National Competition Council

Annual Report 1998-1999

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Office of
Council President

31 August 1999

The Honourable Peter Costello, MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

We submit to you the fourth Annual Report of the National Competition Council, for the year 1998-99. The report is prepared and submitted in accordance with section 29O of the *Trade Practices Act 1974*.

Yours sincerely

Graeme Samuel
President

David Crawford
Councillor

Robert Fitzgerald
Councillor

Paul Moy
Councillor

Elizabeth Nosworthy
Councillor

Contents

Boxes

Tables

Figures

Abbreviations and definitions

ABARE	Australian Bureau of Agricultural and Resource Economics
ABB	Australian Barley Board
ACCC	Australian Competition and Consumer Commission
ACT	Australian Capital Territory
ACTO	Australian Container Transport Organisation
ADIC	Australian Dairy Industry Council
AGA	Australian Gas Association
AM	Member of the Order of Australia
AO	Officer of the Order of Australia
ARTC	Australian Rail Track Corporation
ATC	Australian Transport Council
CAN	Customer Access Network
CEDA	Committee for Economic Development of Australia
CIE	Centre for International Economics
COAG	Council of Australian Governments
CPA	Competition Principles Agreement

CPRA	*Competition Policy Reform (New South Wales) Act 1995*
CRR	COAG Committee for Regulatory Reform
CSO	Community Service Obligation
DoFA	Department of Finance and Administration
EEO	Equal Employment Opportunity
FAG	Financial Assistance Grant
FOI	Freedom of Information
FOI Act	*Freedom of Information Act 1982*
GBE	Government Business Enterprise
GDP	Gross Domestic Product
GGTP	Goldfields Gas Transmission Pipeline
GPOC	Government Prices Oversight Commission (Tasmania)
GRIG	Gas Reform Implementation Group
GRTF	Gas Reform Task Force
GST	Goods and services tax
GL	Gigalitre, one billion litres
Hamersley	Hamersley Iron Pty Ltd
Hilmer Review	Independent Committee of Inquiry into National Competition Policy

Hope Downs	Hope Downs Management Services Pty Limited
HORSCCTMR	House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform
IC	Industry Commission (now Productivity Commission)
IMF	International Monetary Fund
IPARC	Independent Pricing and Regulatory Commission (ACT)
IPART	Independent Pricing and Regulatory Tribunal (New South Wales)
MA	Master of Arts
NCC	National Competition Council
NCP	National Competition Policy
NEM	National Electricity Market
NGPAC	National Gas Pipelines Advisory Committee
NRTC	National Road Transport Commission
NSW	New South Wales
NUS	NUS International Pty Ltd
NZ	New Zealand
OECD	Organisation for Economic Cooperation and Development
OHS	Occupational Health and Safety
ORG	Office of the Regulator General (Victoria)

PC	Productivity Commission
PhD	Doctorate of Philosophy
PL	Pipeline Licence
QCA	Queensland Competition Authority
QR	Queensland Rail
RBA	Reserve Bank of Australia
RMS	Rail Management Services Pty Ltd
RRIA	Robe River Iron Associates
SAA	Standards Association of Australia
SAP	Systems, Applications and Products Computerised System
SCARM	Standing Committee on Agriculture and Resource Management
SCNPMGTE	Steering Committee on National Performance Monitoring of Government Trading Enterprises
SCOT	Standing Committee on Transport
SIRWP	Sugar Industry Review Working Party
SPL	Significant Producer Legislation (Victoria)
TAB	Totalisator Agency Board
TAP	Tasman Asia Pacific
TPA	*Trade Practices Act 1974*

Tribunal	Australian Competition Tribunal
UIWG	Upstream Issues Working Group
UK	United Kingdom
USA	United States of America
WA	Western Australia
WSAA	Water Services Association of Australia

Part A

A1 Growth and change in Australia's economy: the place of National Competition Policy

A1.1 The process of growth and change

The recent economic crises in East Asia revealed how global economic forces can affect the well-being of individual nations. But while globalisation brings risks, it is also a major source of wealth generation for nations with the appropriate blend of policies to minimise the risks and harness the benefits of change. National Competition Policy (NCP) is part of a suite of policies – both macroeconomic and microeconomic – that is placing Australia in a better position to benefit from global forces for change.

Globalisation is being driven by a dramatic expansion in service-based industries such as information, communications and finance, allied with technological advances that are spurring greater efficiencies in these areas and opening up new avenues for trade.

Whilst change is occurring rapidly, it can be seen as part of an evolving process. As economies develop, there is typically a declining reliance on primary production – especially agriculture. For example, agriculture's share of Gross Domestic Product in Australia declined from 21 per cent in 1948-49 to around 3 per cent today (PC 1999a). Australia and OECD countries have also experienced a long-term decline in the relative importance of manufacturing. More recently, similar trends have been emerging in Asia.

As agriculture and manufacturing decline, there is typically strong growth in the services sector. This is especially true for Australia. By 1999, over 80 per cent of Australian workers were employed in service industries, one of the highest rates in the OECD.

These structural changes stem from several factors, including productivity advances, growth in household incomes that enable consumers to spend more on higher value goods and services, and shifting patterns of world trade – in particular, a long-term decline in the terms of trade against primary commodities. Government policies – such as the lowering of trade barriers – also play an important role. Some of the underlying forces for change are summarised in Box A1.

Productivity growth in particular has been a significant driver of change during the 1990s. Australia's annual productivity[1] growth averaged 2.4 per cent over the last six years, a rate matched only by Norway among the world's developed nations (Parham 1999). This result reflects, among other things, technological innovation in services such as communications, business and financial services, Australia's relatively well-educated and cost efficient labour force, and policies such as NCP. NCP helps by reducing the cost of business inputs, improving the efficiency of government businesses and raising the productivity of infrastructure.

1 Multi-factor.

Box A1.1 Sources of pressure for structural change

The main 'market-related' sources of structural change are:

- **Technological change** such as advances in microelectronics, information and communication technology, new materials technology, biological technology, robotics and energy-related technologies;

- **Behavioural changes** which have accompanied changes in income and its distribution, demographic changes and changing tastes (eg increased demand for recreation and entertainment services and low fat foods consistent with more health conscious lifestyles);

- **Trade and global specialisation** associated with the emergence of new export markets and increased competition from imports associated with the rapid industrial development of many Asian economies; and

- **Resource discovery and depletion** such as the development of mineral resources and the degradation of land in various regions due to soil erosion and salinity.

The main 'government-related' sources of structural change are:

- **Trade and investment liberalisation** involving Australia reducing tariff and non-tariff barriers to trade, reform of arrangements for selling agricultural products and world-wide actions to liberalise trade and investment restrictions;

- **Infrastructure and general government reforms** involving initiatives to commercialise, corporatise and privatise public utilities, remove regulations which limited businesses starting up and restructure infrastructure to promote competition. In the case of general government activities, reforms have promoted improved

productivity, competition and an outcomes-oriented approach to service delivery (eg through financial management reforms, better targeting of services and payments and competitive tendering);

- **Labour market reforms** which have focused on more flexible mechanisms to determine wages and conditions (eg enterprise bargaining), reforms to labour market assistance programs, and reforms to workers compensation and occupational health and safety legislation;

- **Competition and other regulatory reforms** involving changes to restrictive trade practices and price monitoring legislation, reforms to regulatory processes and moves to promote competition – such as through the National Competition Policy framework; and

- **Taxation reforms** covering initiatives to broaden the tax system (eg the introduction of a goods and services tax, and taxes on fringe benefits and capital gains) and improve the operation of the corporate tax system (eg dividend imputation, changes to depreciation regimes and the removal of tax exemptions from activities such as gold mining).

Source: PC 1998a.

A1.2 Harnessing NCP to realise the benefits of change

Since the early 1980s, Australian governments have deliberately chosen to develop Australia as a dynamic, outward-looking economy. The benefits are significant for a small economy such as Australia's, where our domestic market alone lacks the depth to sustain high growth in many key industries. The alternative – to have resisted change through measures such as trade barriers – would have penalised domestic consumers by raising the prices of traded goods, and denied exporters markets for their products.

The importance of productivity growth

There is now widespread acceptance among governments, business and the wider community that sustainable increases in Australia's standard of living are closely linked to how efficiently we use our resources. By raising the contribution of workers, land and capital to the economy, we produce more wealth per person, setting the foundations for benefits such as better health care, education and welfare support for the community.

While Australia's recent performance has been strong, productivity growth was poor by international standards from the 1960s until the 1980s. The International Monetary Fund (IMF) attributes this to high tariff regulation and extensive product market regulation, protecting large sectors of the economy from the need to innovate and improve efficiency (OECD 1999, Singh 1998). Australia slid from being the third richest country in the OECD in 1960 to fifteenth place in 1992.

In the 1980s, Australian governments recognised the need to transform Australia into a dynamic outward-looking economy. The early phases of reform included financial deregulation (from 1983) and comprehensive tariff reform (from 1988). From the late 1980s, governments shifted their attention to introducing competition into protected areas of the economy, such as air travel and telecommunications. At the same time, they began to look at the operation of government businesses to inject a stronger focus on cost-effectiveness to ensure value for money in the delivery of services.

National Competition Policy

An important development in the early 1990s was agreement among governments that a more co-ordinated approach should be applied to the reforms taking place across the country, and that further work was needed in a number of areas. This was the genesis of the Hilmer Report of 1993. Acting on the Report's recommendations, a number of reforms were drawn together in 1995 as the National Competition Policy package. The key elements of NCP are summarised in Box A2.

Box A1.2 The NCP Reforms

In summary, the NCP reforms agreed by governments in 1995 were to:

- *widen Australia's consumer protection laws* by extending the reach of Part IV of the Trade Practices Act (TPA) to apply to all businesses in Australia. Part IV of the Act contains rules to limit the abuse of market power by businesses, promote fair trading and efficient industry practices, and protect consumers.

- *improve the quality of Australia's infrastructure* through reform packages in the electricity, gas, water and road transport industries; and establishing third party 'access' arrangements for the services of nationally significant monopoly infrastructure such as gas pipelines, electricity grids and railway lines;

- *review and, where appropriate, reform all laws which restrict competition*, and ensure that any new restrictions provide a net community benefit; and

- *improve the performance of government businesses* through structural reform, introducing competitive neutrality so that government businesses do not enjoy unfair advantages when competing with private businesses, and considering the use of prices oversight.

The public interest test

The rationale underlying NCP was a recognition of the beneficial outcomes that a competitive economy can bring. But NCP is not about introducing competition for its own sake. Because some new arrangements have the potential to affect many groups, implementation is tied to independent *public interest assessments* to ensure that reform brings a net benefit to the community (see Box A3).

Box A1.3 The NCP Public Interest Test

Under clause 1(3) of the Competition Principles Agreement, governments take into account the following factors when assessing the merits of reforms in relation to competitive neutrality, anti-competitive legislation and the structure of public monopolies:

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

The list is open-ended, meaning that any other relevant matter should also be considered when assessing the case for a competition reform.

The diverse nature of the NCP agenda sometimes results in misunderstandings about the scope of reform, and some measures commonly attributed to NCP are *not*, in fact, part of the package. For example, competitive tendering and privatisation are *not* required under the NCP program. These policy approaches – which both predate the NCP program – are matters for individual governments.

NCP reforms are being implemented through processes which allow engagement of different interests, including business, governments and local communities. For

example, reviews of major pieces of legislation typically involve wide consultation covering consumers, community groups, business and professional groups, governments and academia.

A1.3 Benefits to consumers

Although NCP is a relatively new policy area, many of the reforms are already yielding benefits to *Australian consumers* through lower prices and/or improved service provision. For example:

- deregulating *shop trading hours* in the ACT and Victoria has provided shoppers with greater flexibility and – in Victoria – created new employment (See Box A4);
- the annual *electricity* bill of a typical Victorian household fell by about 15 per cent from $868 to $737 between 1993-94 and 1998-99 (Victorian Government 1999). Households are expected to benefit nationally from *electricity and gas* reforms, as energy deregulation continues over the next couple of years.
- early reforms to *legal services* in New South Wales have cut the cost of conveyancing (Baker 1996), with similar reforms now in place in most other States and Territories;
- Victoria has reported to the Council that as a result of deregulation in that State, a number of *professional services* in rural areas – such as eye testing – are now becoming cheaper and more accessible; and
- upcoming legislation reviews offer the potential to reduce *taxi* fares and improve customer accessibility to taxi services.

Box A1.4 Deregulation of shop trading hours

NCP reviews into legislative restrictions on shop trading hours have been completed or are proceeding in most jurisdictions, with a generally deregulated environment now operating in New South Wales, Victoria, ACT and the Northern Territory.

A Victorian Government study found that deregulation of trading hours would provide benefits to consumers – in terms of greater convenience as to where and when they can shop – worth about $65 per person per year (Victorian Government 1998). It was found that restricted shopping hours have become inconvenient for many in the community, due to social and demographic changes – for example, an increase in single parent households and many people working longer hours.

A 1998 referendum in the Victorian city of Bendigo found that of the 72 per cent of eligible voters who participated, 77 per cent voted to maintain the newly deregulated Sunday trading arrangements (PC 1999). A similar pattern was found in the ACT, where a trial restriction on trading hours for town centre supermarkets – to assist smaller retailers in local shopping centres – was abandoned after studies found that the restrictions did not help small shops. Nor was there community support for the restrictions (PC 1999).

Despite fears that deregulation would damage employment in the retail industry, the evidence suggests this is not the case. For example, retail employment in Victoria increased by 5500 people (from 314 500 to 320 000) between February 1997 and February 1998 – covering the period following deregulation. As at May 1999, employment in the industry had risen to 334 500 (ABS 1999).

A1.4 Making Australia more competitive

NCP is also lowering a range of input costs for *producers*. Some examples are provided in Box A5. By lowering input costs, the competitiveness of our industries on the world stage is being lifted, helping to sustain strong rates of growth in output and employment. At the same time, reduced input costs for business are also passed on to consumers through lower prices for goods and services.

Box A1.5 Making Australian industry more competitive

- Following NCP *electricity* reform, tariffs for business users have fallen by up to 50 per cent since the levels of the 1980s. Despite a corrective upswing in 1999, a recent NUS survey ranked Australia's electricity prices as the third lowest out of 17 countries surveyed. Australian prices were about half the levels recorded in the USA (IC 1991, NUS 1999).
- NCP reforms in *gas* have resulted in significant reductions in gas haulage tariffs. For example, gas transmission tariffs in Western Australia are set to fall by 25 per cent between 1997 and 2000, while distribution tariffs in New South Wales are scheduled to fall by up to 60 per cent between 1997 and 2000 (Farrant 1998, IPART 1997).
- *Rail freight* rates have fallen and service quality improved with competition. For example, rates for the Melbourne-Perth route fell 40 per cent, while service quality and transit times improved, following the introduction of competition in 1995 (NCC 1997).
- *Coal freight* charges in the Hunter Valley fell by 25 per cent between 1995-96 and 1997-98, with a further 10 per cent reduction in rail access charges scheduled in 1998-99 (NCC 1998a).
- Prices for the products of *government trading enterprises* fell on average by 15 per cent over the four years to 1995-96, partly due to competition reforms. More recent evidence shows that these trends are continuing. In the five years to 1996-97, price reductions included port services (down 23 per cent), telecommunications (23 per cent) and air traffic services (40 per cent (SCNPMGTE 1997, 1998).

Many of these benefits are flowing to rural businesses. For example, a number of rural councils and businesses reported to a recent PC inquiry that they had achieved substantial cost savings in electricity following NCP reform. Country Australia has also benefited from price reductions in port charges and long distance telephone calls.[2]

NCP and the macro-economy

On a broader plane, NCP and related reforms have been helping to forge a stronger, more resilient economy. In its May 1999 Semi-Annual Statement on Monetary Policy, the Reserve Bank (RBA) noted that Australia is now in its longest expansion phase since the 1960s, coupled with low inflation and the lowest rate of unemployment for nearly a decade.

> *That such a performance has been maintained, almost two years after the Asian crisis first broke in Thailand, is indicative of the extent to which the Australian economy's underlying strength and resilience have been improved over time.*

The Commonwealth Treasury attributes Australia's strong economic performance to sound macroeconomic underpinnings coupled with structural reforms – including competition policy – that have increased productivity and spurred a more flexible and outward-looking business sector (Commonwealth Treasury 1999). The PC reports that productivity gains have been especially concentrated in some of the sectors that have been a specific focus of reform – for example, electricity, gas and water, and communications (Parham 1999).

Some of this new adaptability is evident in the recent success of many Australian exporters in diverting products from the depressed East Asian markets to stronger markets elsewhere, including Europe and the USA (Commonwealth Treasury 1999).

Recent IMF and OECD reports also link Australia's recent economic success to NCP and related reforms, citing the contribution of public enterprise reform, infrastructure

2 The latter reflects both technological improvements and increased competition.

reforms and regulatory reform in areas such as shop trading hours. The IMF also points out that structural reforms contributed to an upswing in investment – the mainspring for economic growth – in the mid 1990s (OECD 1998, 1999, Singh 1998).

A1.5 Getting the policy mix right

NCP is one of a suite of policies – both macroeconomic and microeconomic –contributing to Australia's strong economic performance in the late 1990s. For example, stability in Australia's budgetary and monetary policy settings have underpinned confidence in the economy, providing momentum for growth. And NCP is not the only structural policy facilitating reform – other policies playing significant roles include labour market reform.

There is a growing consensus that the policies now in place are positioning Australia to capture the benefits of change. At the same time, an important ongoing challenge for governments is to create a policy mix that both maximises the aggregate benefits of reform, while achieving a fair distribution of benefits across society. A widely held fear in the community is that globalisation and structural change are tending to centralise wealth towards those with market power and access to technology.

The Council has commented on this in several publications, noting a greater dispersion of incomes and opportunities among people as Australia moves to a so-called 'post-industrial' or 'information age' society (NCC 1998, 1999a). Work relying mainly on intellectual skills is generally attracting higher rewards compared with other forms of work. Meanwhile, people without an increasingly high base level of intellectual skills are, in relative terms, losing ground (Reich 1993, Harding 1997).

NCP and distribution issues

On one level, effective competition in itself plays a vital role in ensuring that globalisation's centralising tendencies do not overwhelm social and economic diversity by driving out the small. Competition helps to break down concentration of economic power by opening up markets. In this sense, it promotes greater equity by removing special protection and privileges traditionally conferred on particular businesses, thus removing discrimination between market participants.

As a change management tool, NCP is also playing a part in helping the difficult transitions facing many rural communities. For example, competitive neutrality reforms in local government are helping councils to meet the needs of local communities for delivery of services at a time when revenues are constrained. And legislation reviews into areas such as postal services have maintained a sharp focus on the provision of important community service obligations, while promoting changes aimed at lowering costs and improving service delivery.

Similarly, the NCP water reforms have a broad vision, with a strong focus on issues such as water quality, community service obligations and the environment. The water reforms aim for a sustainable future for water resources, while providing mechanisms to help rural businesses adjust to change.

But while the process of NCP reform – as with all structural change – is bringing benefits across the broad spectrum of the community, it cannot ensure that every person will be better off. And some groups – particularly those who have been sheltered from competitive pressures – will lose under NCP. As such, the costs and benefits of reform will fall unevenly, and people in some regions, industries or communities exposed to reform may suffer hardship.

For example, while recent structural reforms like NCP have helped to shield our economy from job losses that would once have flowed from the East Asian recession, it is also true that significant job losses have occurred in some of the industries in the front line of reform – for example, electricity, gas, railways and telecommunications (PC 1999).

Tailoring a package of policies

It is important that the benefits of NCP and like reforms be shared fairly across the community – on equity grounds, to promote social cohesion and to maintain community support for changes that are bringing greater wealth to the nation. In particular, governments must look at ways of helping individuals and communities in the front-line of change to adjust to changing circumstances and ensure that the fabric which binds local communities is not damaged.

To achieve these goals, NCP must be implemented in conjunction with policies that address the distributional impacts of change. This requires structural policies, such as education and training, to better prepare individuals for change. Education is both a means of sustaining innovation and growth, and for disseminating the benefits of change across the community – by enabling people to develop the skills needed to obtain employment in a changing economic environment.

Also required are measures to address the effects of change on individuals and local communities – for example, social security policies, the provision of important community service obligations and targeted rural and regional development policies.

In short, the benefits of globalisation and structural reform will be maximised through the use of a suite of policies. NCP plays an important role in capturing benefits and disseminating them through society. But it must form part of a wider policy package. Getting this policy mix right is essential in ensuring that the whole of society benefits.

A2 National Competition Policy: what has Australia achieved so far?

A2.1 Background to the NCP

Australia's NCP reform program, now in its fifth year, is designed to help develop a more dynamic, creative and competitive economy better able to serve the interests of the community. The program builds on pro–competitive reforms that commenced with the *Trade Practices Act 1973* (TPA)[3], and focuses on monopoly arrangements.

Monopolies exist because of legislative or other barriers to entry, or because a single provider has materially lower average costs than multiple providers (the so-called 'natural' monopoly).

In essence, NCP is about addressing three types of monopoly:

- infrastructure monopolies, many of which are or have been government monopolies;
- monopolistic activities in competitive markets; and
- legislated monopolies.

3 The TPA established rules to limit the abuse of market power by businesses, promote fair trading and efficient industry practices, and to protect consumers.

A2.2 Infrastructure monopolies

Examples of 'natural' infrastructure monopolies include roads, railway networks, electricity transmission grids, and gas pipelines. These monopolies provide essential services for both industry and consumers. They cost a lot to build but are relatively cheap to use once the infrastructure is in place.

It is *not* economically sensible to have competition in the supply of 'natural' monopoly infrastructure. But that doesn't mean there can't be effective competition between different businesses using the infrastructure. For example, different freight companies can compete against each other by running their own trains on a particular rail network.

Historically however, except in the case of roads, the instrumentality or business that built and maintained the infrastructure also had a monopoly on using it. A government instrumentality would be given responsibility for all aspects of rail operations within a State, for example, and would build the rail network and operate all trains on the network. The same thing happened in electricity. The result was that benefits from competition, such as lower prices and better service quality, were not available to the customers of those government businesses.

NCP addresses this problem by introducing what is called an 'infrastructure access regime'. The regime is contained in the new Part IIIA of the TPA, 'Access to Services'. The regime provides a legal avenue for companies to gain access to the services provided by another business's monopoly infrastructure, whether it be a rail network, electricity grid, gas pipeline or some other infrastructure monopoly.

As well as granting access rights to monopoly services, the new law ensures that the infrastructure owner provides access on reasonable terms and conditions, such as a fair price. This safeguards both the access seeker and the infrastructure owner, who is able to receive a reasonable return on their investment, while introducing competition to activities that rely on the monopoly infrastructure.

A2.3 Monopolistic activities in competitive markets

Competition policy applies rules against anti-competitive conduct and mergers to all businesses, especially in concentrated markets. For Constitutional reasons, government bodies were not covered by the TPA, and certain businesses such as medical or legal partnerships operating solely within a State and Territory escaped its reach. This meant that these businesses could engage in anti-competitive practices that many other groups and businesses were prevented from undertaking by Part IV of the TPA. NCP has addressed these gaps in the coverage of the TPA.

The TPA is now the primary means of regulating any businesses that restrict competition in otherwise competitive markets. One of the key issues that Part IV seeks to address is large firms which may be in a position to manipulate markets to their advantage, for example, by using their market power unfairly against a competitor.

A2.4 Legislated monopolies

Competition policy involves the review of all monopolies created by separate, specific government legislation. Examples include professions monopolies, statutory marketing arrangements for agricultural industries, taxi-licensing arrangements, import restrictions and retail trading restrictions. Indeed, in putting together their review programs, the Commonwealth, States and Territories identified almost 1700 restrictive laws and regulations.

NCP recognises that not all anti-competitive arrangements are bad. For this reason, it does not require automatic deregulation. Rather, it calls for each piece of legislation to be carefully reviewed, to see if restrictions are in the public interest. Where relevant, reviews consider matters such as consumer interests, the environment, the need to provide adequate community services, employment and regional development issues. One particularly important consideration is whether the

objectives of the legislation can be met in a better way, including reliance on the general protective provisions of the TPA.

If a restriction in legislation is found to be in the public interest, and if restricting competition is the best way of achieving the objective of the legislation, the restriction is to stay. If not, it is to be removed to allow for the benefits of competition.

There are two qualifications to this broad, three-pronged description of NCP.

First, much of NCP focuses on the performance of Government Business Enterprises (GBEs). There are three categories of NCP reform relevant to GBEs: structural reform of public monopolies; prices oversight of public monopolies; and competitive neutrality. The first two of these relate to infrastructure monopolies and/or legislative monopolies which are publicly owned and thus fall under the first and third categories of monopoly outlined above.

Competitive neutrality reform is relevant to government businesses more generally, rather than just publicly owned monopolies. The principle of competitive neutrality reform is that publicly-owned businesses should not enjoy advantages, or suffer disadvantages, compared to privately-owned competitors by reason of their public ownership.

Second, the reform obligations in the COAG water reform agreements go beyond competition policy to provide a comprehensive set of measures to ensure efficient water services, that scarce water is allocated to the best available uses, that all consumers recognise the cost and value of water, and that the full social impact of water production and use, including the impact on the environment, is taken into account. Thus, the water reform obligations constitute a set of broad economic reform measures which also explicitly address social considerations, such as environmental needs.

A2.5 Progress so far

Two-thirds into the reform program schedule, the evidence suggests that the goals envisaged by governments in 1995 are well in sight.

In line with the tasks assigned to it under the Implementation Agreement, the Council has now conducted two assessments of Commonwealth, State and Territory governments 'progress with implementing NCP. The first assessment in 1997 was concerned mainly with governments establishing the necessary policy agendas and administrative arrangements to support implementation of the NCP.

The Council's second assessment, conducted in June 1999, covers the middle two–year period of the NCP program. The assessment demonstrated both the broad scope of the NCP program and the strong reform performance of all Australian governments. The Council's 1997 and 1999 assessments are both publicly available documents. (NCC 1999b, NCC 1999c)

Despite the evidence of progress, NCP implementation has often been contentious. The pace of NCP reform implementation has been criticised as too fast. While NCP is an important means of helping Australia to adjust to a new environment, the pace of change creates uncertainty and fear in many Australians, who look to governments to address their concerns. Large policy reform programs, such as NCP, become a focus of attention, even where the reform programs are set up to win benefits from change rather than to drive change.

In addition, there are general misunderstandings within the community of the scope and objectives of NCP. This has exacerbated broader concerns about the pace of social and economic change in Australia. The Council has been concerned about these misunderstandings for some time, and has endeavoured to address them. But the recent draft report of the Productivity Commission's inquiry into the Rural Impacts of NCP (PC 1999) and the Interim Report of the Senate Select Committee on the Socio-Economic Consequences of the NCP (SSCSCNCP 1999) confirm that much more needs to be done. Fostering a better understanding of NCP and broader social and economic change represents a significant challenge for Australia's governments.

Further, by subjecting all restrictions on competition to public interest tests, NCP has generated opposition from the groups who currently benefit from those protections. This narrow opposition has sometimes combined with broader parts of the Australian community with more general and often genuine concerns about social and economic change, to help create a political environment not always conducive to economic reform. The role of political leadership on economic reform and NCP is critical in this environment.

But attitudes to economic and social change in Australia are becoming more sophisticated and this has helped NCP implementation to progress.

First, the recent economic upheavals in the region have underlined the value of the reforms taken by Australia to better manage our economic environment. These reforms, including NCP, ensure that we are as well placed as possible to benefit from change including in the international environment. The recent international developments have made the value of reforms taken by Australia far more evident.

Second, there is greater recognition of the need to help people adjust to a changing world: this is important not just in terms of the direct economic consequences of NCP, but more broadly, in terms of the social and economic changes associated with technological developments and globalisation.

A2.6 Applying the Conduct Code

All jurisdictions have enacted legislation to extend the application of the general pro-competitive market rules of Part IV of the TPA to all businesses in Australia. The Australian Competition and Consumer Commission (ACCC) and the courts enforce these market rules.

A2.7 Electricity reform

The electricity reform program is now well established. Structural reform of electricity utilities is complete in New South Wales, Victoria, Queensland and the ACT, and substantially progressed in South Australia and Tasmania. The National Electricity Market (NEM) is fully operational in New South Wales, Victoria, Queensland (operating a wholesale power market under the NEM rules), South Australia and the ACT. The construction of transmission links will confer full participation on Queensland (in 2000) and Tasmania (expected in 2002).

The operation of the NEM represents one of the most complex of the NCP reforms. While competition in the wholesale power market is established, albeit with some transitional arrangements still to be phased out, transaction costs have prevented the extension of full competition to individual residential customers. The introduction of effective retail competition will be a key issue for the further development of the electricity industry reforms. Both the electricity industry and governments will need to focus on the form of retail competition introduced for residential customers and the manner of its introduction.

A2.8 Gas reform

Gas reform has been one of the major success stories of NCP. Starting in 1992, a series of COAG gas reform agreements were developed to achieve free trade in gas throughout the nation and develop intra–field and inter–field competition through:

- removing regulatory impediments to trade in gas;
- applying access arrangements to transmission and distribution infrastructure; and
- facilitating the construction of new transmission links between gas fields and markets.

While some issues remain in relation to retail competition, intra–field competition and the finalisation of access arrangements in a few States, gas reform in Australia is largely complete.

A2.9 Road transport reform

While the 1995 NCP agreements created obligations on jurisdictions, it did not establish a clear road transport reform agenda. After a slow start, governments have more recently devoted greater attention to national road transport reform.

Governments endorsed a 19 point reform package for the second tranche of NCP, brought forward by the Australian Transport Council (ATC). The package includes a nationally consistent regulatory framework for heavy vehicle registration, driver licensing, heavy vehicle mass and loading restrictions, commercial driver fatigue management and the national exchange of vehicle and driver information.

The Council will look to governments to set an extensive reform agenda for the third tranche assessment. The Council sees considerable value in governments consulting representatives of road users in developing the third tranche assessment framework.

Of particular note is that the ATC (by majority decision) has instructed the National Road Transport Commission (NRTC) to refrain from providing expert assistance to the Council on the detail of the road reform program. This instruction has been unhelpful to the Council's work, and generates the impression that at least some jurisdictions are seeking to impede the supply of information to the Council, and indeed, to the community.

A2.10 Water reform

Water reform has been a major focus of governments' NCP implementation activity over the past five years. The NCP water reform agenda is now well under way.

Water reform highlights the multifaceted nature of NCP. The water reform package encompasses urban and rural water and wastewater industries and includes both economic and ecological objectives.

As with any public policy of this magnitude and complexity, implementing the water reform package has not been without its difficulties. Some of these will be the subject of two supplementary assessments by the Council prior to 31 December 1999 and 1 July 2000.

The Council has recommended that 25 per cent of Queensland's NCP payments for 1999-2000 be suspended pending a further assessment of progress before the end of the year. The Council is concerned about the nature of the assessments of economic viability and ecological sustainability for some Queensland rural water infrastructure investments and that appraisal recommendations have not been carried out. In addition, the Council believes that water storages may have been built which have not been shown to be both economically viable and ecologically sustainable. These matters lie at the heart of the NCP water reform program – the water reform package does not prevent governments building dams and other water infrastructure, but such investments must satisfy economic and environmental tests.

A2.11 Regulation review and reform

The legislation review program is aimed at ensuring that all legislative restrictions on competition are removed unless they can be shown to provide a net community benefit, and that new laws do not unnecessarily restrict competition. Governments' review programs cover many diverse areas, including shopping hours, marketing of

agricultural products, the finance and insurance sector, food labelling, trades and professions regulation, gambling regulation and local government planning processes. Accordingly, the legislation review program is one of the most significant elements of NCP.

In general, governments are making good progress against their legislation review schedules. This has seen the repeal of redundant legislation, amendment or replacement of Acts to reflect NCP principles and regulatory best practice, and the reform of previously protected activities. Conversely, it has also seen the retention of restrictions on competition where these have been demonstrated to be in the public interest.

The legislation review program has presented some challenges to governments and the Council, and this is likely to continue. Overall, about half the reviews on governments 'agendas have been completed or are underway, while only around 20 per cent of the reform agenda is complete. While this has meant that an impressive number of reviews have been conducted within a short period, it also highlights the task ahead: many reviews are yet to commence while large numbers are yet to progress to policy response stage. These include some difficult reform areas, such as agricultural marketing arrangements and price support schemes, retail trading arrangements (including liquor licensing arrangements), taxi licensing, the regulation of the professions (including retail pharmacy arrangements) and mandatory insurance arrangements (such as workers compensation and transport accident insurance).

A2.12 Review and reform of Government Business Enterprises

Reform of government business enterprises, which in many areas predated the formal competition policy agreements, has been drawn together and considerably boosted by NCP. For example, governments now have a formal competitive neutrality policy extending to significant government owned businesses (in some jurisdictions to all government-owned businesses) and mechanisms for considering complaints that competitive neutrality policy is not being appropriately applied.

Emerging issues are the relationship between, and reconciliation of, competitive neutrality reforms (including actions by governments to address competitive neutrality complaints) with the treatment of community service obligations (CSOs). Properly designed CSOs allow:

- governments to assure the provision of certain minimum levels of service to disadvantaged people; and

- government businesses to operate efficiently and on a competitively neutral basis.

The Council has an ongoing interest in these issues, and looks to governments to develop CSO frameworks which meet the social needs of the community as well as the community interest in competition policy reform.

A2.13 Local government reform

Local governments are not parties to the NCP agreements – the States and the Northern Territory accepted reform obligations on behalf of local governments within their jurisdiction. Nonetheless, local government has a particularly important role in the NCP program because it is at the local level that the effects of change can be most evident.

The application of competitive neutrality reforms to local government business activities was the only area of first tranche obligations that was the subject of a supplementary assessment for all relevant jurisdictions. However, from that difficult start, local government reform is gathering acceptance and support, helped by positive measures to assist local government reform by State governments. These include assistance with reform development and training in NCP processes, and in the case of Victoria, Queensland and Western Australia, the earmarking of a proportion of competition payments to those local governments which introduce reforms consistent with the NCP agenda.

Increasingly, local governments are adopting NCP and complementary reform measures to provide better value services to ratepayers and the community. Local governments are now starting to see NCP as contributing to their effective work and operations, rather than the destructive influence it was originally painted as. The shift in the attitudes to, and improved performance of, local government competitive neutrality reform is exemplified by the fact that no jurisdiction is the subject of a qualified second tranche assessment in this area.

A2.14 The Competition Payments

Under the Implementation Agreement, the Commonwealth agreed to make payments to the States and Territories for implementing the NCP reform package. These payments recognise that NCP reforms provide dividends not just to the whole community, but also to Commonwealth revenues. The payments are an economic dividend paid by the Commonwealth to States and Territories in return for their investment in NCP reform. They also ensure that some of the tax revenue gains from reform accrue directly to each responsible government as a fiscal incentive.

Satisfactory progress against the NCP obligations is a prerequisite for States and Territories to receive these payments: without reform implementation, there can be no reform dividends to share. The Council's assessments of State and Territory progress against the NCP obligations includes recommendations to the Commonwealth Treasurer on the NCP payments. Where governments don't invest in reforms in the public interest, reductions in NCP payments may be recommended.

The NCP payments comprise two components, and are available over the period 1997-98 to 2005-06:

- competition payments, which are general purpose payments totalling $4.2 billion (in $1994-95); and

- maintenance of the real per capita guarantee of the Financial Assistance Grants (FAG) pool.

The introduction of the Goods and Services Tax (GST) on 1 July 2000 will see the FAG arrangements replaced with payment of GST revenues to States and Territories. NCP payments will be reduced to the competition payments as a result. However, the same dividend for reform investment remains. States and Territories will now be direct recipients of revenue growth associated with NCP reform implementation.

In considering recommendations on payments to the States and Territories, the Council considers each element of the reform obligations. The Council takes into account, where relevant, impacts of NCP reforms on:

- the prices, range and quality of consumer goods and services;
- the output of producers;
- the environment;
- social welfare and equity;
- social policies and legislation;
- economic and regional development;
- the competitiveness of Australian businesses;
- the relative significance of the reform;
- the progress of NCP reform implementation across the jurisdiction;
- the efficient allocation of resources; and
- the overall impact on the Australian community.

The Council considers that governments which demonstrate a strong commitment to sound NCP outcomes, including a robust consideration of the public interest, are entitled to their full share of the associated reform dividends. This will be demonstrated by good policy development processes and implementation of appropriate reforms. The Council only recommends reductions in NCP payments as a last resort where no path to dealing with outstanding issues can be agreed.

A3 The way forward

Australia is entering the final phase of the formal NCP program. The Council has two broad goals for this phase of the NCP program.

The first is to build on the achievements to date by working with governments to complete the reform program originally set out in April 1995. This will include a focus on the priorities which emerged from the June 1999 assessment.

The Council's second broad goal is to help the community to become better attuned to the scope and potential outcomes of competition reform, including how NCP helps achieve Australia's long term economic and social objectives. The Council will pursue this over the coming year through a community information program.

The Council's information program is intended to convey some important messages. The main message, put simply, is that more often than not competition will benefit the community over the long term, recognising that NCP is about encouraging effective competition not competition for its own sake. Part of this message is that some important community objectives, which people have tried to deliver by restricting competition, may be achieved more effectively by other means.

A3.1 Completing the NCP program: the Council's four-point approach

The Council of Australian Governments (COAG) established the National Competition Council as a policy advisory body to provide national oversight of NCP and accountability to the Commonwealth, State and Territory governments. However, the Council doesn't set reform agendas or implement reforms itself. This is the responsibility of the various governments.

The Council's NCP progress assessment function is the primary oversight and accountability mechanism. From its earliest days, the Council has sought to use this mechanism to encourage governments to adopt broad agendas addressing competition concerns, rather than to penalise non-performance. This involves considerable interaction between the Council and governments, with the Council aiming to ensure that governments are aware at an early stage of its approach to assessment and the areas where compliance with the NCP agreements is potentially at issue.

Australia's success in maximising the benefits from competition reform lies in constructive engagement with governments, with the Council focusing on reform implementation questions and governments accepting responsibility for addressing concerns. To this end, the Council has proposed to governments a four-point approach to completing the remaining NCP reforms, whereby:

- the Council and governments reach agreement on remaining reform priorities, including those which raise questions about NCP compliance;
- governments work with the Council (and with other jurisdictions where appropriate) to develop practical approaches to implementing pro-competitive reform in the identified priority areas;
- governments undertake a nation-wide, coordinated program to consult, inform and assist key reform stakeholders on reform implementation, including structural reform assistance; and
- the Council puts in place a community information program package which assists implementation of NCP by drawing on successful experiences to date and addressing specific reform implementation matters.

A3.2 Identify and agree on remaining NCP priorities

The Council's work to date has identified a number of priorities critical to the successful completion of the NCP program.

The *National Electricity Market* (NEM) is now operational. While larger businesses are able to choose their electricity supplier, full retail competition appears problematic and will require a co-ordinated and carefully considered national approach if competitive benefits are to be received at the household level.

Two particular matters in which the Council will retain an interest through to the third tranche NCP assessment are the efficacy of the National Electricity Code rules on approval of regulated versus unregulated transmission interconnectors, and potential competitive neutrality issues, given the extent of government ownership within the electricity industry.

There are also electricity competition issues for the non–NEM jurisdictions: Western Australian and the Northern Territory. Although outside the national market, competition obligations are conferred upon both jurisdictions by clause 4 of the *Competition Principles Agreement*. Clause 4 obliges governments, prior to introducing competition, to relocate responsibility for industry regulation from relevant public monopolies and review the structure of the public monopoly to facilitate competition in the industry. Both jurisdictions are introducing competition in their electricity supply industries through third party access regimes covering electricity transmission and distribution grids.

Water reform is another significant element of NCP. A particular challenge in the next two years is to ensure that rural water schemes charge for water on the basis of usage and full cost recovery. While State Governments have recently recommitted to the reforms, much of the program is still to be implemented. Consequently, water reform will be a major area for the third tranche assessment.

Similarly for *road transport*, while all jurisdictions have completed or made substantial progress against the second tranche obligations, certain elements of the reform program – some of which date back as far as 1991 – are still to be implemented. The

Council will be looking to governments to agree on the details of reform obligations for the third tranche assessment as soon as possible. Ideally, the third tranche should take account of the original COAG objectives for road transport reform. To assist with information on the detail of the road reforms, the Council is looking to Transport Ministers to agree to it having direct access to advice from the NRTC.

The *review and reform of unjustified legislative restrictions on competition* will also be a major component of the third tranche assessment. There are some difficult challenges ahead as governments strive to complete their review and reform programs by the target date of end-2000.

Consistent with the Competition Principles Agreement, the Council will look for governments to have completed their review programs and implemented review recommendations, where appropriate. In particular, the Council will take account of progress in areas which emerged as priorities through the second tranche assessment process. These include:

- the current national review of pharmacy regulation;
- responses to the current Productivity Commission review into the social and economic implications of Australia's gambling industries;
- restrictions in relation to professions and occupations, especially in the areas of health and legal services and building trades licensing;
- remaining statutory marketing arrangements in agriculture, particularly dairy (in several jurisdictions), grains and, in Western Australia, potato marketing;
- various regulations governing insurance, including areas of mandatory insurance such as third party motor vehicle accident and workers compensation, and other areas such as health insurance where earlier reviews were not permitted to examine significant influences on the competitive behaviour of insurance providers such as the Commonwealth's approach to community rating;

- various retail trading and licensing matters, including restrictions on trading hours, liquor licensing rules and taxi licensing arrangements;

- access by third parties to the Australia Post network for bulk mail deliveries; and

- broadcasting regulation, with particular reference to digital television, at the Commonwealth level.

These areas of legislation are typified by significant restrictions on competition. Moreover, changes to current arrangements are likely to involve significant small business impacts (including in agriculture), sensitive social policy issues and/or substantial revenue implications for governments. Because of these impacts, the areas identified by the Council will need special attention from governments to ensure community understanding of the need for reform. This is likely to require that governments identify suitable reform implementation paths and engage with stakeholders to explain the basis for reform and identify appropriate adjustment strategies.

One area likely to prove significant beyond the formal period of the NCP program is the Council's role under *Part IIIA* of the TPA. The role of the Council under Part IIIA is to:

- recommend approval (certification) of State and Territory regimes providing for third party access; and

- recommend on whether certain monopoly infrastructure should be declared following applications from businesses that want to obtain access rights.

Part IIIA activity has increased over the past year. During 1998-99, the Council received eight new applications from State and Territory governments[4] seeking to have access regimes 'certified' as effective under the national regime, making a total

4 One application for certification was subsequently withdrawn.

of 11 applications. Applications for certification have related primarily to gas, where six governments have sought certification of their applications of the National Gas Access Code, and rail. To date, three regimes have been certified as effective.

The Council also received one application relating to its declaration function during 1998-99. On 24 September 1998, Robe River Iron Associates (RRIA) sought declaration of the rail line service provided by Hamersley Iron Pty Ltd (Hamersley) in the Pilbara region of Western Australia. This matter was the subject of Federal Court action by Hamersley, which claimed that services by its rail line were part of its iron ore production process; this would mean that the Council could not make a recommendation on whether or not the service should be declared. The Federal Court decision of 28 June 1999 supported the Hamersley application. As a consequence, the Council has not proceeded to make a recommendation on the RRIA declaration application. The Federal Court's decision is currently the subject of an appeal.[5]

The Council's experience with Part IIIA matters, particularly certification questions, is that appropriate and timely application of the regime (and therefore achievement of the benefits from appropriate use of monopoly infrastructure) is heavily dependent on governments proposing regimes that meet the criteria set out in the TPA. There have been delays in certifying some regimes to date due, for example, to governments attempting to impose sweeping derogations which undermine the broad application of their regimes or failing to provide for independent regulatory oversight of access arrangements.

Continued evolution of the *national rail* sector, while not explicitly targeted under NCP, is also an important competition matter. Commonwealth and State Transport Ministers acknowledged in September 1997 that there is a need for a vigorous interstate rail system that supports port competition and is genuinely competitive with road transport and domestic shipping industries. Ministers agreed to a series of reforms to apply to rail infrastructure linking the State capitals and their ports, aimed at increasing train speeds and tonnages, and standardising practices, technologies and access arrangements.

5 For a discussion of the RRIA application, see Part B4.

One component of the 1997 agreement directly relevant to the work of the Council is the commitment to provide for Australia-wide track access as a single service to train operators. This is aimed at reducing costs for operators by removing the need for them to seek separate access to track in each State. In exercising its responsibility to assess the effectiveness of State regimes, the Council will focus, among other things, on ensuring that the regimes facilitate Australia-wide access to rail track.

A3.3 Cooperation between governments and the Council on a workable process for implementing reform, especially in relation to the NCP priorities

The Council frequently emphasises that its objective in carrying out the progress assessment role assigned by COAG is to work with governments to facilitate outcomes which benefit the community. While it is for elected governments to set the reform agenda and the pace and method of reform implementation, the Council is nonetheless in a unique position because of the assessment process to identify issues and put them on the agenda. The Council can also help achieve beneficial and timely outcomes by providing advice to governments on whether proposed approaches are likely to satisfy NCP obligations.

Early in its life, the Council set, as its key overall objective, the achievement of positive assessments for all jurisdictions. Consistent with this, the Council adopts a 'no surprises' approach to assessment by making it clear to governments as soon as possible where reform implementation may not be meeting NCP principles. This requires a far more interactive approach than would be involved with a simple snapshot assessment of progress. It depends on the Council informing the relevant jurisdiction(s) at an early stage of any assessment difficulties, and governments engaging with the Council to agree on and resolve identified deficiencies. Deficiencies involving a single jurisdiction can be progressed through bilateral discussions between the Council and the relevant government, while problems involving more than one jurisdiction can be addressed through a multi-jurisdictional process.

The Council's objective in operating in this way is to identify outstanding reform issues and put in place a means for dealing with them which is supported by the relevant government. The Council does not apply a negative assessment unless a remedial process is unable to be satisfactorily negotiated.

The value of working cooperatively in this way has been demonstrated already in the Council's work with all governments to advance the national reform agendas for gas, water and road transport, and with individual governments in areas such as statutory marketing arrangements, the professions, competitive neutrality, electricity reform and trading hours. At a national level, the approach to water reform provides perhaps the clearest example. While governments had agreed to the strategic framework in 1994, there was some debate about the reform obligations for the NCP assessment process. Following approaches by the Council to jurisdictions in June and November 1998, State and Territory Governments set up a process involving themselves and the Council to adjust and clarify the water reform objectives for the second and third tranches of NCP. In addition, the Council engaged in bilateral discussions with every State and Territory through the second tranche assessment, in part to better take account of the diversity of the water industry across jurisdictions. The outcome of these processes for water has been, arguably, a stronger assessment process with greater confidence in outcomes reached and potentially greater benefits to the water industry and Australia more generally.

Notwithstanding the achievements from NCP to date, the Council's success in performing a reform facilitation role is closely linked to public recognition by governments of the Council's mandate from COAG to assess NCP progress. Integral to this is a constructive approach by governments aimed at facilitating appropriate reform, rather than wholesale rejection of NCP, either generally or in application to particular matters. Where the cooperative approach has been most successful to date, the common features have been an acknowledgement by the governments concerned that there is a competition matter which needs to be addressed and a willingness to engage with the Council to determine an acceptable path forward.

The alternative to a cooperative approach is for the Council to simply reach a final determination on NCP assessments in the priority areas, without significant consultation or negotiation with governments. The Council sees little value in taking

such an approach. Specifically, it would open the possibility that the community would lose in two ways. First, it may mean that governments do not implement reforms identified as being in the community interest and, second, it is more likely to result in NCP payments from the Commonwealth being withheld from particular jurisdictions.

A3.4 Consult, inform and assist key reform stakeholders on reform implementation

As discussed earlier, the Council considers that the success of the NCP program depends critically on governments consulting with the community, including key stakeholders, and taking account of the views expressed. But governments must also lead reform implementation if the NCP program is to be completed on time and as originally envisaged by COAG. Often, governments will also need to consider measures to assist structural change.

To date, information available to stakeholders on the need and rationale for the NCP program has been limited. As a result, opponents of change have often been able to depict competition policy as ideologically driven and providing little, if any, overall benefit.

The Council considers that an effective consultation and assistance strategy is central to NCP. This strategy should include constructive engagement with stakeholders and their participation in decision making. Constructive engagement means consulting with stakeholders, explaining the proposed reforms, providing the opportunity to comment on the direction and pace of reform implementation, addressing any concerns raised with honest and direct responses, and, importantly, making appropriate modifications to a reform proposal, including assistance as necessary to manage change. However, constructive engagement should not mean that stakeholders control review processes or that no reform should proceed without unanimous support.

The Council is well placed to contribute to effective engagement with stakeholders, particularly given the range of backgrounds and other roles of Councillors. For national reform issues, co-ordination between governments on consultation is needed, particularly to highlight the benefits from developing national markets. Engagement between the Council and stakeholders can also be built into the assessment process, through governments including the Council in consultation strategies. In this way, the Council can complement governments 'efforts to explain and support NCP.

A3.5 The Council's proposal for community consultation

The previous sections discussed the opportunities which an effective NCP will help provide for Australia. However, it is not enough to merely identify opportunities and relevant reform priorities and actions. Effective communication is also integral to success. Indeed, NCP faces a difficult future without a concerted effort by governments to communicate the rationale and need for reform and take account of community concerns.

Over the coming year, the Council intends to pursue a community consultation strategy directed primarily to two broad objectives.

First, the Council will focus on engagement with those directly affected by NCP reforms (and indirectly the broader community) to identify available opportunities and gains as well as threats and likely costs. As part of this process, the Council will explain the place of NCP to those in the community whose interests would be better served by a more competitive economy. This will be done, for example, by explaining how effective competition benefits consumers through reduced prices and improved quality of goods and services.

Second, the Council's work will aim to assist governments and community leaders who have a role in explaining proposed reforms to the community. The Council will provide factual advice on reform outcomes aimed at contributing to a better general

understanding and, in particular, countering misconceptions which inevitably arise in discussions about economic and social policy.

The Council's consultative strategy is not intended to 'sell' NCP as a product. Rather, it will aim at assisting community awareness and help explain the likely impact of future reforms by identifying relevant reform experience. It will do this by:

- drawing on the lessons and benefits of closely related reform measures in the past to provide a factual basis for considering reform measures under consideration;

- tailoring the messages to specific areas, particularly highlighting potential benefits; and

- co-ordinating and sharing information with governments and relevant community groups.

The Council's work will also seek to expose that which, to date, has been a considerable drawback to progressing competition reform. Namely, the relative imbalance between those who win and lose from restrictions on competition.

Because beneficiaries of restrictions on competition are often concentrated in a particular area or industry, each stands to gain much from particular restrictions. Each therefore has significant incentives to join together to lobby for government favours, and to confuse the community interest with their own. Often they are highly organised and well funded, and able to use the media to effectively communicate their interests.

But the losers from restrictions on competition – taxpayers, consumers and other industries which use the 'protected' good or service as an input to production – are diffuse and lose only a little each, even though there are many more of them and they may lose much more in total. Hence, losers from competitive restrictions have little incentive to lobby against those restrictions. In the past, this has resulted in a focus on the costs of reform to affected industries, employees and regions without much attention to the overall benefits of reform. As a result, political incentives have sometimes diverged from the public interest.

Of course, governments must still be sensitive to the fact that particular reforms can have an adverse impact on those directly affected, even if the overall benefits to Australia are positive. Thus, another important element of the Council's work will be to assist in identifying how the benefits of reform might be best achieved. This may mean, for example, implementing reform through progressive transitional arrangements and/or accompanying reform with a structural adjustment package targeted to individuals who are severely disadvantaged by pro-competitive change. In other cases, it may mean careful targeting of social policies. This is an area which the Council considers warrants greater attention, including resourcing, by governments.

Another important focus of the Council's communication program will be the strong linkages between Australia's economic well being and achievement of the community's social objectives. Put in the simplest terms, NCP is an important contributor to a well-functioning healthy economy which, in turn, is necessary if governments are to have the resources to deliver the services demanded by the community. This is perhaps the single most important message – that NCP is all about achieving Australia's economic and social goals over the long term.

A3.6 Forthcoming reviews of NCP agreements and the Council

When establishing the NCP in April 1995, governments decided that both the defining NCP agreements - the *Conduct Code Agreement* and the *Competition Principles Agreement* - and the National Competition Council should be reviewed after five years. The review of the Council is intended to examine the need for and the operation of the Council.

In addition, the Commonwealth Government has scheduled the arrangements governing third party access in Part IIIA of the TPA (including exemptions) for review in 1999-2000 as part of the Commonwealth's Legislation Review Schedule.

These reviews provide a valuable opportunity to examine whether current policies are achieving the objectives originally envisaged for NCP. Quite rightly, the NCP agreements and the Council's operational arrangements are not set in stone. The scheduled reviews will allow Australia, after five years experience with NCP, to have a fresh look at aspects which are working and those requiring change or development. The review of the Council will help decide whether the roles and functions which governments set for it in 1995 are still appropriate and how current arrangements might be improved.

Part B

B1 NCP and Related Reforms: outline of reform obligations

B1.1 The origin of NCP

Australia's National Competition Policy (NCP) reform program builds on a process that was launched with the *Trade Practices Act* (TPA) in 1974. The TPA contains various rules to limit the abuse of market power by businesses. Its broad aim is to promote fair trading and efficient industry practices and to protect consumers.

The contribution made by the TPA in bringing a greater pro-competitive focus to the economy is significant. However, by the late 1980s and early 1990s, it had become clear that a more comprehensive and co-ordinated approach to reform across the three spheres of government was required. To this end, governments commissioned an Independent Committee of Inquiry into National Competition Policy (Hilmer Review), which reported in August 1993.

In April 1995, following the consideration of the Hilmer Review recommendations, the Council of Australian Governments (COAG) agreed to implement the NCP package. The package is set out in three inter-government agreements, the:

- *Conduct Code Agreement;*
- *Competition Principles Agreement*; and
- *Agreement to Implement the National Competition Policy and Related Reforms.*

NCP builds on the pro-competition principles embodied in the TPA. The underlying principle is that competition should be introduced where it serves the overall community interest, taking into account a range of issues, including economic, social

and environmental concerns. Thus, NCP involves a shift away from anti-competitive arrangements in specific industries to general pro-competitive rules, to enhance economic performance and consumer interests. It aims at developing a more dynamic, creative and competitive economy to better serve the interests of the community as a whole.

The program incorporates pre-1995 inter-governmental agreements relating to infrastructure reform in the areas of gas, electricity, water and road transport. It also puts a national umbrella over several reforms which governments were already developing or implementing. Thus, it recognises that Australia is increasingly operating as a single market rather than a series of State and Territory markets, and encourages governments to adopt a national focus in considering change.

B1.2 The NCP and related reforms

In summary, the NCP program involves:[6]

- extending the reach of the anti-competitive conduct laws in Part IV of the TPA to virtually all private and public sector businesses;
- improving the performance of essential infrastructure through implementing nationally co-ordinated reform packages in:
  - electricity: through the introduction of a fully competitive National Electricity Market by 1 July 1999, which provides for consumer choice, third party interconnection to transmission and distribution networks and non-discriminatory regulatory arrangements;
  - gas: through structural reform or ring fencing of vertically integrated transmission, distribution and retail monopolies, the establishment of a

6 The NCP reform commitments are set out in full in NCC 1998.

national third party code for access to transmission and distribution pipelines and the removal of regulatory barriers to free and fair inter-state trade;

- water: through a strategic framework designed to create an economically efficient and ecologically sustainable water industry, including pricing reform, structural separation of institutional arrangements, water allocations and trading, and integrated catchment management and water quality guidelines; and

- road transport: through the introduction of uniform national reforms covering heavy vehicle registration, the transport of dangerous goods, driver licensing, vehicles standards, road rules and a consistent approach to compliance and enforcement;

- establishing a legal regime for third party 'access' to the services of nationally significant monopoly infrastructure;

- reviewing and where appropriate, reforming all laws which restrict competition by the end of the year 2000, and ensuring that any new restrictions provide a net community benefit; and

- improving the performance of government businesses through:

  - reviewing the structure of the public monopoly businesses prior to privatising those monopolies or introducing competition into the markets they serve, and ensuring that any regulatory functions held by the public monopoly are relocated;

  - implementing competitive neutrality principles, including a mechanism to investigate alleged breaches of competitive neutrality policy, to ensure that government businesses do not enjoy unfair advantages or disadvantages arising from their public ownership when competing with private businesses; and

- considering the establishment of prices oversight arrangements to ensure that government businesses with substantial market influence do not overcharge for the services they provide.

Governments also agreed to apply the NCP reforms to local governments within their jurisdiction.

B1.3 The Council's assessments of NCP progress

Under the Implementation Agreement, the Council is required to assess State and Territory progress in relation to each of the reform areas for the purposes of making recommendations to the Commonwealth Treasurer about the provision of NCP payments to the States and Territories. The Council also assesses reform progress achieved by the Commonwealth.

The Council undertakes three assessments during the life of the NCP program. Two assessments have been completed: the first in June 1997; and the second in June 1999. The Council's assessments are released as public documents after the Treasurer has taken a decision on the recommendations.

B2 Progress with NCP and related reforms during the second tranche

In June 1999, the Council completed its second tranche assessment of Commonwealth, State and Territory progress with implementing NCP (NCC 1999b). The assessment covered the middle two year period of NCP implementation by governments and reports on some substantial reforms. Notable reforms included implementation of competitive energy markets in gas and electricity, water reform, road transport regulatory reform, legislation review and competitive neutrality.

The intensive reform activity during the period of the second assessment contrasts with the first assessment period, which concluded in mid-1997. The first assessment covered essentially the two-year establishment phase of NCP (NCC 1999a). During this establishment period, governments focused on setting up the necessary policy agendas and administrative arrangements to support implementation of the NCP package.

As well as reporting on progress, the Council's second assessment forms a basis for the third assessment due before July 2001. It highlighted a range of issues which will require governments' attention over the next 18 months.

B2.1 Progress during the second tranche of NCP

Legislation review and reform

Under NCP, governments are reviewing and, where appropriate, reforming all legislation which restricts competition. They have undertaken to complete this by

the end of 2000. The principle guiding the reviews is that legislation 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 only be achieved by restricting competition.

The test applies to both existing anti-competitive regulation and new or amending legislation. The aim is better regulation rather than necessarily less regulation.

Consistent with this, the Competition Principles Agreement recognises there will be circumstances where restrictions are justified. Considerations which may be relevant in determining where the overall public interest lies include the environment, employment, social welfare and equity, economic and regional development, consumer interests, business competitiveness and economic efficiency.

Progress to date

In its June 1999 assessment of progress with the legislation review and reform program, the Council applied two broad criteria:

1. progress against review timetables as documented through governments annual reports to be generally consistent with completion of the program by the end of the year 2000; and

2. governments meeting the spirit of the NCP agreements by adopting rigorous review processes leading to robust outcomes and implementing reforms consistent with review recommendations, unless governments can justify a different course of action on net community benefit grounds.

To assist reviewers, the Council, in conjunction with the Centre for International Economics (CIE), released *Guidelines for NCP Legislation Reviews* in February 1999 (CIE 1999). Similarly, the COAG Committee for Regulatory Reform has released *Guidelines for the Review of Professions Regulation* (CRR 1999).

The CIE work emphasises the extent to which the success of the legislation review and reform program depends on robust processes, with good quality reviews and reports dependent on comprehensive terms of reference, appropriate review mechanisms and opportunities for consultation with stakeholders. Recommendations should be consistent with the evidence and should be implemented expeditiously.

Progress against review programs

All governments established their NCP legislation review programs in June 1996 in accordance with the CPA.[7] Governments have also put in place processes to ensure that all new legislation restricting competition meets the guiding principle.

All governments have progressed their review and reform agendas over the past 12 months consistent with the obligation to complete reviews and implement required reforms by the end of the year 2000. However, the rate of progress differs among jurisdictions, in part reflecting different priorities at the time governments put their programs in place.

All up, almost 1700 pieces of legislation are scheduled for review across all jurisdictions over the period of NCP. Some 1100 of these were scheduled for completion by the end of 1998. Around half of these reviews were completed on time, and another 400 were underway. Governments have announced their responses in over 370 cases. Progress by each jurisdiction as at the end of 1998, derived from governments 'NCP annual reports (NCC 1999b)[8] is summarised in Table B2.1.[9]

7 Each government published a legislation review timetable in 1996 and reports progress against this timetable each year. In total, governments have scheduled almost 1700 pieces of legislation for review over the period of NCP. The timetables continue to evolve as governments identify additional restrictions for review and reshape their review and reform priorities. The Council publishes a consolidated listing of progress against all timetables (NCC 1998b).

8 Volume 3.

9 As some jurisdictions schedule their reviews on a financial year basis, others on a calendar year and there is occasionally incomplete reporting, the data in the table should be taken as indicative of progress only.

Table B2.1 Progress of reviews scheduled by jurisdiction, at 31 March 1999

	Reviews scheduled to date[a]	Reviews completed and reform implemented	Reviews completed but reform still to be implemented	Reviews underway	Reviews scheduled but not commenced	Total reviews scheduled over life of NCP
Commonwealth	67	27	13	17	10	105
New South Wales	143	44	16	65	18	178
Victoria	121	57	19	20	25	219
Queensland	68	26	5	24	13	137
Western Australia	164	43	49[b]	47	25	307
South Australia	121	28	13	73	7	181
Tasmania	186	95	18	47	26	238
ACT	161	36	20	43	62	241
Northern Territory	85	17	9	55	4	87
Total (all jurisdictions)	1 116	373	162	391	190	1 693

a Data on reviews scheduled do not include Acts where jurisdictions' preliminary reviews indicated there were no significant restrictions.
b The Western Australian Government has endorsed a response to 45 reviews but is yet to take legislative action to implement the approach endorsed.

Source: Jurisdictions' Annual Reports for 1999

Key issues

Beyond the overall progress achieved against the review programs, the Council's second tranche assessment identified several key areas where significant progress was made.

National reviews

Governments are concluding national reviews of regulation relating to travel agents and the mutual recognition of goods and registered occupations. National reviews of legislation related to the registration of pharmacists and pharmacy ownership and the control of agricultural, veterinary and industrial drugs and poisons are underway. The Commonwealth and States are currently establishing a national review of architects regulation, which is due to commence in late 1999.

Barley marketing

Victoria and South Australia deregulated domestic barley marketing arrangements (and in South Australia the oat market) as of 30 June 1999. The Australian Barley Board (ABB) was transferred to grower ownership as of the same date. Both States have passed legislation to deregulate export arrangements for barley from 1 July 2001.

This result is consistent with the recommendations of the 1997 joint Victoria - South Australia review of their barley marketing acts.

Queensland's 1997 review of grain marketing arrangements recommended, amongst other things, that domestic marketing be opened to competition but that monopoly export arrangements be retained until at least mid-2002. The Queensland Minister for Agriculture is reported to be examining the implications for arrangements in Queensland following recent changes in Japanese commodity purchasing policy and the reforms in Victoria and South Australia.

Sugar

Despite some slippage in the implementation timeframe, Queensland has made significant progress with implementing the structural and regulatory reforms recommended by the 1995-96 Sugar Industry Review Working Party (SIRWP). Legislation to give effect to remaining reforms is imminent.

Evidence suggests domestic consumers of sugar are benefiting from price reductions resulting from the abolition of the tariff on imports and the Queensland Sugar Corporation's shift to export parity pricing for domestic sales.

However, it is not clear that consumers are receiving the full net benefit which domestic market reform would bring. Further, recent developments in world sugar market conditions have introduced greater competitive pressures, which are forcing down Australian export premia. This raises doubts as to whether the single desk marketing arrangements for sugar continues to be in the public interest.

Dairy

On 13 July 1999, the Victorian Government announced its intention to deregulate all legislative price and supply controls over Victorian milk from 30 June 2000. The announcement followed a review of the Victorian dairy industry which found that reform would deliver a net public benefit.

As the largest Australian milk producing State, the Victorian decision will have implications for other States. The Victorian reforms, coupled with the production cost advantage which Victorian producers already have, will put pressure on the New South Wales, Queensland and Western Australian dairy industries. The governments in each of these States have announced their intention to retain farmgate and supply management arrangements for fresh milk.

A key development in dairy industry reform is the national reform and structural adjustment package put forward by the Australian Dairy Industry Council (ADIC). ADIC proposes the repeal of all remaining State and Territory dairy regulation in mid-2000 and the payment of financial assistance to dairy producers to adjust to the open market. The Commonwealth is considering its response.

Poultry meat

Following reviews, the South Australian, Western Australian and Queensland Governments decided to remove regulated entry barriers to the traditionally highly regulated poultry meat market. The governments decided to retain some degree of collective bargaining between growers and processors, subject to allowing individual growers the right to 'opt-out'– that is, to separately negotiate a supply agreement with a processor.

Western Australia and Queensland have retained an industry specific approach to the remaining arrangements. South Australia intends to repeal its legislation following the five year authorisation by the ACCC of collective bargaining arrangements between each South Australian processor and their respective growers. The South Australian approach illustrates how general competition law can, in some circumstances, render industry specific legislation unnecessary.

Professions regulation

Review and reform of professions regulation is underway in all jurisdictions. Two areas of note are health practitioners and legal practice.

Health practitioner legislation

Queensland has completed the first stage of a major review of health and medical practitioner registration acts.[10]

Stage 1 provided an objective consideration of the need to regulate health practitioners and their practice and the most appropriate manner in which to regulate. The resultant minimalist risk management approach is being applied across the health professions in Stage 2. This is intended to reduce the risk of regulatory anomalies arising between related professions while allowing issues specific to a particular profession to be taken into account.

10 The review covers chiropractors, osteopaths, dentists, dental technicians, dental prosthetists, medical practitioners, occupational therapists, optometrists, pharmacists, physiotherapists, podiatrists, physiologists and speech pathologists.

The resultant legislative arrangements are expected to wind back commercial controls imposed on professional practice and restrictions on advertising, while retaining professional registration/licensing and the reservation of professional titles in some areas (for example, physiotherapist, medical practitioner, doctor and surgeon).

Western Australia and South Australia are adopting a similar approach to reviewing their health professions regulation.

Following a review of its physiotherapy regulation, Victoria retained the restriction on the use of the title 'physiotherapist' and advertising restrictions requiring fair and accurate advertising. No restrictions on professional practice or practice ownership were retained.

Legal practice

On 30 June 1999, the Queensland Government announced a wide-ranging package of reforms for the legal practice in that State. The package includes:

- the establishment of a new independent Legal Practice Authority to handle complaints about lawyers;
- a disciplinary board to hear conduct charges against lawyers;
- Supreme Court committees to set admission rules and approve cost scales;
- the introduction of non-lawyer property conveyancing, allowing lawyers to join multi-disciplinary practices with other professionals; and
- the capping of payouts for damages arising from unscrupulous behaviour by lawyers to $60 000.

The Queensland reform package is a major step forward in what remains a highly regulated area of professional practice.

The continuing prohibitions on non-lawyer conveyancing in Tasmania and the ACT require close scrutiny. Over the past two decades all other States have removed the

legal practitioner monopoly over property conveyancing, and non-lawyer conveyancers have existed in South Australia for 140 years. With the appropriate professional accreditation of non-lawyer conveyancers, the benefits to consumers can be quite considerable.[11]

Tasmania's conveyancing arrangements are currently under review and the ACT is due to commence a review of its legal practice arrangements later this year.

Taxi licensing

Reviews of taxi cab and hire car industries are at an advanced stage in most jurisdictions. Victoria, Queensland, Western Australia, South Australia, Tasmania and the ACT have commenced or completed reviews of present regulatory arrangements. The New South Wales Independent Pricing and Regulatory Tribunal (IPART) has released an interim report (IPART 1999) proposing, amongst other matters, a gradual increase in taxi licences over five years and a further review after this time.

Following an NCP review, the Northern Territory removed limits on the number of taxi licences from 1 January 1999. The Northern Territory Government bought back taxi licences to compensate existing owners, this cost being funded through the collection of licence fees across the passenger transport industry. The number of taxis in Darwin has risen by 10 per cent, just three months after deregulation, and two new taxi networks have started operation. Maximum fare restrictions will be reviewed in July 2000. Minimum taxi network sizes[12] were introduced as an interim measure to ensure they are of a sufficient size to meet customer response time expectations.

11 The liberalisation of conveyancing in New South Wales in 1992 resulted in a 17 per cent reduction in costs (or some $86 million per annum) for New South Wales consumers (NCC 1998a).

12 The minimum network sizes are: Darwin – 20 standard taxis or 5 executive taxis; and Alice Springs – 10 standard taxis or 5 executive taxis.

Resource development agreement legislation

In response to questions raised in the Council's 1997 assessment, the Western Australian Government reviewed a small sample of its resource development Agreement Acts to determine the extent of any competitive restrictions.

The review found that the sample of Agreement Acts reviewed impose few restrictions on competition. It also noted that the benefits flowing from the acts are often not at the expense of taxpayers or other industries and are an 'efficiency bonus' for the developer arising from greater certainty and risk reduction.

The Western Australian Government endorsed the findings of the review and has undertaken to ensure that that there is an increased focus on the community impacts of new Agreement Acts. The Government considered that the Acts reviewed are representative of other resource development Agreement Acts, and therefore, does not consider it necessary to review remaining Agreement legislation.

Future assessments

The Council will revisit, via supplementary assessment prior to July 2000 and/or in the third tranche, a range of legislation matters identified during the June 1999 assessment. These include:

- dairy industry reform, with reference to the proposed national dairy industry reform and adjustment package currently under consideration;
- domestic rice market reform in New South Wales following the in-principle agreement by New South Wales to remove state-based vesting arrangements and establish the Rice Export Authority under Commonwealth jurisdiction;
- the 8 per cent cap on the number of liquor licences an individual or company can hold in Victoria, which Victoria has retained despite a review recommendation for removal;

- monopoly provision of compulsory third party motor vehicle and workers compensation insurance arrangements;
- monopoly provision of professional indemnity insurance for solicitors in Victoria, which Victoria has retained reversing an earlier decision to introduce reform;
- restrictions on shop trading hours, which South Australia has retained without so far providing a rigorous net public benefit case;
- review of the 'proof-of-need' requirement imposed on applicants for liquor licences in South Australia; and
- restrictions on competition in public sector superannuation arrangements.

The Council will continue to work with governments to progress these matters.

Looking forward

While all governments have made undoubted progress against their NCP review and reform programs, there is a significant task remaining.

First, governments will need to devote considerable attention (and resources) to completing their review and reform programs by the end of 2000 target. Unless there is a compelling case to proceed in an alternative direction, governments will need to implement reforms consistent with review recommendations.

Second, there are some challenging areas of regulation remaining to be reviewed. In addition to the matters which the Council identified during the second tranche for supplementary assessment and/or as matters for the third tranche, NCP priorities include:

- governments' responses to the PC review (due to report 26 November 1999) into the social and economic implications of gambling;

- the conduct and outcome of the national review of pharmacy regulation now underway;
- restrictions in relation to the professions and occupations, especially in the areas of health and legal services;
- regulation of private health insurance by the Commonwealth;
- governments 'approaches to regulation of the taxi industry;
- remaining agricultural marketing arrangements, including wheat, barley, dairy and potato marketing (in Western Australia); and
- the Commonwealth's response to the Productivity Commission's current review of broadcasting regulations, with particular reference to digital television arrangements.

Competitive neutrality

Government businesses provide a vast array of goods and services. Taxpayers, private sector clients and the general public expect these services to be provided effectively and efficiently. In many cases, governments have assessed that effective competition can lead to improved business performance and thus better outcomes for the community. There is now considerable evidence that competition is leading to community benefits, for example by encouraging both public and private sector businesses to offer better quality services at lower prices (see Box B2.1).

Achieving effective competition requires that government and private providers compete on even terms. Competitive neutrality under NCP contributes to this by removing artificial competitive advantages or disadvantages arising from government ownership. Under NCP, significant government-owned businesses should face the same commercial

Box B2.1: Improvements in the performance of government businesses

Governments 'efforts to improve the performance of their business activities together with factors such as technological change are leading to positive outcomes for businesses and the community. For example:

- over the five years ending 1996-97, business and household consumers benefited from falls in the real price of electricity (up to 24 per cent), ports and telecommunications services (up to 23 per cent) and air traffic services (up to 40 per cent) (PC, 1998b);

- following the corporatisation of Freightcorp in 1996, labour productivity has improved by 55 per cent, locomotive productivity has increased by 39 per cent and real average rail freight charges have fallen by 16 per cent. (PC 1998c);

- over the five years ending 1996-97, Australia Post has reduced the real cost of delivering a standard letter by nearly 9 per cent while the range of services and annual dividends to the Government have increased (PC 1998c); and

- average water bills have fallen by almost 17 per cent over the five years to 1997-98, operating costs have fallen by more than 18 per cent and investment in treatment infrastructure to safeguard drinking water and protect the environment doubled in 1997-98 (WSAA 1998).

pressures and regulatory environment as the private sector and charge prices that include all relevant costs, where this provides a net benefit to the community.[13]

Governments have been reviewing and reforming the nature of their involvement in business activities since the late 1980s. Since 1995, NCP competitive neutrality principles have provided a consistent set of arrangements which governments are applying to significant Commonwealth, State and Territory and local government businesses. In addition to competitive neutrality, governments have also endeavoured to improve resource use in other ways, for example privatisation, competitive tendering and accrual accounting. While these measures contribute to, and benefit from, effective application of competitive neutrality principles, they are not requirements under NCP.

Progress in implementing competitive neutrality

All governments have made good progress with implementing competitive neutrality principles, particularly in relation to large Government Business Enterprises (GBEs). However, progress has also been achieved in relation to smaller businesses, such as local government waste collection and businesses undertaken as part of a broader range of functions such as public hospital radiology services. Competitive neutrality arrangements are also being applied to in-house bids where governments decide to introduce competitive tendering.[14]

Notwithstanding the progress to date, there has been some variation in jurisdictions' approaches. For instance, jurisdictions vary in how they define their significant businesses, the timing of their reform programs, and in some of the policy settings used to implement competitive neutrality principles.

The scope of businesses covered by competitive neutrality policy is an important determinant of its overall effectiveness. Most jurisdictions use expenditure thresholds

13 Governments' NCP competitive neutrality commitments are listed under clause 3 of the CPA.

14 An overview of progress in each jurisdiction is provided by the Council's Second Tranche Assessment of Governments' Progress with Implementing the National Competition Policy and Related Reforms (NCC 1999c).

to identify their significant business activities. For example, the Commonwealth, Queensland and Western Australian Governments adopt a threshold of annual turnover in excess of $10 million. However, Victoria now applies competitive neutrality principles to all government business activities while Tasmania has applied competitive neutrality to its GBEs (except the Port Arthur Historic Site Management Authority) since July 1997 regardless of their size.

The NCP does not provide a great deal of guidance as to which business activities should be considered significant. The Council considers that significance should be considered in terms of market impact rather than size alone. Therefore, the Council supports the approach of the Commonwealth, New South Wales, Western Australia, South Australia and Tasmania to complaints regarding business activities currently below threshold size. This can enable competitive neutrality to be applied to businesses that have a significant market effect but are below the jurisdiction's expenditure threshold.

Local government

For local government, the NCP reform with the greatest direct effect is likely to be competitive neutrality. Introducing competitive neutrality to local government proved difficult at first, and local government competitive neutrality reform was the only area of first tranche obligations that was subject to a supplementary assessment for all relevant jurisdictions.

Local government reform has since gathered momentum. This has been assisted by greater understanding of NCP and its potential benefits among local governments, and State government measures such as implementation guidelines, case studies and workshops. Queensland, Victoria, and Western Australia are also assisting change by making a portion of their competition payments available to local governments that successfully introduce reforms. The shift in the attitudes to, and performance of, local government competitive neutrality reform is illustrated by the fact that no jurisdiction was the subject of a qualified second tranche assessment in this area.

Implementation is perhaps most advanced in Victoria and New South Wales. Victoria now applies competitive neutrality to all local government business activities. The New South Wales Government has reported that its surveys of local governments show that almost 90 per cent of larger local government businesses have separate internal reporting arrangements and nearly two-thirds of smaller businesses apply full or partial cost attribution in setting prices.

Western Australia has reviewed 129 local government businesses and now applies competitive neutrality principles in about half of these. Queensland has focused on applying competitive neutrality to businesses owned by its 17 largest local governments although steps are being taken to apply competitive neutrality to smaller local governments. South Australia and Tasmania have not proceeded as quickly, having first had to finalise local government boundary amalgamations.

Competitive neutrality pre-supposes that local governments have good information on costs and effective costing systems. Thus, implementing competitive neutrality has involved set-up costs for some local governments. However, competitive neutrality policy is generally not the main reason for reforms of costing systems such as accrual accounting. For example, in evidence provided to the current Productivity Commission inquiry into the impact of competition policy on rural and regional Australia, the City of Grafton noted that the New South Wales *Local Government Act 1993*, which pre-dates formal NCP, introduced a number of reforms, including new accounting standards. These reforms were aimed at increasing transparency and accountability, and to encourage efficiency and effectiveness in service delivery.

While it is possibly still too early to gain a full appreciation of the extent to which benefits from NCP are accruing to local government, there are some encouraging signs. In particular, there is increasing anecdotal evidence that more and more local governments now consider that NCP has fostered a beneficial change in culture and that effective use of competition is leading to improved performance. For example, in Tasmania, 18 of 29 councils have decided to apply full cost attribution to all their businesses rather than just those regarded as significant. Tasmania has stated that its local governments are embracing competitive neutrality as they realise:

> … *the advantages that competitive neutrality could deliver in increasing the efficiency of council operations.* (Tasmanian Government 1999, p. 22)

Dealing with complaints about competitive neutrality application

As required under the CPA each government has a mechanism for investigating and recommending on complaints that government businesses are not applying appropriate competitive neutrality policy. These are either located in organisations independent of the government's competitive neutrality policy body (as in the case of the Commonwealth, New South Wales, Queensland, South Australia and Tasmania) or are located as a discrete unit within the government's policy area.[15]

The Council views effective resolution of competitive neutrality complaints as an important determinant of NCP compliance. Governments must report publicly on allegations of non-compliance formally received by complaints mechanisms. In reviewing NCP progress, the Council looks for evidence that complaints are being handled rigorously and that the recommendations of complaints mechanisms are acted upon, unless there is a strong public interest case for an alternative approach.

Competitive neutrality complaints have been upheld across a wide range of businesses. For example:

- prices charged by the Australia Protective Service for counter terrorist services are being revised following a complaint made to the Commonwealth Competitive Neutrality Complaints Office;

- appropriate competitive neutrality principles are being considered for Cleland Wildlife Park following an investigation by South Australia's Competition Commissioner; and

- prices charged for the manufacture and sale of artificial eyes by Sydney Eye Hospital have been revised consistent with New South Wales' pricing principles.

15 Arrangements for handling competitive neutrality complaints and contact details for each jurisdiction are outlined in the Council publication *Making Competitive Neutrality Complaints* (NCC 1998c).

During its second tranche assessment, the Council noted that Queensland's response to a complaint by Coachtrans Pty Ltd in relation to Queensland Rail's (QR) Brisbane to Gold Coast services potentially had implications for its compliance with NCP commitments. The Queensland Competition Authority (QCA) investigation of the complaint found a breach of competitive neutrality policy in relation to the fares charged by QR on the route, and recommended action by the Queensland Government. The Government rejected the QCA recommendation on this matter, and the Government's decision is now the subject of judicial review action in the Federal Court initiated by Coachtrans. The Council will complete its second tranche assessment of Queensland's competitive neutrality performance after the decision of the Federal Court is available and the Queensland Government has had an opportunity to determine its response.

Implementing competitive neutrality and achieving desirable social objectives

The Council is aware that some in the community believe that competitive neutrality is being pursued at the expense of social objectives. However, this is not the case. NCP requires only that competitive neutrality be introduced where, following consideration of the broad public interest, the benefits of reform are expected to outweigh the costs. For example, while Victorian prison-based industries were the subject of a competitive neutrality complaint, the State Government has decided that competitive neutrality principles will not be applied given the relative importance of other social goals such as lower recidivism and higher prisoner quality of life.[16]

Another common concern, particularly at the local government level, is that implementing full cost pricing precludes the provision of Community Service Obligations (CSOs). Again, this is a misconception. However, while application of competitive neutrality principles does not prevent the provision of CSOs, it is important

16 While Victoria does not intend to introduce competitive neutrality to its prison activities it has required the implementation of the Prison Industries Code of Practice which requires that prison industries target areas currently supplied by imports and that a market impact assessment be undertaken before entering a new industry.

that CSO arrangements do not undermine competitive neutrality measures. Integrating CSO and competitive neutrality objectives requires consideration by governments to defining, costing, funding and providing CSOs.[17]

Once CSOs have been appropriately structured, governments can consider whether introducing competition in their provision would achieve government social policy objectives more efficiently and effectively. For example, enabling private and not-for-profit services to apply for CSO funding, provided they meet accepted service standards, may achieve social objectives at a lower cost while maintaining service quality.

Next steps

On the evidence to date, competitive neutrality reform for the most part is progressing satisfactorily. Nonetheless, the Council will continue to monitor progress, including for local government businesses. The appropriate application of competitive neutrality principles will be an important element of the Council's third tranche assessment.

There are some remaining matters that warrant attention, particularly in relation to the scope of coverage of competitive neutrality policy. The Council considers the approach adopted by Victoria and Tasmania (for its GBEs and some local governments) where by expenditure thresholds are removed, or the Commonwealth, New South Wales, Western Australian and South Australian approach which allows for investigation of complaints about any government business activity, as appropriate models.

The Council will also continue to monitor the effectiveness with which competitive neutrality complaints are handled and the reform outcomes that result. Complaints are an important indicator of the scope and efficacy of competitive neutrality policy. In assessing competitive neutrality implementation, the Council's view is that

17 A detailed discussion of appropriate CSO arrangements is provided by the Council's 1997-98 Annual Report (NCC 1998a) while details of arrangements in each jurisdiction is provided in Volume III of the Council's *Second Tranche Assessment of Governments' Progress with Implementing the National Competition Policy and Related Reforms* (NCC 1999c).

complaints units' recommendations should be supported. However, the Council acknowledges that in some exceptional circumstances governments may have a sufficiently strong public benefit justification for adopting an alternative approach.

Finally, there are some misconceptions about NCP competitive neutrality policy within the community, particularly concerning the scope for addressing social objectives within the NCP framework. These warrant attention by governments. The Council will take up these matters as part of its future community consultations.

Structural review of public monopolies

When governments decide to privatise or increase competition in public sector monopolies, getting the right industry structure is important to ensure that benefits from that increased competition are realised and that those benefits flow through to customers. For instance, privatising a public monopoly, without necessary structural reform, can simply replace the government monopoly with a private monopoly, with few gains in competition and potentially some significant costs.

To avoid these problems governments included clause 4 in the CPA. This clause means that before privatising or introducing competition for a public monopoly, governments need to review the regulation and business structure of the monopoly to consider whether it is appropriate for the new environment. This clause does not require governments to privatise or introduce competition to their businesses. It does, however, place obligations on them to consider structural reform if they do decide to adopt these policies.

In gas, electricity and water, structural reform issues have also been addressed by the general agreements covering these sectors.

Structural reform obligations

The structural reform provisions in clause 4 require governments to consider whether changes should be made to:

- improve the commercial focus of the government business subject to privatisation or increased competition;

- ensure that the government business is not advantaged because it is responsible for regulating its competitors, maintains control over specific facilities or services others have to use in order to compete or enjoys other types of advantages; and

- facilitate the benefits of competition flowing through to consumers and provide adequate protection for consumers.

In practice, governments have implemented a range of approaches to address these issues. For example, in the ACT it was recognised that under the *Milk Authority Act 1971*, the Milk Authority was responsible for acquiring and marketing milk in the ACT (commercial functions), as well as determining maximum retail prices for milk, market entry and franchising arrangements (regulatory functions). These dual functions had given the Milk Authority a monopoly over milk marketing in the ACT. The ACT undertook a review that noted that the *Milk Authority Act:*

> *... was not meant to preclude competition in the ACT market, but this has occurred as a result of the dual roles of regulation and marketing being merged...* (ACT 1998).

The ACT Government has since divided the Milk Authority's regulatory, commercial and price determination roles between three agencies within government.

In Victoria the reform of rail services has specifically taken into account the provision of CSOs. In the past V/Line Freight has conducted an uneconomic business of transporting parcels and palletised freight. This was considered to have a significant benefit to the community. Continuation of this service was a condition of the sale of V/Line and a specifically defined CSO payment will be made to the private sector

operator to ensure the service continues. This means that V/Line freight will compete with other freight haulage operaters on an equal basis.

The Council's second tranche assessment identified some problems in governments' approaches to structural reviews. The Commonwealth did not review structural reform issues prior to the privatisation of TasRail, Australian National Railways and the Australian Wheat Board. There were also questions raised in the areas of telecommunications and Sydney Basin Airports, although planned reviews in these two areas may resolve any outstanding issues.

Approaches to structural reform

The CPA provides that the assessment of the most appropriate industry structure should be undertaken on a case-by-case basis. This allows the individual circumstances of each situation to be analysed and addressed directly.

Obviously, the approaches will need to vary between industries. The most appropriate balance of competition, regulation and commercial incentives differs greatly between organisations like TABs, insurance companies and rail authorities.

Even within industries different approaches may be justified. For example, the Productivity Commission draft report on *Progress in Rail Reform* (PC 1999b) analyses both the costs and benefits of separating out the management of rail track from the operation of trains, and separating different segments of the rail network. It concludes that different types of rail services have different characteristics and that the benefits of structural separation vary between different sectors of the industry. Therefore:

> ... *different structures may be warranted for urban passenger transport, regional high volume railways, regional low volume railways and the interstate rail network.*

The PC suggests that urban passenger rail services and regional rail lines could be separated from the rest of the network, and that separation of the operation of trains from the management of the track may be appropriate for high volume regional and

interstate rail services. The PC also considered that there needed to be one authority managing the whole of the interstate network.

The application of this type of approach is not inconsistent with the Commonwealth selling TasRail as a vertically integrated business and introducing specific arrangements for the interstate rail network.

The complexities of analysing and implementing appropriate structural reform are clearly illustrated by the issues facing regulation of the telecommunications industry. The potential gains from arrangements that encourage innovation and the development of new products are equally evident.

The partial privatisation of Telstra in 1997 gave rise to an obligation on the Commonwealth Government to examine the merits of structurally separating the monopoly elements from the non-monopoly elements of Telstra's business. Such a review would need to balance the costs of separation against the gains from avoiding unnecessary duplication of the monopoly elements of the network and from encouraging competition where it is feasible.

The Council's second tranche assessment looks at the arrangements for accounting separation for telecommunications and reports on the developments in these arrangements since 1997. In preparation for this assessment, the Council commissioned Tasman Asia Pacific (TAP) to review the ACCC's proposed record-keeping rules and the Commonwealth Government's proposed arrangements for accounting separation for the local fixed network.

The report by TAP concluded that the proposed new record-keeping rules are an improvement on their predecessors and will provide the ACCC with the information necessary to detect anti-competitive behaviour. TAP also found that the recent legislative amendments are potentially positive steps towards a ring-fencing model. However, TAP did not consider that these arrangements, nor ring-fencing per se, would be adequate to remove Telstra's sources of market power and combat anti-competitive behaviour. TAP suggested separating the Customer Access Network (CAN), being the natural monopoly element, from transmission facilities and operating the CAN independently under the supervision by the ACCC or another regulatory authority.

In response to the TAP report, the Commonwealth argued that the analysis was insufficient to show that the current regulatory regime had failed to promote competition. It also noted that the provisions in the TPA covering Telstra are scheduled for review in 2000, and this will allow for a thorough assessment of the telecommunications regime, including the effectiveness of current accounting separation arrangements.

The regulatory approach to telecommunications has developed during the 1990s in a relatively ad hoc way. The upcoming review of sections XIB and XIC of the TPA provides a valuable opportunity to assess the most appropriate approach to future regulation. In particular, the reviews should analyse the costs and benefits of alternatives to the current regime, including structural separation of the local fixed network from non-monopoly elements, the regulation of the natural monopoly infrastructure and the regulation of conduct.

Prices oversight of Government Business Enterprises

Prices oversight of Government Business Enterprises (GBEs) aims to ensure that government businesses with substantial market influence do not overcharge for the services they provide. Under NCP, States and Territories which do not have independent prices oversight mechanisms in place for their business activities are to consider whether to establish these.

All States and Territories, except Western Australia and the Northern Territory, now have prices oversight arrangements, although the nature of these arrangements and the government business activities covered vary.

- In New South Wales, the Independent Pricing and Regulatory Tribunal (IPART) is responsible for prices oversight in electricity, gas, water, waste and urban passenger transport.

- Victoria's Office of the Regulator General (ORG) provides independent prices oversight in electricity, gas, ports and grain handling.

- The Queensland Competition Authority (QCA) provides independent prices oversight of government business activities that are public monopolies or near monopolies, and which the Premier and Treasurer declare to be Government Monopoly Business Activities. Queensland is assessing major government businesses against criteria for declaration, commencing with port authorities.

- In South Australia, the *Government Business Enterprises (Competition) Act 1996* establishes a prices surveillance mechanism for the State's monopoly or near monopoly government businesses. SA Water Corporation is declared for prices oversight until 21 November 1999.

- In Tasmania, the Government Prices Oversight Commission (GPOC) regulates the pricing policies of the State's monopoly or near monopoly GBEs and government agencies, including the Metropolitan Transport Trust, the Hydro-Electric Corporation, the Motor Accidents Insurance Board, Hobart Regional Water Authority, the North West Regional Water Authority and a range of other government (including local government) businesses. There is a mechanism under which other monopoly services can be declared.

- In the ACT, the Independent Pricing and Regulatory Commission (IPARC) has the power to regulate prices, make access determinations and carry out other functions with respect to businesses declared by the Minister. Industries subject to price regulation include electricity, water, public transport (buses and taxis) and gas.

Implementing the Competition Code

Under the *Conduct Code Agreement*, governments agreed to extend the operation of Part IV of the TPA to all business activities. Each State and Territory government

has enacted a modified version of Part IV, called the Competition Code, in their jurisdiction.

Conduct Code Agreement reporting obligations

Under the *Conduct Code Agreement*, the Commonwealth, States and Territories have reporting obligations to the ACCC on section 51(1).[18] These obligations are:

- to notify the ACCC of legislation that relies on section 51(1) within 30 days of the legislation being enacted or made; and
- to have notified the ACCC by 20 July 1998 of legislation relying on the previous version of section 51(1) that will continue pursuant to the current section 51(1).

The Council considered jurisdictions 'compliance with the Conduct Code reporting obligations in its second tranche assessment of NCP progress. The Council assessed all jurisdictions as having met their Conduct Code reporting obligations.

Electricity

State governments have traditionally been responsible for the generation, transmission (long distance transfer of electricity using high voltage wires) and distribution (short distance transfer of electricity using lower voltage wires within a specific urban area and retail supply) of electricity. The Australian electricity industry has therefore

18 Section 51(1) of the TPA allows the Commonwealth, States or Territories by legislation or regulation to specifically authorise conduct that would otherwise breach Part IV of the Act. The Commonwealth Treasurer may, however, override a State or Territory exception under section 51(1) by regulation.

developed on a State-by-State basis, with publicly-owned monopolies dominating in each State and little electricity trade between States. This structure presented problems such as overstaffing, less than optimal service and inefficient use of infrastructure.

In 1991, COAG began the process to reform the national electricity industry and address these problems. New South Wales, Victoria, Queensland,[19] South Australia and the ACT have implemented structural and regulatory reforms resulting in the commencement of the National Electricity Market (NEM) on 13 December 1998. The NEM establishes a single wholesale market for electricity and an access regime for the transmission and distribution networks.

The NEM operates as a series of regional markets (pools) - one in each participating State except New South Wales which has two regions. With the exception of Queensland, high voltage transmission lines interconnect these regional markets. Construction of interconnect capacity with Queensland is underway.

Given the vast geographical difficulties, Western Australia and the Northern Territory are not NEM participants. Currently, Tasmania is not a NEM participant but has expressed an intention to the join the NEM in the year 2002 if the proposed 'Basslink' – an undersea interconnector linking Tasmania and Victoria's grids – proceeds.

Market behaviour is regulated in a light-handed manner with market conduct and pricing oversight subject to national competition law administered by the ACCC. State and Territory regulators are responsible for the regulation of distribution services, the contestability timetable, environmental standards and health and safety matters. Progressively from 1 July 1999, the ACCC is assuming responsibility for the regulation of transmission services.

19 Queensland is not yet physically connected to the NEM but is operating under the NEM's rules. An interconnection between Queensland and New South Wales is expected to be completed in 2000.

Progress to date

Australia's electricity supply industry has undergone dramatic changes in terms of structure, regulation and access arrangements and the reform program is now well established. State and Territory governments have, to varying degrees, restructured, corporatised and privatised their once monopoly power assets.

The Council's second tranche assessment revealed that the structural reform of electricity utilities is complete in New South Wales, Victoria, Queensland and the ACT. Both South Australia and Tasmania have made substantial progress in structuring their respective electricity supply industries. Western Australia and the Northern Territory are in the process of implementing their structural reform program.

State and Territory progress on regulatory arrangements is as follows:

- New South Wales, Victoria, Tasmania and the ACT have introduced the required regulatory reforms by removing any responsibilities for industry regulation from the public power utility;

- Queensland and Western Australia have not advised the Council as to their current or proposed regulatory arrangements;

- South Australia passed legislation in August 1999 to establish an Independent Industry Regulator, thereby completing the regulatory framework for the South Australian electricity industry; and

- the Northern Territory is in the process of transferring the regulatory functions out of its public utility.

Providing for third party access to transmission and distribution networks (considered to be natural monopolies) has also been a major reform to the electricity industry. Open access arrangements permit the introduction of competition where there are competitive elements of the electricity industry - generation and retail. All jurisdictions (except the Northern Territory) have introduced legislation to provide for third party access to their respective transmission and distribution networks.

Future directions

The Council considers that the establishment of the NEM and the structural and regulatory reforms undertaken by each jurisdiction are an important start to the creation of a fully competitive market. However, considerable work remains to see the full benefits of the reforms flow through to customers.

An important feature of the NEM is that consumers will progressively be able to choose their electricity supplier from the various licensed retailers operating in the market. Prior to the commencement of the NEM, most electricity consumers were obliged to purchase their electricity from a regional monopoly electricity company at a fixed charge. Large customers are now able to participate in the wholesale market or negotiate the price and service level with competing suppliers. Reform of the electricity industry involves extending the choice of retail supplier down to the level of the individual residential customer. The earliest timetable for full retail contestibility is January 2001, however there is at this stage no co-ordinated national project to oversight the introduction of full retail competition.

The introduction of retail contestability in the electricity sector introduces considerations that customers now have to face for the first time, such as the bundling of services and choice of supplier. In addition, the electricity supply industry will need to address new technical and structural challenges in the lead up to full retail competition. Both the industry and governments need to focus on the form of retail competition that is introduced and the manner of its introduction.

The form of retail competition may range from full real-time metering of individual customers (as currently implemented for larger customers) to proxy methods, which use average consumption profiles combined with individual customer load data (so called 'deemed profiling'). The choice of method has implications for:

- the level of transaction costs;
- the risk for retailers;
- the mechanism for recovering the transaction costs; and
- the effectiveness of competition.

Overseas and Australian experience has highlighted several problems with the implementation of retail contestability. First, irrespective of which method is used the transaction costs involved are high relative to the customer benefits that can be gained. Second, UK and Australian research indicates that customers require a saving of 10-15 per cent and 15-20 per cent respectively, to encourage them to switch. Given Australia's relatively low prices by world standards, these savings levels are difficult to achieve given the transaction costs involved.

Whilst the Council acknowledges the significant electricity reforms that governments have already undertaken in the reform of the electricity industry, retail competition remains the outstanding issue. There are significant public policy as well as commercial issues at stake including the need to avoid the introduction of unique State solutions to retail contestibility. Such an approach would exacerbate the transaction cost problem already facing the industry. The Council considers that a national body should assume responsibility for co-ordinating the implementation of retail contestability in the NEM.

Looking ahead, the Council anticipates that electricity reform will be a major focus of the third tranche assessment as result of issues that have arisen from the start of the NEM. These issues include competitive neutrality issues arising from the form of ownership of generators, the effective implementation of retail contestability, and the efficacy of the National Electricity Code rules on approval of regulated versus unregulated transmission interconnectors.

Gas

The NCP gas reform program, which aims at free and fair trading in gas between and within the States and Territories, has already resulted in some important achievements namely:

- the national third party code for access to transmission and distribution pipelines is now operational in most jurisdictions;

- structural break-up or ring fencing of the old vertically integrated transmission, distribution and retailing monopolies is now virtually completed;

- the beginnings of interstate trade in gas, with New South Wales supplying Victoria's emergency gas needs in the aftermath of the September 1998 Longford crisis.

Reforms in the downstream sector are bringing significant price reductions. For example:

- in Western Australia, transmission tariffs on the Dampier-Bunbury pipeline will fall by around 26 percent between 1997 and 2000 under a transitional price path; and

- gas distribution prices in New South Wales are to fall by up to 60 percent in real terms between 1997 and 2000 under the AGL access undertaking accepted by the New South Wales regulator in 1997.

The National Code

The central area of NCP gas reform has been to establish the National Gas Pipelines Access Code. The Code has now been passed through legislation by all jurisdictions, and is operational in New South Wales, Victoria, Western Australia, South Australia, the ACT and the Northern Territory.[20]

The National Code provides people with a right to negotiate access to gas pipeline services on reasonable terms and conditions approved by an independent regulator – with a right to binding arbitration to resolve disputes.

The National Code is an important breakthrough in creating more competitive gas markets as it gives customers greater scope to negotiate with a range of gas suppliers,

20 Tasmania does not yet have a natural gas industry. Implementation has been delayed in Queensland pending a review by the Council into the effectiveness of that State's application of the Code.

knowing that it is possible to access a pipeline to carry the gas to the required destination. The added competition is pushing down prices of both gas and gas haulage services.

Although it is still early days, these developments offer the potential to expand the market for natural gas, fuelling the development of new pipeline proposals to link key gas basins with major markets. Some of these proposals – like the AGL-Chevron pipeline from Papua New Guinea to Queensland, and Duke Energy's Eastern Gas Pipeline along the south-eastern seaboard – are well advanced.

The Council's primary function in this area at present is in considering certification under Part IIIA of the TPA of each State's application of the National Code. Once a regime is certified as effective, the relevant services are immune from declaration under Part IIIA.

South Australia became the first jurisdiction to have its access regime certified, following a recommendation to this effect from the Council to the Commonwealth Minister for Financial Services and Regulation in 1998. During 1998-99, the Council also made a recommendation on the New South Wales regime to the Minister. In addition, the Council conducted public consultations on the Western Australian, Queensland and ACT regimes.

The principal issues the Council is considering for each of the State certifications are:

- whether State regulators are independent of all parties, including governments, and whether they have sufficient resources to fulfil their work. While the ACCC is the regulator for transmission pipelines in all States other than Western Australia, State bodies will regulate distribution networks in most jurisdictions. This has required the establishment of new regulatory agencies in a number of jurisdictions; and

- the implications of any derogations (modifications, variations or exemptions) from the Code for its effective operation.

The issue of 'derogations' is of particular significance in Queensland, where the application of the Code contains a number of exemptions affecting several pipelines. The Council has sought the advice of the ACCC on whether the Queensland Regime, as it applies to the five affected pipelines, is broadly consistent with the National Code, and the extent to which any differences are significant.

Coverage issues

The Council also plays a number of ongoing roles under the National Code. In particular, the Council will handle applications for coverage of a pipeline – and revocation of coverage.

The Council understands the need for certainty as to the likely coverage of new infrastructure and is available to advise investors on whether a proposed new pipeline would meet the coverage criteria. Alternatively, investors may seek coverage prior to construction of a new facility by adopting the Code's competitive tendering principles for new pipelines, or by submitting an access arrangement for the pipeline to the regulator.

Conversely, revocation issues will arise from, for example, technological innovation and changing market conditions. During the 1998-99 financial year, the Council received seven applications for revocation of coverage of pipelines under the National Gas Access Code. All of the applications were made in respect of pipelines located in Western Australia.

As at the end of June 1999, the Council had delivered its final recommendations in respect of four applications to the Western Australian Minister for Energy, Resources Development, and Education. The Minister accepted the Council's recommendations and announced his decisions on 30 June 1999. Under the decisions, coverage was revoked in respect of three laterals running off the Goldfields Gas Transmission pipeline (the GGTP to Mt Keith, GGTP to Leinster, and GGTP to Kalgoorlie power station pipelines, Pipeline Licences 25, 26, and 28), while revocation was refused in respect of one other lateral (the Kalgoorlie to Kambalda pipeline, PL27).

The Council released its draft recommendations in respect of two further applications for revocation on 30 June 1999. These applications concern Western Australia's Tubridgi pipeline (PL16) and the Beharra Springs pipeline (PL18). The draft recommendations are to revoke coverage of the Beharra Springs pipeline, but to retain coverage of the Tubridgi pipeline.

As at 30 June 1999, the Council was considering the seventh application for revocation, made by Robe River Mining Pty Ltd in respect of the Karratha to Cape Lambert pipeline (PL8).

Removing regulatory barriers to free and fair trade in gas

A second key element of NCP gas reform is the removal of all legislative and regulatory barriers to free and fair trade in gas, between and within the States.

Many jurisdictions are addressing this issue as part of their legislation review programs under clause 5 of the CPA. As such, all relevant jurisdictions have scheduled gas-related legislation and regulation for review by the year 2000.

A major focus in 1998-99 was the issue of regulatory or legislative barriers to free and fair trade in gas in the 'upstream' sector. While the National Code is promoting interbasin competition, significant barriers to competition remain within particular basins.

The Upstream Issues Working Group (UIWG), an intergovernmental group on which the Council is an observer, examined upstream gas reform issues in 1998 and recently finalised a report to COAG on its findings.

Two areas highlighted by the UIWG were:

- the need for greater transparency in acreage bidding processes, including the publication of winning acreage bids; and

- the need for progress on access to upstream facilities.

The Council is aware that these principles are being reflected in reviews currently being undertaken by a number of jurisdictions into their petroleum legislation, ratification Acts, and other relevant legislation and regulation.

The issue of third party access to upstream facilities has emerged as a significant issue in South Australia's Cooper Basin. A review into South Australia's *Cooper Basin (Ratification) Act 1975* identified a number of restrictions on competition where the costs outweighed public benefits. It noted that some of the restrictions arise because of the lack of a third party access regime to the Cooper Basin facilities, and because separate marketing by the Cooper Basin producers is effectively precluded. The review recommended that these restrictions be removed. The Council is awaiting an official response from South Australia on this matter.

Retail competition

Reform at the 'retail' end of the market is the final link in achieving competitive gas prices. The Gas Reform Implementation Group reported on this issue in February 1999, noting that retail competition is closely linked to upstream reform. For example, while a number of retailers have been granted licences in New South Wales, some have reported difficulties in sourcing competitively priced gas. The problems include that the contestable end of the market is already under contract, and difficulties in acquiring competitively priced gas from producers.

One retail issue to have been drawn to the Council's recent attention is Victoria's Significant Producer legislation (SPL). A number of parties claim that the legislation imposes restrictions on significant producers in both the wholesale and retail markets, with adverse consequences for competition.

The Victorian Government has given an undertaking to the Council that if there is evidence that the provisions of SPL are adversely affecting the development of the market and competition, a review into the legislation will be brought forward. The Council will continue to monitor this issue.

Water

The strategic framework

In 1994, COAG agreed to a strategic framework to address the economic, environmental and social implications of future water reform and achieve an economically efficient and ecologically sustainable water industry. The strategic framework recognised the diverse structures that existed across the water industry while providing an integrated approach to water resource management.

Australia is now in its sixth year of implementing the strategic framework. State leaders have recently recommitted to the reforms. The way water is allocated, delivered and paid for has and will continue to fundamentally change. The agreed reforms traverse the urban and rural sectors of the industry, including wastewater and groundwater. They embrace ecological and economic objectives to ensure water is used sustainably and efficiently.

The strategic framework includes the following commitments:

- pricing reform based on the principles of consumption-based pricing, full-cost recovery and removal or publication of subsidies and cross-subsidies;
- implementation of comprehensive water allocation or entitlement systems, including allocations for the environment as a legitimate water user, separated from land title. This will facilitate trade of water and its reallocation to higher value uses;
- the structural separation of the roles of service provision from water resource management, standard setting and regulatory enforcement;
- future investment in new rural schemes or extensions to existing schemes being undertaken only after appraisal indicates it is economically viable and ecologically sustainable;

- the implementation of integrated catchment management and water quality guidelines; and

- educating Australians about the need for water reform and consulting about the way reforms will be implemented.

Developments in 1998-99

In July 1998, the High Level Steering Group on Water, comprising Chief Executive Officers of State water agencies, replaced the Standing Committee on Agriculture and Resource Management Taskforce on COAG Water Reform. The High Level Steering Group is responsible for providing strategic impetus for water reform beyond the implementation of the strategic framework. A key role is to ensure that at the national level every effort is made to overcome impediments to progress and promote best practice collaboration (Matthews 1999).

In January 1999, representatives of the High Level Steering Group, Committee for Regulatory Reform, Australian and New Zealand Environment and Conservation Council and NCC met to consider adjustments to the strategic framework and implementation timetable.

The Prime Minister, in his letter to Premiers and Chief Ministers seeking endorsement of the recommendations noted that the changes, which recognise of the complexity of the implementation task, will result in an extension of the timetable for implementation of the environmental allocations and water trading reforms from 1998 to July 2001. This is balanced, however, by a more rigorous specification of the commitments and implementation path for allocations to stressed rivers and trading arrangements.[21]

21 Letter from the Prime Minister to Premiers and Chief Ministers, 7 April 1999.

Some achievements

Reforms to urban water charges have resulted in cheaper water. A recent survey found that Australian commercial water users received the third cheapest bills of fifteen major Western countries, after registering the highest price five years ago (NUS 1998). The price reduction is credited to the change from property value to consumption based pricing and eliminating the cross-subsidy between commercial and residential sectors.

While pricing reforms have reduced bills, investment in urban water treatment has increased, safeguarding drinking water quality and protecting the environment. Water supply interruptions have decreased in frequency and the duration of water and sewerage interruptions has also decreased. Water businesses are returning increased dividends to government (WSAA 1998).

The States and Territories have worked together to develop benchmarking arrangements for large urban providers, large town providers and irrigation schemes. For example, the Water Services Association of Australia (WSAA) compares 19 urban providers serving in excess of 12 million Australians in areas such as economic, financial and service performance. The benchmarking facilitates informed decision making on issues such as industry structure, competition policy and regulation.

Irrigators are having a greater say in water management. In Victoria for example, Water Services Committees are elected by water users to negotiate and agree with rural water authorities on matters such as pricing, service levels, investment and corporate planning.

Water trading is providing new opportunities to businesses. In the Murray Darling Basin diversions have been capped by agreement. Enterprises needing water must buy it on the water markets. In response to this, the Murray Darling Basin Commission, in conjunction with South Australia, Victoria and New South Wales, is progressing and extending an interstate pilot water trading scheme. In 1997-98, 11.5 per cent of water entitlement (863 GL) in New South Wales was traded. The market value of this water was estimated at between $60-100 million. The net present value of the increase in the value of irrigated agriculture (as compared to the no trade situation) was around $65 million (Marsden Jacob 1999**)**.

States and Territories are responding the challenges of river systems that are stressed through over-extraction of water or changes to natural flow patterns. Common approaches to restoring the health of these rivers include the development of environmental flows, reallocation of water to the environment and supporting integrated catchment management.

Second tranche assessment

The Council assessed water reform progress for the first time as part of the June 1999 second tranche NCP assessment. This assessment demonstrated the commitment of governments to the strategic framework. In most respects, second tranche reform commitments have been met or significant progress has been achieved.

Where the Council was concerned that a reform commitment was not met, a path forward was identified by the State or Territory in all cases. The Council made no recommendations for deductions as a result of implementation slippages. The Council recommended suspension of NCP payments only where it appeared that there was a breach of the strategic framework.

The Council was satisfied that Victoria and the ACT sufficiently met reform commitments. The Council recommended that supplementary assessments be undertaken in respect of various matters as set out in Table B2.2 below.

The task ahead

The second tranche assessment has provided an opportunity to recognise the successes of States and Territories in implementing the strategic framework. In addition, jurisdictions have committed to implement outstanding reform commitments.

While much of the focus was on the urban water industry for the second tranche assessment, for the third tranche the focus will turn to rural water services, providing

Table B2.2: Supplementary assessments, water reform

Jursidiction	Supplementary assessment matter
New South Wales	*June 2000*: Water allocation and trading arrangements.
Queensland	*December 1999*: Urban cost recovery and pricing, institutional arrangements and devolution of irrigation management. Assessment of economic viability and ecological sustainability of rural schemes in Queensland. The Council recommended a suspension of 25 per cent of Queensland's competition payments in respect of this matter. *June 2000*: Water allocation and trading arrangements.
Western Australia	*June 2000*: Water allocation and trading arrangements.
South Australia	*December 1999*: Commercial water pricing. *June 2000:* Bulkwater, commercial and wastewater pricing.
Tasmania	*December 1999:* Implementation of two part tariffs for urban water supply and devolution of irrigation management. *June 2000*: Water allocation and trading arrangements, and institutional reforms.
Northern Territory	*December 1999:* Urban cost recovery, rate of return, cross-subsidies, water allocations and trading (including provision of a timetable for action on priority systems) and institutional reform. The Council will also review criteria for assessing economic viability of new rural schemes and bulk water pricing arrangements.

a better balance of water allocation including water for the environment and improving the quality of water for both users and the environment.

The Council will continue to adopt a co-operative and consultative approach when working with all jurisdictions to complete second tranche reforms and progress commitments that will be assessed in 2001.

Road Transport

The national approach to road transport reform commenced in 1991 with the Heavy Vehicles Agreement and was extended in 1992 with the Light Vehicles Agreement. In April 1995, governments incorporated these national road transport reform programs within NCP. The objective is to create a consistent national regulatory framework aimed at improving transport efficiency, increasing road safety and reducing the administrative and compliance costs of regulation.

Road transport regulation outcomes were required for the second tranche assessment and will also be relevant for the third tranche assessment.

COAG endorsed a 19 point assessment framework for the second tranche, encompassing consistency across jurisdictions in relation to matters such as heavy vehicle registration, heavy vehicle dimensions, loading regulations, managing driver fatigue and driver licensing. The 19 reforms are summarised in Box B2.2. In most cases, the end date for implementing these reforms preceded the date of the second tranche assessment, although three reforms were due by July 1999 and another two by December 1999.

Under NCP, governments have an obligation to implement all designated reforms unless they have an exemption approved by COAG. For the second tranche 19 point program, exemptions were available to Western Australia and the Northern Territory (reforms 6, 7 and 14) and the ACT (reforms 6, 7 and 11). Only the reforms relating to heavy vehicles operating across State borders – nine in total – are relevant to the Commonwealth.

Box B2.2: The 19 point road transport second tranche assessment framework

Reform 1: A national package (Act/regulations/code) for the carriage of dangerous goods by road.

Reform 2: As far as practical, uniform or consistent national procedures and requirements for the registration of heavy vehicles.

Reform 3: Uniform national requirements for key driver licensing transactions including issue, renewal, suspension and cancellation (excluding learner and novice drivers).

Reform 4: Common Mass and Loading Regulations, which impose mass limits for vehicles and combinations, Oversize and Overmass Regulations and Restricted Access Vehicles Regulations, covering the operating requirements for larger vehicles.

Reform 5: Uniform in-service heavy vehicle standards.

Reform 6: Nationally consistent legislative and administrative arrangements for managing truck driver fatigue. Subsequent regulations combine truck and bus driving hours.

Reform 7: Nationally consistent regulation for managing fatigue among drivers of larger commercially operated buses. Subsequent regulations combine truck and bus driving hours (also reform 14).

Reform 8: National mass and dimension limits for heavy vehicles.

Reform 9: Common and simplified licence categories and improved processes to eliminate the holding of multiple licences by single driver.

Reform 10: Expansion of "as-of-right" access for B-doubles and other approved large vehicles.

Reform 11: National in-service pre-registration standards (for heavy vehicles).

Reform 12: Common roadworthiness standards through adoption of roadworthiness standards and guidelines, together with mutual recognition and consistent enforcement.

Reform 13: Enhanced safe carriage and restraint of loads through standard regulations and a practical guide for the securing of loads to apply throughout Australia.

Reform 14: Adoption of national bus driving hours (subsequently included in the Combined Driving Hours Regulations with reforms 6 and 7).

Reform 15: Simplified cost-free interstate conversions of driver licences.

Reform 16: Support by jurisdictions for development of alternative compliance systems.

Reform 17: Options for three and six month registration to provide operational flexibility.

Reform 18: Provision for employers to obtain limited information about an employee's driver licence status, with employee consent.

Reform 19: Agreement to link State/Territory databases to enable automatic exchange of vehicle and driver information through the National Exchange of Vehicle and Driver Information System – Stage 1.

Progress to date

At the time of the second tranche assessment, there had been considerable progress towards implementation of the 19 point framework. Australia-wide, over 80 per cent of the reforms were in place, with commitments from jurisdictions to implement most of the outstanding reforms generally in line with specified end-dates.

New South Wales and Victoria have implemented all requirements in full. The other jurisdictions, while well advanced, were still to implement several reforms at June 1999. On the basis of the information provided by governments, the Council anticipates that the remaining second tranche reforms should be in place by early 2000, although South Australia and Tasmania have foreshadowed the possibility of additional delay due to computer programming requirements. The Council will conduct a supplementary assessment of progress, aimed at ensuring required reforms are in place, prior to 31 March 2000.

Both Tasmania and the Northern Territory are yet to resolve the status of one of the 19 reforms. Tasmania stated that it does not intend to mandate use of driver log books (reform 6) and will seek an exemption, and the Northern Territory is yet to determine its approach to the core demerit points element of national driver licensing reform (reform 3). The Council will consider these issues in the forthcoming supplementary assessment.

The Commonwealth expressed strong commitment to the road reform program, but is not yet able to give a firm indication on implementation timing. This is due to the need to consult with States and Territories in reviewing the *Interstate Road Transport Act 1985*.

One matter which has arisen during the assessment process is the desirability of the Council having direct access to the National Road Transport Commission (NRTC). At present, the Council is prevented from having any contact with the NRTC as the result of a decision by Transport Ministers. Access by the Council to the expert knowledge on the detail and scope of the reform obligations available within the NRTC would greatly assist the Council's work, and ultimately achievement of agreed NCP reforms.

Future directions

Given that advances have been made but that there are still elements of the reform program to be implemented, the Council resolved to undertake a supplementary assessment of road reform progress prior to 31 March 2000 rather than to recommend any reduction in competition payments. For the supplementary assessment, jurisdictions will be expected to have fully implemented the relevant components of the second tranche assessment framework or to have demonstrated an approved exemption for reforms not in place.

In addition, the Council places considerable importance on early development of the third tranche assessment framework. The Council is encouraging governments to set an extensive third tranche program consistent with that envisaged by COAG in 1991 and 1992. The Council encourages governments to consult with the road transport industry in finalising the framework, including on the criteria for assessing successful implementation.

B2.2 Second tranche assessment: the Council's recommendations

Over the period covered by the second tranche assessment, the pace of governments' NCP related activity, both individually and collectively, increased and there was significant progress against governments' NCP agendas. The Council recommended that all States and Territories receive the 1999-2000 component of the second tranche NCP payments, with one exception.

The Council was not satisfied that Queensland had demonstrated that robust, independent appraisals had been conducted to determine the economic viability and ecological sustainability of water projects prior to the State's investment in rural infrastructure and/or that recommendations of such appraisals were being implemented. Consequently, the Council recommended that 25 per cent (approximately

$15 million) of Queensland's potential 1999-2000 NCP payments be suspended pending a supplementary assessment by 31 December 1999.

The Council also identified two matters within the Commonwealth's jurisdiction. The Commonwealth did not conduct reviews of the structural and regulatory arrangements in place prior to privatising:

- Australian National rail services; and
- the Tasmanian rail services (TasRail).

There are no competition payments associated with the Commonwealth's participation in NCP.

Despite strong progress, the Council's second assessment identified several matters requiring governments' attention. The Council reached agreement with relevant governments on a way forward in these areas and will conduct supplementary assessments prior to 31 December 1999, 31 March 2000 and July 2000. As well as the matters for supplementary assessment, the Council identified issues for the third tranche assessment due prior to July 2001.

The Council's supplementary assessment before 31 December 1999 will examine:

- the establishment by South Australia of regulatory arrangements for its electricity industry, as recommended by a review;
- the South Australian Government's response to the recommendations of the *Cooper Basin (Ratification) Act 1975* review to ensure free and fair trade in gas; and
- implementation of aspects of the water reform package in Queensland, South Australia, Tasmania and the Northern Territory.

The Council's supplementary assessment prior to 31 March 2000 will examine:

- implementation of aspects of the second tranche 19 point road transport reform framework by the Commonwealth, Queensland, Western Australia, South Australia, Tasmania, the ACT and the Northern Territory.

The Council's supplementary assessment prior to July 2000 will examine:

- the review and reform of dairy industry arrangements in New South Wales, Queensland, Western Australia and the ACT;

- progress by New South Wales following the in-principle agreement of the New South Wales Government to reform domestic rice marketing arrangements consistent with the recommendation of its NCP review;

- progress with national reviews of monopoly compulsory third party (CTP) motor vehicle insurance and workers 'compensation arrangements;

- progress with a further review by Victoria of the monopoly provision of professional indemnity insurance for solicitors;

- the application by Queensland of the National Gas Access Code; and

- progress with implementation of aspects of the water reform package in New South Wales, Queensland, Western Australia, South Australia and Tasmania.

The Council will also conduct a supplementary assessment of the implications for the implementation of competitive neutrality principles by Queensland arising from the Coachtrans competitive neutrality complaint concerning Queensland Rail. The timing of the supplementary assessment will depend on the outcome of the current judicial review action being taken by Sita Queensland (Coachtrans) and will allow time for the Queensland Government to consider the implications of the judicial review outcome.

The following matters identified during the second tranche will be addressed by the Council as part of its third tranche assessment due prior to July 2001;

- the establishment by the Commonwealth of an effective regime to provide access to Australia Post's network, in line with review recommendations;

- the retention by Victoria of the 8 per cent cap on the number of packaged liquor licences able to be held by an individual or company, contrary to a review recommendation, if the cap is retained beyond 31 December 2000;

- restrictions on retail shop trading arrangements by South Australia retained beyond 31 December 2000, which should be shown to provide a net community benefit;

- further consideration by South Australia of the justification for applying 'needs based' criteria for liquor licensing; and

- the approach by South Australia in relation to restrictions in legislation governing public sector superannuation arrangements.

On 26 July 1999, the Commonwealth Treasurer announced he had accepted the Council's assessment findings and recommendations on the 1999-2000 component of the second tranche NCP payments to States and Territories and the forthcoming supplementary assessments.

B3 The Council's review of TPA exemptions

On 5 June 1998, the Commonwealth Government asked the Council to undertake a national competition policy review of sections 51(2) and 51(3) of the *Trade Practices Act 1974* (TPA). Sections 51(2) and 51(3) contain exemptions from the competition laws in Part IV of the TPA.

The Council undertook extensive consultation with interested parties during the review. It received a total of one hundred and ten submissions in response to its Issues Paper and Draft Report, and also held discussions with a range of interested parties.

The Council completed its report on 5 March 1999. At the time of reporting, the Government was yet to respond to the Council's report.

For each subsection of sections 51(2) and (3), the Council looked at the objectives of the exemption, its costs and benefits, and possible alternatives before making final recommendations.

The policy objectives of the competition laws in Part IV have been described by the courts as proscribing and regulating agreements and conduct and procuring and maintaining competition in trade and commerce. Part IV regulates:

- **horizontal agreements**- anti-competitive agreements between competing firms, such as price fixing;

- **vertical agreements**- anti-competitive agreements between firms at different stages of the production chain, such as exclusive dealing and resale price maintenance;

- **misuse of market power**- the use of market power to eliminate a rival or reduce competition; and

- **mergers and acquisitions**- the merger with or acquisition of an entity that would result in a substantial lessening of competition.

There are five main provisions in Part IV. Some of these provisions prohibit conduct only if it 'substantially lessens competition' in a market, while other provisions prohibit conduct outright because it is seen as always or almost always being anti-competitive.

The exemptions in sections 51(2) and 51(3) restrict competition by cutting down the scope of Part IV of the TPA – i.e. by exempting certain activities from the scope of Part IV. The Council's task was to examine whether these restrictions were justified.

The review did not consider any restrictions contained in legislation in the areas exempted under sections 51(2) and (3). For example, while the review examined whether certain actions in relation to intellectual property should continue to be exempted from Part IV, it did not examine any restrictions on competition contained in intellectual property laws.

B3.1 Section 51(2)(a)

Section 51(2)(a) exempts from Part IV (except for sections 45D, 45E, and 48) conduct that relates to the remuneration, conditions of employment, hours of work or working conditions of employees. Its practical effect is to remove from the reach of Part IV, agreements and arrangements between employers and employees that relate to employment conditions.

The Council recommended that the section 51(2)(a) exemption be retained.

In the absence of section 51(2)(a), certain employment agreements and arrangements might breach Part IV of the TPA. This indicates that the exemption has implications for competition and therefore some potential costs.

While the industrial relations framework serves to minimise these potential costs, some costs arise in employment agreements or arrangements, particularly those established outside of the formal industrial relations framework.

The exemption has a number of benefits: maintaining the primacy of the industrial relations framework in labour market relations; complying with Australia's International Labour Organisation Treaty obligations; and providing relative certainty regarding the application of Part IV to employment agreements and arrangements.

The Council found that the benefits of the exemption outweighed its costs.

It considered there were no non-legislative means of achieving the exemption's objectives.

A revocation mechanism for the exemption could be considered for employment agreements or arrangements that are established outside of the formal industrial relations framework, as part of any future comprehensive review of competition policy and labour market arrangements.

B3.2 Sections 51(2)(b), (d) & (e)

Section 51(2)(b) exempts restrictive provisions in employment contracts. The exemption encompasses conditions of work between employer and employee, and services provided by independent contractors pursuant to a contract for services.

Section 51(2)(d) exempts any provision in a contract, arrangement or understanding (otherwise called an 'agreement') between partners that relates to the terms of the partnership, the conduct of the partnership business or competition between the partnership and a party to that agreement. Section 51(2)(d) is concerned with more than restrictive covenants and extends to generally exempt partnership arrangements and conduct of the partnership business. It operates to prevent the normal conduct of a partnership from breaching the price fixing prohibitions in the TPA.

Section 51(2)(e) exempts any restrictive provision of a contract that is solely for the protection of the purchaser in respect of the goodwill of a business.

Restrictive covenants protected by section 51(2) continue to be subject to the common law doctrine of restraint of trade.

The Council recommended that the exemptions in sections 51(2)(b),(d) and (e) be retained.

The objectives of these exemptions are to resolve any conflict between the application of the common law doctrine of restraint of trade and the TPA, to enable the use of certain restrictive covenants and to maintain certainty by ensuring that existing judicial consideration is relevant.

The exemptions do not protect behaviour that would be likely to substantially lessen competition in a market. The majority of businesses relying on the exemptions are operating in competitive markets and have little market power. The application of the common law doctrine of restraint of trade adequately regulates the use of restrictive covenants.

The exemptions provide net benefits by ensuring that appropriate commercial activities that rely on these types of agreements can continue with a degree of certainty. In the absence of the exemption these types of agreements would breach the per se provisions of Part IV, specifically the prohibitions on exclusionary provisions and price fixing.

The Council found that the benefits of the exemptions outweighed their costs.

There are no alternative legislative means of achieving the objectives. Alternatives in terms of authorisation and notification under the TPA are not practical for these types of conduct.

B3.3 Section 51(2)(c)

Section 51(2)(c) provides an exemption for provisions in agreements dealing with recognised standards.

The exemption operates so that where there is an obligation on the part of a person to meet a standard of dimension, design, quality or performance prepared or approved by the Standards Association of Australia (SAA) or by a prescribed association or body, the arrangement is exempt from Part IV of the TPA.

The Australian Gas Association (AGA) is, to date, the only prescribed body for the purposes of Section 51(2)(c).

The Council recommended that the exemption in section 51(2)(c) be removed from the TPA and the Competition Codes in the States and Territories.

The Council's recommendation to remove the exemption is not intended to depreciate the importance and relevance of recognised standards to the community, governments and the courts. The Council recognises that national and international standards are pro-competitive and contribute to free trade. But the Council considers the exemption unnecessary because the use of recognised standards does not involve a breach of Part IV of the TPA.

The exemption may, in some rare circumstances, protect anti-competitive horizontal arrangements involving the collective adoption of standards of the SAA and AGA.

There is no evidence to suggest that the exemption offers any benefits such as promoting the development and use of standards.

There are alternative non-legislative means of achieving the objective of the exemption. Steps taken by governments to reform the standards setting procedures of the SAA and review the use of standards in regulation are more direct, transparent and effective means of promoting the development and use of standards than an exemption from Part IV of the TPA.

The Council considered that there is little foundation to concerns that removal of the exemption will undermine the development of standards by the SAA and AGA, undermine the certification scheme operated by the AGA, or undermine public safety, because the exemption does not address these issues.

B3.4 Section 51(2)(g)

Section 51(2)(g) provides an exemption for a provision of a contract, arrangement or understanding that relates exclusively to the export of goods from Australia or to the supply of services outside Australia.

The Council recommended that the exemption in section 51(2)(g) be retained in its current form.

The exemption is unlikely to restrict competition in an Australian market and therefore, there are no costs.

The exemption provides benefits in terms of certainty and placing Australian exporters on an equal footing with foreign exporters. The exemption may have increased use in the future due to reforms in statutory marketing arrangements and growth in the services sector.

Authorisation (and notification) under the TPA was not considered a practical alternative to the exemption.

B3.5 Section 51(3)

Section 51(3) of the TPA exempts certain conditions in licences and assignments of intellectual property from some of the provisions of Part IV of the TPA. The section

provides that conditions that 'relate to' the subject matter of patents, registered designs, copyright, trade marks, and circuit layouts are exempt from sections 45, 45A, 47, 50 and 50A. Section 51(3) does not provide an exemption from sections 46 or 48.

The Council made a number of recommendations, including:

- that the exemption in section 51(3) be retained, but amended to remove protection of price and quantity restrictions and horizontal agreements.

- extending section 51(3)(a) to cover the rights granted under the *Plant Breeder's Rights Act 1994* (Commonwealth).

- that the ACCC formulate guidelines for the assistance of industry:

  - when intellectual property licensing and assignment conditions might be exempted under section 51(3);

  - when intellectual property licences and assignments might breach Part IV of the TPA; and

  - when conduct in relation to intellectual property that does not fall within the exemption and is likely to breach Part IV of the TPA might be authorised.

The Council examined section 51(3) on the basis that intellectual property laws are not inconsistent with competition laws. In the Council's view, intellectual property laws create exclusive property rights similar to the exclusive rights associated with other forms of property. As most intellectual property owners compete in broader markets, they may not possess sufficient market power to raise any concerns from a competition law perspective.

The exemption may foster a climate of greater certainty in which intellectual property licensing may take place. It may also reduce compliance costs associated with checking whether proposed conduct might be in breach of the TPA. However, due to the narrow scope of the exemption, the Council considers that its benefits are relatively limited.

The exemption has some costs. It may permit:

- horizontal arrangements such as price-fixing, cross-licensing, and patent pooling; and

- price and quantity restrictions,

that substantially lessen competition and reduce incentives to innovate. These costs outweigh the benefits that section 51(3), as currently drafted, provides.

The Council examined a number of alternatives, including:

- exempting conduct considered within the scope of the grant of intellectual property rights;

- narrowing the exemption to remove protection of conduct considered most likely to substantially lessen competition (price and quantity restrictions, and horizontal agreements); and

- repealing section 51(3) and asking the ACCC to issue guidelines explaining the approach to be taken in relation to intellectual property licensing and assignment.

The Council considered that narrowing the exemption to remove protection of price and quantity restrictions, and horizontal agreements was the best approach. This approach imposed the least costs while preserving most of the possible benefits provided by section 51(3). The Council recommended that the ACCC issue guidelines explaining the scope of the amended section.

B4 Access to infrastructure

During 1998-99, the Council received a number of new certification and declaration applications under Part IIIA of the *Trade Practices Act 1974* (Commonwealth) as well as working on continuing matters.[22]

B4.1 Overview of declaration activities

During 1998-99, the Council received one application seeking declaration of infrastructure facilities. This application brought the number of applications for declaration since enactment of Part IIIA to 21.[23] A chronological summary of these applications appears in Table B4.1 at the back of this section.

The Council was also involved in two Australian Competition Tribunal (Tribunal) matters in 1998-99 that related to earlier applications.

Robe River Iron Ore Associates declaration application

The application

On 24 September 1998, the Council received an application from Robe River Iron Associates (RRIA) for declaration of the rail line service provided by Hamersley Iron Pty Ltd (Hamersley) in the Pilbara region of Western Australia.

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22 Full details of the Council's declaration and certification work are available from the Council's homepage at http://www.ncc.gov.au.

23 Of these, ten applications were lodged by Australian Cargo Terminal Operators in respect of access to services at Sydney and Melbourne International Airports, and five by Specialized Container Transport in respect of access to rail services in WA.

RRIA sought declaration of the rail line service provided by Hamersley so that it could use its trains to transport iron ore from its proposed West Angelas mine to Hamersley's line and along Hamersley's line to RRIA's overpass in the north of Chichester National Park. From that junction, RRIA would continue on its own rail line to its port at Cape Lambert.

The process

The Council adopted a public consultation process in assessing this application. It placed advertisements on 29 September 1998 seeking submissions from interested parties by 2 November 1998. The Council provided an Issues Paper to assist interested parties to prepare submissions. Additional time was given to several parties to allow them to adequately prepare their submissions.

Members of the Secretariat met with RRIA and Hamersley and other interested parties and visited RRIA's and Hamersley's operations in the Pilbara.

The Council received five submissions on the application.

In the course of its assessment of the application, the Council recognised that certain issues required further consideration. Accordingly, the Council decided to release a Discussion Paper before finalising its recommendation to the Minister for Financial Services and Regulation.

In the Discussion Paper, the Council sought views from interested parties on certain issues arising from the assessment of criteria (a), (b) and (f) of section 44G of the Act. Two responses were received.

To assist the Council's assessment of criterion (b), it retained Rail Management Services Pty Ltd (RMS) to conduct a study comparing the costs of:

- building an entirely new line from the Central Pilbara to RRIA's existing line to provide the service RRIA seeks; versus

- extending Hamersley's existing line by increasing the number of passing loops; versus

- converting Hamersley's existing line to a dual track.

The Council also asked RMS to investigate the impact access may have on the technical efficiency of Hamersley's operations, being:

- potential technical efficiency losses due to loss of control by Hamersley; and

- potential technical efficiency gains due to economies of scale, especially if the relevant infrastructure were to be converted to a dual track as a minimum.

Interested parties were invited to comment on the content of, and conclusions reached by, RMS. Hamersley did not participate in the study and does not endorse the results of the study.

The Council also retained Dr Joshua Gans, Associate Professor at the Melbourne Business School, University of Melbourne, to advise it.

Federal Court action

On 30 October 1998, Hamersley brought an action in the Federal Court against the Council and RRIA. Hope Downs was later joined as a respondent.

Hamersley argued that the rail line service was not a service for the purposes of Part IIIA but an integral part of its production process that was exempt from the application of Part IIIA. Accordingly, Hamersley argued the Council did not have jurisdiction or power in relation to the application.

Hamersley sought orders including:

(a) a **declaration** from the Federal Court that its rail line service is not a service within the meaning of section 44B of the TPA;

(b) a **declaration** from the Federal Court that it has a right to sole and exclusive possession and control of the rail facility by virtue of the agreement between it and the State of Western Australia – the *Iron Ore (Hamersley Range) Agreement Act 1963*;

(c) a **declaration** that the Council does not have the power or jurisdiction to:

(i) accept, consider, review, investigate, request or receive any submission in relation to or otherwise deal with the access application; or

(ii) make a recommendation regarding declaration of the Hamersley rail track service to the designated Minister pursuant to section 44F(2)(b) of the Act. (Hamersley 1998, pp. 2-3); and

d) a permanent **injunction** to restrain the Council from any further dealing with the application and from making a recommendation to the Minister.

Hamersley sought an order that the Council should provide no less than five days' written notice of its intention to make a declaration recommendation to the Minister. The Council gave an undertaking to that effect to the Court.

The trial commenced on Monday 19 April before Justice Kenny and finished on Wednesday 28 April.

The Council provided Hamersley with the five days notice on 21 June 1999 that it would forward its recommendation on 28 June 1999.

The Court handed down its decision on Monday 28 June 1999.

The Court granted Hamersley's application for declarations as detailed in (a) and (c) above. It made no finding in respect of (b). It followed from the declaration under (a) that the Council did not have the power to make a recommendation regarding declaration of the rail track service. The Council undertook not to proceed further with the application.

The Court concluded the service to which RRIA was seeking access is an integral (and not subsidiary) part of a production process and therefore not a 'service' within the meaning of Part IIIA.

In relation to Hamersley's argument that it had a right of sole and exclusive possession, the Court, while noting that this question should only be sought to be resolved if and

when it arises in the declaration process, found that as the service was exempted from consideration under Part IIIA, a decision on this matter would be academic.

Hope Downs and the Council have lodged appeals against the decision.

B4.2 Australian Competition Tribunal matters

Application for review of decision by Sydney Airport Corporation

The Council's 1997-98 Annual Report provided details of an application for declaration of particular services at Sydney Airport that related to ramp handling and cargo terminal operations. The Council had recommended declaration of some of those services and the Treasurer had accepted those recommendations and declared the services. Sydney Airports Corporation (formerly Federal Airports Corporation) applied to the Tribunal for a review of the Treasurer's decision.

The application was heard by the Tribunal in December 1998. The parties to the hearing were Sydney Airports Corporation, Ansett Australia, Australian Cargo Terminal Operators, South Pacific Air Motives and International Business Management Services. The Council's role was to assist, provide information and make reports as requested by the presiding member of the Tribunal (see section 44K(6) of the TPA).

The Tribunal is yet to hand down its decision.

Application for review of decision by the New South Wales Minerals Council

In the Council's 1997-98 Annual Report, it was reported that the New South Wales Minerals Council had applied for a review of the New South Wales Premier's decision not to declare the rail service provided by the Hunter Rail Line infrastructure.

A preliminary issue for the Tribunal was whether section 78 of the *Competition Policy Reform Act* (CPRA) excluded the Hunter Rail Line service from the operation of Part IIIA of the TPA until July 2000. Section 78 deems a government coal-carrying service to not be a service for the purposes of Part IIIA of the TPA. This issue was referred to the Full Federal Court, which decided that the service provided by Rail Access Corporation through the Hunter Rail Line was not a 'government coal-carrying service' and therefore section 78 of the CPRA did not apply.

The matter was then returned to the Tribunal for determination of the application for review. This application has not been finalised.

B4.3 Overview of certification activities

During 1998-99, the Council received eight new applications from State and Territory governments seeking to have their regimes 'certified' as effective under Part IIIA, making a total of eleven certification applications since its enactment.

To date, three regimes have been certified as effective. The Council is considering its recommendation on seven applications, while one application was withdrawn.

Table B4.2, at the back of this section, summarises the Council's certification work.

National Gas Code for third party access to natural gas pipelines

The Council has received applications from five State and Territory governments seeking certification of their applications of the National Gas Code.

South Australian Gas Access Regime

The Council received South Australia's application in June 1998. After conducting a public process the Council recommended certification of the Regime. The Minister for Financial Services and Regulation certified the Regime on 8 December 1998.

Queensland Gas Access Regime

The Council received Queensland's application for certification in September 1998. After agreeing a process for consideration of the Regime with Queensland, the Council circulated an issues paper requesting comment from interested parties in April 1999.

The Queensland Gas Access Regime contains a number of derogations affecting several existing and proposed transmission pipelines. These derogations quarantine the pipelines from having to comply with the pricing principles of the National Code for varying periods of time. It is intended that the pricing principles that exist in each of these pipeline's current access arrangements will continue to operate through these periods. The Council has sought the advice of the ACCC on whether the pricing principles that do apply to these pipelines are broadly consistent with the National Code.

Australian Capital Territory Gas Access Regime

The Council received the ACT application in January 1999 and conducted a public process to consider the Regime. The Council raised with the ACT the issue of conflict of interest in the merged role of the regulator/arbitrator under the Regime. The ACT Government informed the Council that it was proposing to address the issue through amendments to the *Independent Pricing and Regulatory Commission (ACT) Act 1997*. The Council is awaiting advice that the amendment has been passed prior to sending its recommendation to the Commonwealth Minister.

Another issue is the impact of the recent High Court decision on cross-vesting on appeal mechanisms in the National Code. The model adopted in the National Code is affected by the High Court decision and amendments to the appeals processes of the National Code are necessary. This matter is currently being considered by all jurisdictions through the National Gas Pipelines Advisory Committee (NGPAC).

New South Wales Gas Access Regime

The Council received the New South Wales Government's application for certification in October 1998 and after conducting a public process, forwarded its recommendation to the Minister for Financial Services and Regulation in March 1999.

The Minister is yet to make a decision, pending the resolution of the cross-vesting issue discussed above.

Western Australian Gas Access Regime

The Council received Western Australia's certification application in March 1999. The Council released an issues paper and conducted a public process to assist in its consideration of the Regime. The Council is yet to make its recommendation to the Minister for Financial Services and Regulation.

Third party access to rail services

The Council has received four applications requesting the Council recommend certification of rail regimes. South Australia and Northern Territory lodged a joint application.

Western Australian Rail

The Council received an application from the Western Australian Government in February 1999 seeking certification of its rail access regime.

The Council advertised the application, published an issues paper and requested public submissions on whether the regime complied with the certification criteria in clause 6 of the CPA. The Council received submissions from ten interested parties.

The Council is currently considering the information it has received and is discussing issues with interested parties and the Western Australian Government.

The Council proposes to release a draft recommendation to enable further public consultation in September 1999.

Northern Territory/South Australian Rail

On 18 March 1999, the Council received an application from the Northern Territory and South Australian Governments to recommend certification of a Regime for access to rail services provided by existing track between Tarcoola and Alice Springs and to be provided by new track between Alice Springs and Darwin. The Council subsequently advertised receipt of the Regime and published an issues paper calling for submissions from interested parties.

The Council is currently considering the information it has received and is discussing issues with interested parties and the Northern Territory and South Australian Governments.

Queensland Rail

On 19 June 1998, the Council received an application from the Queensland Government to certify as an effective a regime for third party access to certain rail services in Queensland. The Council prepared an issues paper and received submissions from interested parties on the application.

On 11 February 1999, the Queensland Government withdrew its application for certification. The Queensland Government has advised the Council that it is committed to the certification process and will continue to work with the Council to facilitate a satisfactory outcome.

The Council discontinued its assessment of Queensland's access regime for rail services.

New South Wales Rail

In its 1997-98 Annual Report, the Council discussed in detail the New South Wales Rail Access Regime. The Council had outlined to New South Wales areas where the Council's processes had identified concerns with effectiveness of the regime. New South Wales proposed a number of amendments to the regime that the Council considered sufficient to make a draft recommendation. The Council released this in April 1998 and invited further public submissions.

The Council considered the further information provided and waited until the New South Wales Government implemented amendments to the Regime resolving its concerns. In April 1999, the Council sent its recommendations to the Minister for Financial Services and Regulation. The Minister has yet to make his decision.

Table B4.1: Chronological summary of applications for declaration dealt with by the Council

Application	Service	Council Recommendation	Minister's decision	Outcome
Australian Union of Students (April 1996)	Payroll deduction service provided by DETYA	Not to declare (June 1996)	Not to declare (August 1996)	Appeal lodged (August 1996); Decision not to declare upheld by the Australian Competition Tribunal (July 1997)
Futuris Corporation (August 1996)	WA gas distribution service			Application withdrawn (November 1996)
Australian Cargo Terminal Operators (November 1996)	Qantas ramp and cargo terminal services at Melbourne and Sydney international airports (2 applications			Application withdrawn
Australian Cargo Terminal Operators (November 1996)	Ansett ramp and cargo terminal services at Melbourne and Sydney international airports (2 applications)			Application withdrawn
Australian Cargo Terminal Operators (November 1996)	Particular airport services at Sydney International Airport (3 applications)	To declare (May 1997)	To declare (July 1997)	Services declared from August 1997 until July 2002. Decision stayed pending appeal to Australian Competition Tribunal (July 1997)

Application	Service	Council Recommendation	Minister's decision	Outcome
Australian Cargo Terminal Operators (November 1996)	Particular airport services at MelbourneInternational Airport (3 applications)	To declare (May 1997)	To declare for a period of 12 months (July 1997)	Services declared from August 1997 until 9 June 1998. Thereafter subject to access provisions of *Airports Act 1996*(Cwth)
Carpentaria Transport (December 1996)	Qld rail services, including above rail services	Not to declare (June 1997)	Not to declare (August 1997)	Decision appealed - appeal then withdrawn. Access was negotiated (August 1997)
Specialized Container Transport (February 1997)	New South Wales rail line services (Sydney to Broken Hill)	To declare (June 1997)	Decided not to make a formal decision. Deemed not to declare due to lapse of time (August 1997)	Decision appealed (August 1997) - appeal later withdrawn . Access negotiated.
New South Wales Minerals Council (April 1997)	New South Wales rail line services in Hunter Valley	To declare (September 1997)	Decided not to make a formal decision. Deemed not to declare due to lapse of time (November 1997)	Decision appealed (November 1997) Appeal pending

Application	Service	Council Recommendation	Minister's decision	Outcome
Specialized Container Transport (February 1997)	(1) WA rail services; (2) arriving/departing services (3) marshalling/shunting service; (4) marshalling/ shunting access; (5) fuelling service (5 applications)	To declare (1) rail service; not to declare other services (November 1997)	Not to declare any of the services	Access-seeker appealed Minister's decision. (February 1998) Appeal later withdrawn and access negotiated
Robe River (August 1998)	Hamersley rail services			Federal Court decision that service not within Part IIIA (June 1999). Federal Court decision appealed. Appeal pending

Table B4.2: Summary of certification applications dealt with by the Council

Application	Service	Council Recommendation	Minister's decision	Outcome
New South Wales Gas Distribution Networks Regime (October 1996)	Access to services of relevant gas pipelines	To certify (May 1997)	To certify (August 1997)	Certified; only intended as interim regime
Victorian commercial shipping channels (December 1996)	Access to commercial shipping channels leading into Melbourne Port	To certify (May 1997)	To certify (August 1997)	Certified
New South Wales Gas Access Regime (October 1998)	Access to services of relevant gas pipelines	Sent to Minister, but not publicly available (March 1999)	Postponed	Certification of Regime postponed pending resolution of cross-vesting issues
South Australian Gas Access Regime (June 1998)	Access to services of relevant gas pipelines	To certify (September 1998)	To certify (December 1998)	Certified
Queensland Gas Access Regime (September 1998)	Access to services of relevant gas pipelines			Under consideration by Council

Application	Service	Council Recommendation	Minister's decision	Outcome
ACT Gas Access Regime (January 1999)	Access to services of relevant gas pipelines			Under consideration by Council
Western Australian Gas Access Regime (March 1999)	Access to services of relevant gas pipelines			Under consideration by Council
WA Rail (February 1999)	Access to rail services			Under consideration by Council
Northern Territory/ South Australian Rail (March 1999)	Access to rail services			Under consideration by Council
Queensland Rail (June 1998)	Access to rail services			Under consideration by Council
New South Wales Rail (June 1997)	Access to rail services	Sent to Minister but not publicly available (April 1999)		Under consideration by Minister

B5 Rail

B5.1 National rail access

While the NCP agreements include specific arrangements to cover reforms in electricity, gas, road transport and water, they do not cover rail services. Because of this, rail users, particularly those using interstate track, have faced a different set of circumstances to those seeking access to other infrastructure services.

Although each State and Territory can establish access arrangements within their jurisdictions, this does not overcome the requirement that interstate users must deal with multiple regimes. For example, Specialized Container Transport in its submission to the 1999 PC inquiry on progress with rail reform, noted:

> *The difficulty with the state-based arrangements [is]... that each state started out with different requirements and perceptions. It is the removal of the different perceptions and requirements that is needed...* (Specialized Container Transport, submission to PC inquiry into rail reform, submission 37, p. 2).

In 1997, governments signed a rail agreement that recognised the clear and urgent need to reform interstate rail. An important part of the agreement relevant to the work of the Council is the access arrangements. The rail agreement includes arrangements to provide Australia-wide track access as a single service to rail operators, thereby avoiding the need to seek separate access in each State.

B5.2 Rail inquiries and reviews

There have been several recent government inquiries relating to rail reform. The House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform (HORSCCTMR) reported in 1998 on the role of rail in the national transport network (HORSCCTMR 1998). The Rail Project Taskforce (Smorgon taskforce) investigated the role of government in facilitating rail investments (Rail Projects Taskforce 1999). The draft report of the PC inquiry into progress in rail reform summarises the reform process so far, including other reviews which have reported (PC 1999b)

In addition, the States and Territories, through the Standing Committee on Transport (SCOT) are reviewing rail safety arrangements, with a special focus on interstate safety issues. The Committee is expected to report before the State and Territory Ministers meet in November 1999.

Despite the 1997 agreement and the reviews completed and underway, rail users are still critical of progress. In particular, they are looking for improved access arrangements. For example, the Interstate Rail Operators Group - comprising National Rail Corporation, Toll Holdings Limited and Specialized Container Transport - has stated that:

> *The Group recognises the considerable effort of the ARTC and other bodies in working towards a national regime, but nonetheless, the Group is concerned about:*
>
> - *The lack of progress in implementing an effective national access regime and underlying agreements that create a competitive environment within which rail can recover ground from road... .*
>
> - *The proliferation of state-based regimes which entrench state boundaries and in some cases create disincentives to grow interstate rail traffic...*

(Toll Holdings 1999, pp. 16-17.)

B5.3 Part IIIA processes

Because of the way rail reform has proceeded and the continuing disquiet over progress, considerable attention has focussed on the Council's processes. In particular, the slow pace of change has meant that parties have been relying on the general provisions of the CPA and, in particular, the National Access Regime included in Part IIIA of the TPA. However, as these processes have demonstrated, access arrangements alone cannot address all the problems.

While five applications for access through declaration of rail services have been received by the Council, for the four on which the Council has made recommendations, the Minister responsible has accepted those recommendations on only one occasion. In all four instances, the decision of the Minister has been appealed. In three cases, the appeal was later withdrawn once access had been negotiated.

This experience highlights some of the imperfections in the access declaration process. In particular, the process can be lengthy. If the Minister does not make a decision, the application is not successful, and because the Minister does not have to give reasons in this instance, the process can sometimes lack transparency. While it may open up access for some, by encouraging negotiated agreements between the applicant and the infrastructure owner, the degree to which competition emerges can be compromised if that access is not available more widely.

States are developing their own rail access regimes, some of which cover all rail services, not just those applying to intrastate freight. To date, several States have applied to the Council to have these regimes certified as effective. The Council is currently considering applications from New South Wales, Western Australia and South Australia/Northern Territory. Queensland has withdrawn its certification application.

Apart from problems in implementing access regimes and in gaining access through declaration – such as agreeing on pricing, asset valuation, scheduling and so on – there are also problems in interstate access which arise because of the need to deal with multiple bodies. In particular, using the interstate rail network involves interactions with rail authorities which operate under their own access regimes,

causes uncertainty and complexity in negotiating access. As each rail authority has an access regime tailored to local conditions and needs, there can be a resultant lack of uniformity in a number of important areas such as safety accreditation, operating and technical standards as well as the conditions under which access would be granted.

In assessing State regimes for certification, the Council is required to consider these issues and determine the impact of the regime on rail services operating across State borders. However, the Council's ability to take a national view is limited by the timing of the submission of the access regimes and the nature of those regimes. In addition, there are no accepted national standards for many of the technical and operations aspects of interstate access. Moreover, aside from the issues arising from interstate services, track users still face multiple sets of requirements if they operate in more than one State and thus have dealings with more than one infrastructure owner.

Since the 1997 inter-governmental agreement, there has been much groundwork undertaken to enable interstate rail access arrangements to be implemented, although there is still some way to go and progress has been slow. Clearly, there are areas of overlap between interstate and intrastate regimes. In exercising its responsibility to assess State regimes, the Council places considerable weight on the objective of the national process - Australia-wide track access. This means that the Council's involvement in the national rail access regime will focus, among other things, on ensuring that State regimes and the national process are compatible.

Part C

C1 Organisation

C2 Functions

C3 Management

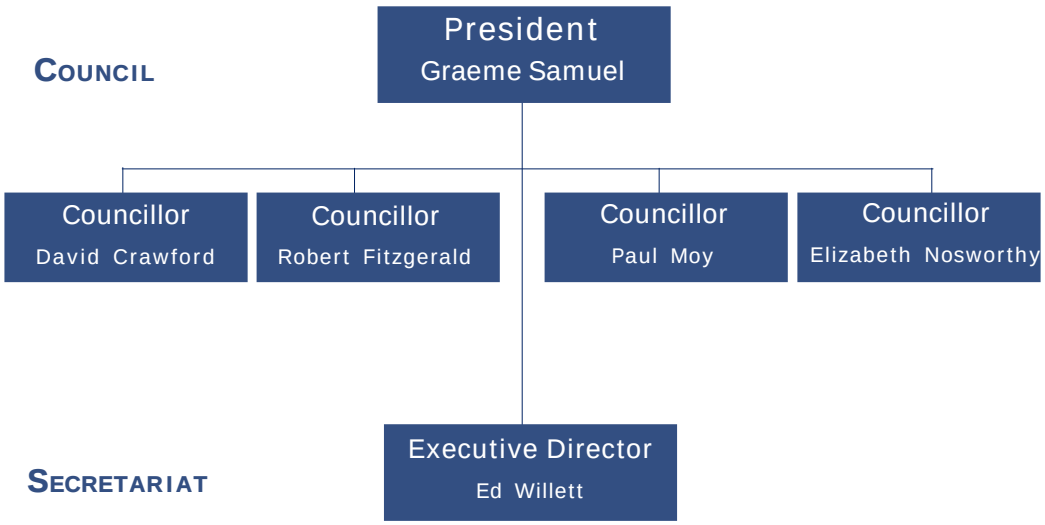
C4 Financial Statements

C1 Organisation

C1.1 Structure

The National Competition Council currently comprises five part-time Councillors, with a secretariat of 20 staff located in Melbourne. The structure of the Council at 30 June 1999 is illustrated in Figure C1.1.

Figure C1.1 National Competition Council organisation chart



C1.2 The Council

Councillors

The members of the Council are drawn from different areas of the private sector to provide a range of skills and experience. The appointments are made jointly by the Commonwealth, State and Territory governments. The Councillors are: Graeme Samuel, President (who is resident in Melbourne); David Crawford (Perth); Robert Fitzgerald (Sydney); Paul Moy (Sydney); and Elizabeth Nosworthy (Brisbane). Each of the Councillors has been appointed for a term of three years.

Graeme Samuel

Graeme Samuel is a Company Director. He was a co-founder of Grant Samuel & Associates, corporate advisors.

Until 1986 Graeme Samuel was Executive Director of Macquarie Bank Limited (from 1981-1986) in charge of its Victorian operations and a Director of its Corporate Services Division.

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

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

Graeme Samual attended Wesley College, Melbourne, and subsequently obtained a Bachelor of Laws from Melbourne University and a Master of Laws from Monash University, and in 1971 was awarded the Law Institute of Victoria Solicitor's Prize. In 1998 he was appointed an Officer of the Order of Australia (AO).

David Crawford

David Crawford is the Chairman of Export Grains Centre Ltd, and a Member of Transfield Pty Limited (WA Advisory Board), Curtin University Graduate School of Business (Board of Advisors), WA Trade Advisory Council and WA Government Treasury Advisory Group.

Between 1997 and 1998 David Crawford was Chief Operating Officer of Ranger Minerals NL. This was preceded by seven years with Wesfarmers Limited: initially as Managing Director, Western Collieries Limited; and ultimately as Executive Director, Corporate Affairs, Westfarmers Limited.

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

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

Robert Fitzgerald

Robert Fitzgerald has practised as a commercial and corporate solicitor since 1979. He has been engaged by the legal firms of C R Fieldhouse, Clayton Utz and was principal of his own commercial legal practice, Robert Fitzgerald and Associates. He

was also engaged as a senior management consultant with Horwath (NSW) Accountants, specialising in licensing and franchising areas.

Robert Fitzgerald holds appointments as: Associate Commissioner, Productivity Commission's National Inquiry into Australia's Gambling Industries; and Commissioner, Community Services Commission NSW.

His previous community positions include National President of the Australian Council of Social Services (1993-97), Commissioner NSW Catholic Commission on Employment Relations, State President St Vincent de Paul Society (NSW) (1989-94) and Chairman, JOBfutures Limited (a national network of community based employment services organisations). In 1994 he was appointed a Member of the Order of Australia (AM).

He has also held other appointments including Chairman of the Franchise Code Administration Council, Chairman of the Commonwealth Franchising Task Force, Member of the Advisory Council to the Law Foundation of NSW and Member of the Special Policy Advisory Group to the Minister for Social Security.

He holds degrees in law and commerce from the University of NSW.

Dr Paul Moy

Paul Moy is an Executive Director of Warburg Dillon Read.

His experience covers a wide range of economics and finance in the public and private sectors. Prior to joining Warburg Dillon Read he was the Director of Investment Banking for Fay Richwhite and prior to that the Deputy Secretary of the New South Wales Treasury. Paul Moy was also a key advisor in Heads of Government Meetings from 1990 to early 1994.

Paul Moy's involvement with industry and utility reform, both inside the public sector and as an advisor, spans a large number of sectors including electricity, water, rail, waste management, ports, forestry, telecommunications and grain handling.

He is the Chair of the Fund Management Committee of the Industry Research and Development Board, responsible for administering the Innovation Fund program, a venture capital fund targeted at early stage innovation involvement.

Paul Moy has an Honours degree and PhD in Economics.

Elizabeth Nosworthy

Elizabeth Nosworthy spent some 25 years as a partner in a national legal practice, covering a wide range of commercial disciplines. She is currently a professional company director and a Fellow of the Australian Institute of Company Directors.

Elizabeth Nosworthy is Chairman of the Port of Brisbane Corporation and Deputy Chairman of the Queensland Treasury Corporation. She is a Director of Telstra Corporation Limited, David Jones Limited, GPT Management Limited, The Foundation for Development Corporation, and City of Brisbane Arts and Environment Limited. She is also a Member of the Australian Greenhouse Office Experts Group on Emissions Trading, and Adjunct Professor of Law at the University of Queensland.

She holds degrees in Arts and Law from the University of Queensland and a Masters of Laws from London School of Economics.

Council meetings

Table C1.1 lists the meetings of the Council held during 1998-99. While the Council generally meets on a monthly basis, its workload sometimes requires more frequent meetings. During 1998-99, the Council met on 11 occasions. The Council held the meetings in Melbourne and made use of teleconference facilities to ensure the maximum number of Councillors possible were involved in the discussions.

Table C1.1 National Competition Council meetings 1998–99

Date of Meeting
21 July
31 August
22 September
23 October
22 February
6 March
23 March
20 April
25 May
15 June
29 June

C1.3 The Secretariat

The Council is supported by a Secretariat that is located in Melbourne and provides advice and analysis at the Council's direction on matters related to the implementation of NCP. It represents the Council in dealings with Commonwealth, State and Territory government officials and other parties with interests in competition policy matters. It has been involved in several intergovernmental committees dealing with competition issues including the Gas Reform Implementation Group, Competitive Neutrality Roundtable Committee and the SCARM Task Force on Water Reform. Secretariat staff also present conference papers on issues related to the Council's work program.

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

Overview of staffing developments

The number of Secretariat staff employed by the Council in 1998-99 remained relatively constant at around 20 with some minor fluctuations during the year. At June 30 1999, the Executive comprised the Executive Director, Deputy Executive Director and 2 Directors, and staff comprised 2 directors involved in research and policy matters, 9 research/policy officers, a Corporate Service Manager and 3 administrative staff.

The Council is a small organisation that covers a diverse range of issues and has always drawn on the expertise of people outside the Council. The Council has seconded officers from other government and private organisations to work on specific projects, and also engaged consultants, sometimes to work within the Council offices.

The majority of Secretariat staff are employed under the *Public Service Act 1922*. During 1998-99 the Council and staff negotiated a Certified Agreement which governs the conditions of employment for the period February 1999 to February 2001. Three officers have been employed on Australian Workplace Agreements or contract. The Council has no inoperative staff. Information on staff profiles is provided in Tables C1.2 and C1.3 below.

Table C1.2 Staff profile, 30 June 1999

Level	Female	Male	Total
Senior Executive Service Band 2	0	1	1
Senior Executive Service Band 1	1	0	1
Executive Level 2 & AWAs	3	1	4
Executive Level 1 & AWAs	3	5	8
APS 6	1	1	2
APS 5	0	1	1
APS 4	0	0	0
APS 3	1	0	1
APS 2	0	0	0
APS 1	1	0	1
Total	**10**	**9**	**19**

Table C1.3 Staff by employment status, 30 June 1999

Level	Female	Male	Total
Full-time permanent	9	6	15
Full-time temporary	0	2	2
Part-time staff	1	1	2
Total	**10**	**9**	**19**

Consultants

The Council used consultants in 1998-99 where it considered it was efficient and cost-effective to do so. Table C1.4 lists the number and value of consultancies engaged. Some of these projects are ongoing so that the total cost will not be paid until 1999-2000. The value of consultants engaged in 1998-99, but paid in 1999-2000, was $8 125.

Table C1.4 Summary of consultants engaged 1998-99

Purpose	Number	Contract amount ($)
Legal advice	10	174 107
Economic advice	2	67 284
Publications and corporate services	1	80 000
Computer	1	17 116
Total	**17**	**338 507**

C2 Functions

Agency overview

The role of the National Competition Council is to implement and monitor National Competition Policy and the related reforms embedded in formal agreements and frameworks developed and agreed to by all Australian governments. The Council's responsibilities include promoting and increasing public awareness of government competition reform agendas, recommendations on applications for infrastructure access under Part IIIA of the *Trade Practices Act*, and assessing whether governments have made satisfactory progress towards competition policy reform.

The Council aims to provide professional advice to governments recognising the need to seek creative solutions for reform, and that competition when applied appropriately will result in greater economic growth, less unemployment and better social outcomes.

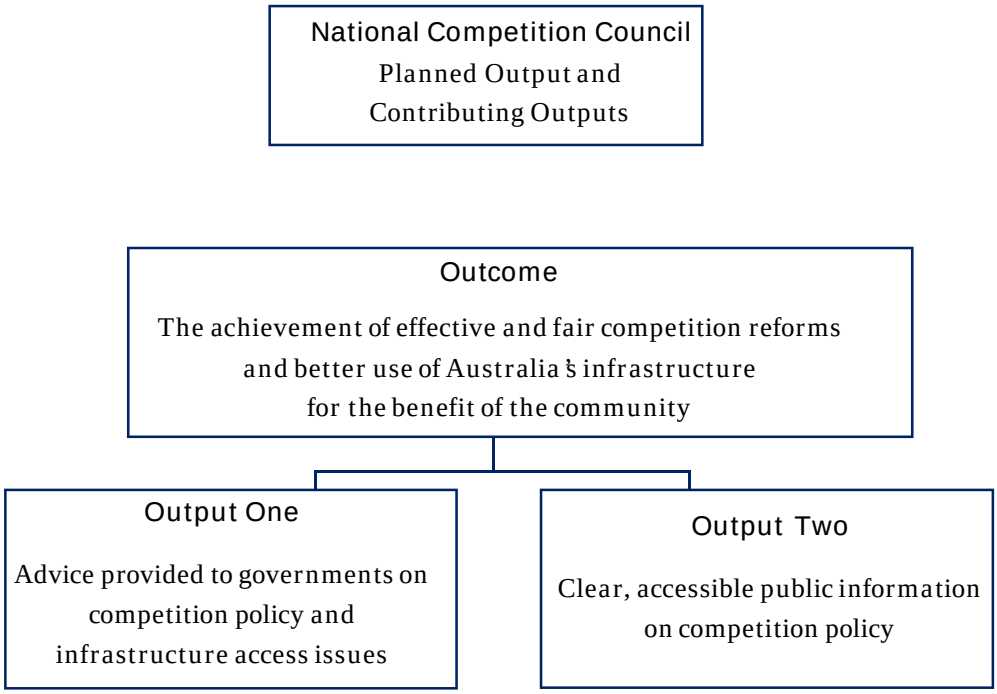
The Council's mission statement is:

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

C2.1 Agreed outcomes and outputs

The Council outcomes and outputs were developed and agreed through the Budget process and are reproduced in Figure C2.1.

Figure C2.1 National Competition Council outcomes & outputs



The Council's outcome relates to the High Level 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"*.

C2.2 Specific functions

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

- access to significant infrastructure services; and

- whether State and Territory government businesses should be subject to prices surveillance by the ACCC.

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

- advice to the Commonwealth when considering overriding State or Territory exceptions from the TPA;

- advice on the progress made against the reform obligations in the NCP Agreements; and

- other work on competition policy as agreed by a majority of governments. Some potential work program items are outlined in the CPA, including prices oversight of government business enterprises (subclause 2(2)), implementation of competitive neutrality principles (subclause 3(3)), structural reform of public monopolies (subclause 4(4)), and a review of legislation which restricts competition where the review has a national dimension (subclause 5(8)).

The Council also has an implied function of supporting the NCP process and appropriate reform more generally. This is reflected in its mission statement and in the Council's goals set out in Box C2.1.

The various functions and responsibilities of the Council are delivered through its work program areas. These are set out in Box C2.2.

More information about the Council's statutory and other responsibilities, and its actions in relation to them over the past year, is presented in Parts A and B of this report.

Box C2.1 The Council's goals are:

- Facilitating timely implementation of effective and fair competition reforms by governments.
- Promotion of competition policy as an 'economic tool' for increasing the country's performance and productivity.
- Promoting better use of Australia's infrastructure.
- Building community awareness and support of National Competition Policy.
- Ensuring that the National Competition Council is a dynamic organisation, capable of providing a safe, healthy and professional work environment for its staff and developing their full potential.

Box C2.2 The Council's work program includes:

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

C3 Management

C3.1 Staff development and management

Training

Excluding salary costs of staff undertaking training, a total of $26 148 representing approximately 2.5 per cent of the Secretariat's salary costs, was devoted to staff training for 1998-99. All Secretariat staff received some training this year.

In-house training for all staff was held in occupational health and safety, report writing, workplace harassment and personal computer skills. In addition, Secretariat staff spent 10 days in other training programs during the year. Eleven staff participated in a variety of training programs in areas such as financial management, skills development and professional development. In addition, twelve Secretariat staff attended conferences on issues associated with competition policy and its implementation. Three officers are currently receiving assistance to undertake further tertiary education.

Industrial democracy

Industrial Democracy Plan

The Council's *Industrial Democracy Plan* provided the basis of its industrial democracy practices during the year. The Plan will be reviewed in 1999-2000 to ensure it is meeting the needs of the Council and its staff. The Council's Deputy Executive Director has formal responsibility for the implementation of industrial democracy principles and practices.

Consultative mechanisms

The Secretariat Executive, which includes the Executive Director, Deputy Executive Director and the two Section Heads, meets weekly. Minutes of this meeting are circulated to all staff.

All staff meet weekly to review Council work and administrative priorities. These staff meetings are the principal source of informing Secretariat staff of Council decisions and inviting staff consideration of issues currently facing the Council. Matters considered relate to research priorities, staffing arrangements, accommodation, office policies, information technology issues and training. During 1998-99, most staff participated in decision making regarding information technology requirements (including training), corporate planning and negotiating the Council's Certified Agreement.

Occupational health and safety

During 1998-99, the Council undertook or continued the following initiatives to ensure the health and safety of its staff and contractors:

- participation in Occupational Health and Safety (OHS) training;
- operation of the OHS committee, including an elected health and safety representative, which reports to the weekly staff meeting;
- encouragement of staff participation in lunch-time and after-hour exercise programs;
- eyesight testing for screen-based equipment users;
- appointment of fire wardens and fire safety training;
- appointment of a trained First Aid Officer;

- advice on ergonomic furniture usage and posture; and
- purchase of ergonomic equipment where appropriate.

The Council received no accident/incident reports during 1998-99. There were no notices lodged or directions given to the Council under sections 30, 45, 46 or 47 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* during the year.

During the year Comcare was consulted to advise upon the management risks associated the Council's operations. A 'new' set of insurance and risk management policies was implemented.

Restructure (Corporate Services)

During the financial year, a restructure of the administrative and support services was undertaken. The review looked at various ways of providing the services and considered that there needed to be a better allocation of the resources to enhance the Council's ability to concentrate on its core business objectives.

The objective of the restructure was to provide effective and efficient support for the Council's core business objectives. The restructure achieved savings by allowing more staff to be channeled into the policy and review aspects of the Council's business.

Position duties were also redefined to change from predominately using Secretariat staff to complete work requirements to using a mixture of staff and outside contractors. As part of this process, various functions were outsourced including :

- accounting and finance;
- mail out and printing;
- maintenance of the data bases; and
- personnel and payroll.

The Council now has a better mix of internal versus external resources. The scope for using contractors in other areas of the Council's operations will be further considered during 1999-2000. Potential areas include the website and banking facilities.

Certified Agreement – 1999 to 2001

During the financial year, management and staff worked together to develop and agree upon conditions of employment for the period up to February 2001. A Certified Agreement 1999-2001, prepared in accordance with the *Workplace Relations Act 1996* (section 170LK), and was approved on 12 February 1999 by the Australian Industrial Relations Commission.

The purpose of the Agreement is to set out the terms and conditions of employment for Council employees below the SES level. Most staff are covered by the Agreement.

It details legal and administrative requirements, arrangements for recognition and remuneration for performance, the working environment, and conditions for redeployment, retirement and redundancy.

Finance and accounting

During this financial year, the Council was required to adjust its accounting and budget systems and procedures in line with new Department of Finance and Administration's (DoFA) requirements.

The budget system was changed from a cash based approach to accrual with the implementation of a new package by DoFA. The process has been outsourced by the Council as part of its contract for accounting and finance services. The Council's contractor has been responsible for implementing the proposed systems.

The accounting system used by the Council is currently being changed to a Systems Applications and Progress Computerised System (SAP) environment by the Council's contractor. However, for the production of this financial year's figures a combination of the previous system and an accounting package was used.

Audit Committee

An Audit Committee was established during the year, with an independent chairperson, to oversee the preparation of the year-end accounts, review internal efficiency and oversee the risk strategy assessment.

C3.2 Equity matters

Social justice

Within its work program, the Council addresses social justice issues in three main contexts.

First, in conducting its functions in relation to the National Access Regime, the Council must consider public interest issues. Matters that the Council may consider include, although are not limited to, the following:

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

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

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

Second, as part of its role of assessing jurisdictions 'progress in implementing the NCP reforms, the Council must consider the extent to which governments have undertaken bona fide reform processes. The NCP agreements ensure governments can take into account all 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 they also call for an examination of whether social justice objectives can be met through ways which do not restrict competition. At the same time, the NCP agreements recognise that many restrictions, by advantaging specific groups at a cost to the broader community, promote neither social justice nor economic efficiency.

Third, where it is directed to conduct reviews under the NCP principles, the Council must also consider social justice issues. The Council 's focus is towards maintaining and, where appropriate, strengthening governments 'social responsibilities, whilst still maximising the benefits from competition.

The Council has released papers on *Considering the public interest under the NCP* (November 1996) and *National Competition Policy: Some Impacts on Society and the Economy* (January 1999). These papers are available on the Council 's web site (*http://www.ncc.gov.au*).

Access

Since its inception in November 1995, the Council has instituted open and transparent processes. For example, in assessing declaration and certification applications for access to infrastructure services, the Council explicitly provides interested parties with the opportunity to have their views considered, including through submissions and meetings with members of the Secretariat. The Council extensively uses the public consultation process to provide input into all of its reviews. The Secretariat

and members of the Council met with representatives of the Commonwealth, State and Territory governments, local governments, community interest groups, and private sector representatives and organisations on many competition policy matters during the year.

During the year, Council produced several publications designed to assist community understanding of its role and functions:

- Annual Report 1997-1998 (August 1998);
- Robe River Iron Associates Application for Declaration of a Rail Service Provided by Hamersley Iron Pty Limited – Issues Paper (September1998);
- NSW Access Regime for Gas Pipeline Services – Issues Paper (November 1998);
- Legislation Review Compendium Second Edition (December 1998);
- National Competition Policy: Some Impacts on Society and the Economy (January 1999);
- Guidelines for NCP legislation reviews (February 1999);
- Application by Robe River Iron Associates for Declaration of a Rail Service Provided by Hamersley Iron Pty Limited - Discussion Paper (March 1999);
- The Northern Territory/South Australian Access Regime for Rail Services - Issues Paper (March 1999);
- The WA Access Regime for Rail Services –Issues Paper (March 1999);
- National Competition Policy First Tranche Assessment Vol 1 and 2 (April 1999);
- Final Recommendations Application for Revocation of Certain Gas Pipelines in Western Australia from Coverage Gas Access Regime (June 1999);

- Second Tranche Assessment of Governments 'Progress with Implementing National Competition Policy and Related Reforms (June 1999); and

- Making Competitive Neutrality Complaints (information brochure).

The Council distributes a newsletter that has a circulation of over 2000 copies and provides information on the status of current projects and articles on topics of interest.

The Council continually updates its web site at *http://www.ncc.gov.au*. This site contains all of the Council's publications, information on applications under Part IIIA of the TPA and current information on matters the Council is considering or has recently considered.

Workplace diversity

The Council has implemented a Workplace Diversity Plan. All recruitment conducted during 1998-99 included a selection criterion relating to understanding of the principles and practical effects of policies on Equal Employment Opportunity (EEO). Selection panels included at least one male and one female. At 30 June 1999, 8 Secretariat staff were members of an EEO group (see Table C3.1).

Table C3.1 Staff by EEO group, 30 June 1999

Level	Female	*NESB 1*[a]	NESB 2[a]	A&TSI[b]	Disabilities
SES	1	-	-	-	-
Executive Level 1 – 2	5	-	-	-	-
APS levels 1 — 6	1	1	-	-	-
Total	**7**	**1**	-	-	-

Source: Internal survey (response to this survey was optional).
a *Non-English speaking background (first and second generation)*
b *Aboriginal and Torres Strait Islanders*

The Council has identified and trained contact officers for both EEO and sexual harassment issues during 1998-99, and conducted an internal awareness seminar for all staff on a harassment free workplace.

There were no reported cases of workplace harassment during 1998-99.

C3.3 Internal and external scrutiny

During 1998-99:

- the Council undertook an internal review of the structure and processes of its corporate function;
- there were no cases of fraud involving the Council; and

- there were no comments by the Ombudsman, or decisions by the administrative tribunals on matters involving the Council.

On 30 October 1998, Hamersley Iron Pty Limited (Hamersley) brought an action against the Council in the Federal Court. Hamersley argued, among other things, that the Council did not have the jurisdiction or power to consider an application, by Robe River Iron Associates (RRIA), for declaration of Hamersley's rail line service, because the service covered by that application was not subject to Part IIIA of the TPA.

A single judge at the Federal Court ruled that the Council did not have the power to accept or consider any submission in relation to the Robe River application for access to the service provided by Hamersley's Rail Infrastructure Facility or to make a recommendation regarding the declaration. The Council appealed this decision in July 1999 (more detail in Section B2.1).

Over the past few years, there have been a number of appeals to the Australian Competition Tribunal against decisions made by the Treasurer or a Premier in response to recommendations by the Council on applications for access to infrastructure services. The appeals have come from infrastructure owners, when the decision was to declare services, and applicants, when the decision was not to declare. Appeals have occurred both when the decision maker has agreed with the Council's decision and when the decision maker has disagreed.

The Council is subject to external scrutiny through the publication of its recommendations to all governments on matters relating to access determinations and competition reforms, external publications and other work that may be placed on the work program from time to time.

The Senate Select Committee on the Socio-economic Consequences of the National Competition Policy provided an interim report in August 1999. The PC is also undertaking a review of the impact of competition policy reforms on rural and regional Australia.

Review of the NCP agreements and the Council will be undertaken next financial year.

C3.4 Other matters

Freedom of information

The Council received no requests for documents under the *Freedom of Information Act 1982* (FOI Act) during 1998-99.

The following information is provided in accordance with subsection 8(1) of the FOI Act.

Organisation of the Council

Details of the Council's organisational structure, role and functions are set out in Sections C1 and C2.

Arrangements for outside participation

People and organisations are encouraged to participate in the formulation of Council advice on access declarations, competition reform or other work program matters, by making representations in person or in writing.

Categories of documents held by the Council

The Council Secretariat holds the following three classes of documents.

First, it holds representations to the Council President and Executive Director. The Council receives correspondence covering a number of aspects of government micro-economic policy and administration.

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

- Council views on matters relating to competition reform implemented by Commonwealth, State and Territory governments;

- Council recommendations on applications for access declarations and certification of access regimes. The designated Ministers are required to publish their decisions on these applications. The Ministers must give reasons for the decision and provide a copy of the Council's recommendation to the service provider and the applicant. The Council makes its recommendations and reasons publicly available after the designated Minister has published a decision. In the case of a declaration application, if the designated Minister does not make a decision, the Council publishes its recommendation 60 days after providing it to the Minister; and

- Material relating to other work assigned to the Council. For example, the review of the Australian Postal Corporation Act and the review of Sections 51(2) and 51(3) of the Trade Practices Act.

Third, the Council Secretariat holds documents on internal office administration. These include a broad range of documents relating to the personal details of staff and to the organisation and operation of the Council. These documents include personal records, organisation and staffing records, financial and expenditure records, and internal operating documentation such as office procedures and instructions.

Documents open to public access subject to a fee or a charge or available free of charge upon request

The following categories of documents are publicly available:

- the Council's Annual Reports to Parliament;

- many of the speeches presented by Councillors and Secretariat staff;
- discussion papers and guides on specific competition policy issues;
- the Council's newsletter discussing competition policy issues;
- the Council's corporate plan;
- declaration or certification applications, and issues papers developed by the Council in response to access declaration or certification applications or other reviews;
- submissions made by interested parties on access declaration or certification applications, or other reviews, where information contained is not commercial-in-confidence;
- the assessment and recommendations to the Treasurer on State and Territory progress in implementing NCP and related reforms;
- issues papers, draft and final reports on other reviews that are referred to the Council; and
- documents outlining the Council's recommendations on declaration and certification applications.

These documents are available from various sources. The Council has as much material as possible available on its web site – *http://www.ncc.gov.au*. Most publications are available through the Commonwealth Government bookshops. Other documents, publications and speeches are available by contacting the Council directly.

In 1998-99, Council and Secretariat staff presented the following conference papers:

- Graeme Samuel, Leadership in Business and Government: Keeping Reform on Track, presented to the Thompson Playford Corporate Forum (Adelaide), 8 July 1998.

- Ben Furmage, Towards an Efficient and Sustainable Water Industry : National Competition Policy and Water Reform, presented to the Economic Society (Victorian Branch), 21 July 1998.

- Graeme Samuel, Evaluation of Commonwealth/State Performance and Challenges/Strategies for the Future, presented to the Treasury Structural Policy Division Conference, 22 July 1998.

- Graeme Samuel, Competition Policy and the Farm Sector, presented to the South Australian Farmers Federation, 24 July 1998.

- Jane Brockington, National Competition Policy and the Professions; Physiotherapists, presented to the Australian Physiotherapy Association, Victorian Branch (Melbourne), 27 July 1998.

- Michelle Groves, Competition Policy and the Energy Industry, presented to the Western Australian Power and Gas Conference (Perth), 27 July 1998.

- Deborah Cope, National Competition Policy & Professional Registration, presented to Australian Medical Association - Competition in Health Conference, 31 July 1998.

- Michelle Groves, Part IIIA Practice and Procedure, presented to the Business Law Society Trade Practices Seminar, 7 August 1998.

- Edward Willett, National Competition Policy, presented to Blake Dawson Waldron (Melbourne), 11 August 1998.

- Michelle Groves, NCC's Experience of Part IIIA, presented to Melbourne University Energy Law and Policy Course, 12 August 1998.

- Graeme Samuel, NCP - The Reform Imperative, presented to the Australian Club (Melbourne), 13 August 1998.

- Deborah Cope, Competition Policy: What is it really about?, presented to the 1998 Postal Office Agents Association Limited National Conference, 15 August 1998.

- Ben Furmage, National Competition Policy and Local Government, presented to the Local Government Professionals Contracts and Commercial Strategy Special Interest Group Annual Conference, 27 August 1998.

- Deborah Cope, Implications of the Third Party Access Regime on Transport Infrastructure Development Projects, presented to IBC Conferences on Victorian Transport Infrastructure Reform, August 1998.

- Deborah Cope, Implementing National Competition Policy, presented to IIR Conferences on National Competition Policy, 1 September 1998.

- Ed Willett, National Competition Policy, presented to the Liquor Licensing Authorities 'Conference (Adelaide), 9 September 1998.

- Graeme Samuel, National Competition Policy – Myths and Realities, presented to the CEDA, 15 September 1998.

- Jane Brockington, Legislation Review and Agricultural Marketing Arrangements, presented to the Dept. of Primary Industries and Energy Seminar (Canberra), 17 September 1998.

- Ed Willett, Developing a Contestable Market for the Delivery of Health Care Services, presented to AIOC Worldwide – Victorian Health Care Summit, 30 September 1998.

- Graeme Samuel, Implications of the New Political Order for Competition Policy, presented to the Institute of Public Administration Australia (Sydney), 9 October 1998.

- Deborah Cope, Implications for Third Party Access Regimes on Transport Infrastructure Development Projects, presented to IBC Conferences, 15 October 1998.

- Michelle Groves, National Competition Policy and Upstream Gas Reform, presented to the National Gas Conference, 15 October 1998.

- Ed Willett, National Water Reform Perspectives, presented to "The Value of Water to South Australia" Conference (Adelaide), 18 October 1998.

- Graeme Samuel, Competition Policy and its Impact on Rural Industries, presented to the NSW Farmers 'Association, 21 October 1998.

- Jane Brockington, National Competition Policy and the Grains Industry, presented to the Australian Grains Exporter Association AGM (Queenscliff), 23 October 1998.

- Jane Brockington, The National Competition Policy and the Review of Professional Regulation, presented to the 39th Australian Surveyors Congress (Launceston), 10 November 1998.

- Graeme Samuel, Competition Reform, Equity and Policy Leadership, presented to the Business Leaders Forum (Brisbane), 19 November 1998.

- Graeme Samuel, National Competition Policy – The Way Forward, presented to the Victoria 500 Summit Conference, 20 November 1998.

- Graeme Samuel, An Introduction to NCP: The Debate about Competition Policy, presented to the Economics Society of Queensland - a debate with Professor John Quiggin (Brisbane), 25 November 1998.

- Deborah Cope, National Competition Policy, Consumer Law Centre of Victoria Limited, 11 December 1998.

- Ed Willett, Notions of Governance/Governance and NCP, presented to the Annual Conference of Local Government Professionals (Melbourne), 18 February 1999.

- Ed Willett, National Competition Policy in relation to Agriculture, presented to Pastoralists and Graziers Association of WA, 25 February 1999.

- Graeme Samuel, Reforming Health Care – Privatisation, Deregulation & Competition, presented to Australian Financial Review Health Summit 99, 25 February 1999.

- Ed Willett, The Introduction and Implementation of Competition Reform to the Australian Water Sector, presented to NZ Water Summit, 8 March 1999.

- Ed Willett, Infrastructure Access (Iron Ore & Steel), presented to ABARE Outlook Conference (Canberra), 17 March 1999.

- Ed Willett, Sugar Industry Reform and National Competition Policy, presented to the Australian Sugar Milling Council AGM, 25 March 1999.

- Graeme Samuel, National Competition Policy: Looking Forward, presented to the Centre for Corporate Public Affairs (Canberra), 25 March, 1999.

- Deborah Cope, The process the Council will use in assessing progress towards COAG Reforms in Water Management, presented to Land & Water Resources, Research & Development Corporation, 25 March 1999.

- Graeme Samuel, National Competition Policy, presented to WA Farmers Federation Conference, 26 March 1999.

- Graeme Samuel, Sixth Foreign Investor Roundtable with the Government of Australia, presented to The Economist (Canberra), 30 March 1999.

- Ed Willett, National Competition Policy and the Rural Sector, presented to the Grains Week 99 Industry Forum (Perth), 14 April 1999

- Trish Lynton, Implications of the Third Party Access Regime on Infrastructure Development Projects, presented to WA Infrastructure, 21 April 1999.

- Graeme Samuel, National Competition Policy: Looking forward, presented to Tasmanian Chamber of Commerce and Industry (Hobart), 22 April 1999.

- Graeme Samuel, Nobody Likes Monopolies – Except Monopolists, presented to the Australian Institute of Company Directors, 26 April 1999.

- Graeme Samuel, National Competition Policy, presented to NSW 500 Conference (Sydney), 30 April 1999.

- Graeme Samuel, Reinventing the Insurance Industry to Meet the Challenges Ahead, presented to the Australian Insurance Institute Conference (Sydney), 3 May 1999.

- Ross Campbell, Issues for Competition as Convergence Increases, presented to the Australian Insurance Institute Conference (Sydney), 3 May 1999.

- Graeme Samuel, Competition Policy - Risks and Opportunities for Business, Family Business Australia (Melbourne), 19 May 1999.

- Ed Willett, NCP – Jumping the Fence to New Perspectives and Profit (Queensland), presented to the Annual Premier's Rural Forum, Queensland, 21 May 1999.

- Simon Cohen, NCP – Competition Policy and the Water Industry, presented to the Water Industry Conference (Perth), 8 June 1999.

- Graeme Samuel, NCP: Looking Forward, presented to the Victorian Business Roundtable - Subcommittee (Melbourne), 22 June 1999.

Facilities for access to Council documents

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

The Deputy Executive Director
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 explicit waiver given, the request will not be processed. Telephone enquiries should be directed to the FOI Coordinator, telephone (03) 285 7484 between 9.00 am and 5.00 pm.

The Deputy Executive Director is authorised under section 23 of the *FOI Act* to make decisions to grant or refuse requests for access to documents. In accordance with Section 54 of the *FOI Act*, 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 *FOI Act*.

If access under the *FOI Act* is granted, the Council will provide copies of documents after receiving payment of all applicable charges. Alternatively, applicants may make arrangements to inspect documents at the National Competition Council office, Level 12, Casselden Place, 2 Lonsdale Street, Melbourne between 9.00 am and 5.00 pm, Monday to Friday.

Advertising and market research

The Council engaged one advertising or market research agency in 1998-99.

The Council was requested by COAG Senior Officials to engage Artcraft Research to research and investigate promotion strategies for NCP.

Annual reporting requirements and aids to access

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

- Section 74 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*;

- Section 50AA of the *Audit Act 1901*;
- Section 8 of the F*reedom of Information Act 1982*;
- Section 29(O) of the *Trade Practices Act 1974*; and
- the guidelines issued by the Department of the Prime Minister and Cabinet.

A compliance index is provided below.

The contact officer for inquiries or comments concerning this report, and for inquiries about any Council publications, is:

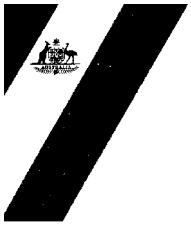
Deputy Executive Director
National Competition Council
GPO Box 250B
MELBOURNE VIC 3001
Telephone (03) 9285 7474
Facsimile (03) 9285 7477

Compliance index

Requirement	Page
Councillors 'letter of transmission to the Treasurer	iii
Table of Contents	v
Abbreviations	ix
Introduction	3
Mission Statement	139
Program objective	139-142
Performance reporting	51-121
Portfolio review	na
Corporate review	127-163
Structure and senior management	129-133
Social justice and equity	147-151
Internal and external scrutiny	151-152
Staffing overview	134-136
Financial statements (including Auditor-General's report)	163-194
Industrial democracy	143-144
Occupational health and safety	144-145
Workplace diversity	150-151
Advertising and market research	161
Freedom of information	153-161
Annual reporting requirements and aids to access	162
Contact officer for further information	162
Alphabetical index	201

C4 Financial statements

Financial statements
for the year ending 30 June 1999



INDEPENDENT AUDIT REPORT

To the Treasurer

Scope

I have audited the financial statements of National Competition Council for the year ended 30 June 1999. The financial statements comprise:

- Statement by Council President and Executive Director
- Agency Revenues and Expenses
- Agency Assets and Liabilities
- Agency Cash Flows
- Schedule of Commitments
- Schedule of Contingencies, and
- Notes to and forming part of the Financial Statements.

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

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

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

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

Audit Opinion

In my opinion,

(i) the financial statements have been prepared in accordance with Schedule 2 of the Finance Minister's Orders, and

(ii) the financial statements give a true and fair view, in accordance with applicable Accounting Standards, other mandatory professional reporting requirements and Schedule 2 of the Finance Minister's Orders, of the financial position of the National Competition Council as at 30 June 1999 and the results of its operations and its cash flows for the year then ended.

Australian National Audit Office

Allan M. Thompson
Executive Director

Delegate of the Auditor-General

Canberra
14 September 1999

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

STATEMENT BY THE COUNCIL PRESIDENT AND PRINCIPAL ACCOUNTING OFFICER

In our opinion the attached financial statements for the financial year 1 July, 1998 to 30 June, 1999 give a true and fair view of the matters required by Schedule 2 to the Finance Minister's Orders made under section 63 of the *Financial Management and Accountability Act 1997*.

Mr Graeme Samuel
President

18th August 1999
Date

Mr Edward Willett
Executive Director

18th August 1999
Date

NATIONAL COMPETITION COUNCIL
AGENCY REVENUES AND EXPENSES

for the year ended 30 June 1999

	Notes	1998-99 $	1997-98 $
NET COST OF SERVICES			
Expenses			
Employees	3	1,547,976	1,593,403
Suppliers	4	1,253,466	1,317,961
Depreciation and Amortisation	5	114,727	99,926
Net Losses from sale of assets	6	-	2,181
Write-down of asset	7	7,928	6,179
Total expenses		2,924,097	3,019,650
Revenue from independent sources			
Sale of goods and services		13,423	12,468
Other revenues from independent sources		-	452
Total revenues from independent sources		13,423	12,920
Net cost of services		2,910,674	3,006,730
REVENUES FROM GOVERNMENT			
Appropriations used for: Ordinary annual services (net appropriations)	16	2,651,105	2,948,187
Resources received free of charge		51,550	24,025
Total revenues from government		2,702,655	2,972,212
Operating (deficit)/surplus		(208,019)	(34,518)
Accumulated results at 1 July		91,834	126,352
Accumulated results at 30 June		(116,185)	91,834

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

NATIONAL COMPETITION COUNCIL AGENCY ASSETS AND LIABILITIES

as at 30 June 1999

	Notes	30/6/99 $	30/6/98 $
PROVISIONS AND PAYABLES			
Employees	8	393,761	366,487
Suppliers	9	86,475	53,420
Other	10	-	14,286
Total provisions and payables		480,236	434,193
EQUITY			
Capital		96,099	-
Accumulated results	11	(116,185)	91,834
Total Equity		(20,086)	91,834
Total Liabilities and Equity		460,150	526,027
FINANCIAL ASSETS			
Cash		500	500
Receivables	12	135,318	157,694
Total financial assets		135,818	158,194
NON-FINANCIAL ASSETS			
Land and Buildings	13,14	133,947	195,409
Plant and Equipment	13,14	136,501	143,276
Inventories - held for sale		51,205	6,453
Other – prepayments		2,679	22,695
Total non-financial assets		324,332	367,833
Total assets		460,150	526,027
Current Liabilities		264,572	283,771
Non-current Liabilities		215,664	150,422
Current assets		189,702	187,342
Non-current assets		270,448	338,685

The above Statement should be read in-conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL
AGENCY CASH FLOWS

for the year ended 30 June 1999

	Notes	1998-99 $	1997-98 $
OPERATING ACTIVITIES			
Cash received			
Appropriations		2,762,886	2,827,309
Other		20,117	452
Total cash received		2,783,003	2,827,761
Cash used			
Employees		1,520,702	1,461,211
Suppliers		1,207,883	1,274,926
Total cash used		2,728,585	2,736,137
Net cash from operating activities	15	54,418	91,624
INVESTING ACTIVITIES			
Cash received			
Proceeds from sale of property, plant & equipment		0	2,700
Total cash received		0	2,700
Cash used			
Purchase of property, plant and equipment		54,418	95,824
Total cash used		54,418	95,824
Net cash used by investing activities		(54,418)	(93,124)
Net (decrease)/increase in cash held		-	(1,500)
add cash at 1 July		500	2,000
Cash at 30 June		500	500

The above Statement should be read in-conjunction with the accompanying notes

NATIONAL COMPETITION COUNCIL SCHEDULE OF COMMITMENTS

as at 30 June 1999

	Agency	
	1998-99	1997-98
	$	$
BY TYPE		
OTHER COMMITMENTS		
Operating Leases	455,913	591,796
Total Other Commitments	455,913	591,796
COMMITMENTS RECEIVABLE		
Net commitments	455,913	591,796
BY MATURITY		
One year or less	103,452	136,338
From one to two years	103,452	136,638
From two to five years	249,009	318,820
Net commitments	455,913	591,796

NATIONAL COMPETITION COUNCIL SCHEDULE OF CONTINGENCIES

as at 30 June 1999

	Agency	
	1998-99	1997-98
	$	$
Contingent Losses	Nil	Nil
Contingent Gains	Nil	Nil

The above Statement 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 1999*

Note 1 Aim and Objectives of the National Competition Council

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

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

The Council's program objectives are:

- to promote micro-economic reform within the community, including by research and providing advice to governments on competition policy matters;
- to recommend on applications for declaration of access to services provided by nationally significant infrastructure and the certification of access regimes under Part IIIA of the Trade Practices Act;
- to assess progress with agreed competition policy reforms, and to recommend to the Commonwealth prior to July 1997, July 1999 and July 2001 whether the conditions for National Competition Policy payments to the States and Territories have been met; and
- to recommend on whether State and Territory government businesses should be declared for prices surveillance by the Australian Competition and Consumer Commission, and to report on the costs and benefits of legislation reliant on section 51 of Trade Practices Act.

Note 2 Summary of Significant Accounting Policies

2.1 Basis of Accounting

The production of the financial statements is required by section 49 of the Financial Management and Accountability Act 1997. The statements have been prepared in accordance with Schedule 2 to the Financial Management and Accountability (FMA) Orders made by the Minister for Finance and Administration. Schedule 2 requires that the financial statements are prepared:

- in compliance with Australian Accounting Standards and Accounting Guidance Releases and the Consensus Views of the Urgent Issues Group; and
- having regard to Statements of Accounting Concepts.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention. They have not been adjusted to take account of either changes in the general purchasing power of the dollar or changes in the prices of specific assets.

The continued existence of the Council in its present form is dependent on Government policy and on continuing appropriations by Parliament for the Council's administration.

2.2 'Agency' and 'Administered' Items

A distinction is required to be made within the financial statements between 'agency' items and 'administered' items.

'Administered' items represent those assets, liabilities, expenses and revenues which are controlled by the Government and managed in a fiduciary capacity by the Council.

2.2 'Agency' and 'Administered' Items (continued)

'Agency' items represent those assets, liabilities, expenses and revenues which are controlled by the Council.

The purpose of this distinction is to enable an assessment to be made of the efficiency of the Council in providing goods and services ('Agency' items), while at the same time enabling accountability by the Council for all resources administered by it.

The Council did not manage 'administered' items on behalf of the Government in relation to the reporting period.

2.3 Taxation

The Council is exempt from all forms of taxation except fringe benefits tax.

2.4 Insurance

In accordance with Commonwealth Government policy, assets are not insured and losses are expensed as they are incurred.

The Council carriers Professional Indemnity Insurance at $20M with ComCover.

2.5 Comparative figures

Where necessary, comparative figures have been adjusted to conform with changes in presentation in these financial statements.

2.6 Program Statements

The Council represents a component of a sub-program within the Department of the Treasury portfolio. As a result there is no requirement for a program statement to be included in the financial statements.

2.7 Appropriations

Appropriations for agency operations other than running costs are recognised as revenue when the Council obtains control over the funds. Control is obtained at the time of expending the funds.

Appropriations for agency running costs operations are recognised in accordance with their nature under the Running Costs Arrangements. Under these arrangements, the Council receives a base amount of funding by way of appropriation for running costs each year. The base amount may be supplemented in any year by a carryover from the previous year of unspent appropriations up to allowable limits, as well as by borrowings at a discount against future appropriations of the base amount. The repayment of a borrowing is effected by an appropriate reduction in the appropriation actually received in the year of repayment.

The Council recognises, in relation to agency running costs operations:

- as revenue an amount equal to the appropriation spent during the financial year;
- as a *receivable* an amount equal to the unspent appropriation carried over to the next year; and
- as a liability an amount equal to the running cost borrowings. The interest cost of the borrowing is expensed over the life of the borrowing.

2.8 Employee Entitlements

The liability for employee entitlements includes all employee benefits including: salaries and wages, annual leave, and long service leave.

No provision has been made for sick leave as all leave is non-vesting and the value of sick leave estimated to be taken in the future is expected to be less than the entitlement that will accrue to Council staff in those future periods.

The non-current portion for the liability for long service leave reflects the present value of the estimated future cash flows to be made in respect of all employees.

2.8 Employee Entitlements (continued)

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

The determination of current and non-current liability portions of the long service leave provision is based on a staff survey. The value of long service leave entitlements estimated to be taken within the next twelve months are classified as current.

Annual leave entitlements are classified as current liabilities.

2.9 Superannuation

Staff of the Council contribute to the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme. Superannuation contributions made by the Council on behalf of staff in relation to these schemes have been expensed in these financial statements.

A liability is not shown for all unfunded superannuation liability that exists in relation to Council staff as the employer contributions fully extinguish the accruing liability assumed by the Commonwealth.

2.10 Resources Received Free of Charge

Resources received free of charge are recognised in the statement of Agency Revenues and Expenses as revenue where the amounts can be reliably measured. Use of those resources is recognised as expenses, or where there is a long term benefit, as an asset.

Resources received free of charge which cannot be reliably measured are disclosed in the notes.

2.11 Cash

For the purposes of the Statement of Cash Flows, cash includes notes, coins and cheques on hand.

2.12 Inventory

Inventories held for sale are valued at the lower of cost and net realisable value.

2.13 Capitalisation Threshold – Property Plant & Equipment

All items of computers, plant and equipment with historical cost equal to or in excess of $ 1,000 are capitalised in the year of acquisition. The items below this threshold are expensed in the year of acquisition.

All items of leasehold improvements controlled by the Council and with historical costs equal to or in excess of $ 5,000 are capitalised in the year of acquisition.

The capitalisation threshold is applied to the aggregate cost of each functional asset.

2.14 Measurement of Property Plant & Equipment

All property, plant and equipment assets in excess of the capitalisation threshold are recorded at cost, except in circumstances in which acquisitions are made at no cost from other Commonwealth controlled entities. In such circumstances property, plant and equipment are recorded at the amounts at which they were recognised in the transferor's books immediately prior to transfer.

2.15 Depreciation and Amortisation of Property Plant & Equipment

Depreciable property, plant and equipment are depreciated over their estimated useful lives. The useful life of an asset reflects the life of the asset to the Council.

Depreciation is calculated using the straight-line method which reflects the pattern of usage of the Council's depreciable property, plant and equipment. The rates used were those applied by Treasury.

Leasehold Improvements are amortised over the estimated useful life of each improvement, or the unexpired period of the lease, whichever is shorter.

2.16 Revaluation of Property Plant & Equipment

All items of leasehold improvements and with historical costs equal to or in excess of $ 5,000 and all items of computer, plant and equipment were revalued in accordance with the 'deprival' method of valuation on 1 July 1999 and thereafter will be revalued progressively on that basis every three years.

The Council reviewed the valuations for:

- Leasehold improvements were initially acquired in November 1995 in connection with the leasehold and revalued on 30/6/99. The valuation represented by the written down value was considered to approximate the 'deprival' value.

- Most computers were replaced late in June 1999 and therefore are carried at cost as at 30/6/99. Plant and equipment was revalued on 30/6/99. The valuation represented by the written down value was considered to approximate the 'deprival' value.

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

2.17 Leases

A distinction is made between finance leases which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased plant and equipment asset and operating leases under which the lessor effectively retains substantially all such risks and benefits.

Where a non-current asset is acquired by means of a finance lease, the asset is capitalised at the present value of minimum lease payments at the inception of the lease and a liability recognised for the same amount. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are charged to the statement of Agency Revenues and Expenses.

2.18 Lease Incentives

The value of rent which would otherwise have been incurred during a rent free period, provided by building owners, is initially recognised as a liability. This liability is reduced once the rent free period ceases by allocating payments between rental expense and reduction of the liability.

	1998-99 $	1997-98 $

Note 3 Expenses: Employees

Basic Remuneration (for services provided)	1,547,976	1,593,403
Total	1,547,976	1,593,403

Note 4 Expenses: Suppliers

Supply of goods and services	1,053,873	1,215,142
Stock writedown	90,906	-
Operating lease rentals	108,687	102,819
Total	1,253,466	1,317,961

Note 5 Expenses: Depreciation and Amortisation

Depreciation of property, plant and equipment	114,727	99,926
Total expense	114,727	99,926

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

Leasehold improvements	17,560	18,403
Leasehold improvements		
- received free of charge	43,902	43,902
Computers, plant and equipment	48,944	31,412
Computers, plant and equipment		
- received free of charge	4,321	6,209
Total	114,727	99,926

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

	1998-99 $	1997-98 $

Note 6 Expenses: Net Losses from Sale of Assets

Non-financial assets:		
Plant and equipment	0	2,181
Total	0	2,181

Note 7 Expenses: Write down of Assets

Non-financial Assets:		
Inventories- held for sale	7,928	6,179
Total	7,928	6,179

Note 8 Provisions and Payables: Employees

Salaries and wages	85,024	82,442
Leave	306,027	281,868
Superannuation	2,710	2,177
Aggregate employee entitlement liability	393,761	366,487

Note 9 Provisions and Payables: Suppliers

Trade creditors	86,475	53,420

	1998-99 $	1997-98 $

Note 10 Provisions and Payables: Other

Lease incentives	0	14,286

Note 11 Equity: Accumulated Results

Opening balance	91,834	126,352
Add. Operating result	(208,019)	(34,518)
Change in accounting policy	-	-
Closing balance	(116,185)	91,834

Note 12 Financial Assets: Receivables

Appropriations	96,099	151,000
Goods and services	39,219	6,694
Total	135,318	157,694

No component of the above receivables was overdue at the end of the reporting period. In addition no component of the receivables was considered doubtful.

	1998-99 $	1997-98 $

Note 13 Non Financial Assets: Property Plant & Equipment

LAND AND BUILDINGS

Leasehold improvements - at cost	122,922	122,922
Less: accumulated amortisation	48,274	30,714
	74,648	92,208
Leasehold improvements - received free of charge	219,511	219,511
Less: accumulated amortisation	160,212	116,310
	59,299	103,201
Total land and buildings	133,947	195,409
Plant and equipment - at cost	206,254	202,420
Less: accumulated depreciation	74,120	67,832
	132,134	134,588
Plant and equipment - received free of charge	25,137	25,137
Less: accumulated depreciation	20,770	16,449
	4,367	8,688
Total infrastructure, plant and equipment	136,501	143,276

Note 14 Non – Financial Assets: Analysis of Property Plant and Equipment

	Land and buildings $	Plant and equipment $	Total $
AGGREGATE			
Gross value as at 1 July 1998	342,433	227,557	569,990
Additions	0	54,418	54,418
Disposal/scrappings	0	(50,584)	(50,584)
Gross value as at 30 June 1999	342,433	231,391	573,824
Accumulated depreciation/ amortisation as at 1 July 1998	147,024	84,281	231,305
Depreciation/ amortisation charge for assets held as at 1 July 1998	61,462	48,042	109,504
Depreciation/ amortisation charge for additions	0	5,223	5,223
Adjustment for disposal/scrappings	0	(42,656)	(42,656)
Accumulated depreciation/ amortisation as at 30 June 1999	208,486	94,890	303,376
Net book value as at 30 June 1999	133,947	136,501	270,448
Net book value as at 1 July 1998	195,409	143,276	338,685
AT COST			
Gross value as at 1 July 1998	122,922	202,420	325,342
Additions	-	54,418	54,418
Disposals/scrappings		(50,584)	(42,656)

Note 14 Non – Financial Assets: Analysis of Property Plant and Equipment (continued)

Gross value as at 30 June 1999	122,922	206,254	329,176
Accumulated depreciation/amortisation as at 1 July 1998	30,714	67,832	98,546
Depreciation/amortisation charge for assets held as at 1 July 1998	17,560	43,721	61,281
Depreciation/amortisation charge for additions	-	5,223	5,223
Adjustment for disposals/scrappings	-	(42,656)	(42,656)
Accumulated depreciation/amortisation as at 30 June 1999	48,274	74,120	122,394
Net book value as at 30 June 1999	74,648	132,134	206,782
Net book value as at 1 July 1998	92,208	134,588	226,796
RECEIVED FREE OF CHARGE			
Gross value as at 1 July 1998	219,511	25,137	244,648
Gross value as at 30 June 1999	219,511	25,137	244,648
Accumulated depreciation/amortisation as at 1 July 1998	116,310	16,449	132,759
Depreciation/amortisation charge for assets held as at 1 July 1998	43,902	4,321	48,223
Accumulated depreciation/amortisation as at 30 June 1999	160,212	20,770	180,982
Net book value as at 30 June 1999	59,299	4,367	63,666
Net book value as at 1 July 1998	103,201	8,688	111,889

Note 15 Cash Flow Reconciliation

Reconciliation of net cost of services to net cash provided by operating activities:	1998-99 $	1997-98 $
Net cost of services	(2,910,674)	(3,006,730)
Extraordinary item	-	-
Loss on sale of property, plant and equipment	-	-
Depreciation/Amortisation	114,727	99,926
Revenue from government	2,702,655	2,972,212
Change in accounting policy	-	-
Changes in disclosure of Carryover (Appropriation)	96.099	-
Changes in assets and liabilities		
(Increase) in receivables	22,376	(126,654)
(Increase)/decrease in other assets	27,944	95,839
Decrease/(increase) in inventories	(44,752)	634
Increase/(decrease) in provisions and payables	46,043	54,216
Net cash from operating activities	54,418	91,624

Note 16 Reconciliation of Agency Running Costs

ORDINARY ANNUAL SERVICES OF GOVERNMENT	Expenditure 1998-99 $	Expenditure 1997-98 $
APPROPRIATION ACT NOS I & 3		
Division 676 National Competition Council		
1.Running Costs	2,783,003	2,830,461
less appropriations under FMA ,Act section 31	(140,102)	(3,152)
	2,642,901	2,827,309
add carryover 30 June	-	151,000
less carryover 1 July	151,000	30,122
add Carry over received	157,000	-
add Funding Net Adjustments	2,204	-
Revenue from Government		
- ordinary annual services	2,651,105	2,948,187
Total	2,651.105	2,948,187

Note 17 Expenditure from Annual Appropriations

APPROPRIATION ACT NOS 1 & 3

Division 676 - National Competition Council

1998/99 Budget Estimates	1998/99 Additional Approp	1998/99 Advance from Minister for Finance	1998/99 Total Approp	1998/99 Actual Expend	1997/98 Actual Expend
1. Running Costs					
$	$	$	$	$	$
2,582,000	293,000	0	2,875,000	2,783,003	2,830,461

Note 18 Services provided by the Auditor General and the Department of Finance & Administration

a. Audit services are provided free of charge by the Auditor-General. The fair value of audit services provided in relation to the reporting period is $20,000 (1997-98:$ 20,000). Other services provided by the Auditor General in relation to the reporting period is $nil (1997-98 $4.025)

b. Com Cover Insurance $ 31,550 (1997-98 $Nil)

Note 19 Executive Remuneration

The number of executive officers who received or were due and receivable to receive fixed remuneration of more than $ 100,000 or more:

	1998/99 Number	1997/98 Number
$100,000 to $110,000	-	-
$110,001 to $120,000	1	1
$120,001 to $130,000	-	1
$130,001 to $140,000	1	-
The aggregate amount of fixed remuneration of executive officers shown above	$260,000	$246,181

Note 20 Act of Grace Payments Waivers and Amounts Written Off

No Act of Grace payments were made pursuant to sub-section 34A(1) of the *Audit Act* 1901 during the reporting period.

No waivers of amounts owing to the Commonwealth were made pursuant to sub section 70C(2) of the *Audit Act 1*901 during the reporting period nor pursuant to any other legislation.

Note 21 Events Occuring After Balance Date

No events of a material nature have occurred since the end of the reporting period (1997-98: Nil) which warrant disclosure within the financial statements.

Note 22 Average Staffing Levels

Average staffing levels for the Council are as follows:

	1998-99 Number	1997-98 Number
National Competition Council	20.8	19.4

Note 23 Financial Instruments

a) Terms, conditions and accounting policies

Financial Instruments	Notes	Accounting Policies and Methods (including recognition criteria and measurement basis).	Nature of underlying Instrument (including significant terms and conditions affecting the amount, timing and certainty of cash flows).
Financial Assets			
Cash		Deposits are recognised at their normal amounts.	Deposits are non interest bearing.
Receivables for goods and services	12	These receivables are recognised any provision for bad and doubtful debts.	All receivables are with the Commonwealth, and/or other external entities
Financial Liabilities			
Trade Creditors	9	Creditors & 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 (& irrespective of having been invoiced).	All creditors are entities that are not part of the Commonwealth legal entity. Settlement is usually made net 30 days.

Note 23 Financial Instruments (continued)

b) Interest Rate Risk: Agency

Financial Instrument	Note	Non – Interest Bearing	
Financial Assets		98-99 $	97-98 $
Cash at Bank		26,296	500
Receivables for goods and services	12	13,423	6,694
Total Financial Assets		39,719	7,194
Total Assets		554,882	526,027
Financial Liabilities			
Trade Creditors	9	86,475	53,420
Total Financial Liabilities (Recognised)		86,475	53,420
Total Liabilities		480,236	434,193

The Council does not have any interest bearing risks.

C) Net Fair Value of Financial Assets and Liabilities

	Note	1998-99 Total carrying Amount	1998-99 Aggregate net Fair value	1997-98 Total carrying Amount	1997-98 Aggregate net fair value
Department Financial Assets					
Cash at Bank		26, 296	26, 296	500	500
Receivables for Goods & Services		13,423	13,423	6,694	6,694
Total Financial Assets		39,719	39,719	7,194	7,194
Financial Liabilities (recognised)					
Trade Creditors		86,475	86,475	53,420	53,420
Total Financial Liabilities (recognised)		86,475	86,475	53,420	53,420

Financial assets

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

Financial Liabilities

The net fair values for trade creditors are short -term in nature, and are approximated by their carrying amounts.

d) Credit Risk Exposures

The Agency's maximum exposures 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 Assets and Liabilities.

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

Competition policy units

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

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Index

A

B

C

D

E

F

G

H

I

L

M

N

O

P

Q

R

S

T

W