per person fell substantially in the 1990s in some urban centres; for example, in Brisbane, water use per year declined from around 500 kilolitres per property in 1994-95 to just over 240 kilolitres per property in 1999-2000. This trend has deferred the need for investment in new water infrastructure in some cases, meaning substantial savings to the community.

The water reforms have also improved accountability, customer focus and service delivery.

Previously, water charges for rural water services in most jurisdictions have been heavily subsidised and have not recovered the costs of service provision and water use. More recently, rural water service providers in several jurisdictions introduced water charges that reflect consumption based pricing. Two-part tariffs have been, or are being, introduced for bulk rural water services. Some rural water service providers are meeting the lower bound of the agreed CoAG pricing guidelines for full cost recovery. This means that these service providers will be able to provide for the cost of ongoing operation and maintenance of irrigation schemes, rather than relying on government funding.

Governments have continued to provide assistance to water customers who are in need, such as pensioners and those in rural and remote communities.

Often, such assistance is provided transparently through clearly defined and separately funded community service obligations.

Institutional reform

All States and Territories have made substantial progress in the structural separation of water resource management, service provision, standards setting and regulation. Public water authorities (particularly in the metropolitan water sector) have been corporatised and the service providers have been separated from the regulators. Service providers are required to operate in a commercial manner and at 'arms length' from government. Further, the service providers are accountable for their financial and operational performance.

Metropolitan water businesses in all jurisdictions have shifted from being part of a government bureaucracy to being customer focused commercial operations. This move has generated benefits such as a real reduction in customer bills of nearly 5 per cent over the past four years, along with improvements in water quality and effluent treatment.

All States and Territories have set up separate entities to undertake regulatory functions and resource management. All but one jurisdiction will have an independent price regulator who undertakes ongoing prices oversight.

Many water service providers participate regularly in benchmarking and performance monitoring programs.

Water allocation and trading

Legislation in all States and Territories requires and provides for allocation of water to the environment. Most governments have, or are developing, water management plans to allocate water for the environment and consumptive use. The environment has generally been given high priority in water allocations.

When there is excess demand for water, clearly defined water property rights and trade in those rights enable water to move to its highest value. Water trading allows new users to obtain water and/or existing users to increase their use without affecting the sustainability of the water system.

Most of the States and Territories have established legislative frameworks for water property rights and are developing trading rules. Water trading in some States and Territories is at an embryonic stage; there is still a long way to go in the full implementation of the required mechanisms for efficient water trading. The effective development and implementation of water management plans and the associated allocation of water for the environment

and consumptive use have strong links to the efficient operation of water trading.

The cooperation of jurisdictions (New South Wales, Victoria, South Australia, Queensland, the ACT and the Commonwealth) in the Murray Darling Basin is an example of the integrated nature of water allocation and trading reforms. A key outcome of this cooperation has been the pilot interstate water trading project in the basin. Where no further water is available for extraction, this pilot project permits water to move to areas where it is highly valued.

Environment and water quality

Many of Australia's key river systems are either overallocated or stressed. The water reform process recognises the importance of allowing enough water to remain in rivers and streams to achieve a sustainable riverine environment. Different jurisdictions have adopted various approaches in attempting to attain sustainable rivers, streams, wetlands, groundwater and other water systems. The common features of these approaches include: establishing environmental flow requirements; developing strategies for reducing withdrawals for consumptive use where necessary to enable environmental flow requirements to be met; adopting integrated catchment management initiatives; and implementing the National Water Quality Management Strategy.

States and Territories are addressing water quality issues through whole-of-catchment approaches. Some have devoted considerable resources to initiate integrated catchment management strategies; for example, Victoria is implementing regional catchment strategies across 10 catchment and land protection regions that cover the State. Integrated catchment management is being implemented in consultation and partnership with local groups.

States and Territories are demonstrating a considerable degree of commitment to ongoing implementation of the National Water Quality Management Strategy. Strategies such as this are being developed in response to the growing community concern about water quality and the need for environmentally sustainable water management. States and Territories are drafting and implementing policies, principles and guidelines with key stakeholder and community input. The ACT, for example, developed the Drinking Water Quality Code of Practice in 2000 under the *Public Health Act 1997*. The performance based code references the 1996 Australian Drinking Water Guidelines.

Public consultation and education

All States and Territories have engaged in extensive consultation with the broader community, including the irrigators, households and environment

and conservation groups. The aim of such consultation has been to achieve public recognition of the need for urgent action to reform the water industry, and to gain acceptance of the proposed reforms. Consultations have focussed on key legislation or major initiatives relating to water industry reform, including by the public release of draft documents for comment, public workshops, community forums and regional public meetings.

Governments are devoting considerable resources to public education on water reform, including water conservation. Some initiatives have focused on raising community awareness about sustainable water resource management and use. Several States and Territories continue to participate in national community education programs (such as *Waterwatch*) that promote water quality monitoring. The *Waterwatch* program involves Commonwealth, State and local governments, school communities, the business sector and other organisations, and creates a community ownership ethic for catchment-wide land and water management.

The path forward

Though considerable progress has been achieved, the water reform program in both the rural and urban sectors is some way from completion.

In the urban sector, some service providers still need to assess the cost effectiveness of introducing consumption based water pricing, particularly at the local government level. In addition, few urban water service providers have considered how to account for externalities (such as the environmental impacts of urban water use) in their water charges.

In general, rigorous consideration, identification and reporting of cross-subsidies and community service obligations, is still required in the water industry.

An ongoing issue in the rural water sector in many jurisdictions is the need to improve the level of cost recovery among the service providers. Previously, rural water supply has been underpriced; irrigation schemes have not generated sufficient revenue to cover their ongoing maintenance costs. Some irrigation schemes may find full cost recovery very difficult in the short term. Some States and Territories have attempted to address this difficulty by finding efficiency gains in bulk water provision and by phasing in cost recovery over time.

The lack of cost recovery in some irrigation schemes, combined with general overallocation of water across Australia, reinforces the need for any new investment in rural water infrastructure to undergo rigorous economic and environmental scrutiny.

There are cases where further progress is required to sufficiently separate water service providers and the relevant government departments to

minimise potential and actual conflicts of interest. Further, there is a need to progress a more accountable and transparent approach to water price setting and monitoring in certain States.

Historically, the value of water in some parts of Australia has represented, on average, around 70 per cent of the farm property value. It is not surprising that the decoupling of water property rights from land title, and changes to water allocation, are creating difficulties for irrigators and financial institutions in managing ongoing credit and lending arrangements, potentially leading to higher risk premiums. These difficulties are compounded by delays and transitional uncertainty surrounding the introduction of the new water property rights systems in some jurisdictions.

Governments need to develop well defined water property rights as soon as practicable so water property right holders have a high degree of security and certainty of ownership for the duration of that right. These aims would be facilitated by a registry system that records the nature of the rights and provides evidence for third party (such as banks) interests.

Water management plans in many States and Territories are at an early stage of development and require progress to facilitate effective water trading. Under some plans, further research will be required to facilitate the appropriate allocation of water to the environment.

The appropriate allocation of water to the environment involves two distinct issues. First, there is a need to wind back 'overallocations' (that is, where farmers have been nominally allocated more water than can be sustainably extracted). Second, there is a need to make more water available for the environment. Both issues need to be addressed expeditiously for the benefit of both the water users (such as the irrigators) and the environment. Addressing issues of overallocation will improve the security of water property rights as well as the value of those rights. Improving environmental water flows will address water quality problems and maintain the value of water rights in the long term.

Farmers in many areas have been allocated more water than can be extracted sustainably. Hence, reductions to water allocations for consumptive use are needed. Such changes could have adverse implications for parts of the farm sector. Reduced water allocations for irrigation could, for example, lower farm productivity and profitability while farmers adapt to the new allocation regimes. In addition, in the short term, some farmers may need to deal with refinancing costs as a result of the decoupling of water property rights and land title. Together, these costs may flow on to affect the economic and social wellbeing of the surrounding rural and regional communities. However, in the medium to long term, water trading and the new water allocation regimes will counteract these costs.

The fundamental question is about who pays for remedying current overallocations of water and making more water available for the environment. The CoAG water agreement offers no clear-cut guidance on this issue. The question of 'who should pay' needs to be resolved by State and

Territory governments on the basis of their individual circumstances and local considerations.

Jurisdictions are at various stages of introducing interstate water trading regimes. The pilot interstate water trading project in the Murray-Darling Basin, while still in its early stages, is promising. A recent review of the project after two years of operation identified several areas in which efficiency gains could be achieved. These include improvements in administration and stakeholder communication. The Council considers the expansion of the pilot project to be the next logical step.

However, several issues require close attention before the pilot project can be expanded. Different types of water property rights exist within the Murray-Darling Basin. Inconsistent property rights in some cases could impede interstate water trading. Hence, a compatible approach to the key components of property rights is needed. Opportunities need to be explored to define and specify better the water property rights across the basin and to improve the exchange rate arrangements to reflect fully the extent of overallocation, security of tenure and the salinity impact. The broader environmental impacts of trading in the basin will depend on the degree to which individual States set and enforce irrigation and drainage plans. The States need to consider the best means by which to address the potential environmental impacts of interstate water trade. The National Competition Council notes that the Murray Darling Basin Commission is working with the States to resolve some of these issues.

Progressing the reform process

As the water reform program has progressed, understanding of both the complexity of the reforms and recognition of the importance of reforms has grown. The Council's assessment process, by regularly monitoring and evaluating jurisdictions' progress, is a lynchpin in achieving the desired outcomes from water reform.

The Council completed its 2001 NCP assessment report in June 2001 which included the progress of individual jurisdictions on water reforms. Implementation of the water reform process has proved to be complex and more challenging than originally envisaged, so progressing water reform will require considerably more work. The rural water reform process, for example, will not be fully completed until at least 2005. Governments recognised this effort and agreed that the Council will annually assess water reform implementation until at least 2005.

While all areas of the water reform process are important, the Council considers that the key immediate tasks for reforms relating to the rural water sector include:

- clarifying, refining and firming up water property rights so they are secure and well defined; and

- allocating water to the environment through a transparent process of developing water management plans in consultation with key stakeholders and community groups.

A4 Energy and transport reform

The energy and transport sectors have undergone significant change in recent years. Progress has been especially significant in the electricity, gas and road transport industries, which were already subject to CoAG reform packages which were brought within the National Competition Policy (NCP) framework in 1995.

- The creation of a national electricity market has led to significant cuts in electricity wholesale prices, helping to reduce production costs across Australian industry. The electricity reforms will continue to deliver important economic benefits if outstanding challenges can be resolved.

- The NCP gas reforms, largely in place, are delivering lower prices to gas users and stimulating major new investment in the industry. These developments are fuelling a vibrant gas industry, with major socio-economic and environmental benefits to Australia.

- The road transport reforms are removing anomalies in the regulatory frameworks among the States and Territories, and improving safety and service delivery to consumers.

Governments have refined certain aspects of the industry reform packages in electricity, gas and road transport since 1995, including some implementation dates. Rail was not covered by a specific NCP agreement. Individual jurisdictions have focussed on State based reform in the rail industry, which has helped to resolve local issues, but the critical matter of national reform remains unfinished.

Energy reform

Traditionally, vertically integrated monopolies (controlling most aspects of production, transportation and retailing) dominated Australia's electricity and gas industries, providing high cost, inefficient services. The NCP energy reforms have opened contestable segments of each industry to competition, while allowing third parties to access the energy transportation bottlenecks.

Electricity

The centrepiece of the electricity reforms is the creation of a national electricity market in south eastern Australia, establishing a single wholesale market for electricity. The market allows retailers, aggregators and end users to bid for electricity sold into the wholesale pool by competing generators, while retailers, aggregators and other producers compete for customers.

The national electricity market has been a remarkable achievement by Governments. It has already conferred significant benefits to medium and large businesses.

- The Australian Bureau of Agricultural and Resource Economics (ABARE) projected that Australia's gross domestic product will be $2.4 billion higher (in 2001 prices) in 2010 than it would be without reform. The net present value of benefits of reform between 1995 and 2010 are projected to total $15.8 billion (in 2001 prices) (Short et al. 2001, p. 84).

- The International Energy Authority (2001) stated that real electricity prices decreased by 10 per cent, on average, in the past 10 years, with benefits across the economy amounting to at least $1.5 billion in 2000.

While households cannot yet choose their electricity supplier, they have received some benefits from improved service provision. A recent determination by Victoria's Office of the Regulator-General, for example, reduced distribution charges by up to 22 per cent from 1 January 2001, saving households up to $65 on annual electricity bills. But, in some regions, insufficient competition in the wholesale market may offset (at least in part) the benefits from more efficient provision of transmission and distribution services.

Recent evidence indicates that the market is not working as well as it should. The concept of a 'market' signifies the existence of competition. For a national electricity market, that competition should occur in the generation and retail sectors, both within and between regions. Sustained large interregional differences in electricity prices are inconsistent with the notion of a competitive national market, although the costs of transportation between regions (accounting for transmission losses and capital costs) explain some variations.

The national electricity market is approaching a watershed in its development; government decisions over the next six to 12 months will be crucial. The National Competition Council remains convinced that the basic market framework now in place — that is, competition between generators and retailers, with shared use of transmission and distribution infrastructure — provides the best opportunity for an efficient electricity industry and for competitive prices to consumers in the long run.

The problems that have recently emerged reflect a need to *refine* market arrangements, not to overturn them. Further work is needed to:

- improve interregional competition;
- streamline the institutional framework;
- address household contestability issues; and
- promote robust competition among generators.

If these challenges can be addressed, the early benefits of reform will be sustained.

Improving inter-regional competition

While New South Wales and Queensland have excess generation capacity, South Australia and to a lesser extent, Victoria face shortages. Some significant price differences among regions have resulted. In an efficient market, these would be expected to stimulate investment in generation and/or interconnection between regions. Unfortunately, at least one major interconnection proposal (between New South Wales and South Australia) has stalled, partly because the rules for approval were deficient. These rules have since been modified, but the Council remains concerned that further work may be needed to improve the efficiency of regulatory approvals processes.

Streamlining the institutional framework

The current institutional arrangements between the National Electricity Code Administrator (NECA), the National Energy Market Management Company (NEMMCO) and the Australian Competition and Consumer Commission are cumbersome at times, with some tension and overlap between roles.

Review of NEM arrangements

At its June 2001 meeting, CoAG reaffirmed its commitment to electricity reform and agreed to establish a Ministerial Council on Energy to examine energy market directions, including the harmonisation of regulatory arrangements and opportunities for improved interconnection and security arrangements. CoAG also noted the establishment of a National Electricity Market Ministers Forum to consider, among other issues, impediments to interconnection and regulatory overlap, transmission pricing, market behaviour and the effectiveness of regulatory arrangements.

The Council supports the review of market arrangements. Governments have a clear role, from an economic policy perspective, in ensuring that the architecture of the national electricity market remains efficient and effective.

It is also appropriate for governments to consider the social implications of electricity supply and consumption.

But governments should not become involved in the day-to-day operation of the market. Some price volatility in the short run is an inevitable, even efficient, aspect of the market's operation, because it encourages appropriate supply and demand responses. There is some evidence that rising wholesale prices are already encouraging the expansion of, and new entry in, generation activities. Price changes are also affecting the way in which businesses use electricity. These developments are essential to ensuring competitive outcomes in the long run.

Market refinements as outlined above should reinforce these incentives, but overly intrusive government action risks blunting them. The primary cause of problems in California's electricity market was not the operation of a competitive market; rather, market incentives were inadequate for encouraging new investment in response to strong demand, and price signals were inadequate for influencing the supply of, and demand for, electricity.

Addressing household contestability issues

The Council understands that metering and customer transfer arrangements at the household level create complex issues. Raising consumer awareness of contestability is a further issue. While some jurisdictions are making a concerted effort to address these challenges, others appear to be adopting a 'wait and see' attitude that may not serve the interests of consumers.

Promoting competition among generators

Higher pool prices in some regions of the national electricity market (and price differentials among regions) raise the question of whether the structure of the generation market is sufficiently competitive to deliver efficient outcomes. Price increases may simply reflect capacity constraints, in which case they provide necessary signals for new investment in electricity generation capacity. But high regional prices could also indicate that the generation market is thin, giving individual generators market power. A recent ABARE study (Short et al. 2001, p. 89) reported that 'in the recent past, in certain months up to half of the price paid for the wholesale supply of electricity in New South Wales, Victoria and South Australia may be attributable to strategic behaviour in the market'.

The Council notes that NECA, in response to market concern about the behaviour of some generators, is reviewing bidding and rebidding strategies and their effect on prices. The review is considering options for additional safeguards against potential abuses of market power.

Gas

The NCP reforms are transforming Australia's gas industry, with benefits to consumers, industry and the environment. The reforms focus on improving efficiency in the gas transportation sector, through implementation of the National Gas Pipelines Access Code (the Gas Code). Now in place in all jurisdictions, the Gas Code allows third parties to use spare and developable capacity in transmission and distribution pipelines. This change enables gas users to contract for gas supply with an upstream producer of choice directly, then ship the gas on reasonable terms and conditions. In this sense, the access reforms promote competition in both upstream gas production and in energy retailing.

Supporting the access reforms, comprehensive structural reforms have broken the old vertically integrated gas utilities into separate transmission, distribution and retailing businesses. In addition, legislative and regulatory barriers to interstate and intrastate trade have been removed or are being phased out.

Upstream gas reform

While the NCP gas reforms have not specifically targeted the upstream (gas production) sector, they have nonetheless enhanced competition among and within gas basins.

In particular, gas distribution networks in major markets can now be accessed under the Gas Code, making it more viable to build transmission pipelines into those markets. In this sense, the access reforms are helping to fill out Australia's gas pipeline grid, bringing a wider range of gas producers and basins into direct competition with one another. Construction of the Duke Eastern Gas Pipeline, for example, has promoted competition between Bass Strait and Cooper Basin gas.

In addition, as part of their legislation review programs the States and Territories are examining regulations covering the allocation of exploration permits and rules for developing gas fields. Such regulations have previously helped to confer monopoly status on particular gas producers in some gas basins.

Household contestability issues

The most significant outstanding issue in the NCP gas reform relates to the extension of competition in gas production and gas retailing to the household sector. The delay in this extension reflects issues similar to those arising for household contestability in electricity, particularly the need to establish appropriate business rules that enable customers to select from competing suppliers. The central issues relate to:

- implementing information technology systems to handle customer billing and transfer;

- determining a cost-effective approach to metering gas use by small customers; and

- achieving consistency across jurisdictions and with the electricity industry, bearing in mind that parties selling gas to consumers may be multi-utility retailers operating in several States and Territories.

The gas industry will play an increasing role in meeting Australia's energy needs, partly because gas-fired electricity generation has environmental benefits. In this sense, a well developed and competitive gas industry is vital to Australia's economic and environmental future. The NCP is playing an important role in stimulating the rapid development of a vibrant and competitive gas industry in this country.

Transport reform

An efficient transport sector is vital to Australian industry, helps fulfil the social needs of urban and rural communities, and is critical to Australia's international competitiveness. To these ends, significant progress continues in road transport reform. While reform is also occurring in rail, there has been little progress in resolving impediments to interstate trade. Consequently, the efficiency gap between road and rail services may widen over time, damaging the competitiveness of rail.

Road transport

Effective, nationally consistent regulation is the focus of the NCP road transport reforms. The aim is to transform Australia's road transport industry — already one of the most efficient in the world — into a truly national industry with minimal impediments to interstate operations.

The reforms are a response to the inconsistent and sometimes anomalous rules and regulations that have traditionally governed road transport across different States and Territories. These anomalies include regulations covering driver and vehicle operations and standards, weights and dimensions. Lack of a consistent national approach to road transport regulation can cause confusion, compromises safety and allows users to take advantage of inconsistencies, differences or lack of communication among systems. It also increases compliance costs for interstate road transport operators.

A pre-existing agenda for road transport reform was brought into the NCP implementation package in 1995. The package was designed to create a consistent national regulatory framework aimed at improving transport

efficiency, increasing road safety and reducing the administrative and compliance costs of regulation. It comprised six modules:

- registration charges for heavy vehicles;
- transport of dangerous goods;
- vehicle operations;
- heavy vehicle registration;
- driver licensing; and
- compliance and enforcement.

Early reform progress was slow, but for the Council's second tranche NCP assessment (in June 1999) governments endorsed a 19-point implementation program, with a further six reforms set for the third tranche assessment (in June 2001). The package includes a nationally consistent regulatory framework for heavy vehicle registration, driver licensing, heavy vehicle mass and loading restrictions, commercial driver fatigue management and the national exchange of vehicle and driver information.

Governments have implemented most of the 19-point program and will have implemented the six elements of the third tranche program by the end of 2001. Although the reforms that CoAG has endorsed for the NCP assessment do not incorporate the entire road reform package envisaged in 1995, the NCP has resulted in a faster and better coordinated reform process.

Despite the significant progress, road users continue to perceive shortcomings, most of which relate to matters outside the NCP assessment framework — for example, the inconsistency in stamp duty and compulsory third party insurance arrangements across jurisdictions. The Council has received anecdotal evidence of prime mover and trailer owners switching registration between jurisdictions to take advantage of differentials in stamp duty and compulsory third party insurance charges. This behaviour may undermine the principle of achieving uniform competitiveness nationwide through standard registration charges. This and similar examples suggest that the CoAG-agreed reforms are only part of the full reform needed.

In addition, CoAG is yet to schedule some of the original (pre-NCP) reforms for assessment. A significant omission is the mass limits review reform, which accounts for some 75 per cent of the economic benefits of the original 31 road transport reforms.

An efficient national road transport industry provides benefits to all Australians through more timely and lower cost transport services, particularly for regional communities. Efficient transport also enables better decisions about the location of industries that rely on transport, by helping to overcome the disadvantages of transporting goods long distances. While the

NCP has significantly enhanced the efficiency of the sector, the full benefits of reform will not be reaped until all elements of the 1995 agenda are in place.

Rail

Improvements in the competitiveness of the road transport industry have tended to exacerbate the problems of slow progress in rail reform and, possibly, biases toward road transport in infrastructure funding and taxation arrangements (Bureau of Transport Economics 1999; Productivity Commission 1999). The rail sector is the poor cousin of the NCP in some senses. The intergovernmental agreements on rail reform are limited to the establishment of one-stop shop services for interstate train-paths provided by the Australian Rail Track Corporation and are not part of the NCP.

Nonetheless, the application of general NCP principles has generated significant reform in the rail sector. Recent changes in the ownership and control of rail infrastructure in a number of jurisdictions have activated the NCP structural reform obligations. While high levels of government ownership remain in several States, private sector involvement in the industry is increasing as governments move to fully or partly privatise their rail businesses. Both Western Australia and Victoria privatised their rail line and rail transport businesses (in 1999 and 2000 respectively). New South Wales maintains government ownership over its rail line infrastructure, but intends to privatise its rail freight business by the end of 2001. The Commonwealth, New South Wales and Victoria intend to privatise their rail freight business, National Rail, by the end of 2001.

More generally, several States and Territories have introduced access regimes to facilitate the negotiation of third party access to rail services. The regimes include provisions for mandatory dispute resolution and, in most cases, independent regulatory oversight. Where a single organisation has interests in both rail line and rail transport businesses, access regimes need to address competitive neutrality issues to ensure affiliates of the access provider are not unfairly advantaged over other access seekers.

State access regimes are starting to facilitate competition in rail haulage operations, especially in bulk haulage operations. The Australian Wheat Board has estimated that the implementation of the Victorian rail access regime will deliver an average freight benefit to growers of over four million dollars per season (Australian Wheat Board 2001, p.2). New South Wales coal mining operations in the Hunter Valley have benefited from large reductions in haulage costs, helping to ensure the viability of these operations despite an increasingly competitive world market. Similar benefits are a prospect for mining operations and other users of bulk haulage services in Queensland, Western Australia and Victoria as intrastate access regimes come into effect in each of those States.

While State based solutions may be helping to address local rail access requirements, they often do not address the problems that interstate

operators face in running trains over four differently regulated networks. The development of State based solutions could aggravate the difficulties in establishing a seamless, nationally consistent approach to interstate rail access. The Council has sought to deal with these risks by working with governments to ensure their regimes adhere to a common framework. Effective regimes include measures such as a joint approach to disputes affecting interstate operations, and avoiding unnecessary duplication of safety accreditation requirements across jurisdictions for example.

In February 2001 the Australian Rail Track Corporation submitted an undertaking to the Australian Competition and Consumer Commission covering access to the interstate network between Kalgoorlie and Broken Hill. However, the corporation cannot on its own develop an undertaking for the entire national network because it does not control the track west of Kalgoorlie or east of Broken Hill.

A recent report by the House of Representatives Committee on Communications, Transport and the Arts called for 'direct and forceful Commonwealth intervention' to resolve the stalemate on national rail reform (HRCCTA 2001). The Federal Minister for Transport, Hon John Anderson, has since said that the Commonwealth could adopt a unilateral approach if cooperation between the States fails to deliver an efficient outcome.

The lack of progress in resolving interstate rail access could affect the future viability of the rail sector. As road and sea have become more efficient, rail's market share has fallen and will continue to do so, unless price distortions and regulatory inconsistencies across modes of transport are addressed and track access is provided on a consistent basis.

Other areas of transport reform

The generic NCP reforms of competitive neutrality, structural reform, legislation review and third party access have stimulated the development of more efficient transport infrastructure in other areas not covered by an industry-specific NCP agreement. These areas include ports, shipping and marine transport and airports; for example, States and Territories have scheduled for review those regulations restricting competition in ports, marine and shipping activity. These regulations include those governing:

- access to shipping berths, channels and port infrastructure;
- pilotage requirements;
- marine safety and navigation;
- vessel operating requirements, including crewing;
- the power of organisations governing ports and shipping to set prices and regulations as well as market products;

- the exemption of organisations governing ports and shipping from paying taxes and government charges; and

- provisions for licensing vessels and vessel operations.

The maritime sector has also been subject to competitive neutrality reforms, structural reforms and, in some States, the introduction of third party access regimes covering shipping berths, channels and port infrastructure. The Victorian shipping channels regime has been certified as being effective under the *Trade Practices Act 1974*, and the Council is considering an application to certify the South Australian ports regime.

Part B

B1 Access to infrastructure

B2 Assessing progress in implementing the National Competition Policy

B1 Access to infrastructure

Why do we need access regulation?

An access regime gives businesses (or individuals or other organisations) a legal avenue through which to share the use of infrastructure services owned by another business. An electricity generating company, for example, may be able to gain a legal right to transmit its electricity through another company's electricity grid. The rationale for access regulation is that the owners of major infrastructure facilities often have substantial market power that they can exploit. There are two reasons for this market power.

First, major infrastructure facilities such as airports, roads, rail networks, gas pipelines, electricity grids, and some communications networks tend to be *natural monopolies* that is, a single facility can meet market demand at less cost than two or more facilities. Duplication would be unnecessary and wasteful. Second, infrastructure owners can enjoy a strategic position in an industry because access to infrastructure facilities may be essential for businesses operating in upstream or downstream markets. Electricity generators, for example, must have access to an electricity grid to deliver their product.

Infrastructure operators can seek to exploit their market power by charging monopolistic prices to businesses using the infrastructure. This can harm competition in related markets and be detrimental to consumers. If an electricity grid owner, for example, were to charge monopolistic prices, then electricity generators would suffer reduced demand and electricity consumers would have to pay more for power.

If the business that owns or operates the infrastructure does *not* also have interests in upstream or downstream markets, then the public policy issue is basically one of dealing with monopoly behaviour. An access regime is one means of restraining prices and maintaining output in these situations, although, in principle, there are also other means such as direct price monitoring or control.

More complex problems arise if a business that operates essential infrastructure also has interests in upstream or downstream markets. The business will still have incentives to charge monopolistic prices to users of its infrastructure. But, it may discriminate against its competitors, offering them access only on inferior terms and conditions, or even denying them access.

To address these problems, governments have been introducing legislated access regimes. Allowing access to infrastructure facilities encourages new

firms to enter upstream and downstream markets. This entry instils greater competition in those markets, promoting more efficient use of infrastructure. Consumers will experience a wider choice of supplier, with the likelihood of a better range of services and/or lower prices.

Part IIIA of the *Trade Practices Act 1974*

Part IIIA of the *Trade Practices Act 1974* (TPA) establishes principles to facilitate competitive outcomes in markets that rely on natural monopoly infrastructure. It sets out the conditions under which businesses have a right of access to services provided by certain infrastructure facilities. It also sets out the roles and responsibilities of the government bodies that administer the access regime.

Part IIIA of the TPA provides a regulatory framework for access negotiation supported by credible dispute resolution procedures.

Pathways to access

Part IIIA sets out three pathways for access to infrastructure services:

- *Declaration (and arbitration).* A business that wants access to a particular infrastructure service applies to have the service 'declared'. If the service is declared then the business and the infrastructure operator try to negotiate terms and conditions of access. If they fail to reach agreement, then they determine the terms and conditions through legally binding arbitration.

- *Certified (effective) regimes.* Where an 'effective' access regime already exists, a business seeking access must use that regime. Under part IIIA, following a recommendation from the National Competition Council, an access regime can be certified as effective by the designated Commonwealth Minister. The criteria for assessing whether an access regime is effective focus on whether the regime has an appropriate framework to promote competitive outcomes.

- *Undertakings.* Infrastructure operators make a formal undertaking to the Australian Competition and Consumer Commission, setting out the terms and conditions on which they will provide access to their services. If accepted, these undertakings are legally binding, so other businesses can use them to gain access.

Review of part IIIA

The Productivity Commission is reviewing part IIIA, including clause 6 of the Competition Principles Agreement. The commission released an issues paper,

seeking public submissions, and subsequently a position paper (Productivity Commission 2001), outlining some preliminary recommendations and seeking further public comment. The National Competition Council provided two submissions and appeared at the public hearings conducted as part of the commission's consultation process.

The Council submitted that the national access regime, although new, has fostered considerable gains in utility reform. While there is scope to address flaws in the framework, the structural underpinnings are sound. The scope of declaration has been confined within a narrow band of natural monopoly infrastructure services and the negotiation/arbitration framework is one of the least interventionist of any access regime introduced in recent years.

The Council supported many of the commission's proposals for amendment to part IIIA (as detailed in the commission's position paper) because it considers that fine tuning is desirable. The proposals included:

- introducing an efficiency based objects clause for part IIIA;
- including general pricing principles within the part IIIA framework;
- requiring Commonwealth access regimes to be assessed for effectiveness against the clause 6 principles and;
- streamlining the access undertakings framework by allowing an access provider to lodge an undertaking for a declared service; by making the criteria for accepting an undertaking and arbitrating declared services more consistent with the principles for certification; and by allowing full merits review on determination of access undertakings.

However, the Council considers that wholesale change to part IIIA poses serious risks. The Council has serious reservations about the commission's view that the structural framework of part IIIA is deficient. While measures to strengthen the framework are desirable, overturning it in favour of something new seems an excessive response to the concerns raised in the position paper.

The Council is especially concerned about the proposals to rewrite the declaration criteria. These proposals appear to stem from the commission's concerns that the current criteria have an inappropriate focus on 'competition' rather than 'efficiency,' making the ambit of part IIIA too wide. The Council considers that experience does not support the commission's concern.

The full text of the Council's submissions are available from its web site. Further details of the review of part IIIA are available from the Productivity Commission's web site.

Overview of declaration activities

Since its last annual report, the Council has received three new applications for declaration of services provided by infrastructure facilities. A summary of all declaration applications appears in table B1.1.

Normandy Mining's application for declaration of electricity services provided through Western Power's south west integrated electricity transmission and distribution system

On 9 January 2001 the Council received an application for declaration of certain electrical transmission and distribution services provided by Western Power Corporation. The application covers electrical transmission and distribution systems situated in the south west of Western Australia (known as the south west interconnected system), servicing the area bounded by Kalbarri in the north, Kalgoorlie in the east, Albany in the south and the western coast of Western Australia. Normandy Power, NP Kalgoorlie and Normandy Golden Grove Operations, (Normandy) are the applicants.

The Council released a discussion paper, consulted with interested parties and sought submissions on the application. The Council will make recommendation on the matter to the Western Australian Premier.

On 7 May 2001 Western Power instituted proceedings in the Federal Court in Perth against the Council and Normandy, seeking to prevent the Council from considering Normandy's application for declaration. Western Power argues that the application services are not 'services' within the meaning of part IIIA. These proceedings are ongoing.

Freight Australia's application for declaration of rail track services provided through the Victorian intrastate rail network

On 1 May 2001 the Council received an application from Freight Victoria Limited, a private company trading as Freight Australia, for declaration of services provided by the rail lines it leases from the Victorian Government, excluding services provided by sidings and some branch lines.

The Victorian Rail Access Regime regulates access to all rail lines leased to Freight Australia, including sidings and branch lines, but only for the purposes of transporting freight. If the services under application are declared, then their access terms and conditions may be negotiated under part IIIA, rather than under the Victorian regime[4].

[4] Section 109 of the Australian Constitution provides that Commonwealth legislation takes precedence over State legislation to the extent that there is an inconsistency. However, the Council has not considered the extent to which the Victorian regime

The Council released an issues paper in June 2001, asking for submissions and subsequently consulted with interested parties. The Council will consider the matters raised by interested parties in preparing its recommendation.

Portman Iron Ore Limited's application for declaration of rail track services provided through WestNet Rail's Koolyanobbing-Esperance rail track

On 9 August 2001 the Council received an application from Portman Iron Ore Limited for declaration of the services provided by the Koolyanobbing-Esperance rail line. WestNet Rail operates this line under a 49 year lease from the Western Australian Government.

The Council will consider the application through a public process, before forwarding its recommendation to the Commonwealth Minister for Financial Services and Regulation.

Overview of certification activities

Since its last annual report, the Council has received three new applications from State and Territory governments seeking to have their regimes 'certified' as being effective under part IIIA, making a total of 15 certification applications since the TPA's enactment.

The Council has certified eight regimes as being effective. Table B1.2 summarises the Council's certification work.

Northern Territory Gas Access Regime

The Council received the Northern Territory's application for certification on 13 March 2001. The Council circulated an issues paper in late March, seeking public comment on the application. In response, the Council received a submission from NT Gas.

The Northern Territory Gas Access Regime applies the National Third Party Access Code for Natural Gas Pipelines (the National Gas Code) in the Northern Territory without any derogations or transitional arrangements. The National Gas Code is discussed extensively in earlier Council annual reports.

The Council made its recommendation on the effectiveness of the Northern Territory Gas Access Regime to the Commonwealth Minister for Financial

may be in conflict with part IIIA because it is not relevant to the Council's consideration of the application.

Services and Regulation in June 2001. The Minister is considering the matter.

ACT Gas Access Regime

The Council forwarded its recommendation on the ACT Gas Access Regime to the Commonwealth Minister for Financial Services and Regulation on 19 July 2000. The Minister certified the regime on 25 September 2000 as being effective for 15 years. The Minister's decision was in accordance with the Council's recommendation.

New South Wales Gas Access Regime

In March 1999 the Council recommended to the Commonwealth Minister for Financial Services and Regulation that the New South Wales Gas Access Regime be certified. On 29 March 2001 the Minister announced his decision to certify the regime. The Minister's decision had been delayed pending resolution of cross-vesting issues arising.

Queensland Gas Access Regime

The Council received Queensland's application to certify its gas access regime in September 1998. While the Queensland Code was submitted to the Council as an application of the National Gas Code, it incorporates significant derogations from that code. The derogations affect major transmission pipelines, affecting issues such as access pricing and information flows to access seekers.

While the Council forwarded its recommendation on the regime to the Commonwealth Minister for Financial Services and Regulation in February 2001, the Minister subsequently requested advice on further information that the Queensland Government and the owners of the derogated pipelines had provided to him. The Council is examining that information to provide advice to the Minister.

The Queensland regime was enacted in May 2000. While not certified, the provisions of the regime (including obligations on pipeline owners) operate.

Victorian Gas Access Regime

The Council received Victoria's certification application in July 1999. A difference between the Victorian application of the National Gas Code and other State regimes is the application of a market carriage framework for access to pipelines. The Victorian application also contained transitional arrangements.

The Council recommended certification of the regime in April 2000, but was subsequently required to provide further advice on the transitional arrangements. The Commonwealth Minister for Financial Services and Regulation certified the regime as being effective on 29 March 2001.

Western Australian Rail Access Regime

The Western Australian Government applied for certification of the Western Australian Rail Access Regime in February 1999. The Council's public process identified a number of concerns Western Australia subsequently addressed through amendments to the regime. These amendments included the creation of an independent rail access regulator with broad powers to enforce compliance with the regime.

The Council released a draft recommendation in September 1999, stating its preliminary view that the amended regime would be an effective access regime. The Council received 11 submissions on the draft and liaised further with key stakeholders. These processes identified additional concerns which were subsequently resolved with further refinements of the regime.

For one significant outstanding matter — that is, how to resolve issues relating to interstate rail operators — the Western Australian Government considered it would be more appropriate to resolve the issue of interface between its regime and other relevant regimes after further development in a national access regime for interstate rail services. Consequently the Government withdrew its application for certification in November 2000.

Northern Territory Electricity Network Access Regime

On 1 December 1999 the Council received an application from the Northern Territory Government to certify a regime as being effective for access to the Territory's electricity networks. The Council issued a draft recommendation in September 2000, noting that it would be unable to recommend certification to the Minister unless the outstanding issues were resolved.

The principal areas of concern included limitations on contestability and the out-of-balance energy system.

The Northern Territory Government proposed amendments to the regime to address these outstanding matters. These amendments were implemented and the Council is finalising its recommendation to the Commonwealth Minister for Financial Services and Regulation.

Victorian Rail Access Regime

On 27 July 2001 the Council received an application from the Victorian Government for certification of the Victorian Rail Access Regime as being

effective. Some track covered by this regime is also covered by a declaration application lodged by Freight Australia.

The Victorian Rail Access Regime began operations on 1 July 2001 to regulate access, for the purpose of carrying freight only, to:

- the intrastate rail line network leased to Freight Australia;
- the freight rail lines into Melbourne leased to Freight Australia;
- part of the metropolitan rail network leased to Bayside Trains;
- the South Dynon Terminal leased to National Rail; and
- the Dynon Terminal leased to Freight Australia.

The Council will assess this application through a public process.

South Australian Ports and Maritime Services Access Regime

In August 2001 the Council received an application from the South Australian Government to certify their Ports and Maritime Services Access Regime as being effective. The regime provides for third party access to certain maritime services provided at prescribed ports. These services include:

- vessel access to ports;
- pilotage services;
- berthing rights;
- port services for loading and unloading vessels; and
- the storage of goods.

The Council will assess this application through a public process.

Overview of coverage activities under the National Gas Code

The Council has ongoing roles under the National Gas Code. In particular, it considers applications for coverage of a pipeline and revocation of coverage. The Council understands the need for certainty about the likely coverage of new infrastructure and is available to advise investors on whether a proposed new pipeline would meet the coverage criteria. Alternatively, investors may seek coverage before construction of a new pipeline, by submitting an access

arrangement to the regulator or adopting the competitive tender process of the National Gas Code. The Council received no new applications for coverage in 2000-01.

Conversely, revocation issues arise from, for example, technological innovation and changing market conditions. The Council received eight applications for revocation of coverage in 2000-01.

Coverage and revocation of gas pipelines

In assessing both coverage and revocation applications, the Council must consider whether the relevant pipelines meet or continue to meet the coverage criteria in the National Gas Code. The Council must then make a recommendation to the relevant State, Territory or Federal Minister.

Coverage of the Eastern Gas Pipeline

On 30 June 2000 the Council made its recommendation on coverage of the Duke-owned Eastern Gas Pipeline to the Commonwealth Minister for Industry, Science, and Resources. The reasoning for the Council's recommendation was discussed in the Council's 1999-2000 annual report.

On 16 October 2000 the Minister for Industry, Science and Resources decided that the Eastern Gas Pipeline should be covered under the National Gas Code.

The Duke Group of companies applied to the Australian Competition Tribunal for a review of the Minister's decision. The hearings for the application for the review were held from 29 January 2001 to 8 February 2001. The tribunal on 4 May 2001 handed down its decision not to cover the pipeline; *Duke Eastern Gas Pipelines Pty Ltd (2001) ACompT 2*.

The tribunal concluded that coverage of the pipeline under the National Gas Code would not promote competition in another market (in particular, the south east Australia gas sales market) compared to the existing voluntary access promised by Duke. The main basis for this conclusion was that Duke does not have the market power to restrict competition in gas sales. The underlying determinants of the tribunal's decision included:

- the commercial imperatives faced by Duke (that is, the imperatives to attain a return on the pipeline by optimising use);
- the countervailing power of other market participants;
- the existence of spare pipeline capacity serving the gas sales market; and
- some degree of competitive pressure from the Interconnect and Moomba-to-Sydney Pipeline.

The tribunal concluded that criterion (a) of the coverage test was not met. The tribunal considered that criterion (b) was satisfied, finding that it would not be economic to develop another pipeline to provide the services provided by the Eastern Gas Pipeline. The tribunal considered that the pipeline provided a point-to-point service for the transport of gas from Longford to Sydney, and that it would not be economic to develop another pipeline to provide this service over the likely range of demand serviced by the pipeline. The tribunal did not need to conclude on criteria (c) and (d).

Revocation of the Dalby distribution network (Queensland)

On 23 August 2000 the Council received an application to revoke coverage of the Dalby natural gas distribution system. The applicant was the Dalby Town Council, which owns and operates the distribution system.

The Dalby distribution system supplies gas to of 2,278 customers through 86 kilometres of reticulated gas pipes and delivers an annual volume of gas of about 160 terajoules worth approximately $1.7 million. The majority of gas is used by 14 large customers, consuming around 118 terajoules. The distribution system draws gas from the Roma-to-Brisbane pipeline, which Australian Pipeline Trust owns.

The Council was not satisfied that regulation under the National Gas Code would promote competition in the relevant gas sales market. The applicant is the sole supplier of gas through the distribution system and there was no evidence that any third party requires, or is likely to require, access in the short to medium term to supply gas to customers. Further, the Council considered that regulation was likely to impose costs that would outweigh any benefits and would be contrary to the public interest.

In November 2000 the Council recommended revocation of coverage of the Dalby distribution system. On 28 November 2000 the Queensland Minister for Mines and Energy revoked coverage of the Dalby distribution system.

Revocation of the Peabody–Mitsui transmission pipeline (Queensland)

On 18 August 2000 the Council received an application from Peabody Moura Mining to revoke coverage of the Peabody-Mitsui Pipeline near Moura in Queensland.

The Peabody–Mitsui Gas Pipeline was constructed to carry gas from the Moura Mine gas drainage operation to the Duke Queensland Gas Pipeline (formerly known as the PG&E Queensland Gas Pipeline), which runs from Wallumbilla to Gladstone and Rockhampton. The pipeline also carries gas for Energex Retail, from the Duke Queensland Gas Pipeline to the Queensland Nitrates Plant. The Dawson Valley Pipeline runs near the Peabody–Mitsui Pipeline for part of its length. The application for revocation of the Dawson Valley Pipeline is discussed below.

The Council was not satisfied that regulated access to the pipeline would promote competition in another market or that coverage would be in the public interest. No prospective explorer for gas or producer of gas indicated any intention to seek to interconnect with or gain access to the Peabody–Mitsui Gas Pipeline. The Council also considered that no new customers for natural gas were likely to be supplied through the pipeline.

In November 2000 the Council forwarded its recommendation to revoke coverage to the Minister. On 23 November 2000 the Commonwealth Minister for Industry, Science and Resources revoked coverage of the pipeline.

Revocation of the Dawson Valley pipeline and the Kincora to Wallumbilla pipeline (Queensland)

On 21 August 2000 the Council received applications from the Oil Company of Australia to revoke coverage of the Kincora-to-Wallumbilla Pipeline and the Dawson Valley Pipeline. The former pipeline transports gas 53 kilometres from the Kincora gas plant in the Surat Basin to the Roma-to-Brisbane Pipeline which transports gas collected from a number of gas fields in the western Surat Basin. The gas transported in the pipeline is sold to Origin Energy, which on-sells it to customers in southeast Queensland. The Dawson Valley Pipeline transports gas 47 kilometres from the Dawson Valley gas fields in the Bowen Basin to the Duke Queensland Gas Pipeline, which runs from Wallumbilla to Gladstone and Rockhampton. At the time of the application, the major customers of the gas transported in the pipeline were Origin Energy (which supplies the Boyne Island smelter), the Ticor Chemical Company in Gladstone and Energex (which supplies the Queensland Nitrates Plant at Moura).

The Council was not satisfied that regulated access to either pipeline would promote competition in another market or that coverage would be in the public interest. The Council considered that there was little likelihood in the short to medium term of a third party requiring access to the Dawson Valley Pipeline or the Kincora-to-Wallumbilla pipeline.

In November 2000 the Council forwarded its recommendation to revoke coverage to the Minister. On 23 November 2000 the Commonwealth Minister for Industry, Science and Resources revoked coverage of the pipelines.

Revocation of the Riverland and Mildura transmission pipelines (South Australia/Victoria)

In May 2001 the Council received applications from Envestra Limited to revoke coverage of the Riverland gas transmission pipeline (located in South Australia) and the Mildura gas transmission pipeline (located in South Australia and Victoria). Envestra owns the pipelines.

The Council forwarded its recommendations on the pipelines to the South Australian Minister for Energy (for the Riverland Pipeline) and the

Commonwealth Minister for Industry, Science and Resources (for the Mildura Pipeline) in August 2001.

Revocation of the Moomba to Sydney transmission pipeline and the Dalton to Canberra transmission pipeline (New South Wales)

On 28 April 2000 the Council received an application from Eastern Australian Pipeline Limited for revocation of three pipelines within the Moomba-to-Sydney Pipeline System:

- the main pipeline running from Moomba to Sydney (the Moomba-to-Wilton Pipeline);
- the transmission pipeline branching off the main pipeline to Canberra (the Dalton-to-Canberra Pipeline); and
- the transmission pipeline branching off the main pipeline to Culcairn (the Young-to-Culcairn Pipeline).

The Council forwarded its final recommendation not to revoke coverage to the Commonwealth Minister for Industry, Science and Resources on 8 September. The Minister decided on 16 October 2000 not to revoke coverage of the pipelines.

Following the decision of the Australian Competition Tribunal in the Eastern Gas Pipeline case, Eastern Australian Pipeline Limited re-applied on 18 June 2001 for revocation of two pipelines within the Moomba-to-Sydney Pipeline System:

- the Moomba-to-Wilton Pipeline; and
- the Dalton-to-Canberra Pipeline.

The Council released an issues paper in late June calling for submissions. The Council will release a draft recommendation and take further submissions before sending its final recommendation to the Commonwealth Minister for Industry, Science and Resources.

Table B1.1: Summary of declaration applications to the Council

Applicant	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Australian Union Students (April 1996)	Payroll deduction service provided by Department of Education Employment Training and Youth Affairs	Not to declare (June 1996)	Not to declare (August 1996)	The Union applied to the Australian Competition Tribunal for review of the Minister's decision. Tribunal determined not to declare (July 1997).
Futuris Corporation (August 1996)	Western Australian gas distribution service			Application withdrawn (November 1996).
Australian Cargo Terminal Operators (November 1996)	Qantas ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			Application withdrawn.
Australian Cargo Terminal Operators (November 1996)	Ansett ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			Application withdrawn.
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Sydney International Airport (three applications)	To declare (May 1997)	To declare (July 1997)	Federal Airports Corporation applied to the Australian Competition Tribunal for review of the Minister's decision. Tribunal determined to declare the services for a period of five years from 1 March 2000.
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Melbourne International Airport (three applications)	To declare (May 1997)	To declare for a period of 12 months (July 1997)	Services declared from August 1997 until 9 June 1998, thereafter subject to access provisions of the *Airports Act 1996* (Cwlth).
Carpenteria Transport (December 1996)	Queensland rail services, including above-rail services	Not to declare (June 1997)	Not to declare (August 1997)	Carpenteria applied to Australian Competition Tribunal for review of Minister's decision. Application for review was subsequently withdrawn.

Table B1.1 continued

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Standardised Container Transport (February 1997)	New South Wales rail track services (Sydney to Broken Hill)	To declare (June 1997)	Deemed to be not declared due to expiry of 60 day time limit (August 1997)	Standardised Container Transport applied to Australian Competition Tribunal for review of Minister's decision. Application for review was subsequently withdrawn following successful access negotiations.
New South Wales Minerals Council (April 1997)	New South Wales rail track services in Hunter Valley	To declare (September 1997)	Deemed not to declare due to lapse of time (November 1997)	NSW Minerals Council applied to the Australian Competition Tribunal for review of Minister's decision. Application for review was withdrawn following the certification as being effective of the New South Wales Rail Access Regime.
Standardised Container Transport (July 1997)	(1) Western Australia's rail track services; (2) arriving/ departing services; (3) marshalling/shunting service; (4) marshalling/ shunting access; (5) fuelling service (five applications)	To declare (1) rail service; not to declare other services (November 1997)	Not to declare any of the five services (January 1998)	Standardised Container Transport applied to the Australian Competition Tribunal for a review of the Minister's decision. Application for review was subsequently withdrawn following successful access negotiations.
Robe River (August 1998)	Hamersley rail track services			Federal Court decision that service not within part IIIA (June 1999). Federal Court decision was appealed. Application for declaration was withdrawn by Robe prior to Full Federal Court hearing. Appeal stayed.
Normandy Mining	Electricity services provided through Western Power's south west electricity networks	Under consideration by the Council		
Freight Australia	Rail track services provided through Victoria's intrastate rail network	Under consideration by the Council		

Table B1.1 continued

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Portman Iron Ore Limited (August 2001)	Rail track services provided through the Koolyanobbing-to-Esperance rail track	Under consideration by the Council		

Table B1.2: Summary of certification applications to the Council

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
New South Wales Gas Distribution Networks Regime (interim regime, October 1996)	Access to services of relevant gas pipelines	To certify (May 1997)	To certify (August 1997)	Certified; only intended as an interim regime before the introduction of the National Gas Code.
Victorian commercial shipping channels (December 1996)	Access to commercial shipping channels leading into Melbourne Port	To certify (May 1997)	To certify (August 1997)	Certified for five years.
New South Wales Rail (June 1997)	Access to rail track services	To certify (April 1999)	To certify (November 1999)	Certified until 31 December 2000.
South Australian Gas Access Regime (June 1998)	Access to services of relevant gas pipelines	To certify (September 1998)	To certify (December 1998)	Certified for 15 years.
Queensland Rail (June 1998)	Access to rail track services			Application withdrawn (February 1999).
Queensland Gas Access Regime (September 1998)	Access to services of relevant gas pipelines	Sent to Minister (February 2001), but not publicly available		
New South Wales Gas Access Regime (October 1998)	Access to services of relevant gas pipelines	To certify (March 1999)	To certify (March 2001)	Certified for 15 years. Decision had been delayed pending resolution of cross-vesting issues.
Australian Capital Territory Gas Access Regime (January 1999)	Access to services of relevant gas pipelines	To certify (July 2000)	To certify (September 2000)	Certified for 15 years.
Western Australian Gas Access Regime (March 1999)	Access to services of relevant gas pipelines	To certify (February 2000)	To certify (May 2000)	Certified for 15 years.
Western Australian Rail (February 1999)	Access to rail track services			Application withdrawn by Western Australian Government.

Application	*Service*	*Council recommendation*	*Minister's decision*	*Outcome*
Northern Territory/South Australian Rail (March 1999)	Access to rail track services	To certify (February 2000)	To certify (March 2000)	Certified until 31 December 2030.
Victorian Gas Access Regime (July 1999)	Access to services of covered pipelines	To certify (April 2000)	To certify (March 2001)	Certified for 15 years.
Northern Territory Electricity Access Regime (December 1999)	Access to services of electricity distribution networks	Under consideration by Council		
Northern Territory Gas Access Regime (March 2001)	Access to services of covered pipelines	Sent to Minister (June 2001)		
Victorian Rail Access Regime (July 2001)	Access to rail track services	Under consideration by Council		
South Australian Ports and Maritime Services Access Regime (August 2001)	Access to prescribed port and maritime services	Under consideration by Council		

Table B1.3: Summary of coverage and revocation applications under National Gas Code to the Council

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
Southern Cross Pipelines (March 1999)	GGTP-to-Mt Keith Power Station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999).
Southern Cross Pipelines (March 1999)	GGTP-to-Leinster Power Station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999).
Southern Cross Pipelines (March 1999)	Kalgoorlie-to-Kambalda (Western Australia)	Revocation	Not to revoke coverage (June 1999)	Not to revoke coverage (July 1999).
Southern Cross Pipelines (March 1999)	GGTP-to-Kalgoorlie Power Station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999).
SAGASCO South East (May 1999)	Tubridgi Pipeline (Western Australia)	Revocation	Not to revoke coverage (July 1999)	Not to revoke coverage (August 1999).
Boral Energy Resources (May 1999)	Beharra Springs Pipeline (Western Australia)	Revocation	To revoke coverage (July 1999)	To revoke coverage (August 1999).
Robe River Mining Company (June 1999)	Karratha-to-Cape Lambert Pipeline (Western Australia)	Revocation	To revoke coverage (September 1999)	To revoke coverage (September 1999).
Epic Energy SA (December 1999)	South East Pipeline System (South Australia)	Revocation	To revoke coverage (March 2000)	To revoke coverage (April 2000).
AGL Energy Sales and Marketing (January 2000)	Eastern Gas Pipeline (Longford to Sydney)	Coverage	To cover (June 2000)	Minister decided to cover. Duke Energy applied to the Australian Competition Tribunal for review of Minister's decision. Tribunal decided to not cover.
East Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Moomba-to-Sydney Pipeline System (main trunk line from Moomba to Wilton)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)

Applicant	*Pipeline*	*Decision sought*	*Council recommendation*	*Minister's decision/outcome*
East Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Young-to-Culcairn lateral (New South Wales)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000).
East Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Dalton-to-Canberra lateral (New South Wales and ACT)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000).
Envestra (April 2000)	Palm Valley to Alice Springs Pipeline (Northern Territory)	Revocation	To revoke coverage (July 2000)	To revoke coverage (July 2000).
Envestra (April 2000)	Alice Springs distribution system (Northern Territory)	Revocation	To revoke coverage (July 2000)	To revoke coverage (July 2000).
Dalby Town Council (August 2000)	Dalby distribution system	Revocation	To revoke coverage (November)	To revoke coverage (November 2000).
Peabody Moura Mining (August 2000)	Peabody–Mitsui Pipeline	Revocation	To revoke coverage (November 2000)	To revoke coverage (November 2000).
Oil Company of Australia (August 2000)	Dawson Valley Pipeline	Revocation	To revoke coverage (November 2000)	To revoke coverage (November 2000).
Oil Company of Australia (August 2000)	Kincora-to-Wallumbilla Pipeline	Revocation	To revoke coverage (November 2000)	To revoke coverage (November 2000).
Envestra (May 2001)	Riverland pipeline	Revocation	To revoke coverage (August 2001)	
Envestra (May 2001)	Mildura Pipeline	Revocation	To revoke coverage (August 2001)	
East Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Moomba-to-Wilton Pipeline	Revocation	Under consideration	
East Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Dalton-to-Canberra Pipeline	Revocation	Under consideration	

B2 Assessing progress in implementing the National Competition Policy

A key activity for the National Competition Council during 2000-01 was the June 2001 assessment of government's progress in implementing the National Competition Policy (NCP) and related reforms. This assessment built on the work of the first and second tranche assessments undertaken in June 1997 and June 1999 respectively.

Under the 1995 NCP agreements, the June 2001 assessment was to have been the last: the essential reform ingredients of the NCP were to have been fully implemented by the end of 2000. However, NCP implementation has proved more challenging than envisaged. Since 1995, the Council of Australian Governments (CoAG) has amended some elements of the program to extend reform timetables beyond 2001. Thus:

- rural water reform will not be completed until at least 2005, probably much later;
- the national electricity market, although significantly progressed, will not be implemented to the level of household choice of electricity supplier for several years;
- a timetable for the remaining road transport reforms is yet to be developed; and
- the deadline for completion of the legislation review and reform program has been set back by eighteen months to mid-2002.

Nevertheless, while governments still have some work to do to complete their NCP legislation review and reform programs, much has been accomplished in the five years of the NCP. Many sectors of the economy — including water management, the utilities, transport, communications, agricultural marketing, professions, finance and retail trading — have undergone extensive pro-competitive change.

In reaffirming their commitment to the NCP in November 2000, governments agreed that the Council should conduct annual assessments of reform implementation until at least 2005. CoAG will conduct a further review of the terms and conditions of the NCP agreements and the Council's assessment role before September 2005.

Water

The importance of the NCP to the community is best exemplified in the water reform commitments of the NCP. In its first annual report in 1996, the Council said that:

> *The [water] reforms proposed extend beyond competition policy matters, and if fully implemented, will probably have a far greater impact on community welfare in the longer term (including explicit consideration of the environment) than any other measure.* (NCC 1996, p.31)

Excessive and inappropriate use of water to date has created Australia's largest economic, social and environmental problems. The need to change the way in which Australia has traditionally exploited water resources is now accepted throughout the community. The NCP water reform program provides the framework and an implementation agenda for much needed changes to managing both urban and rural water systems.

Urban water reforms are nearly complete in most jurisdictions. The NCP reforms include consumption based pricing of water to discourage wasteful use, cost recovery by water service providers to help ensure adequate investment in infrastructure, protection against inadequate service standards and/or monopoly pricing by water service providers, and programs to improve water quality.

Rural water reform primarily relates to arrangements for the use of water in irrigated agricultural activities. More than 70 per cent of water use in Australia is in irrigation. Excessive allocations of water to irrigation over most of the past century caused extensive damage to river systems and groundwater resources, while salinity associated with rising watertables destroyed large tracts of productive land. Water reform (in conjunction with such measures as the national action plan on salinity and water quality) is an essential component of the national initiatives seeking to avoid more extensive damage.

The NCP rural water reforms are designed to address these problems at their root cause by ensuring:

- the availability of adequate water to protect the environment;
- the maintenance and efficient development of water infrastructure;
- the clear allocation of rights to use water; and
- the separation of water rights from the ownership of land, and the introduction of trading rules, to provide for trading of water rights to help ensure water is used where it is most valued.

Progress in rural water reform has been impressive. All jurisdictions have reform paths in place to:

- institute efficient water pricing;
- ensure adequate allocation of water to the environment; and
- provide for clear property rights for water, separate from land title.

Embryonic water trading arrangements are gradually extending and expanding. Nonetheless, this area of NCP reform is extremely complex and difficult. There are no easy paths forward, with tensions between the objectives of:

- implementing reform as quickly as possible;
- devoting the time and effort needed to ensure meaningful consultation with interested parties and delivery of the best possible approach to reform; and
- accommodating the vital ongoing interests of farmers and other water users in the transition to the new arrangements, including providing structural adjustment assistance where needed.

Electricity

The central NCP commitment on electricity is for (relevant) governments to create the national electricity market and meet the market related objectives. CoAG recently re-affirmed electricity reform principles and implementation targets, and governments have agreed to review market arrangements.

The national electricity market has been a remarkable achievement. The market has already conferred enormous benefits on medium sized and large businesses. The Australian Bureau of Agricultural and Resource Economics (ABARE) estimated that Australia's gross domestic product will be 0.26 per cent ($2.4 billion in 2001 prices) higher by 2010 than in the absence of reform, with the net present value of benefits of reform between 1995 and 2010 totalling $15.8 billion (in 2001 prices) (Short et al. 2001, p. 84). The New South Wales 2001 NCP annual report cited Treasury estimates that electricity customers in the State saved over $1.6 billion (in 2001 prices) between the commencement of reform in May 1995 and December 2000. Victoria's 2001 NCP annual report cited:

- a 1998 report by the Australian Chamber of Manufacturers, which found that industrial and commercial businesses achieved an average reduction in electricity costs of 23 per cent between 1994 and 1998; and

- a 2000 report by the National Electricity Code Administrator (NECA), which found that the average wholesale electricity price in Victoria was 16 per cent lower than the average price at the market start.

Even for households in most national electricity market regions (who currently cannot choose their electricity supplier, so have yet to benefit from competition in electricity generation and retailing activities), there have been benefits from more efficient provision of electricity services overall. A recent Victorian Office of the Regulator-General determination, for example, reduced average distribution charges by 12–22 per cent from 1 January 2001, saving households up to $65 on annual electricity bills.

Despite these substantial benefits from the national electricity market, there have been many critics of electricity reform. The criticisms are made against a background of rising energy costs worldwide (driven by rising oil prices and demand for energy) and the gradual exhaustion of excess electricity generation capacity as demand rises, eroding opportunities for low wholesale electricity prices. Some have suggested that the electricity market is inevitably following the path of problems experienced overseas — particularly the high profile failures in California's electricity market — and that governments should immediately and intrusively re-regulate the industry.

Indeed, the national electricity market is approaching a watershed in its development and government decisions over the next six to 12 months will determine its future structure and performance. However, the issues arise because the market arrangements need to be refined, rather than overturned. The overall market framework, which provides for competition between generators and retailers of electricity and shared use of transmission and distribution infrastructure, provides the best opportunity for an efficient electricity industry and competitive prices to consumers in the long run. Possible market refinements include:

- addressing deficiencies in approval processes for new transmission system interconnection to help ensure interregional competition and the sharing of reserve capacity in electricity generation;

- improving institutional arrangements, particularly between NECA, the National Energy Market Management Company (NEMMCO) and the Australian Competition and Consumer Commission, to help ensure efficient market operation and regulation;

- settling appropriate and consistent arrangements for extending competition to the sale of electricity to households;

- appropriately phasing out transitional arrangements that impede the full operation of the market; and

- safeguarding against changes in market structure or conduct that may impede or reduce competition between generators.

The overriding objective is to retain independent operation and regulation of the national electricity market. Governments have a clear role, from an economic policy perspective, in ensuring that the architecture of the national electricity market is and remains appropriate, given this objective.

A further criticism of the national electricity market points to an increase in coal fired electricity generation, exacerbating environmental problems. The Senate Environment, Communications, Information Technology and the Arts Committee recommended that the Council's assessments incorporate benchmarks for the reduction of the greenhouse intensity of power generation (recommendation 31) (Commonwealth of Australia 2000). As the Senate Committee recognised, however, this is beyond the current scope of the NCP agreements (see recommendation 30). Governments can introduce policies designed to deal with the social implications of electricity supply and consumption, such as rules or general tax or subsidy measures to correct for the environmental costs of electricity. The national electricity market's separation of generation activities from other parts of electricity supply facilitates such policies. New South Wales, for example, introduced measures to allow consumers to choose 'green' electricity without impeding the operation of the market.

But governments should avoid becoming involved in the day-to-day operation of the market. As they have recognised, some electricity wholesale price volatility in the short to medium term is an inevitable, even efficient, aspect of the market's operation, encouraging appropriate electricity supply and demand responses. The primary cause of problems in California has been inadequate market incentives in the supply of, and demand for, electricity. Already, there is some evidence that rising wholesale prices are encouraging expansion of, and new entry in, generation activities, as well as changes in the ways in which businesses use electricity. These developments are essential to ensure competitive prices in the long run. Market refinements along the lines outlined above will help to reinforce these incentives, but overly intrusive government action risks defeating them.

Gas

Gas reform has been a major success story of the NCP. CoAG agreements on gas reform date back to 1991, but little happened for five years until the gas reform commitments were rolled into the NCP program. CoAG's objectives for national free and fair trade in gas are now largely in place. The only significant outstanding matter is the extension of competition in gas production and retailing to the household level.

Gas reform under the NCP has transformed the gas industry in Australia. The introduction of the National Gas Access Code (particularly in relation to gas distribution pipelines) and increased competition in gas exploration, have stimulated gas production and pipeline development activities. There is unprecedented interest in the development of gas resources in the Bass

Strait, the Cooper Basin, the Otway Basin, the Timor Sea and elsewhere. A major new pipeline has been completed recently, linking gas processing facilities at Longford in Victoria to consumers in Sydney, Canberra and elsewhere in New South Wales and Victoria. There are competing proposals to build new pipelines linking gas fields in Victoria to consumers in South Australia, and linking gas fields in the Timor Sea to consumers in south east Australia. Other pipeline proposals include linking Longford to Tasmania and linking gas fields in Papua New Guinea to Queensland and possibly south east Australia.

The NCP is stimulating the rapid development of a vibrant and competitive gas industry in Australia. The gas industry is likely to play an increasing role in meeting Australia's energy needs, partly because gas is likely to increase its role in electricity generation for environmental reasons. A well developed and competitive gas industry is vital to Australia's economic and environmental future.

Road transport

Effective, nationally consistent regulation — the focus of the NCP road transport reform program — is necessary to transform the Australian road transport industry, already one of the most efficient in the world, into a truly national industry with minimal impediments to interstate operations. An efficient national road transport industry provides benefits to all Australians through more timely and lower cost transport services, particularly for regional communities. Efficient transport also enables better decisions about the location of industries that rely on transport, by helping to overcome the disadvantages of transporting goods long distances.

Governments have made advances with road transport reform under the NCP. They have implemented the bulk of the 19 components of the national second tranche NCP program and will have implemented the six elements of the third tranche NCP program by the end of 2001. Although the reform programs that CoAG endorsed for the three NCP tranches have not incorporated the entire road reform package envisaged in 1995, the NCP has resulted in a faster and better coordinated reform process. Uniform mass limits is the most significant element of the 1995 program not in the three reform tranches to date.

Rail and other transport

Improvements in the competitiveness of the road transport industry have tended to exacerbate problems with rail and possibly biases towards road transport in infrastructure funding and taxation arrangements (Bureau of

Transport Economics 1999; Productivity Commission 1999). The rail sector is the poor cousin of the NCP in some senses. Intergovernmental agreements on rail reform have been confined to the establishment of 'one-stop shop' services for interstate train paths provided by the Australian Rail Track Corporation. These agreements are not part of the NCP and the Council has no role in ensuring that obligations are actually met.

Nonetheless, the application of general NCP principles has generated significant reform in the rail sector. State access regimes are facilitating competition in rail haulage operations, especially in intrastate bulk haulage operations. New South Wales coal mining operations in the Hunter Valley have benefited from large reductions in haulage costs, helping to ensure the viability of these operations despite an increasingly competitive world market. Similar benefits are a prospect for mining operations and other users of bulk haulage services in Queensland and Western Australia, given the impending finalisation of intrastate access regimes. The NCP structural reform, legislation review and competitive neutrality commitments are also helping to ensure a more competitive rail sector.

The general reform principles of the NCP have also stimulated the development of more efficient transport infrastructure in other sectors, such as ports, sea freight and airport developments, and bulk handling and storage services for agricultural commodities.

Communications infrastructure

Communications infrastructure and services are vital to the Australian economy. Further, given the growing importance of this sector, rapidly changing technology and convergence between communications technologies (such as between data and voice traffic technologies), competition policy issues in communications services are increasingly important for economic growth and employment in Australia.

Relevant NCP activity includes reviews of telecommunications structure and regulation, reviews of postal services structure and regulation, and reviews of broadcasting services regulation (in particular, the Productivity Commission's review of digital television services regulation). These reviews, which are responsibilities of the Commonwealth, are mostly still underway. In line with CoAG's decision to extend the timeframe for the legislation review and reform program, the Council will consider jurisdictions' progress in 2002.

Professions and occupations

Professionals, such as doctors, lawyers and engineers, generally provide services alone or in partnership with other professionals. Until the NCP

extended the operation of the restrictive trade practices provisions of the *Trade Practices Act 1974* (TPA) to all businesses in Australia, professionals were effectively exempt. Five years later, some professional groups are recognising that many past practices and business arrangements that restrict competition between professionals risk contravening the TPA. The Australian Competition and Consumer Commission is considering, for example, an application from the Royal Australasian College of Surgeons for 'authorisation' of cooperative training practices to avoid any risk of prosecution under the TPA. The Commission authorises such practices if it concludes that they are in the interests of the community overall.

State and Territory legislation endorses some anticompetitive professional practices and arrangements, which thereby avoid the need for authorisation by the Australian Competition and Consumer Commission. The NCP requires all governments to review these arrangements as part of the legislation review and reform program. The test applied in these reviews parallels the public benefit test applied by the Australian Competition and Consumer Commission in authorisations.

Restrictions on the services that professionals can provide, or on the ways in which they provide those services, should be retained only where there is a good public interest reason, such as the protection of consumers. The regulation of service standards will often be desirable in relation to the provision of professional services, particularly because consumers may find it difficult to form judgments about service standards. Where this is the case, competition restrictions via standards regulation meet the NCP tests.

But some regulation of the professions may not be in the interests of the community as a whole; for example, reviews of the regulation of some medical professionals in Queensland recommended the removal of many restrictions on commercial practices that do not have an impact on care. Generally, however, the reviews have recommended retaining registration requirements, reservation of title (such as 'doctor') to professionals with the necessary qualifications, and disciplinary procedures to maintain consumer protection.

Government's legislation review and reform program for professions and occupations is extensive. Professions and occupations encompass many sectors of the economy, including health, the legal sector, other business services (including real estate agents and auctioneers), and planning and building (including architects, surveyors, and building and related trades). Governments have completed some review and reform activity, but these areas are primarily matters for the 2002 NCP assessment.

Forestry, fisheries and mining

Appropriate regulation of exploitative activities such as forestry and fisheries is critically important to ensure protection of the environment, preservation of resources and the long term viability of the industries. Equally, however,

excessive regulation may overly burden businesses and undermine the health of these industries. The application of the NCP principles is helping to ensure effective regulation in the interests of the community.

Similarly, the regulation of mining activities is important to protect the environment, to ensure the health and safety of mine workers, to provide certainty to mining interests and, in some cases, to reflect the respective responsibilities of mining companies and governments in developing supporting infrastructure and services. Some of the current legislation is old and possibly no longer meets the community's needs.

There are also important competitive neutrality issues in the forestry industry, particularly in relation to the exploitation of (usually privately owned) plantation timber versus the exploitation of (usually publicly owned) native forests. Submissions to the Council suggest that biases exist in favour of the exploitation of native forests due to inappropriate pricing of native hardwood.

Forestry and fisheries have not been a focus of the NCP assessment process. Governments are now examining their application of the NCP principles to forest management and completing reviews of their laws regulating fisheries. These are matters for further consideration in 2002.

Planning and development

The Productivity Commission (as former Industry Commission 1995) identified the regulation of planning, construction and development services as an area in which the application of the NCP would confer large benefits on the community. Historically, planning, construction and development regulation has suffered from unnecessary delays in approvals processes (partly due to faulty regulation) and a lack of consistency among jurisdictions. Effective regulation provides for efficient and timely approvals processes with adequate community consultation, and reflects a balance of social, environmental and development interests.

Most jurisdictions have completed NCP reviews of planning and approval and building and approval legislation. However, reform outcomes in a number of jurisdictions are still to be implemented. Progress in these areas for most jurisdictions will be considered further in 2002.

Other legislation review

Other areas of the legislation review and reform program that involve important and difficult public interest issues and in some cases also adjustment assistance issues include: the taxi and hire car industry; grain

marketing arrangements; fair trading and consumer legislation; the regulation of finance, insurance and superannuation services; retail trading arrangements; education services; gambling; and child care. Governments' review and reform progress in these areas varies. Reform outcomes are generally still to be implemented, so the Council will assess jurisdictions' progress in 2002.

- *Taxis* — only the Northern Territory has implemented substantial regulatory reform. Other governments completed reviews, but are yet to implement reform.

- *Grain marketing arrangements* — the Commonwealth, New South Wales, Victoria, Queensland and South Australia completed reviews. Victoria removed its barley marketing monopoly. Western Australia is reviewing its legislation and Queensland may re-examine its barley marketing arrangements in the light of changes in Victoria and elsewhere.

- *Fair trading, consumer credit and trade measurement* — some governments completed reviews of fair trading legislation, and national reviews of the Consumer Credit Code legislation and trade measurement legislation are underway.

- *Finance, insurance and superannuation services* — all jurisdictions reviewed and reformed financial services regulation. Most jurisdictions reviewed compulsory insurance and public sector superannuation services, implementing a number of changes.

- *Shop trading hours* — Victoria and the ACT removed restrictions, the Northern Territory has no specific legislation and New South Wales applies widespread exemptions from trading hours restrictions. Queensland is addressing NCP questions about trading hours via the Queensland Industrial Relations Commission, which upheld recent applications for extended trading hours. Western Australia, South Australia and Tasmania have completed reviews.

- *Liquor licensing* — Victoria implemented significant reforms to its arrangements and announced a phased removal of its remaining anticompetitive restriction, the '8 per cent rule'. Queensland and South Australia completed review and reform activity, removing some restrictions while retaining others. Western Australia recently completed its review, which recommended removing several restrictions on competition. Reviews are underway in other jurisdictions.

- *Education services* — review and reform progress varies. Victoria completed reviews and removed a number of restrictions, whereas New South Wales and the Northern Territory have yet to commence reviews of some relevant legislation.

- *Gambling* — the Productivity Commission completed an inquiry on gambling in 1999. All States and Territories have reviews of gambling legislation underway. Although a handful of reviews are complete,

governments have responded to only a few. CoAG established a national approach to preventing and addressing the negative consequences of problem gambling identified in the Productivity Commission inquiry.

- *Child care* — South Australia and the ACT completed review and reform activity of child care legislation. Progress by the jurisdictions that are yet to finalise their review and reform activity will be considered in 2002.

Legislating for national standards

Given their concern that Australia's regulatory system was overly complex, was inconsistent and imposed unnecessary costs, governments entered a specific commitment on the development (through national and/or joint government processes) of new legislation that restricts competition. The purpose of this commitment is to ensure bodies that set national standards (such as Ministerial councils) apply consistent processes aimed at achieving effective regulation. Consequently, governments agreed that a national standards-setting body, where it proposes to establish a regulation or adopt a standard, must first show that a regulatory impact statement has been prepared and justifies adopting the regulatory measure.

The Commonwealth Office of Regulation Review is responsible for advising governments on compliance with the national standards-setting regulatory impact processes. The Office of Regulation Review identified several cases of where an appropriate regulatory impact statement had not been prepared. However, in almost all of these cases, processes are in place (either processes specific to the national standard or general legislation gatekeeping procedures) that should help to improve the effectiveness of legislation introduced to support the national standard. There is value in continuing to assess under NCP the governments' application of the CoAG national standard-setting obligations.

Finalising the legislation review and reform program

The legislation review program poses the greatest challenges of all the general reform components. Each government accepted a large burden by agreeing to review and, where appropriate, reform all anticompetitive legislation within a five-year period from June 1996. The program involves around 1700 separate pieces of legislation. Further, political considerations (including elections) and resource constraints mean that reform programs have not always run smoothly. Nonetheless, important reforms have been achieved and more are a prospect. Importantly, the NCP has instilled within governments a greater appreciation of the effects of business regulation and a

culture of rigorous justification of the need for, and design of, new and existing regulation.

The CoAG decision to extend the timeframe for the legislation review and reform program to 30 June 2002 recognises the work involved. The Council will assess governments' progress against the program in 2002.

Conclusion

Governments have achieved considerable progress in NCP reform, sometimes in difficult circumstances. Reform implementation has been associated with challenging political environments and intensive debate, with governments needing to consider some impacts on specific industries and communities. Governments should be congratulated for their commitment to reform, which reflects a commitment to good governance in the interests of Australia.

The changes have contributed to sustained growth in productivity and employment and general economic growth, despite political and economic upheavals in the Asia–Pacific region. The rise in Australia's aggregate productivity and output growth in the 1990s of 1 percentage point above trend levels for the past six years is hard to explain other than by the changes to the Australian economy during the 1980s and 1990s, including competition policy. Australia's successes in developing a more competitive economy are likely to provide extensive and longstanding benefits.

More importantly, the NCP is developing a more competitive economy in combination with, rather than in isolation from, addressing important social and environmental problems. Water reform, for example, is being implemented to address environmental problems associated with water use, as well as to address competition issues such as property rights in water and water trading arrangements. Similarly, reform in the electricity and gas industries is leading to more competitive energy supply and also helping Australia to deal with environmental problems such as greenhouse gas emissions. Energy reform does so by, first, providing a market structure that is amenable to targeted, market-based environmental measures and, second, providing dynamic energy production that can adapt to a changing world environment. Similarly, the application of the NCP to the forestry, fishing and mining industries jointly addresses development, social and environmental issues, and reviews of the regulation of professions deal with both consumer protection and competition issues. Given the NCP's clear focus on a rigorous assessment of the public interest, reforms that are implemented serve the broad interests of all Australians.

Part C

C1 Organisation

C2 Functions

C3 Management

C4 Financial statements

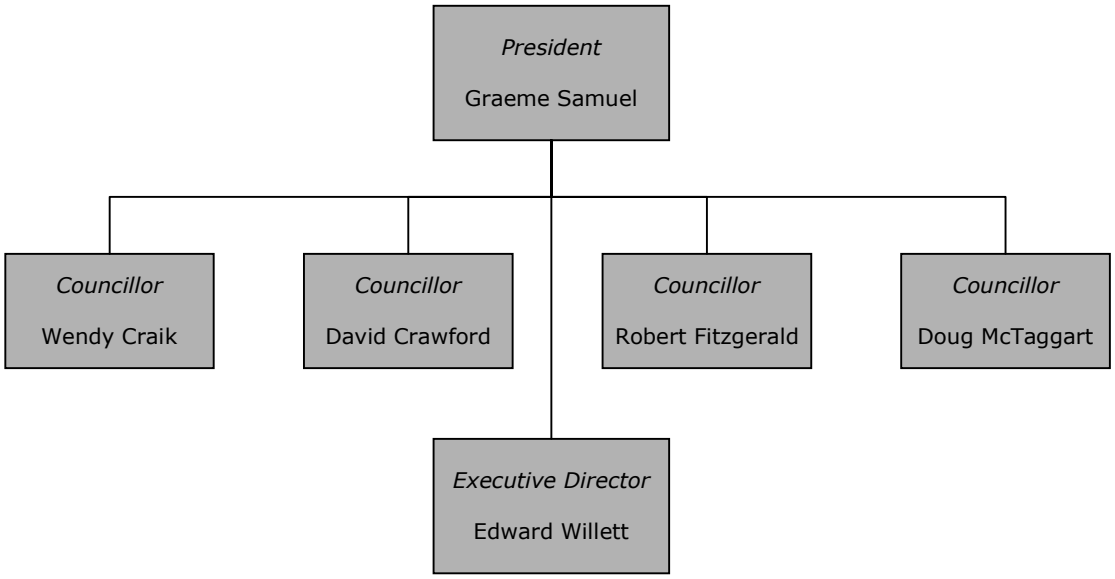
C1 Organisation

The National Competition Council is an independent advisory body for all Australian governments involved in implementing the National Competition Policy (NCP). The Commonwealth Government funds the Council and its Secretariat through budget appropriations.

Structure

The Council comprises five part-time Councillors and a secretariat of 20 staff and is located in Melbourne. The structure of the Council at 30 June 2001 is illustrated in figure C1.1.

Figure C1.1: National Competition Council organisation chart



The Council

Councillors

The Councillors are drawn from various parts of Australia and different industry sectors to provide a range of skills and experience. They are appointed for a three-year term by the Commonwealth, State and Territory governments. The current Councillors are Graeme Samuel (President), Wendy Craik, David Crawford, Robert Fitzgerald and Doug McTaggart.

Graeme Samuel

Graeme Samuel is a company director. He was a co-founder of Grant Samuel & Associates, corporate advisers. From 1981 to 1986 he was Executive Director of Macquarie Bank, in charge of its Victorian operations, and a Director of its Corporate Services Division.

His career as a banker was preceded by 12 years as a partner of leading Melbourne law firm Phillips Fox & Masel. He was the co-author of a text on the Securities Industry Code and has published numerous papers and journal articles on business affairs.

Graeme Samuel holds several other offices, including Chair of the Melbourne & Olympic Parks Trust, Commissioner of the Australian Football League, Member of the Docklands Authority and Director of Thakral Holdings Limited. He was formerly a Trustee of the Melbourne Cricket Ground Trust (1992–98), President of the Australian Chamber of Commerce and Industry (1995–97) and Chairman of the Inner and Eastern Health Care Network.

Graeme Samuel attended Wesley College, Melbourne, and subsequently obtained a Bachelor of Laws from Melbourne University and a Master of Laws from Monash University. He was awarded the Law Institute of Victoria Solicitor's Prize in 1971.

He was appointed an Officer of the Order of Australia (AO) in 1998.

David Crawford

David Crawford is a company director. He is Chair of Westralia Airports Corporation, Export Grains Centre and Supersoftware (International), and a Director of Grain Biotech Australia. He is a Member of Transfield (Western Australia Advisory Board) and Chairman of the Curtin University Graduate School of Business (Board of Advisors) and the John Curtin International Institute (Board of Advisors).

David Crawford was Chief Operating Officer of Ranger Minerals NL between 1997 and 1998, following seven years with Wesfarmers, initially as Managing Director, Western Collieries and ultimately as Executive Director, Corporate Affairs, Wesfarmers.

Previously, he spent twelve years with CSR, including five years as an economist and seven years with Western Collieries where he held several senior management positions. His previous committee memberships include the Australia India Business Council, Environmental Protection Authority Advisory Board, Pacific Basin Economic Council, Chamber of Mines and Energy Executive Council, Western Australia Coal Industry Council and Australian Pacific Economic Cooperation Committee.

David Crawford has an Honours Degree in Economics from the University of Queensland and Master of Arts (Political Science) from the University of Toronto.

Robert Fitzgerald

Robert Fitzgerald practised as a commercial and corporate solicitor for 20 years, having been engaged by the legal firms of C R Fieldhouse, Clayton Utz and having been principal of his own commercial legal practice. He was also engaged as a senior management consultant with Horwath (New South Wales) Accountants, specialising in licensing and franchising.

Robert Fitzgerald holds the appointment of Commissioner of Community Services in New South Wales. He was the Associate Commissioner on the Productivity Commission's inquiry into Australia's gambling industries in 1999.

His previous community positions include National President of the Australian Council of Social Services (1993–97), Commissioner with New South Wales Catholic Commission on Employment Relations, State President of the St Vincent de Paul Society (New South Wales) (1989–94) and Chair of JOB Futures (a national network of community based employment services organisations).

He has also held appointments as Chair of the Franchise Code Administration Council, Chair of the Commonwealth Franchising Task Force, Member of the Advisory Council to the Law Foundation of New South Wales and Member of the Special Policy Advisory Group to the Minister for Social Security and Chair of the Ministerial Task Force on Community Services (New South Wales).

Robert Fitzgerald holds degrees in law and commerce from the University of New South Wales.

He was appointed a Member of the Order of Australia (AM) in 1994.

Wendy Craik

Wendy Craik is the Chief Executive Officer of Earth Sanctuaries Limited and Chair of the Australian Fisheries Management Authority. She is a Council Member of the Australian Institute of Marine Science and a Board Member of the Cooperative Research Centre for Coastal Resources and the Foundation for Rural and Regional Development.

She has held appointments as Executive Director of the National Farmers Federation between 1995 and 2000 and Executive Officer of the Great Barrier Reef Marine Park Authority. She has also held membership of the Australian Landcare Council, the CSIRO Land and Water Sector Advisory Committee, the Australian Information Economy Advisory Council and the Board of the Institute of Land and Food Resources (Melbourne University).

She has an Honours Degree in Science from the Australian National University, a Graduate Diploma in Management from the Capricornia Institute of Advanced Education and a PhD (Zoology) from the University of British Columbia.

Doug McTaggart

Doug McTaggart is the Chief Executive Officer of the Queensland Investment Corporation. He is a former Member of the Australian Accounting Standards Board, Director of the Investment and Financial Services Association and Councillor of the Queensland University of Technology. Doug McTaggart is the President of the Economic Society, Australia.

He has held appointments as the Under Treasurer and Under Secretary of the Queensland Treasury, Director of the Queensland Investment Corporation, Director of the Queensland Office of Financial Supervision, Director of the Queensland Treasury Corporation and Director of the Queensland Performing Arts Trust. He has also been Chair of the Qsuper Board of Trustees and held various academic positions as an economist.

Doug McTaggart has an Honours Degree in Economics from the Australian National University and Master of Arts and a PhD from the University of Chicago.

Council meetings

Table C1.1 lists the meetings of the Council held during 2000-01. While the Council generally meets on a monthly basis, its workload sometimes requires more frequent meetings. During 2000-01 the Council met on 12 occasions. It held the meetings in Melbourne and made use of teleconference facilities to ensure the maximum number of Councillors possible were involved in the

discussions. The Audit Sub-committee of the Council met on two occasions during the year.

Table C1.1: National Competition Council meetings, 2000-01

25 July 2000	6 February 2001	8 May 2001
22 August 2000	20 February 2001	29 May 2001
17 October 2000	27 March 2001	12 June 2001
20 November 2000	24 April 2001	26 June 2001

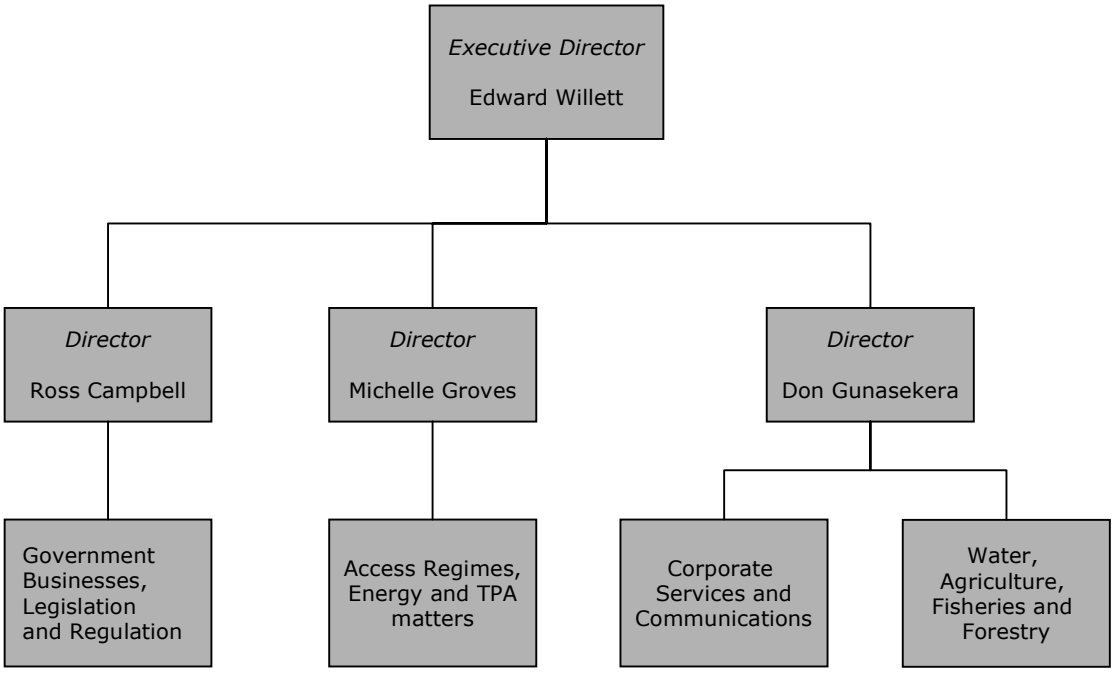
The Secretariat

The Council is supported by a Secretariat located in Melbourne. The Secretariat provides advice and analysis at the Council's direction on matters related to the implementation of the NCP. It represents the Council in dealings with Commonwealth, State and Territory government officials and other parties with interests in competition policy matters.

During 2000-01 the Council Secretariat was involved in several intergovernmental committees dealing with competition issues, including the Gas Policy Forum, the National Gas Pipelines Advisory Committee, the Competitive Neutrality Roundtable Committee and Council of Australian Governments senior officials meetings. Secretariat staff also present conference papers on issues related to their work program and produce a range of publications (including community information papers), which are all available on the Council's web site (http://www.ncc.gov.au).

The Council supports the consultative approach taken by the staff of the Secretariat in discussing competition matters with officials from Commonwealth, State and Territory governments and with representatives from interest groups.

Figure C1.2: National Competition Council Secretariat organisation chart



Overview of staffing developments

The number of Secretariat staff employed by the Council in 2000-01 remained around 20. The actual number of staff fluctuated slightly during the year. At 30 June 2001 the staff comprised the Executive Director, three Directors, 10 research/policy officers, a Corporate Service Manager, three administrative staff and two communications officers.

The Council is a small organisation that covers a diverse range of issues and has always drawn on the expertise of people in other organisations. As well as engaging consultants, sometimes under contract to work within the Council offices, the Council has seconded officers to work on specific projects from other government and private organisations.

The majority of Secretariat staff is employed under the Public Service Act 1999. During 2000–01 staff were covered by a Certified Agreement that governed their conditions of employment for the period February 1999 to February 2001. The agreement expired on the 12 February 2001 and a new agreement was successfully negotiated between management and staff, to be implemented during September 2001. Four officers have been employed on Australian Workplace Agreements and three on contracts. The Council has one inoperative staff member who was involved in a road traffic accident on 18 January 2001. Information on staff profiles is provided in tables C1.2 and C1.3.

Table C1.2: Staff profile, 30 June 2001

Level	*Female*	*Male*	*Total*
Senior Executive Service Band 2 & AWA	0	1	1
Senior Executive Service Band 1 & AWA	1	2	3
Executive Level 2	4	7	11
Executive Level 1	1	0	1
Administrative Service Officer Grade 6	1	0	1
Administrative Service Officer Grade 5	0	0	0
Administrative Service Officer Grade 4	1	0	1
Administrative Service Officer Grade 3	1	0	1
Administrative Service Officer Grade 2	0	0	0
Administrative Service Officer Grade 1	0	0	0
Total	**9**	**10**	**19**

Table C1.3: Staff by employment status, 30 June 2001

Level	*Female*	*Male*	*Total*
Full-time permanent	6	7	13
Full-time temporary	2	2	4
Part-time staff	1	1	2
Total	**9**	**10**	**19**

Senior Executive Service information

The Executive Director position is at the SES2 level and the three Director positions are at the SES1 level.

Consultants

The Council used the services of consultants in 2000-01 where it was considered efficient and cost-effective to do so. Table C1.4 lists the number and value of consultancies engaged. Some of these projects are ongoing, so the total cost will not be paid until 2001–02.

Table C1.4: Summary of consultants engaged, 2000-01

Purpose	*Number*	*Contract amount ($)*
Legal advice	3	111,026
Litigation	2	592,270
Economic advice	7	241,307
Communications and corporate services	3	29,433
Computer	4	19,158
Total	**19**	**993,194**

C2 Functions

Agency overview

The role of the National Competition Council is to oversee and assist the implementation of the National Competition Policy (NCP) and related reforms outlined in frameworks developed and agreed on by all Australian Governments. The Council's responsibilities include assisting public awareness of competition reform agendas, recommending on the design and coverage of infrastructure access regimes under *part IIIA of the Trade Practices Act 1974* (TPA) and assessing whether States and Territories have made satisfactory progress towards competition policy reform.

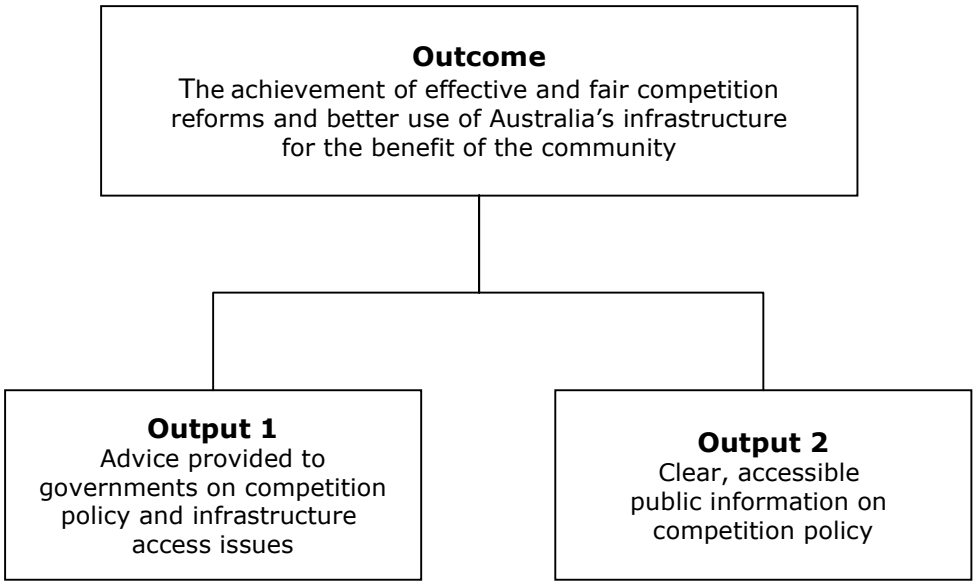
The Council vision is that it will work, through constructive engagement with governments, towards completing the reform program envisaged in April 1995. The Council's second broad goal is to help the community to become better attuned to the scope and potential outcomes of competition reform. This approach will enable increased competition to be introduced where it will result in greater economic growth, less unemployment, better social outcomes and the better use of resources for all Australians.

The above vision is embodied in the Council's mission: 'To help raise the living standards of the Australian community ensuring that conditions for competition prevail throughout the economy that promote growth, innovation and productivity'.

Agreed outcomes and outputs

The Council's outcome and outputs, developed and agreed on through the budget process, are represented in figure C2.1. The Council's outcome relates to the high level Commonwealth Government outcome of 'Well functioning markets', which is part of the overall Commonwealth Government outcome of 'Strong, sustainable economic growth and the improved wellbeing of Australians'.

Figure C2.1: National Competition Council's planned outcomes and contributing outputs



Specific functions

The Council has statutory responsibilities under both the TPA and the *Prices Surveillance Act 1983* to make recommendations to relevant governments on:

- the design and coverage of infrastructure access regimes; and
- whether State and Territory government businesses should be subject to prices surveillance by the Australian Competition and Consumer Commission.

Apart from these statutory responsibilities, the three NCP agreements establish a role for the Council in the following areas:

- advice on the progress made against the Competition Policy Agreements;
- other advice on competition policy as agreed on by a majority of the stakeholder governments; and
- advice to the Commonwealth when considering overriding State or Territory exceptions from the TPA.

The Council also has an implied function of generally supporting NCP processes and appropriate reform. This function is reflected in the Council's mission statement and goals (box C2.1). In 2000–01 the Commonwealth Government again recognised this role by providing the Council with $200,000 to fund its communications work.

The Council delivers its various functions and responsibilities through its work program areas.

Parts A and B contain more information about the Council's statutory and other responsibilities, and the Council's actions in relation to them during 2000–01 (box C2.2).

Box C2.1: National Competition Council's goals

- To facilitate timely implementation of effective and fair competition reforms by governments
- To promote competition policy as an 'economic tool' for increasing the country's performance and productivity
- To promote better use of Australia's infrastructure
- To build community awareness and support of the NCP
- To ensure the Council is a dynamic organisation, capable of providing a safe, healthy and professional work environment for its staff and developing their full potential

Box C2.2: National Competition Council's work program

- Facilitation and assessment of governments' progress in implementing competition policy reforms
- Provision of advice to governments on the design and coverage of infrastructure access regimes
- Undertaking of work allocated to the Council's work program by governments
- Ongoing improvement of the Council's operational standards in leadership, strategic direction, information systems support services, resource allocation and staff development
- Promotion of community understanding of the NCP

C3 Management

Staff development and management

Training

Excluding the salary costs of staff undertaking training, a total of $59,457 (representing approximately 4.5 per cent of the Secretariat's salary costs) was devoted to staff training and development for 2000–01. All Secretariat staff received some training during the year.

All staff received in-house training in occupational health and safety regarding staff workstations and posture, strategic planning, database management and PC skills. In addition, Secretariat staff spent 10 days in other training programs during the year. Various staff participated in training programs in areas such as financial management, skill development and professional development. A number of staff attended strategic development courses. In addition, Secretariat staff attended approximately 12 conferences on issues associated with competition policy and its implementation. Two officers received assistance to undertake further tertiary education.

Industrial democracy

Industrial democracy plan

The National Competition Council's *Industrial Democracy Plan* was the basis of its industrial democracy practices during the year. The plan will be reviewed in 2001-02 to ensure it continues to meet the needs of the Council and its staff. The Council's Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

Consultative mechanisms

The Secretariat Executive, which includes the Executive Director and the three Directors, meets weekly. Minutes of this meeting are circulated to all

staff. All staff meet weekly to review the work priorities and discuss other management issues and the Secretariat's work program.

These staff meetings are the principal means of informing Secretariat staff of management decisions and inviting staff consideration of issues facing the organisation. Proposed changes to research priorities, staffing arrangements, accommodation, office policies, information technology issues and training are discussed at these regular meetings. During 2000-01 most staff participated in decision making regarding information technology requirements (including training), planning, and the roles and responsibilities of the staff and the executive. Section meetings were also conducted during the year.

Occupational health and safety

During 2000-01 the Council undertook or continued the following initiatives to ensure the health and safety of its staff and contractors:

- participation in occupational health and safety training;
- the operation of an occupational health and safety committee, which reports to the weekly staff meeting;
- encouragement of staff participation in lunchtime and after-hours exercise programs;
- eyesight testing for screen-based equipment users;
- the appointment of fire wardens and fire safety training;
- the appointment of a trained First Aid Officer;
- advice on ergonomic furniture use and posture; and
- the purchase of ergonomic equipment where appropriate.

The Council received one accident/incident report during 2000–01. No notices were lodged and no directions were given to the Council under ss30, 45, 46 or 47 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* during the year.

The Occupational Health and Safety Agreement was finalised and signed during 2000–01. Also during the year, Comcare was again consulted to advise on the management risks associated with the Council's operations. A revised set of insurance and risk management policies was implemented. This involved developing a *Risk Management Plan* and a *Comcare Policy*. Both documents were issued to all staff.

Outsourcing (corporate services)

During 2000–01 the Council outsourced or market tested the following corporate services functions:

- accounting and finance (AIMS interface, reporting, accounting package, account processing and monthly reconciliations);
- editing and printing of Council publications;
- banking;
- payroll and human resource management (payroll processing, maintenance of personnel files and advice on industrial relations and personnel matters);
- web site restructure;
- library services and information; and
- maintenance of databases.

Certified Agreement, 1999–2001

The National Competition Council Certified Agreement 1999-2001, prepared in accordance with the *Workplace Relations Act 1996* (s.170LK) and certified by the Australian Industrial Relations Commission in February 1999, operated during 2000-01. The agreement sets out the terms and conditions of employment for Secretariat staff below the SES level. Among other things, it establishes the Secretariat's salary structure and arrangements for performance development, including performance based advancement through a broadband classification structure. The agreement also sets out the arrangements for a family–friendly and flexible workplace, including provisions for part time work and home based work. The agreement includes redeployment and redundancy provisions. It also provides for each member of staff to negotiate an Australian Workplace Agreement.

During 2001 the Council negotiated a replacement agreement, also under s. 170LK of the Workplace Relations Act. The new agreement builds on the earlier one. The Council applied to the Australian Industrial Relations Commission on 26 July 2001 for certification of this agreement to be valid until August 2003.

Finance and accounting

Treasury[5] processed the Council's accounts during 2000–01 on the SAP (R3) Package Accounting Software. As a government body, the Council is required by the Department of Finance and Administration to reconcile its GST components on a monthly basis.

Corporate governance

A series of policies and procedures were reviewed during 2000–01 including delegations. Each staff member is issued with a *Policy Manual* and a separate *Procedures Manual* that detail the basic corporate governance matters of the Council. These documents detail issues such as government values and what is expected of Commonwealth employees.

The Council's Audit Committee played a key role in improving the Council's financial reporting by oversighting the financial reporting processes, audit functions, risk management and internal controls. The Committee met twice during the year to approve policies and the end–of–year financial statements.

Contracts

During 2000-01 contracts were re-negotiated for the use of hire vehicles, air travel and banking, personnel and accounting services.

Equity matters

Social justice

Within its work program, the Council addresses social justice issues in three main contexts. First, in conducting its functions in relation to the National Access Regime, the Council must consider public interest issues. Matters that the Council may consider include (although are not limited to) the following:

- policies concerning occupational health and safety, industrial relations, access to justice and other government services, and equity in the treatment of different persons;

5 Treasury is contracted to provide financial services to the Council.

- economic and regional development, including employment and investment growth; and

- the interests of consumers generally or a class of consumers.

Second, as part of its role of assessing jurisdictions' progress in implementing the National Competition Policy (NCP) reforms, the Council must consider the extent to which governments have undertaken bona fide reform processes. The NCP agreements allow governments to account for all of the costs and benefits of reform options, including social, environmental and economic considerations. The agreements recognise that social justice considerations can warrant restrictions on competition, although the Council also calls for an examination of whether the social justice objectives can be met in ways that do not restrict competition. At the same time, the NCP agreements recognise that many restrictions, by advantaging specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Third, where it conducts reviews under the NCP principles, the Council is also required to consider social justice issues. The Council's focus is on maintaining an organisation's social responsibilities, and even strengthening these responsibilities, while maximising the benefits from competition.

The Council is in the process of completing the following guides, which will be available in 2001–02 on its web site (http://www.ncc.gov.au):

- Declaration of certain Services provided by Monopoly Infrastructure — *A Guide to Declaration under Part IIIA of the Trade Practices Act 1974*; and

- Certification of Access Regimes — *A Guide to certification under Part IIIA of the Trade Practices Act 1974*.

Application of the Commonwealth Disability Strategy

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

The Council's policy recommendations are designed to affect all Australians because they have a positive economic benefit. The Council's strategies are to increase the wellbeing of the community by promoting competition policies and reforms.

Individual recommendations are at the broadest level, so the impact on sections of the community is not necessarily specific. This approach entails viewing people with disabilities in the wider context and the design of the

Council's policies does not discriminate against any group within the community. The performance criterion for the year was met, because the Council's policies did not isolate that part of the community with disabilities.

The Council's consultation process does not discriminate against any group within the community and, as such, the performance criterion was satisfied in 2000–01. The Council's recruitment policy does not discriminate against race, disability, colour, sex or religion, or on any other grounds. Recruitment information is available through electronic and hard copy formats.

The Council has developed its workplace including the office access and work stations, with the aim of reducing barriers to access by people with disabilities.

Access

Since its inception in November 1995, the Council has instituted open and transparent processes. Declaration and certification applications for third party access to essential facilities, for example, explicitly provide interested parties with the opportunity to have their views considered by the Council, including having meetings with members of the Secretariat. The Council uses the public consultation process extensively to provide input into its reviews. The Secretariat and members of the Council met with representatives of State, Territory and local governments, community interest groups and private sector representatives and organisations on many competition policy matters during the year.

During 2000–01 the Council released the following publications to assist community understanding of its role and functions:

- *NCC Updates* (issues in August 2000, December 2000 and April 2001)
- community information papers:
  - 'Securing the Future of Australian Agriculture: Overview'
  - 'Securing the Future of Australian Agriculture: Sugar'
  - 'Securing the Future of Australian Agriculture: Barley'
  - 'Reform of the Health Care Profession'
  - 'Reform of the Legal Profession'
  - 'Reform of the Professions'
  - 'Workers Compensation Insurance'
  - 'Compulsory Motor Vehicle Insurance'

  - 'Road Transport Reform'
  - 'Local Government and National Competition Policy'
- Staff discussion papers:
  - 'Reforming the Regulation of the Professions'
  - 'Taxi Reform in Australia'
  - 'Application for Declaration of Western Power Corporation Electricity Transmission and Distribution Services'
- Background papers on rural water reform
- *Third Tranche Assessment Framework*
- Council submissions to the Productivity Commission's — Part IIIA review
- *1999-2000 Annual Report*
- Issues papers:
  - 'NT Third Party Access Regime for Gas Pipelines'
  - 'Moomba to Sydney Pipeline System under the Gas Pipelines Access Regimes of NSW and SA'
  - 'Mildura Pipeline and Riverland Pipeline under the Access Code for Natural Gas Pipeline Systems'

The Council continually updates its web site at *http://www.ncc.gov.au*. This site contains all of the Council's publications and information on applications under Part IIIA of the Trade Practices Act, as well as current information on issues and matters the Council may be considering or has recently considered. The web site is being upgraded to increase accessibility to relevant information.

In 2000–01 Council and Secretariat staff presented the following speeches:

- Graeme Samuel, President: National Competition Policy: A Five Year Stocktake, 7 July 2000
- Graeme Samuel, President: The Impact of Competition Policy on Rural Australia, 11 July 2000
- Ed Willett, Executive Director: Multi-User Infrastructure Access, 11 July 2000
- Ben Furmange, Project Manager: Achieving a More Efficient and Sustainable Water Industry, 19 July 2000

- Graeme Samuel, President: Utility Reform: How National Competition Policy is Changing Australia, 7 August 2000
- Deborah Cope, Deputy Executive Director: Implementing a National Approach to Water Reform, 7 August 2000
- Ed Willett, Executive Director: The Role of Declaration in Infrastructure Regulation, 25 August 2000
- Deborah Cope, Deputy Executive Director: Access to Rail Infrastructure, 14 September 2000
- Ed Willett, Executive Director: The Future of National Competition Policy, 20 November 2000
- Graeme Samuel, President: Presentation to the Fairley Leadership Graduation Dinner, 27 November 2000
- Paul Swan, Project Manager: Queensland Implementation of Water Reform, 30 November 2000
- Ben Furmage and David Owens, Project Manager: National Competition Policy and Local Government, 5 December 2000
- Graeme Samuel, President: Address to the NSW Council of Professions, 16 February 2001
- Ben Harris, Project Manager: Health Insurance and Legal Issues, 8 March 2001
- Ed Willett, Executive Director: National Electricity Market under National Competition Policy, 14 March 2001
- Paul Swan, Project Manager: Water Reform: Where Now?, Queensland Farmers Federation Conference, 15 March 2001
- Ross Campbell, Director: NCP and its Relevance to the Insurance Sector, 20 March 2001
- Graeme Samuel, President: A presentation to the Finance Club - Melbourne University Business School, 26 March 2001
- Graeme Samuel, President: National Competition Policy — The Public Interest Test, 15 May 2001
- Graeme Samuel, President: A Changing Australia: The Business and Social Imperatives, 21 May 2001
- Denise Leslie, Communications Officer and David Owens, Project Manager: National Competition Policy and Local Government, 30 May 2001

Workplace diversity

The Council has reviewed its Workplace Diversity Plan during the year. All recruitment conducted during 2000-01 included a selection criterion relating to understanding of the principles and practical effects of workplace diversity policies. Selection panels included at least one male and one female and were recorded by a professional scribe. At 30 June 2001 11 Secretariat staff identified themselves as members of an equal employment opportunity group (see table C3.1).

Table C3.1: Staff by equal employment opportunity (EEO) group, 30 June 1999

Level	*Female*	*NESB 1*[a]	*NESB 2*[a]	*A&TSI*[b]	*Persons with disabilities*
Senior Executive	1	1			
Senior Officer Grades Executive Level 1–2	5				
Administrative Service Officer Grades 1–6	3	1			
Total	**9**	**2**			

a Non-English speaking background (first and second generation). **b** Aboriginal and Torres Strait Islanders.

Source: Internal survey (response to this survey was optional).

The Council has identified and trained contact officers for both workplace diversity and sexual harassment issues, and distributed to staff information on a harassment free workplace. No workplace harassment was reported during 2000–01.

Internal and external scrutiny

During 2000–01:

- the Council tested the market for certain corporate service's functions;
- there were no cases of fraud involving the Council; and
- there were no comments by the Ombudsman or decisions by the administrative tribunals on matters involving the Council.

Over the past few years the Australian Competition Tribunal conducted a number of reviews of decisions by the Treasurer or a Premier in response to Council recommendations on applications for access to infrastructure services. These reviews were initiated by infrastructure owners when the decision was to declare services and by applicants when the decision was not to declare. Reviews occurred both when the decision maker agreed with the Council's decision and when they disagreed.

The Minister for Industry, Science and Resources, acting on a recommendation of the Council, decided on 16 October 2000, that the Eastern Gas Pipeline should be a covered pipeline in accordance with the National Third Party Access Code for Natural Gas Pipeline Systems.

Such a decision can have major commercial implications for the pipeline owner or operator, and Duke Eastern Gas Pipeline sought a review by the Australian Competition Tribunal of the Minister's decision to cover the Eastern Gas Pipeline. The tribunal decided that the pipeline should not be covered. A detailed analysis of the decision and its implications are located in section B1.4 — 'Coverage of the Eastern Gas Pipeline'.

The Council is also subject to external scrutiny through the publication of its recommendations to all governments on matters relating to access determinations and competition reforms, external publications and other work that may be placed on the work program. The Senate Select Committee on Socio-Economic Consequences of the National Competition Policy is undertaking a review of the NCP.

The Council of Australian Governments (CoAG) determined in November 2000, that the Council, following the third tranche NCP assessment (conducted before July 2001), will undertake an annual assessment of each government's performance in meeting its reform obligations as specified in the Agreement to Implement the National Competition Policy and Related Reforms, or as subsequently advised by CoAG. As part of the assessment, the Council would also recommend the level of competition payments to each State and Territory. The terms and operation of the Conduct Code Agreement, the Competition Principles Agreement, and the Agreement to Implement the National Competition Policy and Related Reforms, will be reviewed before September 2005, along with the Council's assessment role.

The Council's processes and procedures have been subject to audit by the Auditor–General. In addition, during 2000–01 the Attorney–General's Office reviewed and approved the Council's Fraud Control Plan.

Other matters

Freedom of information

The Council received one request for documents under the *Freedom of Information Act 1982* during 2000-01. The following information is provided in accordance with sub s.8(1) of the Freedom of Information Act.

Organisation of the Council

The Council's organisational structure, role and functions are detailed in:

- chapter C1 (organisation);
- figures C1.1 and C1.2 in chapter C1 (structure); and
- chapter C2 (functions).

Categories of documents held by the Council

The Council Secretariat holds three classes of documents. First, it holds representations to the Council's President, Executive Director and staff. The Council receives correspondence covering aspects of government microeconomic policy and administration.

Second, it holds policy and administration files relevant to the Council's operations. The documents on these files include correspondence, analysis and policy advice prepared by Secretariat officers. The three main categories of working files are:

- Council views on matters relating to competition reform implemented by Commonwealth, State and Territory governments;
- Council recommendations on applications for access declarations and certification of access regimes. The designated Ministers are required to publish their decisions on these applications. The Ministers must give reasons for the decision and provide a copy of the Council's recommendation to the service provider and the applicant. The Council makes its recommendations and reasons publicly available after the designated Minister has published a decision. In the case of a declaration application, if the designated Minister does not make a decision, then the Council will publish its recommendation 60 days after it is provided to the Minister; and
- material relating to other work assigned to the Council for example, the review of the *Australian Postal Corporation Act 1989* and the review of ss 51(2) and 51(3) of the TPA.

Third, it holds documents on internal office administration. These include a broad range of documents relating to the personal details of staff and to the organisation and operation of the Council. These documents include personal records, 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 upon request

The following categories of documents are publicly available:

- the Council's annual reports to Parliament;
- speeches by Council and Secretariat staff;
- discussion papers and guides on specific competition policy issues;
- the *NCC update*;
- the Council's corporate plans;
- issues papers developed by the Council and applications received for declaration, certification or under the Gas Code;
- submissions by interested parties on access declaration or certification applications, applications under the Gas Code or other reviews, where information contained is not commercial-in-confidence;
- assessments and recommendations given to the Treasurer on State and Territory progress in implementing competition policy;
- community information papers and media releases;
- issues papers, draft reports and final reports on other reviews that are referred to the Council; and
- the Council's recommendations on declaration, certification and Gas Code applications.

These documents are available from various sources. The Council has as much material as possible available on its web site — (http://www.ncc.gov.au). Most publications are also available through the Commonwealth Government bookshops. Other documents, publications and speeches can be obtained directly from the Council.

Facilities for access to Council documents

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

Director (Freedom of Information Request)
National Competition Council
GPO Box 250B
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 7484) between 9.00 am and 5.00 pm, Monday to Friday.

The Director (Freedom of Information Request) is authorised under S.23 of the Act to grant or refuse requests for access to documents. In accordance with S.54, 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 Council will provide copies of documents after receiving payment of all applicable charges. Alternatively, applicants may make arrangements to inspect documents at the National Competition Council office, Level 12, Casselden Place, 2 Lonsdale Street, Melbourne between 9.00 am and 5.00 pm, Monday to Friday.

Annual reporting requirements and aids to access

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

- s.74 of the Occupational Health and Safety (Commonwealth Employment) Act;
- s.50AA of the *Audit Act 1901*;
- *The Public Service Act 1999*;
- s.8 of the Freedom of Information Act 1982;
- s.29(O) of the TPA; and
- the guidelines issued by the Department of the Prime Minister and Cabinet.

A compliance index is provided at the end of this section.

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

Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477

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C4 Financial statements

Financial statements

for the year ended 30 June 2001

INDEPENDENT AUDIT REPORT

To the Treasurer

Scope

I have audited the financial statements of the National Competition Council for the year ended 30 June 2001. The financial statements comprise:

- Statement by Council President and Principal Accounting Officer;
- Statement of Financial Performance;
- Statement of Financial Position;
- Statement of Cash Flows;
- Schedule of Commitments;
- Schedule of Contingencies; and
- Notes to and forming part of the Financial Statements.

The Council's President is responsible for the preparation and presentation of the financial statements and the information they contain. I have conducted an independent audit of the financial statements in order to express an opinion on them to you.

The audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards, to provide reasonable assurance as to whether the financial statements are free of material misstatement. Audit procedures included examination, on a test basis, of evidence supporting the amounts and other disclosures in the financial statements, and the evaluation of accounting policies and significant accounting estimates. These procedures have been undertaken to form an opinion as to whether, in all material respects, the financial statements are presented fairly in accordance with Australian Accounting Standards, other mandatory professional reporting requirements and statutory requirements in Australia so as to present a view of the Council which is consistent with my understanding of its financial position, its operations and its cash flows.

GPO Box 707 CANBERRA ACT 2601
Centenary House 19 National Circuit
BARTON ACT
Phone (02) 6203 7300 Fax (02) 6203 7777

The audit opinion expressed in this report has been formed on the above basis.

Audit Opinion

In my opinion,

(i) the financial statements have been prepared in accordance with Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders; and

(ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 1 of the Financial Management and Accountability (Financial Statements 2000-2001) Orders, of the financial position of the National Competition Council as at 30 June 2001 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office

K. I Smith

Keith I. Smith
Senior Director

Delegate of the Auditor-General

Canberra
4 September 2001

National Competition Council
Casselden Place Level 12 2 Lonsdale Street Melbourne 3000 Australia
GPO Box 250B Melbourne 3001 Australia
Telephone 03 9285 7474 Facsimile 03 9285 7477

STATEMENT BY THE COUNCIL PRESIDENT AND PRINCIPAL ACCOUNTING OFFICER

In our opinion the attached financial statements for the financial year 1 July, 2000 to 30 June, 2001 give a true and fair view of the matters required by Schedule 1 to the Finance Minister's Orders made under section 63 of the Financial Management Accountability Act 1997.

Mr. Graeme Samuel
President

31 August 2001
Date

Mr. Edward Willett
Executive Director

30 August 2001
Date

NATIONAL COMPETITION COUNCIL
STATEMENT OF FINANCIAL PERFORMANCE
for the period ended 30 June 2001

	Notes	2000-01 $	1999-00 $
Revenues from ordinary activities			
Revenues from Governments		3,280,000	3,271,000
Sales of Goods and Services		3,042	66,985
Other	2	220,589	–
Total revenues from ordinary activities		**3,503,631**	**3,337,985**
Expenses from ordinary activities			
Employees	3A	1,978,882	1,787,974
Suppliers	3B	1,962,150	1,161,508
Depreciation and amortisation	3C	98,060	110,100
Total expenses from ordinary activities		**4,039,092**	**3,059,582**
Net Operating Surplus (Deficit) from ordinary activities		(535,461)	278,403
Net Surplus (Deficit)		**(535,461)**	**278,403**
Equity interest			
Net surplus (deficit) attributable to the Commonwealth		**(535,461)**	**278,403**
Total changes in equity other than those resulting from transactions with owners as owners		**(535,461)**	**278,403**

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

NATIONAL COMPETITION COUNCIL
STATEMENT OF FINANCIAL POSITION
as at 30 June 2001

	Notes	2000-01 $	1999-00 $
ASSETS			
Financial assets			
Cash		275,406	545,303
Receivables	4A	213,998	111,323
Total financial assets		**489,404**	**656,626**
Non-financial assets			
Land and Buildings	5A,C	39,491	84,977
Plant and Equipment	5B,C	60,129	103,157
Other		–	8,896
Total non-financial assets		**99,620**	**197,030**
Total Assets		**589,024**	**853,656**
LIABILITIES			
Provisions			
Employees	6A	519,489	503,983
Total provisions		519,489	503,983
Payables			
Suppliers	7A	346,679	91,356
Total payables		346,679	91,356
Total liabilities		**866,168**	**595,339**
EQUITY			
Accumulated surpluses (deficits)		(277,144)	258,317
Total Equity	8A	**(277,144)**	**258,317**
Current liabilities		346,679	132,055
Non-current liabilities		519,489	463,284
Current assets		489,404	592,497
Non-current assets		99,620	261,159

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

NATIONAL COMPETITION COUNCIL

STATEMENT OF CASH FLOWS

for the period ended 30 June 2001

	Notes	2000-01 $	1999-00 $
OPERATING ACTIVITIES			
Cash received			
Appropriations for outputs		3,280,000	3,271,000
Sales of Goods and Services		–	90,980
Other		120,956	–
Total cash received		3,400,956	3,361,980
Cash used			
Employees		(1,962,301)	(1,677,752)
Suppliers		(1,699,007)	(1,093,848)
Total cash used		(3,661,308)	(2,771,600)
Net cash from (used by) operating activities	9	(260,352)	590,380
INVESTING ACTIVITIES			
Cash used			
Purchase of property, plant and equipment		(9,545)	(45,577)
Total cash used		(9,545)	(45,577)
Net cash from (used by) investing activities		(9,545)	(45,577)
Net increase/(decrease) in cash held		(269,897)	544,803
Cash at the beginning of the reporting period		545,303	500
Cash at the end of the reporting period		**275,406**	**545,303**

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

NATIONAL COMPETITION COUNCIL

SCHEDULE OF COMMITMENTS

as at 30 June 2001

	2000-01	1999-00
	$	$
BY TYPE		
OTHER COMMITMENTS		
Operating Leases	343,896	257,984
Total Other Commitments	**343,896**	**257,984**
COMMITMENTS RECEIVABLE		
Net commitments	343,896	257,984
BY MATURITY		
All Net commitments		
One year or less	171,948	106,752
From one to five years	171,948	151,232
Net commitments	**343,896**	**257,984**

NATIONAL COMPETITION COUNCIL

SCHEDULE OF CONTINGENCIES

as at 30 June 2001

	2000-01	1999-00
	$	**$**
Contingent Losses	–	–
Contingent Gains	–	–

The above statements 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 2001

Note 1 : Summary of significant accounting policies

1.1 Aim and objectives of the National Competition Council

The National Competition Council (the 'Council') was established on 6 November 1995 by the *Competition Policy Reform Act 1*995 following agreement by the Commonwealth, State and Territory governments.

The Council is an independent body that advises all governments on implementation of the national competition policy reforms. The Council's aim is to help raise the living standards of the Australian community by ensuring conditions for competition prevail throughout the economy which promote growth, innovation and productivity.

The Council's program objectives are:

- to promote microeconomic reform within the community, including by research and by providing advice to governments on competition policy matters;
- to recommend on applications for declaration of access to services provided by nationally significant infrastructure and the certification of access regimes under part IIIA of the Trade Practices Act;
- to assess progress with agreed competition policy reforms and to recommend to the Commonwealth prior to July 1997, July 2001 and July 2002 whether the conditions for NCP payments to the States and Territories have been met; and
- to recommend on whether State and Territory government businesses should be declared for prices surveillance by the Australian Competition and Consumer Commission and to report on the costs and benefits of legislation that relies on s.51 of Trade Practices Act.

1.2 Basis of accounting

The financial statements are required by s.49 of the *Financial Management an Accountability Act 1997* and are a general purpose financial report.

The statements have been prepared in accordance with:

- Schedule 1 to Orders made by the Finance Minister for the preparation of Financial Statements in relation to financial years ending on or after 30 June 2001;
- Australian Accounting Standards and Accounting Interpretations issued by Australian Accounting Standards Boards;
- other authoritative pronouncements of the boards; and

- Consensus Views of the Urgent Issues Group.

The statements have been prepared having regard to:

- Statements of Accounting Concepts; and
- the Explanatory Notes to Schedule 1, and Guidance Notes issued by the Department of Finance and Administration.

The Council Statement of Financial Performance and the Statement of Financial Position have been prepared on an accrual basis and are in accordance with historical cost convention. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position.

Assets and liabilities are recognised in the Council Statement of Financial Position 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. Assets and liabilities arising under agreements equally proportionately unperformed, however are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrecognised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than remote contingencies).

Revenues and expenses are recognised in the Council Statement of Financial Performance when, and only when, the flow or consumption or loss of economic benefits has occurred and can be reliably measured.
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.

1.3 Changes in accounting policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 1999-2000.

1.4 Revenue

The revenues described in this note are revenues relating to the core operating activities of the Council.

(A) Revenues from Government - agency appropriations

Appropriations for departmental outputs are recognised as revenue to the extent that the Finance Minister is prepared to release appropriations for use (that is, the full amount of the appropriation passed by the Parliament less any savings offered up at Additional Estimates and not subsequently released).

(B) Resources received free of charge

Services received free of charge are recognised as revenue 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 at their fair value when the asset qualifies for recognition, unless received from another government agency as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.5).

(C) Other revenue

Revenue from the sale of goods is recognised upon the delivery of goods to customers.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

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

Council revenue from the rendering of a service is recognised by reference to the stage of completion of contracts or other agreements to provide services to Commonwealth bodies. The stage of completion is determined according to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

1.5 Transactions by the Government as owner

Appropriations designated as 'Capital – Equity Injections' are recognised directly in equity to the extent drawn down as at the reporting date.

Net assets received under a restructuring of administrative arrangements are designated by the Finance Minister as contributions by owners and adjusted directly against equity. Net assets relinquished are designated as distributions to owners. Net assets transferred are initially recognised at the amounts at which they were recognised by the transferring agency immediately prior to the transfer.

1.6 Employee entitlements

(A) Leave

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

The liability for annual leave reflects the value of total annual leave entitlements of all employees at 30 June 2001 and is recognised at the nominal amount.

The non-current portion of the liability for long service leave is recognised and measured at the present value of the estimated future cash flows to be made in respect of all employees at 30 June 2001. In determining the present value of the liability, the Agency has accounted for attrition rates and pay increases through promotion and inflation.

In determining the value of the liability, the Council has taken into account attrition rates and pay increases through promotion and inflation.

(B) Separation and redundancy

Provision is made for separation and redundancy payments in circumstances where the Agency has formally identified positions as excess to requirements and a reliable estimate of the amount of the payments can be determined.

(C) Superannuation

Staff of the Council contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Employer contributions amounting to $166,757 in 2000–01 (up from $130,090 in 1999–00) in relation to these schemes have been expended in these financial statements.

No liability for superannuation is recognised at 30 June because the employer contributions fully extinguish the accruing liability that is assumed by the Commonwealth.

Employer Superannuation Productivity Benefit contributions totalled $31,620 in 2000–01 ($23,714 in 1999–00).

1.7 Leases

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased plant and equipment asset and operating leases under which 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 the present value of minimum lease payments at the inception of the lease and a liability recognised for the same amount. 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 basis which is representative of the pattern of benefits dervied from the leased assets. The net present value of future net outlays in respect of surplus space under non-cancellable lease agreements is expensed in the period in which the space becomes surplus.

Lease incentives taking the form of 'free' leasehold improvements and rent holidays are recognised as liabilities. These liabilities are reduced by allocating payments between rental expense and reduction of the liability.

1.8 Borrowing costs

All borrowing costs are expensed as incurred except to the extent that they are directly attributable to qualifying assets, in which case they are capitalised. The amount capitalised in a reporting period does not exceed the amounts of costs incurred in that period.

1.9 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution.

1.10 Financial instruments

Accounting Policies for financial instruments are stated at Note 13.

1.11 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 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.

1.12 Property (land, buildings and infrastructure), plant and equipment

(A) Asset recognition threshold

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

(B) Revaluations

All items of leasehold improvements and with historical costs equal to or in excess of $5,000 and all items of computer, plant and equipment were revalued in accordance with the 'deprival' method (replacement cost) of valuation on 1 July 2000 and thereafter will be revalued progressively on that basis every three years.

The Council reviewed the following valuations:

- Leasehold improvements were initially acquired in November 1995 in connection with the leasehold and valued on 30/6/01 at cost. The valuation represented by the written down value was considered to approximate the 'deprival' value; and

- Most computers were replaced late in June 2000 and therefore are carried at cost as at 30/6/01. The valuation represented by the written down value was considered to approximate the 'deprival' value (replacement).

The financial effect of the move to progressive revaluations is that the carrying amounts of assets will reflect current values and that depreciation charges will reflect the current cost of the service potential consumed in each period.

(C) Recoverable amount test

Schedule 1 requires the application of the recoverable amount test to departmental non-current assets in accordance with AAS 10 Recoverable Amount of Non-Current Assets. The carrying amounts of these non-current assets have been reviewed to determine whether they are in excess of their recoverable amounts. In assessing recoverable amounts, the relevant cash flows have been discounted to their present value.

(D) 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 balance date and necessary adjustments are recognised in the current or current and future reporting periods, as appropriate. Residual values are re-estimated for a change in prices only when assets are revalued.

Depreciation and amortisation rates applying to each class of depreciable asset are based on the following useful lives:

	2000-01	**1999-2000**
Buildings on freehold land	60 years	60 years
Leasehold improvements	**Lease term**	**Lease term**
Plant and equipment	4 – 9 years	4 – 9 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 3C.

1.13 Inventories

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

1.14 Taxation

The Council is exempt from all forms of taxation except fringe benefits tax and the goods and services tax.

1.15 Insurance

The Council has insured for risks through the Government's insurable risk managed fund, called 'Comcover'. Workers compensation is insured through Comcare Australia.

1.16 Comparative figures

Comparative figures have been adjusted to conform to changes in presentation in these financial statements where required.

	2000-01	1999-00
	$	$
Note 2 : Operating revenues		
Revocation fee and court costs recovery	220,589	–
Note 3: Operating expenses		
3A – Employee expenses		
Remuneration (for services provided)	1,978,882	1,787,974
Total	1,978,882	1,787,974
3B – Suppliers expenses		
Supply of Goods and Services	1,832,986	909,617
Operating Lease Rentals	129,164	114,868
Stock Writedown	–	137,023
Total	1,962,150	1,161,508

	2000-01	1999-00
	$	$
3C – Depreciation and amortisation		
Depreciation of Property, Plant and Equipment	98,060	110,100
Total	98,060	110,100

The aggregate amounts of depreciation or amortisation expenses during the reporting period for each class of depreciable asset are as follows:

Leasehold Improvements	45,487	48,968
Plant and Equipment	52,573	61,132
Total	98,060	110,100

Note 4: Financial assets

4A – Receivables		
Goods and Services	–	15,224
GST receivable	77,958	–
Appropriations	96,099	96,099
Other	39,941	–
	213,998	111,323
Receivables (gross) are aged as follows:		
Not Overdue		
Overdue by:		
Less than 30 days	39,941	15,224
30 to 60 days	26,134	–
60 to 90 days	51,824	–
More than 90 days	96,099	96,099
	213,998	111,323

Note 5: Non financial assets

5A. Land and buildings		
Leasehold Improvements	342,433	342,433
Accumulated Amortisation	302,942	257,456
Total Leasehold Improvements (net)	39,491	84,977
Total Land and Buildings	**39,491**	**84,977**

	2000-01	1999-00
	$	$
5B. Infrastructure, plant and equipment		
Plant and Equipment - at cost	343,675	334,130
Accumulated Depreciation	283,546	211,574
Adjustment to Opening Balance	–	19,399
Total Plant and Equipment	**60,129**	**103,157**

5C. Analysis of property, plant, equipment and intangibles

Movement summary 2000-01 for all assets, irrespective of valuation basis

	Land and buildings	Plant and equipment	Total
	$	$	$
Gross value as at 1 July 2000	342,433	334,130	676,563
Additions – Purchases of assets	–	9,545	9,545
Gross value as at 30 June 2001	**342,433**	**343,675**	**686,108**
Accumulated depreciation/amortisation as at 1 July 2000	257,456	211,574	469,030
Adjustment to Opening Balance	–	19,398	19,398
Depreciation/amortisation charge for the year	45,486	52,574	98,060
Accumulated depreciation amortisation as at 30 June 2001	**302,942**	**283,546**	**586,488**
Net book value as at 30 June 2001	39,491	60,129	99,620
Net book value as at 1 July 2000	84,977	103,157	188,134

	2000-01	1999-00
	$	$

Note 6 : Provisions

6A – Employee Provisions		
Salaries and wages	61,637	39,624
Leave	457,852	463,284
Superannuation	–	1,075
Aggregate employee entitlement liability	519,489	503,983
Current	61,637	40,699
Non-current	457,852	463,284

Note 7 : Payables

7A – Supplier payables		
Trade creditors	346,679	91,356
Total	346,679	91,356

Note 8 : Equity

8A – Equity Table

Item	Accumulated Results	
	2000-01	1999-00
	$	$
Balance 1 July 2000	258,317	(20,086)
Net surplus (deficit) after extraordinary items	(535,461)	278,403
Balance 30 June 2001	(277,144)	258,317

	2000-01	1999-00
	$	$

Note 9 : Cash flow reconciliation

Reconciliation of cash per Statement of Financial Position to Statement of Cash Flows		
• Cash at year end per Statement of Cash Flows	275,406	545,303
• Statement of Financial Position items comprising		
Above cash : 'Financial Asset – Cash'.	275,406	545,303
Reconciliation of operating loss to net cash provided by Operating activities:		
Net Surplus / (Deficit)	(535,461)	278,368
Depreciation/ Amortisation	98,060	110,100
(Increase)/decrease in receivables	(102,675)	23,995
(Increase)/decrease in other assets	–	11,609
(Increase)/decrease in inventories	–	51,205
(Increase)/decrease in prepayments	8,896	–
Increase/(decrease) in employee liabilities	16,581	–
Increase/(decrease) in suppliers liability	254,247	–
Increase/(decrease) in other liabilities	–	115,103
Net cash provided (used) by operating activities	**(260,352)**	**590,380**

Note 10 : Executive remuneration

The number of executives who received or were due to receive total remuneration of $100,000 or more:

	2000–01	1999–00
	no.*	no.**
$100,000 to $110,000	–	–
$110,001 to $120,000	3	1
$120,001 to $130,000	–	1
$130,001 to $140,000	–	–
$140,000 to $160,000	1	–
The aggregate amount of total remuneration of executives shown above	$500,000	$250,000

* Figures included employer superannuation contribution

** Full time SES only

Note 11 : Remuneration of auditors

Financial statement audit services are provided free of charge to the Council. The fair value of the services provided was $20,000 in 2000–01 (also $20,000 in 1999–00).

No other services were provided by the Auditor-General.

Note 12 : Average staffing levels

The average staffing levels for the Council during the year were:

	2000-01	1999-00
	no.	no.
National Competition Council	20.0	21.8

Note 13 : Financial instruments

(A) Terms, conditions and accounting policies

Financial instruments	Notes	Accounting policies and methods (including recognition criteria and measurement basis)	Nature of underlying Instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows)
Financial Assets		Financial assets are recognised when control over future economic benefits is established and the amount of the benefit can be reliably measured.	
Cash		Deposits are recognised at their nominal amounts. Interest is credited to revenue as it accrues.	Deposits are non–interest bearing.
Receivables for Goods and Services	4A	These receivables are recognised at the nominal amounts due less any provision for bad and doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collection of the debt is judged to be less rather than more likely.	All receivables are with the Commonwealth and/or other external entities.
Financial Liabilities		Financial liabilities are recognised when a present obligation to another party is entered into and the amount of the liability can be reliably measured.	
Trade Creditors	7A	Creditors and accruals are recognised at their nominal amounts, being the amounts at which the liabilities will be settled. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

(B) Interest rate risk: agency

Financial Instrument	**Note**	**Non – Interest Bearing**	
		2000-01 $	**1999-00 $**
Financial Assets			
Cash at Bank		275,406	545,303
Receivables for Goods and Services	4A	213,998	111,323
Total financial assets		489,404	656,626
Total Assets		589,024	853,656
Financial Liabilities			
Trade Creditors	7A	346,679	91,356
Total financial liabilities (Recognised)		346,679	91,356
Total Liabilities		866,168	595,339

The Council does not have any interest–bearing risks.

c) Net fair value of financial assets and liabilities

	Note	**2000-01 Total carrying amount $**	**2000-01 Aggregate net fair value $**	**1999-00 Total carrying amount $**	**1999-00 Aggregate net fair value $**
Department Financial Assets					
Cash at Bank		275,406	275,406	545,303	545,303
Receivables for Goods and Services	4A	213,998	213,998	111,323	111,323
Total Financial Assets		489,404	489,404	656,626	656,626
Financial Liabilities (recognised)					
Trade Creditors	7A	346,679	346,679	91,356	91,356
Total Financial Liabilities (recognised)		346,679	346,679	91,356	91,356

Financial Assets

The net fair values of cash and non-interest-bearing monetary financial assets approximate their carrying amounts.

Financial Liabilities

The net fair values for trade creditors are approximated by their carrying amounts.

(d) Credit risk exposures

The Councils maximum exposures to credit risk at the reporting date in relation to each class of recognised financial assets is the carrying amount of those assets as indicated in the Statement of Financial Performance.

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

National Competition Policy contacts

For further information about National Competition Policy, please contact the National Competition Council or the relevant Commonwealth, State or Territory competition policy unit.

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