

NATIONAL COMPETITION COUNCIL

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NATIONAL COMPETITION COUNCIL

Section 1: Agency overview and resources

1.1 STRATEGIC DIRECTION

The National Competition Council (NCC) is an independent statutory agency established under Part IIA of the *Trade Practices Act 1974* (TPA). The NCC advises and makes recommendations under the National Access Regime in Part IIIA of the TPA¹ and recommendations and decisions in relation to natural gas pipelines.

The National Access Regime promotes competition, efficiency and productivity in markets that depend on the use of services provided by monopoly infrastructure facilities. The regime provides for access to monopoly facilities on appropriate terms, while ensuring facility owners receive appropriate payment for the use of their facilities (including a commercial return on their investment) and avoids wasteful and inefficient duplication of costly facilities, while ensuring appropriate incentives for infrastructure investment are maintained.

The NCC's function within the National Access Regime is to recommend on applications for declaration made by parties seeking to open up access to services provided by monopoly facilities. The NCC may only recommend a service be declared where:

- access to a service would materially promote competition in a dependent market;
- the service is provided by a facility that is uneconomical to duplicate;
- the facility is of national significance;
- there is no undue risk to health and safety;
- there is no alternative effective access regime; and
- access is not contrary to the public interest.

1 The NCC was established in 1995 to assist the Australian and State and Territory Governments to implement the National Competition Policy (NCP) and to make various recommendations relating to third party access to monopoly infrastructure. With the completion of the NCP program in 2006, the NCC re-focused on its roles relating to third party access and under the National Third Party Access Code for Natural Gas Pipeline Systems (the Gas Code). In April 2007, the Council of Australian Governments (COAG) determined that the NCC should continue to undertake these functions on an ongoing basis.

All six of these conditions must be met before a service can be declared. The NCC is also required to have regard to the objects of Part IIIA of the TPA, which are to promote effective competition in upstream and downstream markets via the economically efficient operation of and investment in infrastructure, and to encourage a consistent approach to access regulation in each industry. Where a service is declared, the Australian Competition and Consumer Commission is empowered to arbitrate access disputes if parties seeking access and facility owners are unable to agree on access arrangements and prices.

As an alternative to the National Access Regime, States and Territories may develop and implement access schemes specific to a jurisdiction's circumstances or act cooperatively to implement parallel regulation across jurisdictions (such as occurs in relation to the gas and electricity industries). Governments may seek certification of an access scheme as a means of verifying that the scheme provides an effective means of regulating third party access that broadly adheres to the principles underlying the National Access Regime.² Services that are subject to a certified State or Territory access regime are not subject to the national regime. The NCC is responsible for advising on whether such a scheme is effective and reflects the appropriate principles.

NCC recommendations in relation to declaration of services provided by monopoly facilities or certification of State or Territory access schemes are made to the responsible Australian Government Minister, except where declaration is sought for a service provided by a facility owned by a State or Territory government where the recommendation is to the responsible Minister of that State or Territory government.

The Ministerial Council of Energy's ongoing process of progressive reform of the energy sector will see a new National Gas Law. Under this law the NCC is to continue its role of recommending on whether particular natural gas pipeline systems should be covered and thus subject to regulation. This role is similar to that undertaken by the NCC under the Gas Code, which will continue to operate until the new law is implemented. In addition, under the new law, the NCC is responsible for determining whether covered (regulated) pipelines should be subject to full regulation or light regulation, classifying pipelines as transmission or distribution pipelines and advising the Minister for Resources and Energy in relation to price regulation and green field exemptions available under the law.

Activity in access regulation is expected to increase in 2008-09 and beyond. The NCC expects to have three complex declaration applications on hand at the start of the year. The NCC is likely to receive additional applications during the year, although the number and timing of applications is unpredictable. The NCC is also closely involved in a number of court proceedings and applications before the Australian Competition Tribunal arising from current or earlier declaration applications. The NCC anticipates additional such proceedings and applications will arise in 2008-09.

² These principles are set out in clause 6 of the Competition Principles Agreement.

The Ministerial Council of Energy's energy reform process will see most State and Territory governments implementing revised gas and electricity regimes for which they will seek certification. State and Territory governments have also undertaken to seek the certification of all other access regimes by 2010. The NCC anticipates receiving between five and as many as 12 applications for certification during 2008-09, although both the number and timing of these applications will depend on the implementation of relevant legislation at Australian and more particularly State and Territory level. The NCC expects applications for certification of some access regimes across jurisdictions to raise similar issues and to be amenable to being considered in parallel processes which will reduce the resources required in dealing with these.

In addition, the NCC may receive one or more applications relating to the regulation of natural gas pipeline systems.

The NCC is to make its best endeavours to recommend within four months on applications for declaration and within six months on applications for certification. The forthcoming National Gas Law will impose timeframes for the NCC's recommendations and decisions. Meeting these timeframes will require streamlining and greater efficiency in NCC processes and operations, and the reallocation of some additional human and financial resources. The number and complexity of proceedings in the Australian Competition Tribunal in relation to decisions resulting from NCC recommendations and court proceedings commenced in relation to applications for declaration coming to the NCC are also growing and absorbing significant resources.

The NCC works within a complex and evolving area of law where significant private and public interests are involved. In almost all matters that the NCC considers it is required to balance competing claims and interests with a view to ensuring an outcome that serves Australia's national interest. It is essential that the NCC continually develops its capabilities to ensure it provides appropriate advice and makes recommendations and decisions that reflect the relevant law and economic and policy developments as appropriate. The NCC must also ensure that its recommendations meet the requirements of decision making Ministers for objective advice that properly reflects relevant statutory provisions. The nature and potential impact of the NCC's areas of responsibility also demand that the NCC make available information and guidance to all interested parties.

The NCC considers that there are two particular potential challenges to delivering its output as projected.

The first is the capacity and willingness of some parties to raise legal challenges which seek to impair the NCC's ability to properly consider applications for declaration in commercially relevant timeframes or, more broadly, to delay processes under the National Access Regime such that declaration is rendered irrelevant. The second challenge is the scope for delay in intergovernmental regulatory reform processes or a lack of effective coordination in relation to the timing and conduct of applications for certification of new access arrangements in relation to electricity and gas markets.

These factors have the potential to put back the likely timing of expected certification applications in these areas or significantly increase the resources and time needed to consider these applications.

The NCC is continually evaluating and seeking to manage these risks.

1.2 AGENCY RESOURCE STATEMENT

Table 1.1 shows the total resources from all origins. The table summarises how resources will be applied to the NCC.

Table 1.1: National Competition Council resource statement — Budget estimates for 2008-09 as at Budget May 2008

	Estimate of prior + year amounts available in 2008-09 \$'000	Proposed at Budget = 2008-09 \$'000	Total estimate 2008-09 \$'000	Estimated appropriation available 2007-08 \$'000
Ordinary annual services				
Departmental outputs				
Departmental outputs	2,651 ²	2,781 ¹	5,432	4,006
Total net resourcing for the NCC	2,651	2,781	5,432	4,006

1. Appropriation Bill (No.1) 2008-09.

2. Estimated adjusted balance carried forward from previous year for Annual Appropriations.

Third Party Drawdowns from and on behalf of other agencies

	\$'000
Payments made on behalf of the NCC	2,781

Note: The Australian Competition and Consumer Commission provides financial services to the NCC and has drawdown access to manage the NCC's finances.

1.3 BUDGET MEASURES

Table 1.2: National Competition Council 2008-09 Budget measures

	Output group	2007-08 \$'000	2008-09 \$'000	2009-10 \$'000	2010-11 \$'000	2011-12 \$'000
Expense measures						
Departmental outputs						
Responsible Economic Management - National Competition Council	1.1	-	(1,200)	(1,200)	(1,200)	(1,200)
Total expense measures		-	(1,200)	(1,200)	(1,200)	(1,200)

Prepared on a Government Finance Statistics basis.

Section 2: Outcomes and planned performance

2.1 OUTCOMES AND PERFORMANCE INFORMATION

The Australian Government requires agencies to measure their intended and actual performance in terms of outcomes. Government outcomes are the results, impacts or consequences of actions by the government on the Australian community.

The NCC's outcome is described below, specifying the performance indicators and targets used to assess and monitor the performance of the NCC in achieving government outcomes.

The NCC has a single outcome being the achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community.

Following the end of the National Competition Policy (NCP) and the April 2007 decision of the Council of Australian Governments (COAG) about the function of the NCC, the NCC has revised its outputs. The changes are to amend output 1.1.1 so that the output focuses on advising on infrastructure access issues and to remove entirely the former output 1.1.2, under which the NCC provided public information on competition policy. The NCC now has a single output 1.1.1 that reflects the current role of the NCC in relation to third party access regulation and the contribution of this to outcome 1.

The NCC does not administer any activities on behalf of the Australian Government.

2.1.1 Outcome 1: The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community

Outcome 1 strategy

The NCC will provide comprehensive, objective and transparent advice to governments on applications received for the declaration of services and the certification of access regimes and on applications for the coverage/revocation of coverage and form of regulation of natural gas pipeline systems, in line with indicative best endeavours timeframes.

The NCC will continually seek to improve its processes, published guidelines and the structure of recommendation reports, and mechanisms for providing information to interested parties in relation to access regulation matters.

In 2008-09 and beyond, the NCC will liaise with governments as prospective applicants for the certification of access regimes, including regimes in the energy sector, to maximise opportunities for certification.

Outcome 1 resource statement

Table 2.1 provides additional detail of Budget appropriations and the total resourcing for outcome 1.

Table 2.1: Total resources for outcome 1

Outcome 1: The achievement of effective and fair competition reforms and better use of Australia's infrastructure for the benefit of the community	2008-09 Total estimate of available resources \$'000	2007-08 Estimated actual \$'000
Output group 1.1 - National Competition Council		
Departmental outputs		
Output 1.1.1 - Advice provided to governments on infrastructure access issues	2,781	4,006
Total resources for outcome 1	2,781	4,006

	2008-09	2007-08
Average staffing level (number)	13	13

Contributions to outcome 1

Output group 1.1 — National Competition Council	
The component of output group 1.1 is:	
Output 1.1.1 — Advice provided to governments infrastructure access issues	
Advice provided to governments on infrastructure access issues, including in particular on: applications for declaration of services provided by monopoly facilities; applications for certification and applications in relation to natural gas pipelines under the National Gas Law.	
Output 1.1.1 — Advice provided to governments infrastructure access issues	
Key performance indicators	2008-09 target
NCC recommendations on applications for declaration of services provided by monopoly facilities meet statutory requirements (including target time limits) and the advice requirements of decision making Ministers.	Recommendations on applications are provided within statutory time guidelines (target of 4 months). Recommendations meet the advice requirements of decision making Ministers.
NCC recommendations on applications for certification meet statutory requirements (including target time limits) and the advice requirements of decision making Ministers.	Recommendations are made within statutory time guidelines (target of 6 months). Recommendations meet the advice requirements of decision making Ministers.

Contributions to outcome 1 (continued)

Output 1.1.1 — Advice provided to governments infrastructure access issues (continued)	
Key performance indicators	2008-09 target
NCC recommendations and decisions under the National Gas Law are made in accordance with the processes and criteria provided for in that law and related rules.	Recommendations and decisions are made within specified time limits. Recommendations meet the advice requirements of decision making Ministers.
The NCC develops and maintains informative and up to date information resources for applicants, infrastructure owners and other interested parties in relation to all matters for which it is responsible.	A new NCC website is launched to provide accessible information on all access regulation matters for which the NCC is responsible. Updated guidelines on declaration and certification under Part IIIA of the TPA are available on the NCC website by 31 December 2008. Initial guidelines relating to the NCC's areas of responsibility under the new National Gas Law are available on the NCC website within three months of that law coming into effect. Case law developments, legislative amendments and developments in NCC processes or policies are reflected in NCC information resources within 30 days.
The NCC provides timely advice on the operation of the National Access Regime (including by way of the reporting required by s29O(2) of the TPA which requires reporting on time taken to make recommendations, court or Australian Competition Tribunal interpretation of key provisions, matters impeding the operation of the regime, benefits and costs (including any disincentives for investment) resulting from the regime's operation, and implications for the future operation of the regime).	The NCC's Annual Report to Parliament includes a comprehensive report on the National Access Regime that meets the requirements of s29O(2) and is provided by 31 August 2008.

Section 3: Explanatory tables and budgeted financial statements

Section 3 presents budgeted financial statements which provide a comprehensive snapshot of agency finances for the budget year 2008-09. It explains how budget plans are incorporated into the financial statements and provides further details of movements in administered funds, special accounts and government Indigenous expenditure.

3.1 EXPLANATORY TABLES

3.1.1 Reconciliation of total available appropriation and outcomes

The Agency Resource Statement (Table 1.1) details the total available appropriation to the NCC from all sources. For departmental operating appropriations (outputs) this includes carry-forward amounts as well as amounts appropriated at budget. As the NCC incurs and is funded for future liabilities, generally depreciation and employee entitlements, the total amount of departmental operating appropriation available to the NCC is unlikely to be fully utilised in the budget year. The difference between the agency resource statements and the sum of all payments made at the departmental outputs level is the expected carry-forward amount of resources for the 2009-10 budget year, including amounts related to meeting future obligations to maintain the agency's asset base and to meet employee entitlement liabilities.

Table 3.1.1: Reconciliation of total available appropriation and outcomes

	\$'000
Total available departmental operating appropriation (outputs)	5,431
Less estimated payments in 2008-09	2,764
Estimated departmental outputs carried forward and available for 2009-10	2,667

3.1.2 Movement of administered funds between years

Table 3.1.2: Movement of administered funds between years

The NCC does not have any administered funds.

3.1.3 Special accounts

Table 3.1.3: Estimates of special account cash flows and balances

		Opening balance 2008-09 2007-08	Receipts 2008-09 2007-08	Payments 2008-09 2007-08	Adjustments 2008-09 2007-08	Closing balance 2008-09 2007-08
	Outcome	\$'000	\$'000	\$'000	\$'000	\$'000
Other Trust Moneys Account	1	-	-	-	-	-
Services for other Governments and Non-Agency Bodies Account	1	-	-	-	-	-
Total special accounts 2008-09 Budget estimate		-	-	-	-	-
Total special accounts 2007-08 estimate actual		-	-	-	-	-

3.1.4 Australian Government Indigenous Expenditure

Table 3.1.4: Australian Government Indigenous Expenditure

The NCC does not have any Australian Government Indigenous Expenditure.

3.2 BUDGETED FINANCIAL STATEMENTS

The budgeted financial statements contain estimates prepared in accordance with the requirements of the Government's financial budgeting and reporting framework, as well as specific guidelines issued by the Department of Finance and Deregulation. The budgeted statements show the planned financial performance for the 2008-09 budget year and each of the forward years from 2009-10 to 2011-12. The statements also include the estimated actual for 2007-08 for comparative purposes.

3.2.1 Differences in agency resourcing and financial statements

There is no difference between agency resourcing and financial statements.

3.2.2 Analysis of budgeted financial statements

An analysis of the NCC's budgeted financial statements is provided below.

Budgeted departmental income statement

The NCC is budgeting for a breakeven operating result in 2008-09.

Operating revenues

Total NCC revenue is estimated to be \$2.8 million for 2008-09. This is a decrease of \$1.2 million from the 2007-08 estimated actual due to the 2008-09 Budget measure.

Operating expenses

Total expenses are estimated to be \$2.8 million for 2008-09. This is a decrease of \$1.2 million from the 2007-08 estimated actual due to the 2008-09 Budget measure.

Budgeted departmental balance sheet

In 2008-09 the NCC's equity position will be positive \$2.4 million.

Assets

The NCC's assets are predominantly financial assets.

Liabilities

The NCC's liabilities are mainly employee entitlements. There is no significant movement in total liabilities from 2007-08.

3.2.3 Budgeted financial statements tables

**Table 3.2.1: Budgeted departmental income statement
(for the period ended 30 June)**

	Estimated actual 2007-08 \$'000	Budget estimate 2008-09 \$'000	Forward estimate 2009-10 \$'000	Forward estimate 2010-11 \$'000	Forward estimate 2011-12 \$'000
INCOME					
Revenue					
Revenues from Government	4,006	2,781	2,817	2,848	2,907
Other	24	24	24	24	-
Total income	4,030	2,805	2,841	2,872	2,907
EXPENSE					
Employees	1,462	1,533	1,595	1,659	1,725
Suppliers	2,559	1,232	1,206	1,173	1,142
Depreciation and amortisation	9	40	40	40	40
Total expenses	4,030	2,805	2,841	2,872	2,907
Surplus (deficit) attributable to the Australian Government	-	-	-	-	-

Prepared on an Australian Accounting Standards basis.

**Table 3.2.2: Budgeted departmental balance sheet
(as at 30 June)**

	Estimated actual 2007-08 \$'000	Budget estimate 2008-09 \$'000	Forward estimate 2009-10 \$'000	Forward estimate 2010-11 \$'000	Forward estimate 2011-12 \$'000
ASSETS					
Financial assets					
Cash and equivalents	22	22	22	22	22
Trade and other receivables	2,629	2,646	2,659	2,673	2,673
Total financial assets	2,651	2,668	2,681	2,695	2,695
Non-financial assets					
Land and buildings	97	80	73	73	73
Infrastructure, plant and equipment	20	13	36	52	52
Other	2	2	2	2	2
Total non-financial assets	119	95	111	127	127
Total assets	2,770	2,763	2,792	2,822	2,822
LIABILITIES					
Provisions					
Employees	293	301	330	360	360
Other	8	8	8	8	8
Total provisions	301	309	338	368	368
Payables					
Suppliers	29	14	14	14	14
Other	8	8	8	8	8
Total payables	37	22	22	22	22
Total liabilities	338	331	360	390	390
Net assets	2,432	2,432	2,432	2,432	2,432
EQUITY					
Reserves	115	115	115	115	115
Retained surpluses or accumulated deficits	2,317	2,317	2,317	2,317	2,317
Total equity	2,432	2,432	2,432	2,432	2,432
Current assets	2,653	2,670	2,683	2,697	2,697
Non-current assets	117	93	109	125	125
Current liabilities	184	173	187	202	202
Non-current liabilities	154	158	173	188	188

Prepared on an Australian Accounting Standards basis.

**Table 3.2.3: Budgeted departmental statement of cash flows
(for the period ended 30 June)**

	Estimated actual 2007-08 \$'000	Budget estimate 2008-09 \$'000	Forward estimate 2009-10 \$'000	Forward estimate 2010-11 \$'000	Forward estimate 2011-12 \$'000
OPERATING ACTIVITIES					
Cash received					
Appropriations	4,006	2,781	2,817	2,848	2,907
Total cash received	4,006	2,781	2,817	2,848	2,907
Cash used					
Employees	1,442	1,503	1,565	1,629	1,695
Suppliers	2,554	1,238	1,212	1,179	1,172
Total cash used	3,996	2,741	2,777	2,808	2,867
Net cash from or (used by) operating activities	10	40	40	40	40
INVESTING ACTIVITIES					
Cash used					
Purchase of property, plant and equipment	10	40	40	40	40
Total cash used	10	40	40	40	40
Net cash from or (used by) investing activities	(10)	(40)	(40)	(40)	(40)
Net increase or (decrease) in cash held	-	-	-	-	-
Cash at the beginning of the reporting period	22	22	22	22	22
Cash at the end of the reporting period	22	22	22	22	22

Prepared on an Australian Accounting Standards basis.

Table 3.2.4: Departmental statement of changes in equity — summary of movement (Budget year 2008-09)

	Retained earnings	Asset revaluation reserve	Other reserves	Contributed equity/ capital	Total equity
	\$'000	\$'000	\$'000	\$'000	\$'000
Opening balance as at 1 July 2008					
Balance carried forward from previous period	2,317	-	115	-	2,432
Estimated closing balance as at 30 June 2009	2,317	-	115	-	2,432

Prepared on an Australian Accounting Standards basis.

Table 3.2.5: Schedule of budgeted income and expenses administered on behalf of Government (for the period ended 30 June)

The NCC does not have any administered funds.

Table 3.2.6: Schedule of budgeted assets and liabilities administered on behalf of Government (as at 30 June)

The NCC does not have any administered funds.

Table 3.2.7: Schedule of budgeted administered cash flows (for the period ended 30 June)

The NCC does not have any administered funds.

3.2.4 Notes to the financial statements

Basis of accounting

The financial statements have been prepared on an Australian Accounting Standards basis.