

NATIONAL
COMPETITION
COUNCIL



ANNUAL REPORT



2004 - 2005

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ISBN 0-9757067-4-8

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An appropriate citation for this paper is:

National Competition Council 2005, *Annual report 2004-05*, Melbourne.

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 Australian Government and 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 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

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**

30 August 2005

The Honourable Peter Costello MP
Treasurer
Parliament House
Canberra ACT 2600

Dear Treasurer

In accordance with section 290 of the *Trade Practices Act 1974* the National Competition Council is pleased to present you with its tenth annual report, covering the Council's operations for the year 2004-05.

Yours sincerely

**David Crawford
Acting President**

**Doug McTaggart
Councillor**

**Rod Sims
Councillor**

**Virginia Hickey
Councillor**

Table of contents

Abbreviations	ix
President's review	xi
Part A	
A1 The future of microeconomic reform	1
A2 Regulation of access to infrastructure	5
Part B	
B1 Access to infrastructure (output 1)	9
Part IIIA of the <i>Trade Practices Act 1974</i>	10
Overview of declaration activities	11
Overview of certification activities	14
Overview of coverage activities under the National Gas Code	15
B2 Assessment of governments' implementation of National Competition Policy (output 1)	31
Water	32
Energy	32
Road transport	33
Legislation review and reform	34
Gatekeeping arrangements for new legislation	38
Reform of government businesses	39
B3 Communications (output 2)	41
Consultation	41
Speeches	41
Website development	42
Publications	42

Part C

C1 Corporate governance and organisation	45
Corporate governance	45
Internal and external scrutiny	49
Overview of staffing developments	51
C2 Functions	55
Agency overview	55
Agreed outcome and outputs	55
Activities	56
C3 Management	59
Staff development and management	59
Outsourcing (corporate services)	61
Equity matters	62
Other matters	64
Compliance index	68
C4 Financial statements	69
National Competition Policy contacts	95
References	97
Index	99

Boxes

A1.1	The Productivity Commission’s review of NCP reforms—key findings	3
B3.1	Speeches by councillors and Council staff, 2004-05	41
B3.2	Council publications, 2004-05	42
C1.1	Councillor profiles	46
C2.1	National Competition Council’s mission statement, goals and work program	57

Figures

C1.1	National Competition Council organisation chart, 30 June 2005	46
C1.2	National Competition Council secretariat organisation chart, 30 June 2005	48
C2.1	National Competition Council’s planned outcome and contributing outputs	56

Tables

B1.1	Summary of declaration applications to the Council	18
B1.2	Summary of certification applications to the Council	23
B1.3	Summary of coverage and revocation applications under the National Gas Code to the Council	26
C1.1	National Competition Council meetings, 2004-05	47
C1.2	Staff profile, 30 June 2005	51
C1.3	Staff by employment status, 30 June 2005	51
C1.4	Summary of expenditure on consultancies engaged during 2002-03, 2003-04 and 2004-05	52
C1.5	Consultancy services let during 2004-05	53
C3.1	Staff by equal employment opportunity (EEO) group, 30 June 2005	64

Abbreviations

ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ANAO	Australian National Audit Office
BHPBIO	BHP Billiton Iron Ore
COAG	Council of Australian Governments
FMG	Fortescue Metals Group Ltd
GGT	Goldfields Gas Transmission Pty Ltd
NCP	National Competition Policy
NEM	National Electricity Market
OECD	Organisation for Economic Cooperation and Development
OHS	Occupational health and safety
PC	Productivity Commission

President's review

Competition policy—preserving and perpetuating the gains

All Australian governments established the National Competition Policy (NCP) to improve the Australian economy. Their rationale was that fundamental reform—to expose all business activity to greater competition—was needed to improve efficiency and productivity, and enhance incomes and wealth for all Australians.

The NCP is a broad ranging and comprehensive reform program. It is underpinned by principles designed to give appropriate primacy to the operation of competitive markets, reflecting the view of all governments that vigorous competition is the engine that delivers a dynamic economy and, consequently, improving living standards.

The NCP principles allow governments to regulate or intervene in other ways where they can show such actions are in the public interest. In other words, the NCP does not prevent restrictions on competition where these are shown to be genuinely necessary to achieve public interest goals. Governments are also free to introduce subsidies and community service obligations to meet what they consider to be desirable social goals—the only obligation is that these be open and transparent, rather than hidden behind opaque cross-subsidisation and the associated restrictions on competition.

A significant element of the NCP is the program of legislation review and reform. Under this program, governments undertook to review all legislation that restricts competition, with the objective of ensuring any restrictions on competition are in the interest of the overall community. Any restrictions not shown to provide a net public benefit were to be removed. The 'guiding principle' of the program is that legislation (including Acts, enactments, Ordinances and Regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can be achieved only by restricting competition.

All Australian governments undertook to apply this guiding principle to new legislation that restricts competition. They were to do this by establishing 'gatekeeping' processes to vet new legislation and by reviewing legislative barriers to competition every 10 years.

The program of reviewing the stock of existing legislation is coming to an end. Overall, governments have now reviewed about 80 per cent of identified legislation, with several governments showing a real commitment to the agreed task. The unfinished business of the legislation review program comprises two elements: (1) regulation that has not been reviewed in accord with agreed commitments; and (2) regulation that governments have retained despite one or more reviews having failed to establish that the restrictions on competition are needed to serve the public interest.

Individually, some of the outstanding obligations are relatively minor, while others are of greater consequence. In total, however, the remaining unjustified or unjustifiable restrictions remain a drag on Australia's economic performance. These will be reported on in more detail in the National Competition Council's final (2005) assessment report on governments' progress in implementing the NCP and related reforms—a report that will be provided to governments later this year.

All governments now have gatekeeping arrangements in place. It is fair to note that some of these arrangements appear significantly more effective than others and that no common standard has emerged.

The Council is currently completing its 2005 NCP assessment report. That report, as with the Council's previous such reports, will detail where governments have met their reform obligations and where they have not. This year, the Council will also examine the effectiveness of governments' gatekeeping mechanisms. These mechanisms are an important insurance against unnecessary anticompetitive regulation in the future.

While much has been achieved under the NCP, highlighting the need for reform to continue, the rest of the world is not standing still and sectional interests in Australia continue to equate their own interests with the public interest. If the reforms achieved to date are not maintained and continued, Australia will eventually lag the field again, and our efficiency, productivity, incomes and wealth will fall.

Governments have signalled that reform activity will continue. The work undertaken for the Council by The Allen Consulting Group in 2004,¹ the Productivity Commission's authoritative report on the NCP reforms,² the Victorian Government's submission to the COAG review³ and the 3 June 2005 Council of Australian Governments (COAG) *Communiqué*⁴ all confirm the necessity and desirability of continued reform.

1 The Allen Consulting Group 2004, *Microeconomic Reform in Australia: Comparison to other OECD Countries*, Melbourne.

2 Productivity Commission 2005, *Review of National Competition Policy Reforms*, Report no. 33, Canberra.

3 Government of Victoria 2005, *A Third Wave of National Reform: A New National Reform Initiative for COAG*, Melbourne.

4 Council of Australian Governments 2005, *Communiqué*, Canberra, 3 June.

COAG's June *Communiqué* stated:

It is important not to be complacent about the continued performance of the Australian economy. Resting on the achievements of the last decade will cost the Australian community opportunities for greater prosperity.

Australia's productivity performance is under threat, with further reform essential if the economic expansion of the last 14 years is to continue.

Already governments have identified further reform targets in key areas such as workplace relations, energy, water and transport. While sectoral reform activity is necessary, however, a continuation of the prosperity, economic growth and wealth creation of the past 15 or so years will likely need more.

The continuing success of the Australian economy will depend on governments and the community continuing to commit to the underlying principles that have driven reform to date. Sector-specific reform needs to be complemented with broad based reform and the retention and promotion of what the Organisation for Economic Cooperation and Development (OECD) called a 'deep-seated competition culture within Australia'.⁵ To succeed, the reform agenda must be flexible—that is, different jurisdictions may need to undertake reform activities according to their different priorities or schedules—but also disciplined and accountable.

Success too depends on the processes for reform.

To ensure a reform agenda is achieved, there needs to be informed monitoring of outcomes and transparent reporting on progress and on areas where commitments are not being met. Those directly involved in establishing and implementing reform agendas cannot credibly undertake these monitoring and reporting tasks. The existence of proper reporting of itself provides an incentive for meeting reform targets. Direct incentives provide additional encouragement, although the particular form of reward is probably of secondary importance.

Processes such as gatekeeping to ensure regulation is necessary must continue. Processes for testing regulatory proposals (both the mundane and the popular)—to ensure regulation is justified in the public interest, is effective and minimises restrictions on competition—must continue and be enhanced in all jurisdictions. Most particularly, gatekeeping needs enhancement in those jurisdictions where existing mechanisms lack transparency, comprehensive application and a desirable degree of independence.

⁵ Organisation for Economic Cooperation and Development 2005, *OECD Economic Surveys 2004: Australia*, vol. 2004/18, February.

Australian governments pass an enormous and apparently ever increasing amount of regulation each year. Ensuring this regulation meets the requirements of the guiding principle requires not only effective gatekeeping but also political courage and commitment. Governments need to resist the overtures of sectional interests that seek to restrict or raise barriers to competition without demonstrating that doing so is necessary to meet a genuine public interest, and that the proposed restriction will achieve this goal.

The rewards from the NCP have been great. They are not, however, self-sustaining. Only by continuing broad scope reform can governments preserve gains and make further gains. This requires a comprehensive reform agenda, appropriate monitoring and evaluation, and incentives to facilitate reform activity and share the fiscal benefits among all the parties that must come together to make reform happen.

David Crawford
Acting President

23 August 2005

A1 The future of microeconomic reform

Australia is a federation. The policies and actions of all nine Australian governments have a significant impact on the success of the Australian economy, on the productivity and prosperity of its people.

Some policies and actions are the responsibility of a particular government; other matters require coordination and cooperation among governments—that is, cooperative federalism. While the size and scope of the area where cooperative federalism is required may vary over time, depending on the willingness of governments to exert or refer constitutional powers, at any time a range of critical policies will demand concerted action by many or all Australian governments.

For over 10 years, the National Competition Policy (NCP) has provided a basis for cooperative federalism in relation to microeconomic reform. The NCP was founded on a set of intergovernmental agreements that all Australian governments entered in the early 1990s. These agreements provided for a comprehensive transformation of this country's economy over the succeeding 10 years.

The agreements encompassed:

- an extension of competition law to all business activity in Australia, ensuring measures to prevent anticompetitive conduct apply to professions, unincorporated businesses and the business activities of governments
- reform of public monopolies, including the separation of regulatory and commercial activities and an examination of the desirability of separating monopoly activities from potentially competitive ones
- competitive neutrality, so government businesses compete with the private sector on a fair basis
- the creation of independent regulators to oversee or set prices for services supplied by monopoly suppliers
- legislation review and appropriate reform
- the introduction of 'gatekeeping' arrangements, to maintain the quality of regulation
- a national access regime, to provide effective third party access to essential infrastructure
- specific reforms in the energy, water and road transport sectors.

This was the agenda for an initial round of microeconomic reform. It was complemented with two further elements: (1) an assessment process undertaken by the National Competition Council, to monitor and provide transparent reporting of governments' progress against the agenda, and (2) incentive payments (competition payments) enabling states and territories to share the fiscal fruits of their reforms.

The NCP has been hugely successful, and as a result Australians are better off. Elements of the initial reform agenda are ongoing; in particular, governments are expected to retain 'gatekeeping' arrangements to ensure new regulation serves the public interest while minimising restrictions on competition.

The specific program of reform established in the 1990s, however, is reaching an end. But, illustrating the far sighted nature of the initial NCP agreements, those agreements provided for a review and consideration of a next agenda towards the end of the initial agreement period. That review process commenced in April 2004, with the Australian Government Treasurer requesting that the Productivity Commission undertake a Review of National Competition Policy Reforms. The Productivity Commission reported in February 2005. Box A1.1 reproduces its key findings.

At its meeting on 3 June 2005, the Council of Australian Governments (COAG) considered the Productivity Commission's report and agreed:⁶

- that continuing reform is needed to sustain and enhance Australian living standards in light of an ageing population, and there are significant potential gains from further reform
- to proceed immediately with a review of NCP should proceed immediately, with the review to report to COAG by the end of 2005
- to COAG senior officials undertaking the review and producing the review report
- that the review assess the effectiveness of the existing NCP arrangements, but focus on a possible new national reform agenda
- that the review identify practical options for the implementation, monitoring and assessment of any new reform agenda
- that the review is to draw from, but not be limited by, the recommendations of the Productivity Commission report on the Review of National Competition Policy Reforms
- that the Australian Local Government Association participate in relevant elements of the review.

⁶ Council of Australian Governments 2005, *Communiqué*, Canberra, 3 June.

At the time of writing, COAG senior officials were preparing their report for consideration by governments. It is their responsibility to recommend a next agenda for microeconomic reform.

Box A1.1: The Productivity Commission's review of NCP reforms—key findings

The National Competition Policy has delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs. It has:

- contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes
- directly reduced the prices of goods and services such as electricity and milk
- stimulated business innovation, customer responsiveness and choice and
- helped meet some environmental goals, including the more efficient use of water.

Benefits from NCP have flowed to both low and high income earners, and to country as well as city Australia—though some households have been adversely affected by higher prices for particular services and some smaller regional communities have experienced employment reductions.

Though Australia's economic performance has improved, there is both the scope and the need to do better. Population ageing and other challenges will constrain our capacity to improve living standards in the future. Further reform on a broad front is needed to secure a more productive and sustainable Australia.

In a number of key reform areas, national coordination will be critical to good outcomes. These areas—many of which have been encompassed by NCP—should be brought together in a new reform program with common governance and monitoring arrangements. Priorities for the program include:

- strengthening the operation of the national electricity market
- building on the National Water Initiative to enhance water allocation and trading regimes and to better address negative environmental impacts
- developing coordinated strategies to deliver an efficient and integrated freight transport system
- addressing uncertainty and policy fragmentation in relation to greenhouse gas abatement policies
- improving the effectiveness and efficiency of consumer protection policies and
- introducing a more targeted legislation review mechanism, while strengthening arrangements to screen any new legislative restrictions on competition.

An 'overarching' policy review of the entire health system should be the first step in developing a nationally coordinated reform program to address problems that are inflating costs, reducing service quality and limiting access to services.

National action is also needed to re-energise reform in the vocational education and training area.

Reform is important in other key policy areas, including industrial relations and taxation, but there would be little pay-off from new nationally coordinated initiatives.

The Australian Government should seek agreement with the states and territories on the role and design of financial incentives under new national reform programs.

Source: Productivity Commission 2005, *Review of National Competition Policy Reforms*, Melbourne, p. ii.

The Productivity Commission's report, along with other documents such as the Business Council of Australia's *Infrastructure action plan for future prosperity* (BCA 2005a) and *Business regulation action plan for future prosperity* (BCA 2005b) and the Exports and Infrastructure Taskforce's (2005) *Report to the Prime Minister on Australia's export infrastructure*, provide officials, and then governments, with a broad menu of elements for a second

reform agenda. That agenda can then be given substance through one or more intergovernmental agreements that set out further reform commitments.

Such an agenda is a critical and necessary element to ensuring Australia continues to actively pursue the reforms that are necessary to preserve and build on the gains made in recent years. But having an agenda is not enough.

The success of NCP lies in a combination of three elements. First, an **agenda** is essential. Second, it is also necessary to ensure progress is assessed and reported in a rigorous, transparent and independent manner. This **assessment** role is critical. Third, the role of **incentives** in progressing and encouraging reform, stiffening government's resolve and distributing the gains from reform is important. These three elements together form a process for achieving reform.

The agenda must be flexible in scope and form. There will be identifiable big ticket reform items—the development of a true national energy market or water reform, for example—but parts of the agenda should also deal with processes to eliminate unnecessary regulatory or administrative burdens on productivity. These process items should involve big commitments to deal with a large number of small items that together represent a substantial drag on the Australian economy. Addressed individually, they would not warrant COAG's attention, but only through a program of review agreed at that level will they be addressed.

A worthwhile reform agenda needs to be complemented with a process of assessment. That process will reinforce accountability for meeting reform objectives in a timely fashion, by discouraging the dilution of challenging objectives or the 'adjustment' of unmet timetables and deadlines.

Incentives of some form are also important to achieving necessary reforms and provide a means of distributing the gains from reform. Elements of any new reform agenda are likely to pose political problems for at least some governments; some may give rise to fiscal issues. State and territory governments receive significant funding from the Australian Government, and it is a legitimate question to ask why financial incentives are needed to persuade governments to take actions that will produce significant benefits.

Financial incentives can assist governments in meeting legitimate demands for adjustment assistance and stiffen their resolve to undertake reform. The Council's experience with the NCP suggests that, on balance, there is a legitimate role for financial incentives to assist implementation of a next reform agenda. The form of the incentives may be different however from that which operated under the NCP.

The ability of Australian governments to agree on a next comprehensive agenda of microeconomic reform will be a test of cooperative federalism, and their willingness to be held accountable through assessment and incentive mechanisms will test the commitment to that agenda.

A2 Regulation of access to infrastructure

As for most transactions relating to the provision of goods and services, a market is the preferred means of determining the prices and other terms of access to the services provided by infrastructure facilities. Where markets for services provided by infrastructure facilities are effectively competitive, those markets are likely to ensure access is provided efficiently and at appropriate prices. However, while some infrastructure services are provided in competitive markets, the economics associated with the provision of some infrastructure are such that only one facility is going to exist. Such natural monopolies can act as bottlenecks to the development of competition in other markets that depend on access to the natural monopoly infrastructure.

In such bottleneck situations, if access on appropriate terms is denied or available only at costs that include significant monopoly rents, then the Australian economy as a whole is harmed—the development of competition in dependent markets is frustrated and facilities may be duplicated unnecessarily. In either event, the efficiency of the economy is reduced.

Depending on where one looks for a solution to bottleneck issues, a variety of approaches can be found. Some countries rely on litigation, while others deal with this issue as part of a broad ranging approach to regulation of an entire sector of the economy, and some do not deal with the issue at all. In Australia, we have a fourth approach. Each case is assessed on its merits against a set of criteria intended to limit regulatory intervention to cases where:

- a genuine natural monopoly bottleneck exists
- the matter is of national significance
- access is not available under an effective state regulatory regime
- competition in a dependent market will be promoted
- making access available will not harm health and safety, environmental objectives and the overall public interest.

Compared with a litigation based alternative, this approach is likely to provide appropriate access more quickly, at lesser cost and with greater certainty. Compared with a more expansive regulatory model, it is likely to provide for access in a more confined set of circumstances and at lesser cost. Finally, compared with having no scheme for access to bottleneck facilities, the Australian approach is likely to avoid inefficient duplication and enhance competition and efficiency in dependent markets.

In many ways, the Australian approach leads the world in regulatory practice. There are, however, many areas in which improvements can be made, and regulatory approaches must be dynamic. As the industries and businesses that are subject to regulation change, the scope and nature of the regulation may need to change too.

In Australia, regulation is generally undertaken by experts operating within statutory rules and the principles of natural justice. All relevant parties have opportunities to participate in regulatory process, and regulatory decision making is largely transparent. Regulators are subject to appeal processes, although ‘appeals’ in their current form amount to a repetition of the regulatory role rather than a process designed to overcome errors made in the first instance.

In Australia, the decision as to what is subject to regulation is generally separated from the administration of regulation. Except in the case of telecommunications, the Council rather than a regulator is responsible for advising the relevant ministerial decision maker on whether access to a particular infrastructure facility should be subject to regulation. If the Council so advises, the Australian Competition and Consumer Commission (ACCC) (or sometimes a similar state body) administers the regulation.

Regulation of infrastructure involves tradeoffs—in particular, a tradeoff between the interests of consumers and infrastructure owners, and between (1) the development of competition in markets that depend on a particular infrastructure and (2) the effects of regulation on the returns to infrastructure owners and the consequential effects on investment. The existence of tradeoffs is no reason to avoid regulation, but a consideration of the tradeoff involved is critical in deciding whether to impose regulation in a particular situation. That consideration is central to the application of the criteria for access regulation.

Appropriately applied regulation will benefit the Australian economy and the public generally. The Australian approach seeks to judge the known tradeoffs between competing interests in ways that ensure regulation is imposed only where it is necessary and desirable to do so.

B1 Access to infrastructure (output 1)

Under the 1995 National Competition Policy (NCP) agreements, all Australian governments agreed to a regime for third party access to services provided by nationally significant infrastructure where:

- it would not be economically feasible to duplicate the facility
- access to the service is necessary to permit effective competition in a downstream or upstream market
- the facility is of national significance, having regard to the size of the facility, its importance to constitutional trade or commerce, or its importance to the national economy, and
- the safe use of the facility by the person seeking access can be assured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

The Competition Principles Agreement provided for the Australian Government to put forward legislation to establish the access regime, but left room for state or territory regimes to take its place if they are certified by the National Competition Council as matching the core criteria of the national regime.

The national access regime is a mechanism for when attempts at negotiated access fail, and it was established via amendments to the *Trade Practices Act 1974*. Parties seeking access can apply for the relevant government minister to 'declare' a service. The Council considers the matter against the criteria in the Trade Practices Act and recommends to the minister whether the service sought by the applicant should be declared. If declaration occurs, access seekers acquire a legal right to negotiate access with the provider. If necessary, the Australian Competition and Consumer Commission (ACCC), through arbitration, determines the request for access.

The 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. The rationale for access regulation is that the owners of major infrastructure facilities often have substantial market power that they can exploit.

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 one of dealing with monopoly behaviour. An access regime is one means of restraining prices and maintaining output in these situations; in principle,

there are also other means, such as direct monitoring and control of prices and service standards.

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

Part IIIA of the *Trade Practices Act* 1974

Part IIIA of the Trade Practices Act 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
- the roles and responsibilities of the government bodies that administer the access regime.

Part IIIA provides a regulatory framework for access negotiation supported by credible dispute resolution procedures. It sets out three pathways for access to infrastructure services:

1. *Declaration (and arbitration)*. A business that wants access to a particular infrastructure service can apply 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.
2. *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, the designated federal minister can certify an access regime as being effective. The criteria for assessing whether an access regime is effective focus on whether the regime has an appropriate framework to promote competitive outcomes.
3. *Undertakings*. Infrastructure operators can make a formal undertaking to the ACCC, 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.

In December 2002, the Council published a guide to part IIIA to assist parties interested in access issues. The guide comprises three parts (each available

on request from the Council or on its website at www.ncc.gov.au). Part A examines the rationale for access and provides an overview of the pathways to access under part IIIA. Parts B and C provide more detailed information on the access pathways in which the Council plays a role—that is, part B covers the declaration pathway, while part C illustrates the Council’s approach to the certification of state and territory access regimes.

Overview of declaration activities

During 2004-05, the Council received one new application for declaration under part IIIA of the Trade Practices Act of services provided by infrastructure facilities. This was an application by Lakes R Us for the declaration of a water storage and transport service provided by Snowy Hydro and State Water Corporation. Other activity during 2004-05 related to the June 2004 application by Fortescue Metals Group Ltd (FMG) for declaration of services provided by the Mount Newman and Goldsworthy railway lines, the March 2004 application by Services Sydney Pty Ltd for declaration of transportation and interconnection services, and the October 2002 Virgin Blue Airlines Pty Ltd application for declaration of airside services at Sydney Airport.

These matters are discussed below. Table B1.1 summarises all declaration applications that the Council has received since the enactment of part IIIA.

Lakes R Us application for declaration of a water storage and transport service provided by Snowy Hydro and State Water

On 8 October 2004, the Council received an application from Lakes R Us for declaration of the service provided by certain water facilities operated by Snowy Hydro and State Water. (Lakes R Us provided supplementary material on 12 January 2005.)

Lakes R Us is a venture company that has been set up to manage unused water allocations in the Snowy Scheme. It proposes to do this by storing water using the excess storage capacity (vacant air space) of the Snowy Scheme facilities operated by Snowy Hydro and to transport or release water to users in the Murray and Murrumbidgee systems using the services provided by facilities operated by Snowy Hydro and State Water.

The Council published an issues paper (April 2005) concerning the application. It received eight submissions in response. The Lakes R Us application, the issues paper and the submissions are available on the Council’s website at www.ncc.gov.au.

At the time of publication of this annual report, the Council was preparing a draft recommendation on the application. The final recommendation, which will be made after the Council considers responses to the draft recommendation, will be sent to the Premier of New South Wales, who is the relevant minister to determine the Lakes R Us application.

Fortescue Metals Group application for declaration of services provided by the Mount Newman and Goldsworthy railway lines

On 15 June 2004, the Council received an application under part IIIA from FMG for declaration of a service described as the use of the facility, being that part of:

- the Mount Newman railway line that runs from a rail siding that will be constructed near Mindy Mindy in the Pilbara to port facilities at Nelson Point in Port Hedland, and is approximately 295 kilometres long
- the Goldsworthy railway line that runs from where it crosses the Mount Newman railway line to port facilities at Finucane Island in Port Hedland, and is approximately 17 kilometres long.

The applicant identified the service provider as BHP Billiton Minerals Pty Ltd, Mitsui-Itochu Iron Pty Ltd and CI Minerals Australia Pty Ltd trading as joint ventures, and BHP Billiton Iron Ore Pty Ltd.

On 15 December 2004, the Council released decisions on two preliminary issues in relation to the FMG application. Following public consultation and the release of an issues paper, the Council concluded that the two railway lines each provide a separate service and that the Mount Newman line service is capable of being considered further for declaration, while the Goldsworthy line is not because it is part of a production process. A service that constitutes the use of a production process is exempt from declaration under part IIIA of the Trade Practices Act.

On 24 December 2004, BHP Billiton Iron Ore applied to the Federal Court for a declaration that the use of the Mount Newman railway line is not a service for which a declaration under part IIIA can be sought, given that the service is part of a production process. The company sought an order prohibiting the Council from further considering FMG's application.

On 25 February 2005, FMG applied to the Federal Court for a declaration that the use of the Goldsworthy railway line is a service for which declaration under part IIIA can be sought. FMG also sought an order requiring the Council to consider the application for declaration of the service. The Federal Court actions taken by BHP Billiton and FMG are proceeding.

Absent any orders from the court, the Council released an issues paper on 11 March 2005 regarding FMG's application for declaration of the use of the Mount Newman railway line. It sought submissions on the paper by April 8. On request from BHP Billiton, the Council extended the deadline for submissions, for a second time, from May 6 to June 3. The Council is preparing a draft recommendation.

The application, the decisions on the preliminary issues, the issues paper and associated submissions and correspondence are available on the Council's website at www.ncc.gov.au.

Services Sydney application for declaration of transportation and interconnection services

On 3 March 2004, the Council received an application under part IIIA from Services Sydney for a recommendation to declare the following services provided by Sydney Water's sewage reticulation network in the Sydney metropolitan area:

- a service for the transmission of sewage via Sydney Water's Sydney sewage reticulation network from the customer collection points to the interconnection points
- a service for the connection of new trunk main sewers owned and operated by Services Sydney to the existing Sydney sewage reticulation network at the interconnection points.

The Council released an issues paper on Services Sydney's application in April 2004. It received a number of submissions in response to the issues paper.

The Council's draft recommendation of 12 August 2004 was that the service be declared. The Council's final recommendation, recommending declaration of various sewage transportation and sewer connection services, was made on 1 December 2004 to the Premier of New South Wales, who is the relevant ministerial decision maker.

The Premier was deemed to have decided not to declare the service when he had not made a decision within 60 days of receiving the Council's final recommendation. That outcome is established by s44H(9) of the Trade Practices Act.

Services Sydney sought review of the Premier's decision by the Australian Competition Tribunal. The matter is ongoing.

Virgin Blue Airlines application for declaration of airside services at Sydney Airport

The 1 October 2002 application by Virgin Blue Airlines for the declaration of airside services at Sydney Airport is before the Australian Competition Tribunal. The application sought declaration under part IIIA of:

- a service for the use of runways, taxiways, parking aprons and other associated facilities necessary to allow aircraft carrying domestic passengers to:
 - take off and land using the runways at Sydney Airport
 - move between the runways and the passenger terminals at Sydney Airport ('airside service')

- a service for the use of domestic passenger terminals and related facilities to process arriving and departing domestic airline passengers and their baggage at Sydney Airport ('domestic terminal service').

Virgin Blue's application for declaration of the domestic terminal service was withdrawn on 6 December 2002 following Virgin Blue and Sydney Airports Corporation Limited's commercial agreement on terminal access.

In June 2003, the Council issued a draft recommendation (for public comment) that the airside service be declared. It considered the submissions received in response to its draft determination and concluded in its final recommendation that it could not be satisfied that criteria (a) and (f) of the declaration criteria (s44G(1) of the Trade Practices Act) were met. For criterion (a) to have been met, the Council needed to be satisfied that access to the airside service would promote competition in the relevant passenger or freight domestic air transport markets. There was evidence that Sydney Airport's incentive to exercise market power by increasing prices for the airside service, for example, was tempered by the desire to increase passenger traffic to maximise revenue from retail concessions. A further likely constraint on the exercise of market power was the threat of re-regulation.

The Council concluded that the effect of these dual constraints would be unlikely to completely hinder Sydney Airport's ability and incentive to exercise market power. It could not be satisfied, however, that the impact of such a tempered exercise of market power on competition in the dependent markets would adversely affect competition to a material degree. For this reason, criterion (a) was not satisfied. The Council went on to conclude that criterion (f), which considers whether access would be contrary to the public interest, was not met because the Council could not be satisfied that the costs of access would be less than the resultant competitive benefits.

The Council forwarded its final recommendation to the Parliamentary Secretary to the Treasurer, being the relevant minister, in November 2003. On 28 January 2004, the minister decided not to declare the airside service. Virgin Blue sought an Australian Competition Tribunal review of the minister's decision. The matter was heard in October 2004. Judgment is reserved.

Overview of certification activities

The Council considers applications from states or territories that wish to establish infrastructure access regimes that can take the place of the Australian Government regime. It recommends to the Australian Government the certification of state or territory regimes that meet the requirements set down in the Trade Practices Act.

During 2004-05, the Council received an application from the Tasmanian Government seeking a recommendation from the Council that the state's access regime for gas pipeline services is an effective regime under s44M of

the Trade Practices Act. The Council published a draft recommendation in February 2005 and made a final recommendation in April 2005.

Subsequent to the end of the financial year, the Council received an application on 11 July 2005 from the Western Australian Government, which sought a recommendation from the Council that the state's access regime for electricity network services is an effective access regime under s44M of the Trade Practices Act.

Information on the two applications can be found on the Council website at www.ncc.gov.au.

In November 2002, the Council forwarded to the then Australian Government Minister for Financial Services and Regulation its final recommendation that the Queensland gas access regime not be certified. No decision on the recommendation had been taken at the time of publication of this annual report. The Queensland regime was enacted in May 2000. While not certified, the provisions of the regime (including obligations on pipeline owners) continue to operate.

Table B1.2 summarises all certification applications that the Council has received since the enactment of part IIIA.

Overview of coverage activities under the National Gas Code

Under the National Third Party Access Code for Natural Gas Pipeline Systems (the National Gas Code), the Council considers applications for coverage of a pipeline or revocation of coverage. In assessing coverage and revocation applications, the Council must consider whether the relevant pipeline or pipelines meet the coverage criteria in the National Gas Code. It must then make a recommendation to the relevant state, territory or federal minister.

During 2004-05, the Council received one application for revocation under the National Gas Code and one for coverage. On 15 March 2005, the Council received an application from Epic Energy South Australia Pty Ltd for revocation of coverage of the transmission pipelines within the Moomba-to-Adelaide Pipeline system. On 16 March 2005, Molopo Australia Limited applied for coverage of the Dawson Valley Pipeline.

Epic Energy South Australia application for revocation of the Moomba-to-Adelaide Pipeline system

Epic Energy seeks revocation of coverage of the Moomba-to-Adelaide Pipeline system on the basis that neither the Council nor the minister can be satisfied that all of the matters set out in paragraphs (a), (b) and (d) in section 1.9 of the National Gas Code are met.

Section 1.9 sets out provisions governing access issues for the services provided by gas pipelines, similar to the provisions of part IIIA of the Trade Practices Act for other forms of infrastructure. Relevantly, section 1.9(a) requires ‘that access (or increased access) to services provided by means of the pipeline would promote competition in at least one market (whether or not in Australia), other than the market for the services provided by means of the pipeline’. Section 1.9(b) requires ‘that it would be uneconomic for anyone to develop another pipeline to provide the services provided by means of the pipeline’. Section 1.9(d) requires ‘that access (or increased access) to the services provided by means of the pipeline would not be contrary to the public interest’.

Epic Energy argues that changed market conditions, such as the commissioning of the SEA Gas Pipeline, provide incentives for it to offer market based price and service offerings, such that the coverage criteria are no longer satisfied.

The Council released an issues paper concerning the application on 30 March 2005, requesting submissions by 3 May 2005. The Council extended the deadline for its draft recommendation to 16 August 2005, and will make a final recommendation after public consultation on the draft recommendation. Copies of the application, the issues paper, submissions on the issues paper, and advice on recent developments can be found at www.ncc.gov.au.

Molopo Australia application for coverage of the Dawson Valley Pipeline

On 16 March 2005, Molopo Australia applied for coverage of the Dawson Valley Pipeline under the National Gas Code. The applicant seeks coverage of the entire pipeline (Qld: PPL26) which extends from Dawson Valley to the Wallumbilla-to-Gladstone Pipeline. The owner of the pipeline is Oil Company of Australia (OCA) (Moura) Transmissions Pty Ltd, which is a wholly owned subsidiary of Origin Energy Limited.

The Council released an issues paper on 4 April 2005 on the application, seeking submissions by 4 May 2005. It received several submissions. On 8 July 2005, the Council made a draft recommendation against coverage because it was not satisfied that access to the pipeline would confer a net public interest benefit.

At the time it released the draft recommendation, the Council advised that submissions on the draft recommendation should be made by 22 July 2005, and that it would make a final recommendation to the minister before 5 August 2005. Copies of the application, the issues paper, submissions on the issues paper, the draft recommendation and advice on recent developments are available on the Council’s website at www.ncc.gov.au.

Table B1.3 summarises the Council’s coverage and revocation work since the introduction of the National Gas Code.

Revocation of the Goldfields Gas Pipeline (Western Australia)

In November 2003, the Council released its final recommendation on a March 2003 application from Goldfields Gas Transmission Pty Ltd (GGT) to revoke coverage of the Goldfields Gas Pipeline. It recommended to the Western Australian Minister for Energy that coverage not be revoked. The minister's decision of July 2004 was that coverage not be revoked.

GGT sought for the Western Australian Gas Review Board to review the minister's decision. There is in principle agreement between the parties to discontinue the bid for review.

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

<i>Applicant</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Australian Union of Students (April 1996)	Payroll deduction service provided by the 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 a review of the Minister's decision. The tribunal determined not to declare (July 1997).
Futuris Corporation (August 1996)	Western Australian gas distribution service			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Qantas ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Ansett ramp and cargo terminal services at Melbourne and Sydney international airports (two applications)			The application was withdrawn.
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Sydney International Airport (three applications)	To declare (May 1997)	To declare (July 1997)	The Federal Airports Corporation applied to the Australian Competition Tribunal for a review of the minister's decision. The tribunal determined to declare the services for 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 12 months (July 1997)	Services were declared from August 1997 until 9 June 1998, and since have been subject to access provisions of the <i>Airports Act 1996</i> .

(continued)

Table B1.1 continued

<i>Applicant</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Carpentaria Transport (December 1996)	Queensland rail services, including above-rail services	Not to declare (June 1997)	Not to declare (August 1997)	Carpentaria applied to the Australian Competition Tribunal for a review of the minister's decision. It then withdrew the application for review.
Standardised Container Transport (February 1997)	New South Wales rail track services (Sydney to Broken Hill)	To declare (June 1997)	Deemed not to be declared due to expiry of the 60-day limit (August 1997)	Standardised Container Transport applied to the Australian Competition Tribunal for a review of the minister's decision. It then withdrew the application for review following successful access negotiations.
New South Wales Minerals Council (April 1997)	New South Wales rail track services in the Hunter Valley	To declare (September 1997)	Deemed not to be declared due to expiry of the 60-day limit (November 1997)	The New South Wales Minerals Council applied to the Australian Competition Tribunal for a review of the minister's decision. It then withdrew the application for review following the certification 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 the rail track 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 review of the minister's decision. The application for review was withdrawn following successful access negotiations.
Robe River (August 1998)	Hamersley rail track services			The Federal Court decided that the service was not within part IIIA of the Trade Practices Act (June 1999). The Federal Court decision was appealed. Robe River withdrew the application for declaration before the Full Federal Court hearing. The appeal was stayed.

(continued)

Table B1.1 continued

<i>Applicant</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Normandy Power Pty Ltd, NP Kalgoorlie Pty Ltd and Normandy Golden Grove Operations Pty Ltd (Normandy) (January 2001)	Electricity services provided through Western Power's south west electricity networks			Western Power and Normandy settled the broader commercial dispute between them and agreed to discontinue court proceedings seeking to prevent the Council from considering Normandy's application for declaration. Normandy withdrew its application for declaration.
Freight Australia (May 2001)	Rail track services provided through Victoria's intrastate rail network	Not to declare (December 2001)	Not to declare (February 2002)	Freight Australia applied to the Australian Competition Tribunal for a review of the Minister's decision. It then withdrew the application for review. The Victorian Government is reviewing the Victorian rail access regime to consider alternative arrangements that would account for the concerns raised by Freight Australia and other parties.
Portman Iron Ore Limited (August 2001)	Rail track services provided through the Koolyanobbing–Esperance rail track			The application was withdrawn.
AuIron Energy Limited (November 2001)	Rail track services provided through the Wirrida–Tarcoola rail track	To declare (July 2002)	To declare (September 2002)	In October 2002, APT (operator of the rail track) applied to the Australian Competition Tribunal for a review of the minister's decision. In March 2003, the tribunal set aside the minister's decision on the procedural basis that there was no probative material before it that could affirmatively satisfy the matters in s44H(4) of the Trade Practices Act.

(continued)

Table B1.1 continued

<i>Applicant</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Virgin Blue Airlines Pty Ltd (October 2002)	The use of runways, taxiways, parking aprons and other associated facilities necessary to allow aircraft carrying domestic passengers to: (1) take off and land using the runways at Sydney Airport; and (2) move between the runways and the passenger terminals at Sydney Airport (airside service)	Not to declare (November 2003)	Not to declare (January 2004)	Virgin Blue applied to the Australian Competition Tribunal for a review of the minister's decision. At the time of publication of this annual report, the tribunal matter is ongoing.
Services Sydney Pty Ltd (March 2004)	A service for the transmission of sewage via Sydney Water's Sydney sewage reticulation network from the customer collection points to the interconnection points (transmission services) A service for the connection of new trunk main sewers owned and operated by Services Sydney to the exiting Sydney sewage reticulation network at the interconnection points (interconnection service)	To declare sewage transportation and sewer connection services for a period of 50 years (December 2004).	Deemed to have made a decision not to declare (April 2005)	Services Sydney applied to the Australian Competition Tribunal for a review of the minister's decision. At the time of publication of this annual report, the tribunal matter is ongoing.

(continued)

Table B1.1 continued

<i>Applicant</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Fortescue Metals Group Ltd (June 2004)	A service described as the use of the facility, being that part of the Mount Newman railway line that runs from a rail siding to be constructed near Mindy Mindy in the Pilbara to port facilities at Nelson Point in Port Hedland; and the Goldsworthy railway line that runs from where it crosses the Mount Newman railway line to port facilities at Finucane Island in Port Hedland	At the time of publication of this annual report, the Council was considering this matter.		
Lakes R Us Pty Ltd (October 2004, further information January 2005)	A service described by Lakes R Us as a water storage and transport service provided by Snowy Hydro Limited and State Water Corporation.	At the time of publication of this annual report, the Council was considering this matter.		

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

<i>Application</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
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 (but intended only 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			The Queensland Government withdrew the application in February 1999.

(continued)

Table B1.2: continued

<i>Application</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Queensland gas access regime (September 1998)	Access to services of relevant gas pipelines	Draft recommendation sent to the minister (February 2001) was not publicly available. The Council withdrew the recommendation to consider new information provided to the minister. The Council's final recommendation (publicly available) to the minister was that the regime is not effective (November 2002).	At the time of publication of this annual report, the minister was considering his decision.	
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 was 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			The Western Australian Government withdrew the application.

(continued)

Table B1.2 continued

<i>Application</i>	<i>Service</i>	<i>Council recommendation</i>	<i>Minister's decision</i>	<i>Outcome</i>
Northern Territory/South Australian rail (March 1999)	Access to rail track services from Tarcoola to Darwin	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	To certify (December 2001)	To certify (March 2002)	Certified for 15 years
Northern Territory gas access regime (March 2001)	Access to services of covered pipelines	To certify (June 2001)	To certify (October 2001)	Certified for 15 years
Victorian rail access regime (July 2001)	Access to rail track services			The Victorian Government withdrew the application.
South Australian ports and maritime services access regime (August 2001)	Access to prescribed port and maritime services			The South Australian Government withdrew the application.
Tasmanian gas access regime (October 2004)	Access to services of covered pipelines	Final recommendation forwarded to the decision maker (April 2005)	At the time of publication of this annual report, the minister was considering his decision.	
Western Australian electricity network services access regime (July 2005)	Access to electricity transmission and distribution network services	At the time of publication of this annual report, the Council was considering this matter.		

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

<i>Applicant</i>	<i>Pipeline</i>	<i>Decision sought</i>	<i>Council recommendation</i>	<i>Minister's decision/outcome</i>
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline to Keith power station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline to Leinster power station (Western Australia)	Revocation	To revoke coverage (June 1999)	To revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Kalgoorlie–Kambalda pipeline (Western Australia)	Revocation	Not to revoke coverage (June 1999)	Not to revoke coverage (July 1999)
Southern Cross Pipelines (March 1999)	Goldfields Gas Transmission Pipeline 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–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–Sydney)	Coverage	To cover (June 2000)	To cover (October 2000) AGL Energy Sales and Marketing applied to the Australian Competition Tribunal for a review of the minister's decision. On 4 May 2001, the tribunal handed down its decision not to cover the pipeline.

(continued)

Table B1.3 continued

<i>Applicant</i>	<i>Pipeline</i>	<i>Decision sought</i>	<i>Council recommendation</i>	<i>Minister's decision/outcome</i>
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Moomba–Sydney pipeline system (Moomba–Wilton trunk line)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Young–Culcairn lateral line (New South Wales)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (April 2000)	Dalton–Canberra lateral line (New South Wales and the ACT)	Revocation	Not to revoke coverage (September 2000)	Not to revoke coverage (October 2000)
Envestra Ltd (April 2000)	Palm Valley–Alice Springs pipeline (Northern Territory)	Revocation	To revoke coverage (July 2000)	To revoke coverage (July 2000)
Envestra Ltd (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 network (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Peabody Moura Mining Pty Ltd (August 2000)	Peabody–Mitsui pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Oil Company of Australia (August 2000)	Kincora–Wallumbilla pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Oil Company of Australia (August 2000)	Dawson Valley pipeline (Queensland)	Revocation	To revoke coverage (October 2000)	To revoke coverage (November 2000)
Envestra Ltd (May 2001)	Mildura pipeline (South Australia and Victoria)	Revocation	To revoke coverage (August 2001)	To revoke coverage (September 2001)
Envestra Ltd (May 2001)	Riverland pipeline (South Australia)	Revocation	To revoke coverage (August 2001)	To revoke coverage (September 2001)

(continued)

Table B1.3 continued

<i>Applicant</i>	<i>Pipeline</i>	<i>Decision sought</i>	<i>Council recommendation</i>	<i>Minister's decision/outcome</i>
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Moomba–Sydney pipeline system (Moomba–Wilton trunk line)	Revocation	Not to revoke coverage (November 2002)	To revoke coverage for that part of the mainline from the exit flange at the Moomba processing facility to immediately upstream of the off-take point of the Central West pipeline at Marsden, New South Wales; to retain coverage for that part of the mainline from the off-take point of the Central West pipeline at Marsden to the Sydney city gate at Wilton, New South Wales (November 2003)
Eastern Australian Pipeline Limited (now Australian Pipeline Trust) (June 2001)	Dalton–Canberra lateral line (New South Wales and the ACT)	Revocation	Not to revoke coverage (November 2002)	Not to revoke coverage (November 2003)
CMS Gas Transmission Australia (October 2001)	Parmelia pipeline (Western Australia)	Revocation	To revoke coverage (February 2002)	To revoke coverage (March 2002)
Roma Town Council (February 2002)	Roma distribution system (Queensland)	Revocation	To revoke coverage (April 2002)	To revoke coverage (May 2002)
Envestra Ltd (September 2002)	Mildura distribution system (Victoria)	Revocation	To revoke coverage (December 2002)	To revoke coverage (December 2002)
NT Gas Distribution Pty Ltd (January 2003)	City Gate–Berrimah pipeline (Northern Territory)	Revocation	To revoke coverage (April 2003)	To revoke coverage (May 2003)

(continued)

Table B1.3 continued

<i>Applicant</i>	<i>Pipeline</i>	<i>Decision sought</i>	<i>Council recommendation</i>	<i>Minister's decision/outcome</i>
Goldfields Gas Transmission Pty Ltd (March 2003)	Goldfields Gas Pipeline (Western Australia)	Revocation	Not to revoke coverage (November 2003)	Not to revoke coverage (July 2004) GGT sought review of the decision (by the Western Australian Gas Review Board). There is agreement for the bid for review to be discontinued.
Country Energy Gas Pty Ltd (July 2003)	South West Slopes natural gas distribution network	Revocation	To revoke coverage (September 2003)	To revoke coverage (October 2003)
Country Energy Gas Pty Ltd (July 2003)	Temora natural gas distribution network	Revocation	To revoke coverage (September 2003)	To revoke coverage (October 2003)
Epic Energy South Australia (March 2005)	Moomba-to-Adelaide Pipeline system	Revocation	At the time of publication of this annual report, the Council was considering this matter.	
Molopo Australia Ltd (March 2005)	Dawson Valley Pipeline	Coverage	Not to cover (August 2005)	At the time of publication of this annual report, the minister was considering his decision.

B2 Assessment of governments' implementation of National Competition Policy (output 1)

In 1995 the Council of Australian Governments (COAG) agreed to the National Competition Policy (NCP). The policy set out reform obligations for all governments and provided for the Australian Government to make payments (to 2005-06) to states and territories that satisfactorily addressed those obligations.

The National Competition Council was created by COAG via the agreements that established the NCP, principally to assess governments' progress in implementing the reforms and to make recommendations to the Australian Government Treasurer on whether progress was sufficient for states and territories to receive NCP payments.

The agreements initially provided for three assessments, in 1997, 1999 and 2001. However, in November 2000, COAG decided that from 2001 the Council should annually assess governments' compliance with the NCP and related reform obligations up to, and including, 2005. (The Council's 2005 NCP assessment, being finalised later this year, is thus the last under the 1995 arrangements.) The November 2000 COAG meeting also decided that the reform agenda and the NCP arrangements should be reviewed in 2005. That review is underway.

This annual report reflects governments' progress in implementing their NCP obligations. It draws on the 2004 NCP assessment (and subsequent publicly available information), which revealed that much has been accomplished under the NCP. The legislation review and reform agenda is the only reform area in which the timeframe set by COAG has not been achieved. Nevertheless, many sectors of the economy have undergone a pro-competitive transformation, and the beneficial outcomes for the community are widely recognised.

The commitment of governments to implementation throughout the life of the NCP is now universally accepted as a key factor in sustained productivity improvements that, in turn, have underpinned Australia's record economic growth. To that extent, the progress of governments in implementing the NCP has been hailed internationally as world leading. The 'President's review' and part A of this report go into more detail on a holistic assessment of governments' progress.

Water

COAG agreed to a strategic water reform framework in 1994, which was subsequently incorporated into the 1995 NCP agreements. COAG's main objectives were to establish an efficient and sustainable water industry and to arrest the widespread natural resource degradation occasioned partly by water use. The reform framework covers pricing, the appraisal of investment in rural water schemes, the specification of and trading in water entitlements, resource management (including recognising the environment as a user of water via formal allocations), institutional reform and improved public consultation.

Under the terms of the NCP agreements, the 2005 NCP assessment will assess each government's implementation of the entire reform framework. In accord with COAG's decision in 2004 to establish a National Water Initiative to complete and widen water reform commitments made in the 1995 NCP agreements, the National Water Commission will conduct the 2005 NCP assessment.

Energy

Electricity

The principal aim of reforms under the electricity agreements was to establish a fully competitive national electricity market. COAG communiqués set out specific reform commitments intended to achieve this. They include:

- implementing structural changes to allow for the operation of a competitive national electricity market
- allowing customers to choose the supplier (including generators, retailers and traders) with which they will trade
- establishing an interstate transmission network and non-discriminatory access to the interconnected transmission and distribution network
- ensuring there are no discriminatory legislative or regulatory barriers to entry by new participants in generation or retail supply, or to interstate and/or intrastate trade
- implementing cost-reflective pricing for transmission services with greater scope for averaging for distribution network services, and ensuring the transparency and interjurisdictional consistency of network pricing and access charges
- facilitating interjurisdictional merit-order dispatch of generation and the interstate sourcing of generation where cost-effective.

Important reforms were implemented that established the foundation of the national electricity market (NEM), which commenced operation in December 1998. An interconnected electricity grid incorporates New South Wales, Victoria, Queensland, South Australia and the ACT. Tasmania expects to participate fully once the Basslink interconnect with Victoria is commissioned, which is expected in April 2006. A third party access regime has been implemented for the transmission and distribution networks as part of the National Electricity Code.

Although outside the NEM, Western Australia is restructuring its electricity monopoly (Western Power) to provide for greater competition, and the Northern Territory has introduced an access regime for transmission and distribution and a licensing scheme to enable competition in generation and retail.

Most governments have met most of their specific commitments under the electricity agreements, but some commitments remain outstanding. While considerable progress has been made towards achieving the goal of a fully competitive NEM, significant deficiencies in the electricity market have been identified and are not specifically addressed by the current reform program. The shortcomings were identified in 2003 during the Ministerial Council on Energy's deliberations on a future reform agenda for electricity. There has been little further progress.

Gas

The gas reform commitments involve removing all legislative and regulatory barriers to the free trade of gas both within and across state and territory boundaries and providing third party access to gas pipelines.

The core elements of the gas reform commitments have been met. National free and fair trade in gas is now largely realised. The Australian gas market is increasingly competitive, dynamic and efficient. All governments have met their commitments in relation to structural reform and franchising and licensing principles. New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Queensland has deferred implementing full retail contestability.

Road transport

Road transport reform commitments subject to assessment by the Council are almost complete. Commitments outside the scope of assessment by the Council have not been addressed.

The program involves 31 initiatives covering six areas: registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, driver

licensing, compliance and enforcement. COAG endorsed frameworks covering 25 of the initiatives for assessment by the Council.

Of the assessed reforms two matters are outstanding in Western Australia, and one each for the Australian Government and the ACT and processes are in train in each of these cases to complete the reform obligations.

Legislation review and reform

In 1996, governments identified around 1800 pieces of legislation as containing competition restrictions that should be reviewed and, where appropriate, reformed. Of these, the Council considered that around 800 were high priority—that is, laws with a significant impact on competition.

Governments agreed to a 30 June 2002 deadline for completing their programs of review and reform. COAG extended the deadline to June 2003. All governments failed to complete their review and reform activity by the 2003 assessment, so the Council recommended reductions to their competition payments.

After the 2003 NCP assessment, progress against outstanding commitments improved. For the next assessment, the proportion of priority legislation reviewed had improved from 56 per cent at June 2003 to 74 per cent at June 2004. The performance on non-priority legislation had improved from 81 per cent to 87 per cent.

A further improvement in compliance with NCP obligations is expected for the 2005 assessment, but some legislation will not have been reviewed and, where appropriate, reformed at the end of 2005. While recognising that the task of reviewing potentially anticompetitive legislation is time and resource consuming, and often politically sensitive, the Productivity Commission recently recommended that the benefits of enhanced competition are such that governments should complete their programs.

Most of the areas of legislation review where governments have been least enthusiastic about meeting their NCP commitments have involved vigorous campaigns against reform by those who benefit from anticompetitive legislation. In some cases, reform has not occurred despite independent reviews that recommended an end to, or qualification of, restrictions on competition.

Primary industries

When governments established their legislation review programs, they identified statutory marketing arrangements for many agricultural products as restricting competition. Robust review processes have led to significant reforms—for example, all governments repealed price and supply controls on drinking milk; Queensland ended its export marketing monopoly for barley;

Victoria deregulated its barley marketing arrangements, and a recent NCP review of such arrangements in South Australia also recommended liberalisation; Western Australia is reforming grain marketing; Queensland and Tasmania removed supply and marketing restrictions on eggs; Western Australia and South Australia removed entry and pricing restrictions on bulk handling; and several jurisdictions replaced centralised price fixing for poultry growing services.

Legislation for fisheries management makes available a 'toolkit' of controls. The application of fisheries management controls in combinations most suited to particular fisheries is usually the province of subordinate legislation and management plans. This lower tier of regulation is necessarily subject to regular review and revision in response to challenges such as new information, natural stock variation and technological advances. The Council has provided governments with some latitude in this area so reform implementation can reflect the best science.

Governments are also considering the benefits and costs of legislative restrictions in other primary areas, including agricultural and veterinary chemicals, food standards, bulk handling and storage, mining, fishing and forestry. Moreover, the application of competitive neutrality principles to state forestry enterprises, so far done unevenly, has an important role in encouraging sustainable forestry practices.

Professions and occupations

More than 50 professions and occupations have been the subject of legislation review and, in some cases, reform. Nearly all governments have met their Competition Principles Agreement obligations in general professions (such as commercial agents, driving instructors, motor vehicle dealers, pawnbrokers, second-hand dealers, real estate agents and hawkers). Some review and reform activity is incomplete in the health and legal professions, although this situation is improving slowly. Several jurisdictions (particularly Queensland, the ACT and the Northern Territory) completed important reforms of their health legislation in 2004.

Transport (including taxis and hire cars)

Governments have made substantial progress in the review and reform of their transport legislation, except for regulations impinging on the operations of taxis and hire cars. Most governments still closely control entry to the taxi industry, despite independent reviews finding that the extent of anticompetitive restrictions imposes substantial costs on the wider community (for example, queuing costs and 'no shows' in peak periods). The release of new taxi licences typically involves administrative discretion, resulting in only a small number of new licences. In some taxi markets, the new plates must be bought at prevailing market prices that reflect scarcity rents, so the taxi plates can trade for hundreds of thousands of dollars. Many states and territories also actively impede the hire car sector from competing

with taxis by barring hire cars from responding to street hails and mandating higher fares.

Victoria introduced reforms in 2002 that involve the annual release of significant numbers of new taxi licences over 12 years, and Tasmania and Western Australia made progress in 2004 in releasing significant numbers of new plates. The Northern Territory now leases all taxi licences, thereby removing the pressure for licence value escalation. Some other jurisdictions have found it difficult to improve services to the community without undermining the value of taxi licences held by incumbents in the industry.

Retail trading

In the retail sector, significant restrictions on competition remain in two key areas: retail trading hours and the sale of liquor.

All governments except for Western Australia have substantially liberalised their retail trading hours legislation in response to major social changes, such as the rise in female labour force participation and a corresponding rise in two-income households. Where legislation has not provided unwarranted barriers to innovation, retailers have responded by offering extended trading hours to ‘time poor’ consumers.

The reform of liquor laws that restrict competition beyond the social objective of harm minimisation has proved far more difficult. The NCP is entirely consistent with governments’ legitimate concerns to minimise harm from alcohol consumption. Laws relating to community standards (for example, setting minimum age requirements and preventing liquor being sold to intoxicated persons) do not raise NCP compliance issues. However, regulations that prevent responsible sellers from entering the industry, that discriminate between sellers of similar products and services, and that impose arbitrary restrictions on sellers’ behaviour may do little to achieve harm minimisation objectives.

The legislation review and reform program does not inhibit governments from meeting social objectives. Victoria, Tasmania and the ACT, for example, have different approaches to dealing with liquor licensing applications, but all focus on the social, community and health implications of the applications, rather than on the competitive impact on existing licensees. In these cases, a ‘public interest’ test is consistent with NCP principles.

Communications infrastructure

The communications sector covers telecommunications, broadcasting, radiocommunications and postal services — all areas for which the Australian Government has legislative responsibility. There have been only limited reforms to date.

- Following a review, the Australian Government retained a telecommunications-specific regulatory regime. The government has sought to encourage more investment in telecommunications by providing investors with greater certainty about prices and terms and conditions. It also now requires Telstra to prepare separate accounts for its wholesale and retail operations, to increase transparency.
- The Australian Government has authorised limited datacasting trials and announced that reviews will be conducted in 2004 and 2005 on (among other things) whether free-to-air television broadcasters should be allowed to provide additional programming; whether the requirement for simulcasting analogue and digital signals should be amended or repealed; matters relating to the potential end of the moratorium on the issue of new free-to-air broadcasting licences; and the efficient allocation of spectrum for digital television.
- In radiocommunications, the Australian Government has accepted review recommendations that will enhance the role of the market in managing the radiofrequency spectrum.
- New postal legislation expands the powers of the Australian Competition and Consumer Commission (ACCC) to inquire into disputes about bulk mail interconnection arrangements, introduces accounting transparency for Australia Post, and legitimises businesses that provide mail collection, sorting and delivery services.

Social regulation

Gambling regulation extends to casinos, poker machines, clubs, all forms of on-track racing, general sports betting, Internet gaming, totalisators and lotteries. The Council considers that restrictions on competition that confer rights on some at the expense of others, or that provide more favourable arrangements for one class of provider over another, need to be supported by a public interest justification in terms of harm minimisation. The Council accepts, however, that achieving equality of regulation for areas such as gaming machines may be a gradual process, given many jurisdictions' reluctance to increase overall machine numbers.

Arguments for exclusive licences are not convincing, but exclusive casino licences can make a limited contribution to reducing problem gambling by reducing access to table games. Even where an exclusive arrangement is in the public interest, competition for that 'right' can provide a community benefit without jeopardising the social objective.

Much progress has been made in reforming anticompetitive arrangements in gambling that are not based on public interest considerations. However, in its 2004 NCP assessment, the Council considered that an enhanced level of interjurisdictional cooperation could remove some further competition restrictions. Cooperation will be also necessary to ensure legitimate social policy concerns, rather than the protection of existing interests, underpin

restrictions on the introduction of new forms of gambling made possible by technological change.

Insurance services

Compulsory third party insurance and workers compensation insurance are mandatory forms of accident insurance. For at least one of these forms of insurance, some governments have legislated for monopoly underwriting by a government owned entity. This arrangement is the principal restriction with NCP implications. Despite the two types of insurance being similar, New South Wales, Queensland, Western Australia, Tasmania and the Northern Territory license multiple private companies to provide one of these two forms of insurance, but legislate for the monopoly supply of the other form. In the 2004 NCP assessment, the Council noted, given the paucity of analysis of the comparative effects of competitive and monopoly provision, that it was not in a position to weigh up the costs and benefits to the community of each form of insurance provision.

National reviews

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. Although a national process can improve regulatory consistency across jurisdictions, progress has been unacceptable in many cases. In some instances, governments have not yet implemented recommended reforms because delays have arisen from protracted intergovernmental consultation. Areas in which governments' review and reform of legislation are incomplete because interjurisdictional processes need to be resolved include: agricultural and veterinary chemicals; drugs, poisons and controlled substances; and trade measurement. In the case of trade measurement, governments agreed to progress to a uniform legislative scheme in 1990.

Gatekeeping arrangements for new legislation

In addition to the review and reform of existing legislation, the Competition Principles Agreement requires that jurisdictions not introduce new legislation that restricts competition unless:

- the benefits of the restriction to the community as a whole outweigh the costs, and
- the objectives of the legislation can be achieved only by restricting competition.

In its recent review of the NCP, the Productivity Commission reaffirmed the need for high quality gatekeeping of new legislation and recommended that 'all Australian governments should ensure that they have in place effective and independent arrangements for monitoring new and amended legislation' and that national monitoring of the procedures in place in each jurisdiction should be strengthened (Productivity Commission 2005, p. 259). Ongoing monitoring of gatekeeping arrangements would help to buttress improved processes, but a commitment by individual governments to upgrade gatekeeping mechanisms is needed.

The Council considers that maintenance of gatekeeping provisions is important to ensure the benefits of reforms to date are locked in, and to ensure legislation in the future is pro-competition (subject to the tests outlined above). The 2005 NCP assessment will report in detail on governments' gatekeeping arrangements.

Reform of government businesses

Governments' application of competitive neutrality is well advanced. In all states and Territories, major government business enterprises have been corporatised, other significant businesses have been exposed to competitive neutrality principles, and competitive neutrality complaints units have been established. The performance of government businesses has improved as competitive neutrality has promoted a more dynamic culture through greater transparency and accountability. The adoption of competitive neutrality principles, including the capacity for private businesses to compete with government businesses on an equal footing, has improved businesses' efficiency, encouraged better services and more cost-reflective prices for goods and services, and resulted in a more efficient allocation of (private and public) resources.

There remains, however, scope for improvement in terms of the coverage and operation of complaints mechanisms. More generally, performance monitoring of government trading enterprises reveals that many have low rates of return on capital, which could reflect a failure to properly ensure appropriate pricing.

The NCP also requires governments to relocate regulatory functions away from a public monopoly before introducing competition to the market served by that monopoly. In addition, before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly, governments should review the appropriate commercial objectives of the public monopoly and the merits of separating potentially competitive elements from natural monopoly elements. Generally, governments have met these commitments.

B3 Communications (output 2)

The National Competition Council's communications focus in 2004-05 was on consultation and the provision of timely information on the National Competition Policy (NCP) and the Council's role and activities for the benefit of stakeholders and the general public. This focus was achieved principally through both hard copy and web based publication of all relevant material. Speeches were also used for the same communication objective.

Consultation

The secretariat and members of the Council met with representatives of the Australian, state, territory and local governments, community groups and the private sector throughout the year. These meetings covered a wide range of matters relevant to the Council's role in facilitating the application of competition policy.

Speeches

Councillors and Council staff made eight speeches in 2004-05 (box B3.1). The central emphasis, across a broad range of topics, was on improving understanding of the NCP reform agenda and facilitating discussion of NCP issues.

Box B3.1: Speeches by councillors and Council staff, 2004-05

Wendy Craik, President, 'National Competition Policy, water reform and the grains industry', presented to Agriculture Australia Conference 2004, August 2004.
Sam Drummond, Project Manager, 'Complying with COAG pricing principles—practical implications', presented to Water Infrastructure Conference 2004, August 2004.
John Feil, Executive Director, 'National Competition Policy—benefits and challenges for Rural Australia', presented to Sustainable Economic Growth for Regional Australia, September 2004.
John Feil, Executive Director, 'Being a regulated business—the issues', presented to the University of South Australia Trade Practices Workshop, October 2004.
Ross Campbell, Director, 'Initiating unilateral policy reform—a perspective on the National Competition Policy process in Australia', presented to APEC Study Centre training course, 'Managing structural reform from trade reform', November 2004.
John Feil, Executive Director, 'Legal and financial relationship between government businesses and government', presented to students from the University of Delaware, January 2005.
David Crawford, Acting President, 'The future of National Competition Policy', presented to Sustaining Prosperity Conference, April 2005.
Alan Johnston, Director, 'Protecting the public interest in taxi services', presented to the World Taxi Congress, May 2005.

Website development

The Council continued in 2004-05 to develop and improve its website (www.ncc.gov.au). It used the site to enhance community understanding of the NCP and to provide a comprehensive, readily accessible database on the Council's activities.

Publications

The Council's publications in 2004-05 included its annual report, the 2004 NCP assessment report, its issues papers and recommendations on applications under part IIIA of the *Trade Practices Act 1974* and under the National Gas Code, and other reports to assist community understanding of NCP issues. The latter included three independent commissioned reviews to inform discussion of important aspects of reform. The reviews and most other Council publications are available on the Council's website or in hard copy from the Council. Box B3.2 lists Council publications in 2004-05.

Box B3.2: Council publications, 2004-05

Assessment documents

Assessment of governments' progress in implementing the National Competition Policy and related reforms. Volume one: assessment, October 2004

Assessment of governments' progress in implementing the National Competition Policy and related reforms. Volume two: water, October 2004

Occasional series

Dairy—now and then: the Australian dairy industry since deregulation, RidgePartners, November 2004

A review of the NCP grain market reforms, Acil Tasman, November 2004

Microeconomic reform in Australia: comparison to other OECD countries, The Allen Consulting Group, November 2004

Declaration, certification and coverage matters

Services Sydney Limited's application for declaration of transportation and interconnection services: draft recommendation, August 2004; final recommendation, December 2004

Fortescue Metals Group application for declaration of services provided by the Mount Newman and Goldsworthy railway lines: decisions on two preliminary matters, December 2004; issues paper re Mount Newman, March 2005

Epic Energy's application for revocation of the Moomba-to-Adelaide Pipeline system: issues paper, March 2005

Molopo Australia Limited's application for coverage of the Dawson Valley Pipeline: issues paper, April 2005

Lakes R Us's application for declaration of a water storage and transport service: issues paper, April 2005

Application by the Tasmanian Government that the state's access regime for gas pipeline services is effective in terms of the requirements of the Trade Practices Act 1974: draft recommendation, April 2005

Other documents

Annual report 2003-04, September 2004

C1 Corporate governance and organisation

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

Corporate governance

The Council's corporate governance framework is designed to establish accountability and create decision-making processes that effectively and efficiently manage the Council's resources and allocate those resources to NCP priorities.

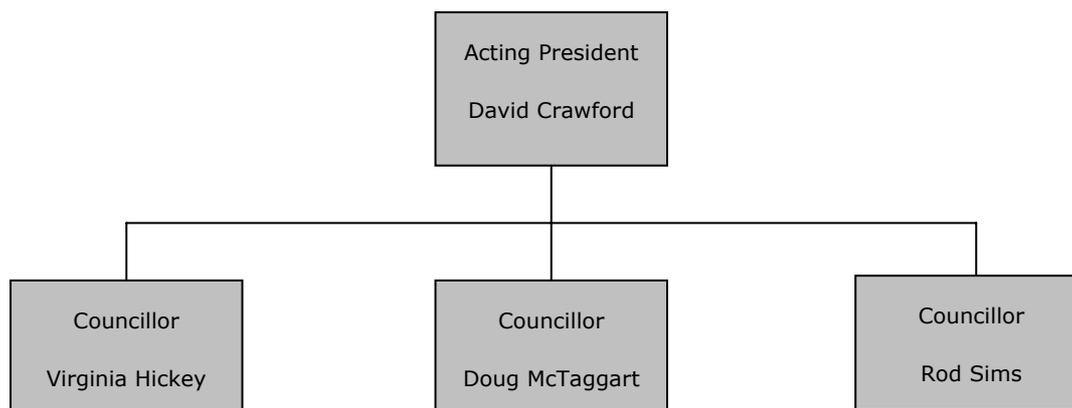
The Council is responsible for the activities of the organisation, consistent with the requirements of the *Trade Practices Act 1974*, the intergovernmental agreements on the NCP and related reforms, and any subsequent amendments to those agreements. Part IIA of the Trade Practices Act specifies the processes for appointing councillors, conducting Council meetings and disclosing interests by councillors.

The outcome and outputs of the Council are agreed with the Department of Finance and Administration and reported in the portfolio budget papers. The *Corporate plan*, endorsed by the Council, specifies activities that contribute to the outcome and outputs. The Council's annual report details the achievements of the Council over the financial year and how they have contributed to the Council's objectives.

Like any agency funded by the Australian Government, the Council has embraced all of the management, accountability, financial and employment reforms applicable to government agencies.

The Council

The Council comprises a President and up to four other councillors. At 30 June 2005, there were four councillors, including an Acting President. The councillors were David Crawford (Acting President), Doug McTaggart, Rod Sims and Virginia Hickey. Dr Wendy Craik resigned as president and Council member as of 25 August 2004, and Mr David Crawford was appointed Acting President on 26 August 2004. Figure C1.1 illustrates the structure of the Council at 30 June 2005.

Figure C1.1: National Competition Council organisation chart, 30 June 2005

The councillors are appointed for three-year terms, drawn from across Australia and different industry and community sectors to provide a range of skills and experience. They consider, review and approve all of the Council's recommendations and major publications before release. The councillors also consider governance issues, including performance against budget.

Box C1.1: Councillor profiles

Mr David Crawford

Mr David Crawford is Acting President of the National Competition Council and Chair of the Westralia Airports Corporation Pty Ltd, the Export Grains Centre Ltd and HRZ Wheats Pty Ltd. He is also Chair of the Board of Advisors of Curtin University Graduate School of Business and a management committee member of both educational and service organisations. He is a Director of Grain Biotech Australia Pty Ltd, Canola Breeders Western Australia Pty Ltd and Grain Foods CRC Ltd.

Mr Crawford was previously the corporate affairs director of Wesfarmers Limited, managing director of Western Collieries Ltd, chief operating officer of Ranger Minerals NL and managing director of Aboosso Goldfields Limited. Mr Crawford has also been a member and/or chair of a number of government and non-government committees in the agriculture and mining industries.

Mr Crawford has an Honours degree in Economics from the University of Queensland and a Master of Arts (Political Science) from the University of Toronto. He is also a Fellow of the Australian Institute of Company Directors.

Dr Doug McTaggart

Dr Doug McTaggart is Chief Executive Officer of the Queensland Investment Corporation, Chair of the Investment and Financial Services Association, a Councillor of the National Competition Council, and a Council Member of the Queensland University of Technology.

Dr McTaggart has held various positions as an academic economist, most recently Professor of Economics and Associate Dean at Bond University. He was previously the under treasurer of the Queensland Department of Treasury. He has been president of the Economic Society of Australia and a member of the Australian Accounting Standards Board.

Dr McTaggart holds an Honours degree in Economics from the Australian National University and a Masters degree and PhD from the University of Chicago.

(continued)

Mr Rod Sims

Mr Rod Sims is a Director of Port Jackson Partners Limited, which he joined in 1994. In addition to his role as a Councillor with the National Competition Council, Mr Sims is also Chair of Inglewood Farms in Queensland and Chair of Sustainable Energy Limited based in Papua New Guinea. From 1996 to 2003, he was chair of the Rail Access Corporation and later chair of the Rail Infrastructure Corporation. Mr Sims was appointed by the Australian Government as a member of the panel reviewing Australia's energy policy for the Council of Australian Governments in 2002.

Mr Sims previously worked for the Australian Government for over eight years, including as the deputy secretary in the Department of Prime Minister and Cabinet. During this period, he also occupied the position of deputy secretary responsible for Transport in the Department of Transport and Communications. From 1988 to 1990, Mr Sims was the economic advisor to the Prime Minister and prior to that worked for nine years overseas as an economic advisor to governments.

Mr Sims holds a first class honours degree in Commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Ms Virginia Hickey

Ms Virginia Hickey is Principal of Luma Corporate Governance Consulting, Commissioner of the National Transport Commission, Chair of TransAdelaide and a board member of Flinders Ports, Medical Insurance Group Australia, Playford Capital and the Art Gallery of South Australia.

Ms Hickey was formerly a partner of Finlaysons Lawyers in Adelaide, with particular expertise in corporate governance, accountants' and directors' liability and general commercial litigation, including actions under the Trade Practices Act and the Corporations Law. She was appointed as a Councillor of the National Competition Council in December 2003.

Ms Hickey has a Bachelor of Arts and a Bachelor of Laws from the University of Melbourne and is a graduate of the Australian Institute of Company Directors.

Council meetings

The Council meets in Melbourne generally once a month, depending on its workload. It met 10 times in 2004-05, including three times by teleconference. Table C1.1 lists the dates of the meetings of the Council in 2004-05.

Dr Craik attended three (of a possible three) meetings before standing down. Mr Crawford and Dr McTaggart attended all 10 meetings. Mr Sims and Ms Hickey each attended nine meetings.

Table C1.1: National Competition Council meetings, 2004-05

27 July 2004	26 October 2004
10 August 2004	16 November 2004
24 August 2004	30 November 2004
14 September 2004	1 February 2005
28 September 2004	3 May 2005

The Audit Committee

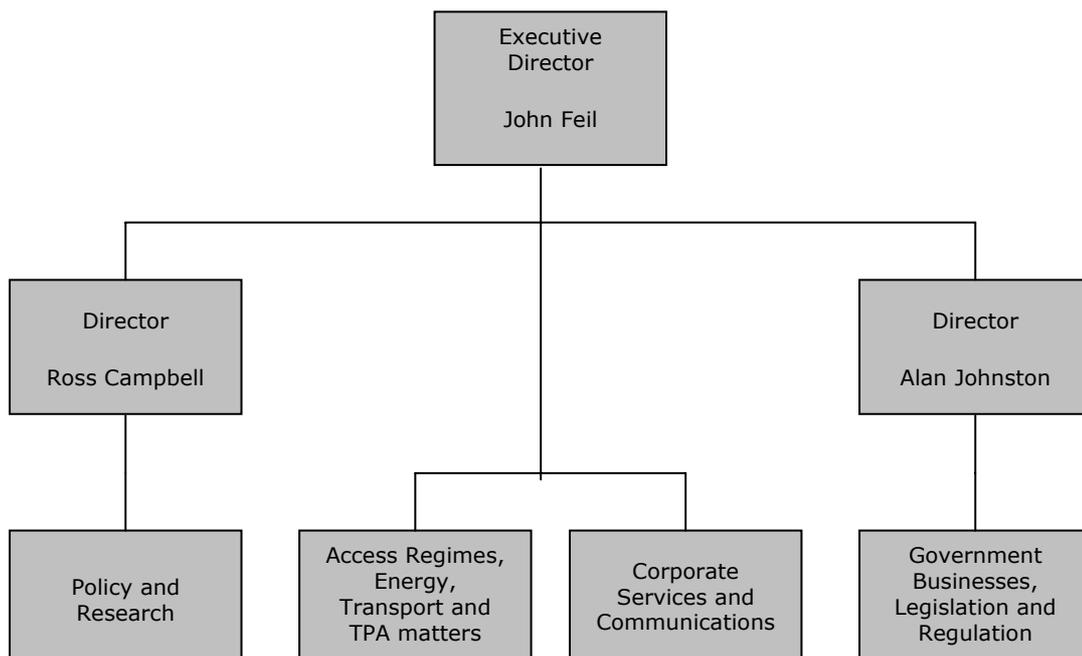
The role of the Audit Committee is to improve the Council's financial reporting by overseeing the financial reporting processes, audit functions, risk management and internal controls. At 30 June 2005, the Audit Committee comprised councillors Doug McTaggart and Virginia Hickey. (David Crawford was a member and the chair of the Audit Committee until taking up the position of Acting President on 26 August 2004.)

The Audit Committee met twice in 2004-05: on 24 August 2004 and 3 May 2005. The August 2004 meeting considered the preparation of financial statements. Audit Committee members David Crawford and Doug McTaggart, and Council officer Michelle Groves, Australian Competition and Consumer Commission (ACCC) officers John Bridge and Gary Preston and Australian National Audit Office (ANAO) officer Mashelle Parrett attended this meeting. The May 2005 meeting primarily considered audit issues that potentially have an impact on the Council. Audit Committee members Doug McTaggart and Virginia Hickey, and Council officers John Feil and Michelle Groves attended this meeting.

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 officials from the Australian, state and territory governments and with other parties that have interests in NCP matters. Figure C1.2 depicts the structure of the Council secretariat at 30 June 2005.

Figure C1.2: National Competition Council secretariat organisation chart, 30 June 2005



Day-to-day management of the secretariat and responsibility for policy and expenditure decisions rest with the executive team. The executive team comprises the Executive Director and the two Directors. It meets regularly, generally weekly, with minutes of its meetings circulated to all staff and the Council president.

Each staff member is issued with a *Policy manual* and a *Procedures manual* that detail corporate governance matters. These documents, which encompass issues such as the Australian Public Service values and what is expected of Australian Government employees, were updated this year.

Internal and external scrutiny

Mechanisms for internal and external scrutiny include: formal reviews of the NCP, NCP issues and the role of the Council; legal mechanisms for reviewing the Council's decisions; and the Council's processes for engaging with stakeholders.

Formal reviews

The main reviews of the NCP conducted or commenced in 2004-05 were the Productivity Commission Review of National Competition Policy Reforms and the Council of Australian Governments (COAG) Review of National Competition Policy to be finalised in late 2005.

The Productivity Commission's final review report was released on 14 April 2005. The report noted that the implementation of the NCP has brought substantial benefits to the Australian community (including regional Australia), which overall have outweighed the costs. The review recommended that Australia continue with competition related reform to sustain and extend its economic performance. The report is available on the Productivity Commission's website at www.pc.gov.au.

COAG agreed that:

- continuing reform is needed to sustain and enhance Australian living standards in light of an ageing population, and there are significant potential gains from further reform
- a review of the NCP should proceed immediately, with the review to report to COAG by the end of 2005
- COAG senior officials are to undertake the review and produce the review report
- the review is to assess the effectiveness of the existing NCP arrangements, but focus on a possible new national reform agenda
- the review is to identify practical options for the implementation, monitoring and assessment of any new reform agenda

- the review is to draw from, but not be limited by, the recommendations of the Productivity Commission report
- the Australian Local Government Association is to participate in relevant elements of the review.

During 2004-05, the Australian Government Ombudsman made no comments on the Council, and no decisions by administrative tribunals involved the Council. The Council's financial statements and procedures were subject to audit by the Auditor-General. Governments will review the NCP and the effectiveness of the existing NCP arrangements by the end of 2005.

Legal mechanisms for reviewing Council decisions

Under both part IIIA of the Trade Practices Act and the National Gas Access Code, the Australian Competition Tribunal reviews decisions by the designated Australian Government minister or state Premier. The minister's or Premier's decisions are made in response to a recommendation from the Council. Two such matters were before the Australian Competition Tribunal in 2004-05:

- Virgin Blue Airlines Pty Ltd filed an application for review of the minister's decision not to declare certain airside services provided by Sydney Airport. A hearing was conducted in November 2004 and the decision is pending. The Council has the status of an intervener in the proceedings and is required to assist the tribunal in the proceedings as required.
- Services Sydney filed an application in February 2005 for review of the New South Wales Premier's decision not to declare sewage transmission and interconnection services currently provided by Sydney Water. (Pursuant to s44H(9) of the Trade Practices Act, the Premier is deemed to have made a decision not to declare the services, because he did not make a decision on declaration within 60 days of receiving the Council's final recommendation.) At 30 June 2005, the parties were exchanging evidence, with a hearing to occur sometime after September 2005.

The Western Australian Gas Review Board also heard an access matter, in relation to the Goldfields Gas Pipeline. The matter has been resolved in principle between the access seeker and the provider, with the application likely to be formally withdrawn in 2005-06.

Fortescue Metals Group (FMG) and BHP Billiton Iron Ore (BHPBIO) are filing evidence in the Federal Court in relation to FMG's application for declaration under part IIIA of rail services in the Pilbara that are provided by facilities owned by BHPBIO. This matter is likely to be heard in 2006.

The Council is also subject to external scrutiny through its published recommendations to all governments on matters relating to access determinations and competition reforms, and through its other publications.

The Council's engagement with stakeholders

During 2004-05, the Council made a presentation to the Productivity Commission Review of the National Competition Policy Reforms (December 2004). The Council also made a presentation to the Senate Environment, Communications, Information Technology and the Arts References Committee for the inquiry into the telecommunications regulatory regime (4 May 2005). In addition, secretariat staff met with stakeholders to discuss NCP issues.

The Council commissioned and published three research papers as part of its submission to the Productivity Commission review. It also published one staff paper. All papers (listed in box B3.2) are available on the Council's website (www.ncc.gov.au).

The discussion on communications in chapter B3 details the Council's processes for providing information and engaging with stakeholders.

Overview of staffing developments

At 30 June 2005, the secretariat had 10.2 full time equivalent staff. These comprised the Executive Director, two Directors, four project managers, 2.2 administrative staff and a communications officer (table C1.2). All permanent staff were employed under Australian Workplace Agreements.

In addition, the Council employed two staff from other Australian Public Service agencies on secondment and one staff member on contract.

Table C1.2: Staff profile, 30 June 2005

<i>Level</i>	<i>Salary range (\$'000)</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
Senior Executive Service, band 2	Up to 199		1	1
Senior Executive Service, band 1	Up to 147		2	2
Executive levels 1-2	72-97	1	4	5
Administrative Service Officer, grades 5-6	52-72	2	1	3
Total		3	8	11

Table C1.3: Staff by employment status, 30 June 2005

<i>Level</i>	<i>Female</i>	<i>Male</i>	<i>Total</i>
Full-time permanent (ongoing)	3	6	9
Full-time temporary (non-ongoing)			
Part-time staff		2	2
Total	3	8	11

Consultants

The Council's policy is to use the services of consultants to obtain legal and economic advice when the required specialist expertise is not available within the Council, and when it is efficient and cost-effective to do so. Table C1.4 lists the type and value of consultancies engaged in 2004-05, as well as those for the preceding two years.

The Council endeavours to use a select tendering process when engaging consultants. This involves the Council identifying potential consultants that it considers are best equipped to deliver the service sought, and inviting them to submit tenders. The selection process is constrained by the requirement for consultants to have specialist economic or legal expertise. The process for selecting legal consultants in particular is constrained by the requirement that they have a high level of knowledge of part IIIA of the Trade Practices Act and also by the need to avoid conflicts of interest. In cases where choice is extremely limited, lawyers and consultants are directly engaged.

During 2004-05, the Council entered two new consultancy contracts involving a total actual expenditure of \$50 659 (table C1.5). There were also six ongoing consultancy contracts active during 2004-05, involving total expenditure of \$725 224. The bulk of this expenditure involved legal advice on matters under part IIIA of the Trade Practices Act.

Table C1.4: Summary of expenditure on consultancies engaged during 2002-03, 2003-04 and 2004-05

<i>Purpose</i>	<i>2002-03</i>	<i>2003-04</i>	<i>2004-05^a</i>
Legal (new)			5 659
Legal (ongoing)	304 393	67 000	613 524
Economic (new)			45 000
Economic (ongoing)	198 574	225 000	111 700
Communications and corporate services	325 056	17 000	-
Information technology	87 105	-	-
Total	915 128^b	309 000	775 883

^a The figures for 2004-05 include GST.

^b Total expenditure for 2002-03 includes amounts for information technology services and corporate support services. Corporate support services are now provided under contract by the ACCC.

Table C1.5: Consultancy services let during 2004-05

<i>Consultant name</i>	<i>Description</i>	<i>Contract price (GST inc.)</i>	<i>Selection process</i>	<i>Justification</i>
Marsden Jacob Associates	Production of a research report	\$45 000	Select tender	Need for independent research and assessment
Australian Government Solicitor	Legal advice regarding an application for declaration	\$5 659 ^a	Direct engagement	Need for specialist expertise
Total		\$50 659		

^a The Council is charged on an agreed time and cost basis.

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* and assessing whether states and territories have made satisfactory progress against their commitments under the NCP agreements.

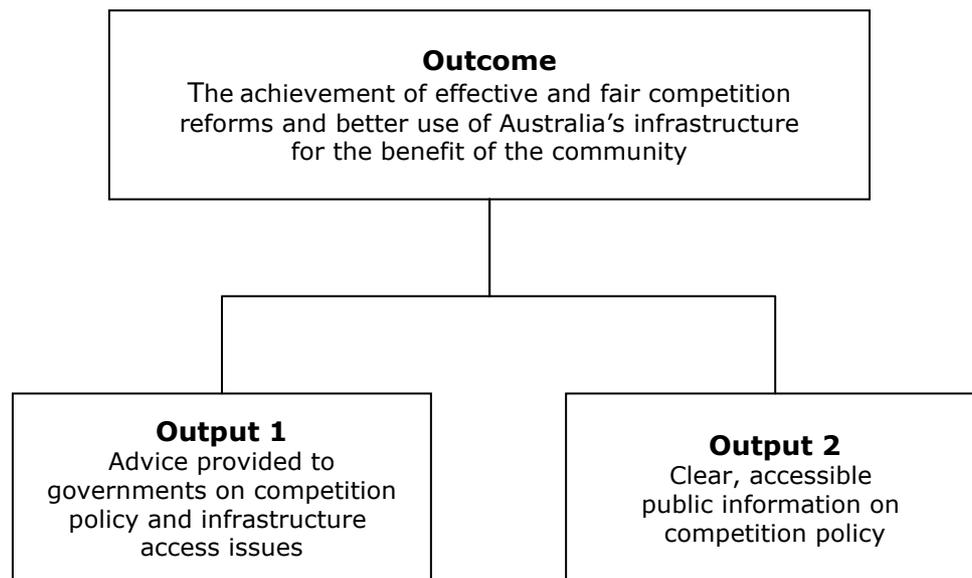
The Council's vision is that it will help deliver Australia's competition policy and program of related reforms by providing objective and constructive advice to governments, thus achieving outcomes that benefit the community as a whole. One of the Council's goals is to build community awareness and understanding of, and support for, the NCP. This approach encourages increased competition where it will result in greater economic growth, reduced unemployment, better social outcomes and the better use of resources for all Australians.

The above vision is embodied in the Council's mission: 'To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest'.

Agreed outcome and outputs

Figure C2.1 represents the Council's planned outcome and outputs, as developed and agreed on through the budget process. The planned outcome relates to the high level Australian Government outcome of 'well functioning markets', which is part of the overall government outcome of 'strong, sustainable economic growth and the improved wellbeing of Australians'.

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



The Council's two outputs are discussed in detail in part B of this annual report. Chapter A discusses performance against the Council's outcome.

Activities

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

- the design and coverage of infrastructure access regimes
- whether state and territory government businesses should be subject to prices surveillance by the Australian Competition and Consumer Commission (ACCC).

Apart from these statutory responsibilities, the three NCP agreements establish the following roles for the Council:

- to advise on the progress made against the competition policy agreements
- to provide other advice on competition policy as agreed on by a majority of the stakeholder governments
- to advise the Australian Government when it is considering overriding state or territory exceptions from the Trade Practices Act.

The Council has an implied function of supporting NCP processes and appropriate reform, as reflected in the Council's mission statement and goals (box C2.1). Of these activities, the design and coverage of infrastructure access regimes and advice on governments' progress in implementing NCP reforms (including discussions with state and territory governments in formulating that advice) use most of the Council's resources. Another significant area of activity is the building of community awareness of NCP reforms.

The Council delivers its functions and responsibilities through its work program areas (box C2.1).

Box C2.1: National Competition Council's mission statement, goals and work program

Mission statement

To improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest

Goals

- To facilitate timely implementation of effective and fair competition reforms by governments
- To promote better use of Australia's resources
- To build community awareness and understanding of, and support for, Australia's 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

Work program

- Facilitation and assessment of governments' progress in implementing NCP and related reforms
- Provision of recommendations to governments on access to infrastructure
- Ongoing improvement of the Council's operational standards in leadership, strategic direction, information systems, support services, resource allocation and staff development
- Building of community awareness and understanding of, and support for, the NCP

C3 Management

Staff development and management

Training

Excluding the salary costs of staff undertaking training, the Council devoted a total of \$16 000 to staff training and development for 2004-05. Various staff participated in training for skill and professional development, including executive and leadership development and improved writing skills. Secretariat staff attended 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 Council's *Industrial democracy plan* was the basis of its industrial democracy practices during the year. The Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

Consultative mechanisms

Minutes of the executive meetings are circulated to all staff. Also, a weekly staff meeting is held to discuss the secretariat's work program and any other issues relevant to the workplace. These weekly meetings are the principal means of inviting staff consideration of issues facing the Council. Proposed changes to research priorities, staffing arrangements, accommodation, office policies, occupational health and safety, information technology issues and training are discussed at these regular meetings. Work teams also met during 2004-05 to discuss work priorities and progress.

Occupational health and safety

During 2004-05, the Council maintained its policy of providing a safe and healthy work environment for its staff and contractors by ensuring the following equipment was regularly maintained and tested:

- Cooling towers were checked each month for legionella and other bacteria.

- Fire extinguishers were pressure tested and serviced. Two fire evacuation exercises were undertaken and fire wardens participated in regular briefing and training sessions.

In addition, the Council continued to offer the following activities to staff:

- screen based eyesight testing and flu vaccine
- ergonomic review of workstations, with staff being provided with the required equipment as recommended by the ergonomist
- confidential health appraisal, whereby staff are offered health assessments, including medical reports and information on the benefits of good health
- confidential counselling through the Employee Advisory Program.

The Council also continued its policy of quarterly meetings of the Occupational Health and Safety (OHS) Committee. In addition, OHS is a standing agenda item at the weekly staff meeting. The Council dealt with the following OHS matters during 2004-05:

- An indoor/outdoor thermometer was purchased to monitor temperature variations in the tenancy.
- Radiation levels of the microwave oven were tested.
- The fire exit door in the tenancy was replaced.
- Emergency procedure instructions were updated.
- Smoke detectors were installed.

The Council received no accident/incident reports during 2004-05. 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.

Fraud prevention and control

The Council continued its promotion of an ethical workplace culture and environment through a range of fraud prevention and control initiatives. The Council Fraud Control Policy contains strategies to minimise the risk of fraud. It assigns responsibility for fraud control action to secretariat staff. The plan is reviewed every 12 months, or earlier if there is a significant change in the Council's structure or functions, or if incidents indicate the need for revision.

A number of management functions have an impact on the effectiveness of the measures in the Fraud Control Policy. These include:

- the Council's encouragement of ethical behaviour by staff
- arrangements for financial authorisations
- provisions aimed at ensuring information security
- appropriate written delegations
- protective security.

There were nil instances of fraud or allegation of fraud within the Council during 2004-05.

Certificate of Fraud Measures

I certify that, as at 30 June 2005, the National Competition Council (the Council) had completed its fraud risk assessments and fraud control plan. I also certify that the Council has in place appropriate fraud detection, prevention, investigation, reporting and data collection procedures and processes that meet the specific needs of the organisation and comply with the *Commonwealth fraud control guidelines*.



John Feil
Executive Director

Outsourcing (corporate services)

During 2004-05, the Council outsourced or market tested the following corporate services functions:

- accounting and finance
- editing and printing of Council publications
- payroll and human resource management
- website support
- library services and information

- database maintenance
- document storage
- supply and maintenance of plants
- property management
- internal office maintenance.

Finance and accounting

The Australian Competition and Consumer Commission (ACCC) is contracted to provide all financial services to the Council. It processed the Council's accounts during 2004-05 using the Finance One accounting software. As an Australian Government body, the Council is required by the Department of Finance and Administration to reconcile its GST components on a monthly basis.

Contracts and purchasing

During 2004-05, the Council renegotiated contracts for library services and information technology. The Council's purchasing was consistent with the Australian Government Treasury policy and the Australian Government procurement guidelines. The key elements of these guidelines are value for money, efficiency and effectiveness, accountability and transparency, ethics and industry development.

Equity matters

Social justice

Within its work program, the Council addresses social justice issues in two main contexts. First, in conducting its functions related to the national access regime, the Council must consider public interest issues. Matters that the Council may consider include:

- policies concerning OHS, industrial relations, access to justice and other government services, and equity in the treatment of different persons
- economic and regional development, including employment and investment growth
- the interests of consumers generally or of a class of consumers.

Second, in assessing jurisdictions' progress in implementing the National Competition Policy (NCP) reforms, the Council must consider the extent to

which governments have undertaken 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 governments can meet social justice objectives in ways that do not restrict competition. At the same time, the NCP agreements recognise that many restrictions, by benefiting specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Application of the Australian Government's disability strategy

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

The Council's recommendations affect all Australians because they have a positive economic benefit. As noted, the Council's mission is to improve the wellbeing of all Australians through growth, innovation and rising productivity, by promoting competition that is in the public interest. Individual recommendations affect the community broadly, so the impact on sections of the community is not necessarily specific. The Council's policies do not discriminate against any group within the community: the Council thus met the performance criterion for the year, because its policies did not isolate people in the community with disabilities.

Further, the Council's consultation process does not discriminate against any group within the community, satisfying that performance criterion in 2004-05. Similarly, the Council's recruitment policy does not discriminate on the basis of race, disability, colour, sex or religion. Recruitment information is available in electronic and hard copy formats.

The Council developed its workplace, including office facilities and workstations, with the aim of reducing barriers to access by people with disabilities. Council reports are available in hard copy and electronically; on request, they can be supplied in MS Word format to facilitate the use of computer programs designed to assist people with a visual impairment.

Workplace diversity

The Council continued to apply its *Workplace diversity plan* in 2004-05. All recruitment conducted during the year included a selection criterion relating to an understanding of the principles and practical effects of workplace diversity policies. Selection panels included at least one male and one female.

No workplace harassment was reported during 2004-05.

At 30 June 2005, secretariat staff identified themselves as members of an equal employment opportunity group as set out in table C3.1.

Table C3.1: Staff by equal employment opportunity (EEO) group, 30 June 2005

<i>Level</i>	<i>Female</i>	<i>NESB 1^a</i>	<i>NESB 2^b</i>	<i>ATSI^c</i>	<i>Persons with disabilities</i>
Senior Executive Service		1	0		
Senior Officer Executive, levels 1-2	2		0		
Administrative Service Officer, grades 1-6	2		1		
Total	4	1	1	0	0

^a Non-English speaking background, first generation.

^b Non-English speaking background, second generation.

^c Aboriginal or Torres Strait Islander.

Other matters

Freedom of information

The Council received one request for documents under the *Freedom of Information Act 1982* during 2004-05, from the Pharmacy Guild of Australia.

Categories of documents held by the Council

The secretariat holds three classes of document. 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 files relevant to the Council's operations. The documents on these files include correspondence, analysis and policy advice prepared by secretariat officers. Four main categories of file are relevant to the Council's operations:

1. Council views on the progress of the Australian, state and territory governments in implementing the NCP reforms
2. Council recommendations on applications for access declarations and the certification of access regimes. The designated ministers are required to publish their decisions on these applications. 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 providing it to the minister.

-
3. Council recommendations on coverage under the National Gas Access Code, which are made public when sent to the relevant minister
 4. material relating to other work assigned to the Council (for example, the review of the *Australian Postal Corporation Act 1989* and the review of ss51(2) and 51(3) of the *Trade Practices Act 1974*).

Third, the Council holds documents on internal office administration. They include personal details of staff, 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 on request

The following categories of document are publicly available:

- the Council's annual reports to Parliament
- speeches by Council and secretariat staff
- research papers and guides on specific competition policy issues
- the Council's corporate plans
- issues papers developed by the Council and applications received for declaration or certification, or under the National Gas Access Code
- submissions by interested parties on access declaration or certification applications, applications under the National Gas Access Code, and other reviews and matters considered in the annual Council assessments of governments' compliance with the NCP and related reforms (where information contained is not commercial-in-confidence)
- the Council's recommendations on declaration, certification and National Gas Access Code applications
- assessments and recommendations to the Australian Government Treasurer on state and territory progress in implementing the NCP
- community information papers and media releases
- issues papers, draft reports and final reports on other reviews referred to the Council.

These documents are usually available in both hard copy and electronic form. The Council places as much material as possible on its website (www.ncc.gov.au). 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 7474) between 9.00 am and 5.00 pm, Monday to Friday.

The Director (Freedom of Information Request) is authorised under s23 of the Act to grant or refuse requests for access to documents. In accordance with s54, 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 arrange to inspect documents at the National Competition Council office, level 9, 128 Exhibition 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:

- s74 of the Occupational Health and Safety (Commonwealth Employment) Act
- s50AA of the *Audit Act 1901*
- the *Public Service Act 1999*
- s8 of the Freedom of Information Act
- s29(O) of the Trade Practices Act
- the guidelines issued by the Department of the Prime Minister and Cabinet.

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

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.

Compliance index

<i>Requirement</i>	<i>Page</i>
Councillors' letter of transmission to the Treasurer	iii
Table of contents	v-vii
Abbreviations	ix
Application of the Commonwealth disability strategy	63
Introduction	1
Mission statement	57
Program objectives	55-57
Performance reporting	9-42
Structure and senior management	45-49
Social justice and equity	62-63
Internal and external scrutiny	49-51
Staffing overview	51-53
Financial statements (including Auditor-General's report)	69-93
Industrial democracy	59
Occupational health and safety	59-60
Workplace diversity	63-64
Freedom of information	64-66
Annual reporting requirements and aids to access	66-67
Contact officer for further information	67
Alphabetical index	99-101

C4 Financial statements

Financial statements

for the year ended 30 June 2005



INDEPENDENT AUDIT REPORT

To the Treasurer

Scope

The financial statements and Council President and the Executive Director responsibilities

The financial statements comprise:

- Statement by the Council President and the Executive Director;
- Statements of Financial Performance, Financial Position and Cash Flows;
- Schedules of Commitments and Contingencies; and
- Notes to and forming part of the Financial Statements

of the National Competition Council for the year ended 30 June 2005.

The National Competition Council's President and Executive Director are responsible for preparing financial statements that give a true and fair presentation of the financial position and performance of the National Competition Council, and that comply with accounting standards, other mandatory financial reporting requirements in Australia, and the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*. The National Competition Council's President and Executive Director are also responsible for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial statements.

Audit approach

I have conducted an independent audit of the financial statements in order to express an opinion on them to you. My audit has been conducted in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing and Assurance Standards, in order to provide reasonable assurance as to whether the financial statements are free of material misstatement. The nature of an audit is influenced by factors such as the use of professional judgment, selective testing, the inherent limitations of internal control, and the availability of persuasive, rather than conclusive, evidence. Therefore, an audit cannot guarantee that all material misstatements have been detected.

While the effectiveness of management's internal controls over financial reporting was considered when determining the nature and extent of audit procedures, the audit was not designed to provide assurance on internal controls.

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

I have performed procedures to assess whether, in all material respects, the financial statements present fairly, in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, accounting standards and other mandatory financial reporting requirements in Australia, a view which is consistent with my understanding of the National Competition Council's financial position, and of its performance as represented by the statements of financial performance and cash flows.

The audit opinion is formed on the basis of these procedures, which included:

- examining, on a test basis, information to provide evidence supporting the amounts and disclosures in the financial statements; and
- assessing the appropriateness of the accounting policies and disclosures used, and the reasonableness of significant accounting estimates made by the Council President and the Executive Director.

Independence

In conducting the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the ethical requirements of the Australian accounting profession.

Audit Opinion

In my opinion, the financial statements of the National Competition Council:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*; and
- (b) give a true and fair view of the National Competition Council's financial position as at 30 June 2005 and of its performance and cash flows for the year then ended, in accordance with:
 - (i) the matters required by the Finance Minister's Orders; and
 - (ii) applicable accounting standards and other mandatory financial reporting requirements in Australia.

Australian National Audit Office



Carla Jago
Executive Director

Delegate of the Auditor-General

Canberra
29 August 2005

National Competition Council

Level 9, 128 Exhibition Street Melbourne 3000 Australia

GPO Box 250B Melbourne 3001 Australia

Telephone 03 9285 7474 Facsimile 03 9285 7477

Website: www.ncc.gov.au



**NATIONAL COMPETITION COUNCIL
STATEMENT BY THE COUNCIL PRESIDENT AND
PRINCIPAL ACCOUNTING OFFICER**

In our opinion, the attached financial statements for the year ended 30 June 2005 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders under the *Financial Management and Accountability Act 1997*.

A handwritten signature in black ink, appearing to read "David Crawford". The signature is written in a cursive style and is positioned above a horizontal dotted line.

David Crawford
Acting President

A handwritten signature in black ink, appearing to read "John Feil". The signature is written in a cursive style and is positioned above a horizontal dotted line.

John Feil
Executive Director

26 AUG 2005

Dated:

26 AUG 2005

Dated:

NATIONAL COMPETITION COUNCIL
STATEMENT OF FINANCIAL PERFORMANCE
for the year ended 30 June 2005

	Notes	2005 \$	2004 \$
Revenues from Ordinary Activities			
Revenues from Government	3(a)	3,880,233	3,847,000
Other revenues	3(c)	35,980	19,854
Revenues from Ordinary Activities		3,916,213	3,866,854
Expenses from Ordinary Activities (Excluding Borrowing Costs Expense)			
Employees	4(a)	1,771,481	2,297,995
Suppliers	4(b)	1,778,763	1,487,644
Depreciation and amortisation	4(c)	83,824	63,006
Value of assets sold	3(b)	-	13,528
Expenses from Ordinary Activities		3,634,068	3,862,173
Net Surplus		282,145	4,681
Net debit to retained surpluses	9(a)	(17,271)	-
Net credit to asset revaluation reserve	9(a)	2,707	-
Total Changes in Equity other than those resulting from transactions with the Australian Government as Owner		267,581	4,681

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

NATIONAL COMPETITION COUNCIL
STATEMENT OF FINANCIAL POSITION
as at 30 June 2005

	Notes	2005 \$	2004 \$
ASSETS			
Financial Assets			
Cash	5(a)	549,645	560,514
Receivables	5(b)	285,123	39,678
Total Financial Assets		<u>834,768</u>	<u>600,192</u>
Non-Financial Assets			
Land and buildings	6(a),(c)	41,337	107,271
Infrastructure, plant and equipment	6(b),(c)	61,743	57,636
Other non-financial assets	6(d)	11,348	13,852
Total Non-Financial Assets		<u>114,428</u>	<u>178,759</u>
TOTAL ASSETS		<u>949,196</u>	<u>778,951</u>
LIABILITIES			
Provisions			
Employees	7(a)	293,196	457,621
Total Provisions		<u>293,196</u>	<u>457,621</u>
Payables			
Suppliers	8(a)	239,355	172,266
Total Payables		<u>239,355</u>	<u>172,266</u>
TOTAL LIABILITIES		<u>532,551</u>	<u>629,887</u>
NET ASSETS		<u>416,645</u>	<u>149,064</u>
EQUITY			
Reserves		2,707	-
Retained surpluses		413,938	149,064
TOTAL EQUITY	9(a)	<u>416,645</u>	<u>149,064</u>
Current assets		846,116	614,044
Non-current assets		103,080	164,907
Current liabilities		364,787	253,110
Non-current liabilities		167,764	376,777

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

NATIONAL COMPETITION COUNCIL
STATEMENT OF CASH FLOWS
for the year ended 30 June 2005

	Notes	2005 \$	2004 \$
OPERATING ACTIVITIES			
Cash Received			
Appropriations		3,880,233	3,847,000
Goods and services		18,195	18,859
GST received from Australian Taxation Office (ATO)		178,144	158,502
Total Cash Received		<u>4,076,572</u>	<u>4,024,361</u>
Cash Used			
Employees		1,836,044	2,205,418
Suppliers		1,968,835	1,684,090
Cash transferred to the OPA		246,000	-
Total Cash Used		<u>4,050,879</u>	<u>3,889,508</u>
Net Cash From or (Used by) Operating Activities	10	<u>25,693</u>	<u>134,853</u>
INVESTING ACTIVITIES			
Cash Used			
Purchase of property, plant and equipment		36,562	24,241
Total Cash Used		<u>36,562</u>	<u>24,241</u>
Net Cash From or (Used by) Investing Activities		<u>(36,562)</u>	<u>(24,241)</u>
Net Increase or (Decrease) in Cash Held			
Cash at the beginning of the reporting period		560,514	449,902
Cash at the End of the Reporting Period	5(a)	<u>549,645</u>	<u>560,514</u>

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

**NATIONAL COMPETITION COUNCIL
SCHEDULE OF COMMITMENTS**

as at 30 June 2005

	2005	2004
	<u>\$</u>	<u>\$</u>
BY TYPE		
Other Commitments		
Operating leases ¹	<u>95,859</u>	<u>227,230</u>
Total other commitments	<u>95,859</u>	<u>227,230</u>
Commitments receivable	<u>8,714</u>	<u>20,657</u>
Net commitments	<u><u>87,145</u></u>	<u><u>206,573</u></u>
BY MATURITY		
Operating lease commitments		
One year or less	<u>95,859</u>	<u>120,832</u>
From one to five years	<u>-</u>	<u>106,398</u>
Total operating lease commitments by maturity	<u><u>95,859</u></u>	<u><u>227,230</u></u>
Commitments receivable	<u>8,714</u>	<u>20,657</u>
Net commitments	<u><u>87,145</u></u>	<u><u>206,573</u></u>

NB: All commitments are GST inclusive where relevant.

¹ Operating leases included are effectively non-cancellable and comprise:

<i>Nature of lease</i>	<i>General description of leasing arrangement</i>
Leases for office accommodation	The current lease expires on 9 May 2006. The Council has a one year option available to it. The option is exercisable in November 2005. There is no annual increase in accordance with movements in the Consumer Price Index.

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

**NATIONAL COMPETITION COUNCIL
SCHEDULE OF CONTINGENCIES**

as at 30 June 2005

	2005	2004
	\$	\$
<u>Claims For Damages or Costs</u>		
Contingent Liabilities		
Balance from previous period	28,040	-
New	-	28,040
Re-measurement	-	-
Liabilities crystallised	(14,020)	-
Obligations expired	(14,020)	-
Total Contingent Liabilities	-	28,040
Contingent Assets		
Balance from previous period	1,158	-
New	-	1,158
Re-measurement	-	-
Liabilities crystallised	(1,158)	-
Obligations expired	-	-
Total Contingent Assets	-	1,158

Details of each class of contingent liabilities and assets, including those not included above because they cannot be quantified or are considered remote, are disclosed in Note 15: Contingent Liabilities and Assets

The above schedule 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 2005

Note

- 1 Summary of Significant Accounting Policies
- 2 Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-2006
- 3 Operating Revenues
- 4 Operating Expenses
- 5 Financial Assets
- 6 Non-Financial Assets
- 7 Provisions
- 8 Payables
- 9 Equity
- 10 Cash Flow Reconciliation
- 11 Executive Remuneration
- 12 Councillors Remuneration
- 13 Remuneration of Auditors
- 14 Average Staffing Levels
- 15 Contingent Liabilities and Assets
- 16 Financial Instruments
- 17 Appropriations
- 18 Specific Payment disclosures
- 19 Reporting of Outcomes

Note 1: Summary of Significant Accounting Policies

1.1 Objectives of the National Competition Council

The National Competition Council (the 'Council') was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Commonwealth, State and Territory governments. The Council is an independent advisory body for all governments on implementation of the national competition policy reforms.

The role of the Council is to oversight and assist the implementation of National Competition Policy and related reforms outlined in frameworks developed and agreed by all Australian Governments. Its responsibilities also include assisting public awareness of governments' competition reform agendas, recommending on the design and coverage of infrastructure access regimes under Part IIIa of the Trade Practices Act 1974, and assessing whether the Commonwealth, States and Territories have made satisfactory progress towards their commitments to competition policy reform.

The Council's outcome is the achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community.

Council activities contributing toward this outcome are classified as Departmental. Departmental activities involve the use of assets, liabilities, revenues and expenses controlled or incurred by the Council in its own right.

The Council's outcome is separated into two output groups as follows:

Output Group 1

Advice provided to governments on competition policy and infrastructure access issues.

Output Group 2

Clear, accessible public information on competition policy.

1.2 Basis of Accounting

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

The statements have been prepared in accordance with:

- Finance Minister's Orders (or FMOs, being the *Financial Management and Accountability Orders (Financial Statements for reporting periods ending on or after 30 June 2005)*);
- Australian Accounting Standards and Accounting Interpretations issued by the Australian Accounting Standards Board; and
- Consensus Views of the Urgent Issues Group.

The Council's Statements of Financial Performance and Financial Position have been prepared on an accrual basis and are in accordance with the historical cost convention, except for certain assets, which, as noted, are at valuation. 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 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. However, assets and liabilities arising under agreements equally proportionately unperformed 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.

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

1.3 Changes in accounting policy

The accounting policies used in the preparation of these financial statements are consistent with those used in 2003-04 except as noted below.

Property plant and equipment assets have been revalued as explained in Note 1.12. These revaluations have been done on a 'fair value' basis. Revaluation increments have been taken to the asset revaluation reserve and decrements have been taken to the asset revaluation reserve to the extent that they reverse a prior increment, otherwise they have been debited directly to retained surpluses. Future revaluations are to be undertaken at fair value.

1.4 Revenue

Revenues from Government

Amounts appropriated for Departmental outputs appropriations for the year (adjusted for any formal additions and reductions) are recognised as revenue, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned.

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 as revenue 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.

Other Revenue

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

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

Receivables for goods and services are recognised at the nominal amounts due less any provision for bad or doubtful debts. Collectability of debts is reviewed at balance date. Provisions are made when collectability of the debt is judged to be less rather than more likely.

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

1.5 Transactions with the Government as Owner

Equity injections

Amounts appropriated which are designated as 'equity injections' for a year (less any savings offered up in Portfolio Additional Estimates Statements) are recognised directly in Contributed Equity in that year.

Restructuring of Administrative Arrangements

Net assets received from or relinquished to another Commonwealth agency or authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

1.6 Employee benefits

Liabilities for services rendered by employees are recognised at the reporting date to the extent that they have not been settled.

Liabilities for wages and salaries (including non-monetary benefits), annual leave and sick leave are measured at their nominal amounts. Other employee benefits expected to be settled within 12 months of the reporting date are also measured at their nominal amounts.

The nominal amount is calculated with regard to the rates expected to be paid on settlement of the liability.

All other employee benefit liabilities are measured as the present value of the estimated future cash outflows to be made in respect of services provided by employees up to the reporting date.

Leave

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

The leave liabilities are calculated on the basis of employees' remuneration, including the Council's employer superannuation contribution rates to the extent that the leave is likely to be taken during service rather than paid out on termination.

The non-current portion of the provision 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 as at 30 June 2005. The estimate of present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Superannuation

Staff of the Council are members of the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. The liability for their superannuation benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course.

The Council makes employer contributions to the Australian Government at rates determined by an actuary to be sufficient to meet the cost to the Government of the superannuation entitlements of the Council's employees.

The liability for superannuation recognised as at 30 June 2005 represents outstanding contributions for the final fortnight of the year.

1.7 Leases

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. In operating leases, 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 beginning of the lease term and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. 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 that is representative of the pattern of benefits derived 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 lease 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 amount of costs incurred in that period.

The Council did not have any qualifying assets for which funds were borrowed during the 2004-05 financial year.

1.9 Cash

Cash means notes and coins held and any deposits held at call with a bank or financial institution. Cash is recognised at its nominal amount.

1.10 Other Financial instruments

Accounting policies for financial instruments are stated at Note 16.

Contingent Liabilities and Contingent Assets

Contingent Liabilities (assets) are not recognised in the Statement of Financial Position but are discussed in the relevant schedules and notes. They may arise from uncertainty as to the existence of a liability (asset), or represent an existing liability (asset) in respect of which settlement is not probable or the amount cannot be reliably measured. Remote contingencies are part of this disclosure. Where settlement becomes probable, a liability (asset) is recognised. A liability (asset) is recognised when its existence is confirmed by a future event, settlement becomes probable or reliable measurement becomes possible.

1.11 Acquisition of assets

Assets are recorded at cost of 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 of 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, Infrastructure, Plant and Equipment (PP&E)

Asset Recognition Threshold

Purchases of property, infrastructure, 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 part of a group of similar items which are significant in total).

Revaluations

Basis and frequency

Property, infrastructure, plant and equipment are carried at valuation. The Council revalues all of its assets in three-year cycles. All valuations are carried out by an independent qualified valuer.

Buildings (leasehold improvements) were revalued as at 1 July 2004 at fair value.

Infrastructure, plant and equipment (P&E) assets were revalued as at 1 July 2004 at fair value.

The valuer has reviewed the asset values and confirmed that the carrying amount of each asset class is not materially different, at reporting date, from its fair value.

Assets which are surplus to requirements are measured at their net realisable value. At 30 June 2005, the Council had no assets in this situation.

Depreciation and Amortisation

Depreciable infrastructure, 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 reporting 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 useful lives in the table below. These rates apply to each item in that class except where the useful life of the item has been reassessed following revaluation.

Asset Class	Total useful life	Total useful life
Fitout	Lease term	Lease term
Plant and equipment	3 to 7 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 4(c).

1.13 Impairment of Non-Current Assets

Non-current assets carried at up to date fair value at the reporting date are not subject to impairment testing.

Non-current assets carried at cost and held to generate net cash inflows are required to have their recoverable amounts tested at the reporting date. The test compares the carrying amounts against the net present value of future net cash inflows. The Council has no assets within this category.

The non-current assets carried at cost, which are not held to generate net cash inflows, have been assessed for indications of impairment. Where indications of impairment exist, the carrying amount of the asset is compared to the higher of its net selling price and depreciated replacement cost and is written down to that value if greater. No assets were identified as impaired as at 30 June 2005.

1.14 Inventories

The Council provides the bulk of its publications free of charge which means the publications do not have a realisable value. As a result of this Council expenses the cost of publications as incurred.

Note 2: Adoption of AASB Equivalents to International Financial Reporting Standards from 2005-2006

The Australian Accounting Standards Board has issued replacement Australian Accounting Standards to apply from 2005-06. The new standards are the Australian Equivalents to International Financial Reporting Standards (AEIFRS). The International Financial Reporting Standards are issued by the International Accounting Standards Board. The new standards cannot be adopted early. The standards being replaced are to be withdrawn with effect from 2005-06, but continue to apply in the meantime, including reporting periods ending on 30 June 2005.

The purpose of issuing AEIFRS is to enable Australian reporting entities reporting under the *Corporations Act 2001* to be able to more readily access overseas capital markets by preparing their financial reports according to accounting standards more widely used overseas.

For-profit entities complying with AEIFRS will be able to make an explicit and unreserved statement of compliance with International Financial Reporting Standards (IFRS) as well as a statement that the financial report has been prepared in accordance with Australian Accounting Standards.

AEIFRS contain certain additional provisions that will apply to not-for-profit entities, including Australian Government agencies. Some of these provisions are in conflict with IFRS, and therefore the Council will only be able to assert that the financial report has been prepared in accordance with Australian Accounting Standards.

AAS 29 *Financial Reporting by Government Departments* will continue to apply under AEIFRS.

Accounting Standard AASB 1047 *Disclosing the Impacts of Adopting Australian Equivalents to International Financial Reporting Standards* requires that the financial statements for 2004-05 disclose:

- an explanation of how the transition to AEIFRS is being managed;
- narrative explanations of the key policy differences arising from the adoption of AEIFRS;
- any known or reliably estimable information about the impacts on the financial report had it been prepared using AEIFRS; and
- if the impacts of the above are not known or reliably estimable, a statement to that effect.

Where an entity is not able to make a reliable estimate, or where quantitative information is not known, the entity should update the narrative disclosures of the key differences in accounting policies that are expected to arise from the adoption of AEIFRS.

The purpose of this Note is to make these disclosures.

Management of the transition to AEIFRS

The Council has taken the following steps for the preparation towards the implementation of AEIFRS:

- The Council's Audit Committee is tasked with oversight of the transition to and implementation of AEIFRS. The Australian Competition and Consumer Commission (ACCC) is contracted to provide the Council with accounting services and will be responsible for implementation of AEIFRS in respect of the Council's accounts. The ACCC's Chief Finance Officer is formally responsible for the project and reports regularly to the Audit Committee on progress against the formal plan approved by the Committee. The ACCC has advised the Council of the ACCC's plan for the adoption of AEIFRS.

- The plan requires the following key steps to be undertaken and sets deadlines for their achievement:
 - All major accounting policy differences between current AASB standards and AEIFRS were identified by 30 June 2004.
 - No system changes were identified as being required for the implementation of the AEIFRS.
 - A transitional balance sheet as at 1 July 2004 under AEIFRS was completed and presented to the Audit Committee on 23 August 2005.
 - An AEIFRS compliant balance sheet as at 30 June 2005 was also prepared during the preparation of the 2004-05 statutory financial reports.
 - The 2004-05 Balance Sheet under AEIFRS will be reported to the Department of Finance and Administration in line with their reporting deadlines.
- The plan also addresses the risks to successful achievement of the above objectives and includes strategies to keep implementation on track to meet deadlines.

Major changes in accounting policy

The Council believes that the first financial report prepared under AEIFRS ie at 30 June 2006, will be prepared on the basis that the Council will be a first time adopter under AASB 1 *First-time Adoption of Australian Equivalents to International Financial Reporting Standards*. Changes in accounting policies under AEIFRS are applied retrospectively i.e. as if the new policy had always applied except in relation to the exemptions available and prohibitions under AASB 1. This means that an AEIFRS compliant balance sheet has to be prepared as at 1 July 2004. This will enable the 2005-06 financial statements to report comparatives under AEIFRS.

A first time adopter of AEIFRS may elect to use exemptions under paragraphs 13 to 25E. When developing the accounting policies applicable to the preparation of the 1 July opening balance sheet, no exemptions were applied by the Council.

Changes to major accounting policies are discussed in the following paragraphs.

Management's review of the quantitative impacts of AEIFRS represents the best estimates of the impacts of the changes as at reporting date. The actual effects of the impacts of AEIFRS may differ from these estimates due to:

- continuing review of the impacts of AEIFRS on the Council operations;
- potential amendments to the AEIFRS and AEIFRS Interpretations; and
- emerging interpretation as to the accepted practice in the application of AEIFRS and the AEIFRS Interpretations.

Impairment of Intangibles and Property, Plant and Equipment

The Council's policy on impairment of non-current assets is at Note 1.13.

Under AEIFRS these assets will be subject to assessment for impairment and, if there are indications of impairment, an assessment of the degree of impairment. (Impairment measurement must also be done, irrespective of any indications of impairment, for intangible assets not yet available for use). The impairment test is that the carrying amount of an asset must not exceed the greater of (a) its fair value less costs to sell and (b) its value in use. 'Value in use' is the net present value of net cash inflows for cash generating units of the Council (of which there are none) and depreciated replacement cost for other assets which would be replaced if the Council were deprived of them.

However, an impairment assessment of the Council's assets indicated that no adjustments will be required.

Decommissioning, Restoration and Make-good

When assessing the accommodation lease for the preparation of the opening balance sheet, an obligation under the lease for make-good was determined. The make good provision has been valued at \$8,000.

The impact of the changes would have the effect of increasing Land and Buildings by \$8,000 and increasing Provisions by \$8,000. Amortisation of Leasehold Improvements is expected to increase by \$4,000 per annum.

Employee Benefits

AEIFRS require that annual leave that is not expected to be taken within 12 months of balance date is to be discounted. After assessing the staff leave profile, the Council does not expect that any material amounts of the annual leave balance will not be taken in the next 12 months. Consequently, there are no adjustments for non-current annual leave.

Financial Instruments

AEIFRS include an option for entities not to restate comparative information in respect of financial instruments in the first AEIFRS report. It is expected that Finance Minister's Orders will require entities to use this option. Therefore, the amounts for financial instruments presented in the Council's 2004-05 primary financial statements are not expected to change as a result of the adoption of AEIFRS.

The Council will be required by AEIFRS to review the carrying amounts of financial instruments at 1 July 2005 to ensure they align with the accounting policies required by AEIFRS. It is expected that the carrying amounts of financial instruments held by the Council will not materially change as a result of this process.

A reconciliation of the impact of adopting AEIFRS on the Council's Statement of Financial Position and Statement of Financial Performance has not been presented due to the adjustments being immaterial.

	2005	2004
	\$	\$
Note 3: Operating Revenues		
<u>3(a) Revenues from Government</u>		
Appropriations for outputs	3,880,233	3,847,000
Total revenues from government	<u>3,880,233</u>	<u>3,847,000</u>
<u>3(b) Net Loss from Sale of Assets</u>		
Buildings (leasehold improvements):		
Write-offs	-	(4,294)
Net loss on disposal of buildings (leasehold improvements)	<u>-</u>	<u>(4,294)</u>
Infrastructure, plant and equipment:		
Write-offs	-	(9,234)
Net loss on disposal of infrastructure, plant and equipment	<u>-</u>	<u>(9,234)</u>
Total value of assets disposed	-	(13,528)
Total net loss from disposal of assets	<u>-</u>	<u>(13,528)</u>
<u>3(c) Other Revenues</u>		
Resources received free of charge	20,500	19,000
Revocation applications	15,000	-
Other revenue	480	854
Total other revenues	<u>35,980</u>	<u>19,854</u>
Note 4: Operating Expenses		
<u>4(a) Employee Expenses</u>		
Wages and Salary	1,397,545	1,721,335
Superannuation	220,439	270,056
Leave and other entitlements	116,035	190,659
Separation and redundancies	-	21,573
Other employee expenses	26,776	83,550
Total employee benefits expense	<u>1,760,795</u>	<u>2,287,173</u>
Workers compensation premiums	10,686	10,822
Total employee expenses	<u>1,771,481</u>	<u>2,297,995</u>
<u>4(b) Suppliers Expenses</u>		
Goods from related entities	11,707	5,894
Goods from external entities	48,154	34,290
Services from related entities	282,399	273,561
Services from external entities	1,305,282	1,048,576
Operating lease rentals*	131,221	125,323
Total supplier expenses	<u>1,778,763</u>	<u>1,487,644</u>

* These comprise minimum lease payments only.

	2005 \$	2004 \$
<u>4(c) Depreciation and Amortisation</u>		
<i>(i) Depreciation</i>		
Infrastructure, plant and equipment	35,161	26,874
<i>(ii) Amortisation</i>		
Leasehold improvements	48,663	36,132
Total depreciation and amortisation	83,824	63,006

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

Leasehold improvements	48,663	36,132
Plant and equipment	35,161	26,874
Total depreciation and amortisation	83,824	63,006

No depreciation or amortisation was allocated to the carrying amounts of other assets.

Note 5: Financial Assets

5(a) Cash

Cash at bank and on hand	549,645	560,514
Total cash	549,645	560,514

5(b) Receivables

GST receivable from the ATO	39,123	39,678
Appropriations receivable	246,000	-
Total receivables (gross)	285,123	39,678

All receivables are current assets.

Receivables (gross) are aged as follows:

Current	285,123	-
Overdue by:		
Less than 30 days	-	39,678
30 to 60 days	-	-
60 to 90 days	-	-
More than 90 days	-	-
	-	39,678
Total receivables (gross)	285,123	39,678

Note 6: Non-Financial Assets

6(a) Land and Buildings

Leasehold improvements

At cost	-	143,939
Less: Accumulated amortisation	-	(36,668)
	-	107,271

At fair value	90,000	-
Less: Accumulated amortisation	(48,663)	-
	41,337	-

Total leasehold improvements	41,337	107,271
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Total Land and Buildings (non-current)	41,337	107,271
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	2005 \$	2004 \$
6(b) Infrastructure, Plant and Equipment		
<i>Infrastructure, plant and equipment</i>		
At cost	-	227,287
Less: Accumulated depreciation	-	(169,651)
	-	57,636
At fair value	96,905	-
Less: Accumulated depreciation	(35,162)	-
	61,743	-
<i>Total Infrastructure, Plant and Equipment (non-current)</i>	61,743	57,636

6(c) Analysis of Property, Plant, and Equipment**Table A – Reconciliation of the opening and closing balances of property, plant and equipment**

Item	Leasehold improvements \$	Infrastructure plant and equipment \$	TOTAL \$
As at 1 July 2004			
Gross book value	143,939	227,287	371,226
Accumulated depreciation/amortisation	(36,668)	(169,651)	(206,319)
<i>Opening net book value</i>	107,271	57,636	164,907
Additions			
by purchase	-	36,561	36,561
Net revaluation increment/(decrement)	(17,271)	2,707	(14,564)
Depreciation/amortisation expense	(48,663)	(35,161)	(83,824)
Disposals	-	-	-
As at 30 June 2005			
Gross book value	90,000	96,905	186,905
Accumulated depreciation/amortisation	(48,663)	(35,162)	(83,825)
<i>Closing net book value</i>	41,337	61,743	103,080

Table B – Assets at valuation

Item	Leasehold improvements \$	Infrastructure plant and equipment \$	TOTAL \$
As at 30 June 2005			
Gross value	90,000	96,905	186,905
Accumulated depreciation/amortisation	(48,663)	(35,162)	(83,825)
Net book value	41,337	61,743	103,080
As at 30 June 2004			
Gross book value	-	-	-
Accumulated depreciation/amortisation	-	-	-
Net book value	-	-	-

The Council does not hold assets under construction or finance lease.

	2005 \$	2004 \$
<u>6(d) Other Non-Financial Assets</u>		
Prepayments	<u>11,348</u>	<u>13,852</u>

Other non-financial assets are current assets.

Note 7: Provisions

7(a) Employee Provisions

Salaries and wages	4,583	-
Leave	288,023	457,621
Superannuation	590	-
Aggregate employee benefit liability and related on-costs	<u>293,196</u>	<u>457,621</u>
Current	125,432	80,844
Non-current	167,764	376,777
Aggregate employee benefit liability and related on-costs	<u>293,196</u>	<u>457,621</u>

Note 8: Payables

8(a) Supplier Payables

Trade creditors and accruals	<u>239,355</u>	<u>172,266</u>
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All supplier payables are current liabilities.

Note 9: Equity9(a) Analysis of Equity

Item	Accumulated Results		Asset Revaluation Reserves		TOTAL EQUITY	
	2005 \$	2004 \$	2005 \$	2004 \$	2005 \$	2004 \$
Opening balance as at 1 July	149,064	144,383	-	-	149,064	144,383
Net surplus	282,145	4,681	n/a	n/a	282,145	4,681
Net revaluation decrement	(17,271)	-	n/a	n/a	(17,271)	-
Net revaluation increment	n/a	n/a	2,707	-	2,707	-
Closing balance as at 30 June	413,938	149,064	2,707	-	416,645	149,064

Note 10: Cash Flow Reconciliation**Reconciliation of net surplus to net cash from operating activities:**

	2005 \$	2004 \$
Net surplus	282,145	4,681
Depreciation / amortisation	83,824	63,006
Loss on disposal of assets	-	13,528
(Increase) / decrease in net receivables	(245,445)	39,954
(Increase) / decrease in prepayments	2,504	(8,240)
Increase / (decrease) in employee provisions	(164,425)	42,009
Increase / (decrease) in supplier payables	67,090	(20,085)
Net cash from operating activities	25,693	134,853

Note 11: Executive Remuneration

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

	2005 Number	2004 Number
\$140,000 to \$149,999	1	-
\$150,000 to \$159,999	1	-
\$160,000 to \$169,999	1	2
\$180,000 to \$189,999	-	1
\$200,000 to \$209,999	-	1
\$220,000 to \$229,999	1	-

The aggregate amount of total remuneration of executives shown above.

\$688,808 \$716,600

The aggregate amount of separation payments during the year to executives shown above.

- -

Note 12: Councillors Remuneration

The Councillors during the year were:

President: Wendy Craik (to 25 August 2004)
David Crawford (Acting President from 26 August 2004)

Councillors: David Crawford (to 25 August 2004)
Virginia Hickey
Doug McTaggart
Rod Sims

The number of Councillors who received or were due to receive remuneration are shown in the following bands:

	<u>2005</u> <u>Number</u>	<u>2004</u> <u>Number</u>
\$10,000 to \$19,999	1	3
\$20,000 to \$29,999	3	-
\$30,000 to \$39,999	-	2
\$50,000 to \$59,999	1	-
\$80,000 to \$89,999	-	1
The aggregate amount of total remuneration of Councillors shown above.	\$145,251	\$193,302

Note 13: Remuneration of Auditors

Financial statement audit services are provided free of charge to the Council by the Australian National Audit Office (ANAO).

The fair value of the services provided was:

<u>2005</u> <u>\$</u>	<u>2004</u> <u>\$</u>
20,500	19,000

No other services were provided by the Auditor-General.

Note 14: Average Staffing Levels

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

<u>2005</u> <u>Number</u>	<u>2004</u> <u>Number</u>
17.7	20.7

Note 15: Contingent Liabilities and Assets*Quantifiable Contingencies*

The Schedule of Contingencies reports a contingent liability as at 30 June 2004 in respect of disputed unpaid invoices issued between 1999 and 2001. The matter was resolved during 2004-05 with the Council agreeing to pay 50% of the disputed invoices.

Unquantifiable Contingencies

There were no unquantifiable contingencies at 30 June 2005 (2004: \$Nil).

Remote Contingencies

There were no remote contingencies at 30 June 2005 (2004: \$Nil).

Note 16: Financial Instruments16(a) Terms, conditions and accounting policies

Financial Instrument	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis)	Nature of Underlying Instrument (including significant terms & 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 at bank	5(a)	Deposits are recognised at their nominal amounts.	The Council's operational bank accounts are held with Westpac Banking Corporation. Since 1 July 2003, no interest is earned on the Council's bank balances.
Receivables	5(b)	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 on 30 day terms.
Appropriations receivable	5(b)	These receivables are recognised at their nominal amounts.	Amounts appropriated by the Parliament in the current or previous years which are available to be drawn down by the Council.
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 and accruals	8(a)	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).	Trade creditors are normally settled on 30 day terms.

16(b) Interest rate risk

Financial Instrument	Notes	Non-Interest Bearing		Total		Weighted Average Effective Interest Rate	
		2005 \$	2004 \$	2005 \$	2004 \$	2005 \$	2004 \$
Financial Assets							
Cash at bank	5(a)	549,645	560,514	549,645	560,514	n/a	n/a
Receivables	5(b)	39,123	39,678	39,123	39,678	n/a	n/a
Appropriations receivable	5(b)	246,000	-	246,000	-	n/a	n/a
Total Financial Assets		834,768	600,192	834,768	600,192		
Total Assets				949,196	778,951		
Financial Liabilities							
Trade creditors	8(a)	239,355	172,266	239,355	172,266	n/a	n/a
Total Financial Liabilities		239,355	172,266	239,355	172,266		
Total Liabilities				532,551	629,887		

16(c) Net fair values of financial assets and liabilities

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.

16(d) Credit Risk Exposures

The Council's maximum exposure to credit risk at 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 Position.

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

All figures for credit risk referred to do not take into account the value of any collateral or other security.

Note 17: Appropriations

17(a) Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations

	2005		2004	
	Departmental Outputs	Total	Departmental Outputs	Total
	\$	\$	\$	\$
Balance carried from previous year	600,192	600,192	492,416	492,416
Unspent prior year appropriations - invalid s31 ¹	(418,486)	(418,486)	-	-
Adjusted balance carried from previous period	181,706	181,706	492,416	492,416
Appropriation Act (No.1)	3,896,000	3,896,000	3,818,000	3,818,000
Appropriation Act (No.3)	-	-	29,000	29,000
Refunds credited (net) (FMA s30)	2,643	2,643	-	-
Appropriation reduced by section 9 determinations (current year)	(15,767)	(15,767)	-	-
Sub-total Annual Appropriation	3,882,876	3,882,876	3,847,000	3,847,000
Appropriations to take account of recoverable GST (FMAA s30A)	177,589	177,589	155,666	155,666
Annotations to 'net appropriations' (FMAA s31)	18,195	18,195	18,859	18,859
30 June 2005 variation - s31 ²	418,486	418,486	-	-
Total appropriations available for payments	4,678,852	4,678,852	4,513,941	4,513,941
Cash payments made during the year (GST inclusive)	(3,844,084)	(3,844,084)	(3,913,749)	(3,913,749)
Balance of Authority to Draw Cash from the CRF for Ordinary Annual Services Appropriations	834,768	834,768	600,192	600,192
<i>Represented by:</i>				
Cash	549,645	549,645	560,514	560,514
Departmental appropriations receivable	246,000	246,000	-	-
GST receivable from ATO	39,123	39,123	39,678	39,678
Total	834,768	834,768	600,192	600,192

¹ Under Section 31 of the Financial Management and Accountability Act 1997 (the FMA Act), the Minister for Finance may enter into a net appropriation agreement with an agency Minister. Appropriation Acts nos. 1 and 3 (for the ordinary annual services of government) authorise the supplementation of an agency's annual net appropriation by amounts received in accordance with its Section 31 Agreement eg, receipts from charging for goods and services.

One of the conditions that must be satisfied under Section 31 of the FMA Act in order for an annual net appropriation to be increased lawfully in this way is that the Agreement is made between the Finance Minister and

the agency Minister or by officials expressly delegated (where permitted) or authorised by them. An agency's Chief Executive is taken to be so authorised.

The delegate of the Minister for Finance and Administration and the Deputy Executive Director of the NCC executed our Section 31 Agreement(s) covering the period 1 July 1998 to 1 March 2005. Whilst the Council have operated and recorded Section 31 monies as though a valid agreement existed, the Council did not have an express delegation or authority for signing the agreement, with the result that the Council's agreement was ineffective and the Council did not have control over Section 31 monies.

The Council's current Section 31 Agreement was made on 2 March 2005 between the Chief Executive and the Delegate of the Minister for Finance and Administration. Acknowledging the ineffectiveness of the prior agreement, this agreement was varied on 24 June 2005, with effect from 30 June 2005, to capture retrospectively all monies that were subject to an ineffective prior agreement.

Accordingly:

- amounts disclosed in previous financial years as available for spending under the Council's departmental outputs appropriations up to 30 June 2004 were overstated by \$418,486;
- the 30 June 2005 Variation to the agreement increased the Council's appropriation by the amount of invalid receipts (\$418,486).

A year-by-year analysis of overstatement of the departmental output appropriations is given below.

	98-99	Total Pre-accrual budgeting	99-00	00-01	01-02	02-03	03-04	Sub-total	04-05	Total 1/7/99 to 1/3/05
Receipts affected	140,102	140,102	0	120,956	116,071	162,600	18,859	418,486	0	418,486
Unspent	140,102	140,102	0	120,956	116,071	162,600	18,859	418,486	0	418,486
Amount spent without appropriation	0	0	0	0	0	0	0	0	0	0

² This amount represents receipts of \$558,588 appropriated by the variation of 30 June 2005 less receipts from 1997-99 of \$140,102.

17(b) Special Accounts

Services for other Governments & Non-Agency Bodies Account	2005	2004
	\$	\$
<i>Legal authority: Financial Management and Accountability Act, 1997, s20</i>		
<i>Purpose: for expenditure in connection with services performed on behalf of other Governments and bodies that are not agencies under the Financial Management and Accountability Act 1997.</i>		
Balance carried from previous year	-	-
Other receipts	-	41,865
Available for payments	-	41,865
Payments made	-	(41,865)
Balance carried to the next reporting period	-	-

Other Trust Monies Special Account

The Council has an Other Trust Monies Account. This account was established under section 20 of the *Financial Management and Accountability Act 1997*. For the years ended 30 June 2004 and 2005, the account had a nil balance and there were no transactions debited or credited to the account.

The purpose of the Other Trust Monies Special Account is for the receipt of monies temporarily held on trust or otherwise for the benefit of a person other than the Australian Government.

Note 18: Specific Payment Disclosures

No Acts of Grace payments were made during the reporting period (2004: No payments made).

No waivers of amounts owing to the Commonwealth were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2004: No waivers made).

No ex-gratia payments were made during the reporting period (2004: No payments made).

No payments were made under the 'Defective Administration Scheme' during the reporting period (2004: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2004: No payments made).

Note 19: Reporting of Outcomes

The Council attributes its outcome between its two output groups on the basis of identifiable actual costs. The \$0.2 million attributed to the output group - clear, accessible public information on competition policy - primarily covers direct costs of these activities. Expenditure on this output group is small in total and as a proportion of the Council's total costs. The Council has concluded that it is not cost effective to allocate overheads to this output group. This basis of attribution is consistent with that used in the 2004-05 budget.

19(a) – Net Cost of Outcome Delivery

	Outcome 1		Total	
	2005 \$	2004 \$	2005 \$	2004 \$
Departmental expenses	3,634,068	3,862,173	3,634,068	3,862,173
Total expenses	3,634,068	3,862,173	3,634,068	3,862,173
Costs recovered				
Departmental	15,000	-	15,000	-
Total costs recovered	15,000	-	15,000	-
Other external revenues				
Departmental				
Other	20,980	19,854	20,980	19,854
Total other external revenues	20,980	19,854	20,980	19,854
Net cost/(contribution) of outcome	3,598,088	3,842,319	3,598,088	3,842,319

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

Note 19(b) - Major Classes of Departmental Revenues and Expenses by Output Groups and Outputs

Outcome 1	Output Group 1		Output Group 2		Total	
	2005 \$	2004 \$	2005 \$	2004 \$	2005 \$	2004 \$
Departmental expenses						
Employees	1,605,916	2,198,290	165,565	99,705	1,771,481	2,297,995
Suppliers	1,763,254	1,455,502	15,509	32,142	1,778,763	1,487,644
Depreciation & amortisation	83,824	63,006	-	-	83,824	63,006
Other expenses	-	13,528	-	-	-	13,528
Total departmental expenses	3,452,994	3,730,326	181,074	131,847	3,634,068	3,862,173
Funded by:						
Revenue from government	3,676,233	3,647,000	204,000	200,000	3,880,233	3,847,000
Other non-taxation revenues	35,980	19,854	-	-	35,980	19,854
Total departmental revenues	3,712,213	3,666,854	204,000	200,000	3,916,213	3,866,854

Outcome 1 is described in Note 1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

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Index

A

- access to Council information, 64–67
 - see also* freedom of information, publications, website development
- access to infrastructure, 9–29
 - regulation of, 5–6
 - see also* declaration, certification, coverage, revocation
- assessment of government's implementation of NCP, xi, 31–39
- audit committee, 48
- Australian Competition Tribunal, 13, 14, 18–21, 26, 50

B

- benefits from NCP reforms, xi
- BHP Billiton Iron Ore, 12, 50
- Business Council of Australia, 3

C

- certification (access), 10, 14–15, 23–25, 42, 64
 - Tasmanian Government application, 14–15, 25, 42
 - WA Government application, 15, 25
 - Queensland Government application, 15, 24
- communications, 41–42
- communications infrastructure, 36–37
- competitive neutrality, 35, 39
- compliance index, 68
- consultants, 52–53
- consultation (communications), 41
- corporate governance and organisation, 45–53
- coverage, National Gas Code, 15–17, 26–29, 42, 65
 - Molopo Australia, 15, 16, 29, 42

D

- declaration, 9, 10, 11–14, 18–22, 42, 50, 53, 64–65
 - Lakes R Us application, 11, 22, 42
 - Fortescue Metals Group application, 11, 12, 22, 42, 50
 - Services Sydney Application, 11, 13, 21, 42, 50
 - Virgin Blue application, 11, 13–14, 21, 50
 - summary of all declaration applications, 18–22
- disability (strategy), 63

E

- electricity, 3, 15, 20, 25, 32–33
- energy, 32–33
- Epic Energy, 15–16, 26, 29, 42
- equity matters, 62–64

F

- financial statements, 69–93
- Fortescue Metals Group, 11, 12, 22, 42, 50
- freedom of information, 64–66
- functions (of the Council), 55–57
- future of microeconomic reform, 1–4

G

- gambling legislation, 37–38
- gas, 15–17, 26–29, 33, 42, 50
 - Epic Energy application for revocation, 15–16, 26, 29, 42
 - Molopo Australia application for coverage, 15, 16, 29, 42
 - Goldfields Gas Pipeline, application for revocation, 17, 26, 29, 50
 - see also* certification (access), coverage, declaration, revocation
- gatekeeping, xi–xiv, 1, 2, 38–39
- Goldfields Gas Transmission, 17, 26, 29, 50
- government businesses, 1, 39, 56

H

hire cars, 35–36

I

incentives for reform, xiii–xiv, 2–4

industrial democracy (plan), 59

infrastructure bottlenecks, regulation, 5–6

insurance services, 38

L

Lakes R Us, 11, 22, 42

legislation review and reform, xi–xii, 1, 34–39

liquor, 36

M

management, 59–67

mission statement, 57

Molopo Australia, 15, 16, 29, 42

N

National Competition Council

agency overview, 55

consultation, 41

council meetings, 47

councillors, 46–47

financial statements, 69–93

management, 59–67

organisation chart, 48

public documents, 41–42

reform progress assessment, 31–39

secretariat, 48

structure, 45–49

training, 59

work program, 57

National Competition Policy (NCP), xi, 1–3, 9, 31, 32, 39

contacts, 95–96

National Gas Code, 15–17, 26, 29, 42, 65

national reviews, 38

O

occupational health and safety, 59–60

outcomes, outputs, 55–56

outsourcing (corporate services), 61–62

overview

certification activities, 14–15

coverage activities, 15–17

declaration activities, 11–14

P

part IIIA of the Trade Practices Act 1974, 10–17, 19, 42, 50, 52, 55

see also access to infrastructure

postal legislation, 37

primary industries, 34–35

Productivity Commission (review of NCP), xii, 2–3, 34, 38–39, 49, 50, 51

professions and occupations, 35

publications, 42

R

reform agenda, 1–4

regulation of access to infrastructure, 5–6

regulation review and reform progress

see legislation review and reform

retail trading, 36

reviews (NCP), 49–50

review methods (NCP decisions), 50

revocation, 15–16, 17, 25–29

Epic Energy, 15–16, 26, 29, 42

road transport, 33–34

S

scrutiny (internal, external), 49–51

secretariat (NCC), 48

Services Sydney, 11, 13, 21, 42, 50

social regulation, 37–38

social justice, 62–63

speeches, 41, 65

staffing developments, 51, 59

staff management, 45–49, 59–61
stakeholder (engagement), 51

T

taxis, 35–36
Trade Practices Act, part IIIA, 10–17, 19, 42,
50, 52, 55
training (staff), 59
transport legislation review, 35–36

V

Virgin Blue, 11, 13–14, 21, 50

W

water, xiii, 1, 3, 4, 11, 22, 32
website development, 42
workplace diversity, 63–64