

## **Memorandum of Understanding In relation to provision of secretariat services**

### **Between the National Competition Council (NCC) and the Australian Competition and Consumer Commission (ACCC)**

#### Background

1. The NCC wishes to ensure it has ongoing access to capable secretariat services to assist it in making recommendations and decisions, and undertaking its other functions, under the Competition and Consumer Act (CCA) and the National Gas Law (NGL).
2. Rather than directly engaging staff and other resources (including premises, IT, payroll and accounting services, and stationery and supplies) to provide secretariat services, the NCC wishes to enter into an agreement with the ACCC to provide it with secretariat services.
3. The NCC will retain responsibility for its recommendations, decisions and other functions under the CCA and NGL. Secretariat services provided to the NCC by ACCC officers will be provided in accordance with NCC policies and procedures and under the direction of the NCC President and Councillors.

#### Secretariat services

4. An indicative list of secretariat services required by the NCC and to be supplied by the ACCC is set out in appendix 1.
5. The ACCC will maintain the capacity to provide the secretariat services required by the NCC. The NCC will retain the ability to directly engage (and pay for) independent expert and legal advice where necessary.
6. The ACCC will ensure that appropriate staff and other related resources are available to provide secretariat services to the NCC so that the NCC is able to meet statutory and other agreed deadlines and are of a quality acceptable to the NCC.

#### Administrative arrangements

7. The NCC and ACCC agree that an appropriately qualified SES officer will be designated as Executive Director of the NCC and will act as the principal link with the NCC President and Councillors and have day to day responsibility for directing the provision of secretariat services.
8. The NCC and ACCC agree that no person will be designated as Executive Director of the NCC without the agreement of the NCC president and that the NCC President will have a substantive input to the assessment of the performance and determination of the remuneration of the designated Executive Director.
9. The NCC and ACCC agree that the designated Executive Director will give priority to the duties of that position but may undertake other duties as required by the ACCC, except where such other duties may involve a conflict of interest.

10. The NCC and ACCC agree that officers involved in provision of secretariat services (including those transferred under clause 13 may also be engaged in other duties for the ACCC. The NCC and ACCC will agree a protocol for handing of confidential information that provides appropriate protection to confidential information provided to either organisation.
11. The ACCC agrees that in assigning officers to provide secretariat services, regard will be had to the need for transparency in decision making and avoidance of any appearance of a conflict of interest. Wherever possible staff engaged in regulation of a service will not be assigned to assist the NCC in considering an application for revocation of declaration or coverage of that service.
12. The NCC and ACCC agree that confidential information obtained or held by either organisation will not be disclosed to the other except as provided for or authorised by law.
13. In order to assist the ACCC in meeting the requirements of this agreement the ACCC will agree to five staff being transferred to the ACCC.

#### Expected service level and payment for services

14. This agreement is predicated on the ACCC providing support to the NCC to consider up to 6 applications under the CCA or NGL each year and undertaking all required administration of the NCC.
15. In return for secretariat services to these levels the NCC will pay the ACCC \$700,000 per annum, quarterly in advance.
16. The payment for services in clause 15 will be reviewed annually having regard to the appropriations of funds by Parliament to the ACCC and NCC and any required "efficiency dividends". The intention is that the value of the payment under clause 15 is maintained as a proportion of the appropriation to the NCC. Payment under clause 15 will only cease upon the expiry of 12 months notice from the NCC to the ACCC.
17. Where the number of applications is likely to exceed the number specified in clause 14, the Executive Director, the NCC President and the ACCC CEO, will meet to determine what, if any, payment adjustment is required.
18. In determining any payment required under clause 17 regard shall be had to the period this agreement has been in operation and the total number of applications over that period. The intention is that an additional payment will only be required when on average the number of applications exceeds that reasonably contemplated by this agreement.

#### Dispute resolution

19. Where any dispute arises in relation to this agreement, the NCC President and the ACCC CEO will meet to consider and determine the matter. Where agreement cannot be reached the parties will refer the dispute to the Secretary to the Treasury (or his/her nominee) for conciliation. If agreement cannot be reached at that point, notice of termination of this agreement under clause 22 will be taken to have been given. The status quo will be maintained during the notice period.

Commencement, review and termination of agreement

20. This agreement will commence on 1 July 2014 and continue until terminated on notice by the NCC or ACCC.
21. This agreement will be reviewed on or before 1 July 2016 and every two years thereafter.
22. Any party seeking to terminate this agreement under clause 20 will give 12 months notice.
23. This agreement may be amended or terminated at any time where a change in Government policy or legislation so requires.



David Crawford  
President  
NCC

Date: 25 March 2014



Rod Sims  
Chairman  
ACCC

Date: 28 March 2014

## **Appendix 1: Secretariat services**

### Advice and support in relation to NCC recommendations, decisions and reports

Receive applications under Part IIIA and the NGL (usually there will be pre-application discussions with intending applicants). This encompasses applications for:

- declaration of a service (and revocation of declaration)
- certification of state/territory access regimes
- ineligibility for declaration (and revocation of an ineligibility determination)
- coverage of pipelines (and revocation of coverage)
- form of regulation of covered pipelines (light regulation determinations are made by the Council)
- 15 year pipeline no-coverage determinations
- Classification and reclassification of pipelines

Advise the NCC on validity of applications

Arrange public notice of applications and publication on NCC website, advise service provider and other interested parties, advise decision making Minister

Advise the NCC on novel issues arising in applications and how these should be considered in accordance with the law, discuss approach to such issues and associated risks with the NCC as appropriate

Seek submissions on applications, publishing these on the website

Deal with applications for confidentiality in accordance with NCC policy

Investigate and research issues arising in applications, especially those relating to satisfaction of the relevant declaration or other decision criteria

Prepare a draft recommendation for consideration by the NCC, amend this as required following discussion with the NCC

Publish and distribute draft recommendation (incl on website), seek further submissions in response to draft recommendation

Finalise recommendation in conjunction with the NCC, provide to decision making Minister

Publish Minister's decision and NCC recommendation

Participate, and brief counsel and solicitors to participate, in reviews or appeals of decisions and other litigation in accordance with NCC policy and practice (It is the NCC's intention that it would directly engage (and pay for) independent experts, solicitors and counsel engaged in any review, appeal or similar proceedings)

Prepare and update guidelines and similar policy statements for approval by the NCC

Respond to inquiries in relation to possible applications and third party access to infrastructure generally

Undertake research and analysis to support the NCC's response to any requests for research or advice under ss29B (1) or (2) of the CCA

Prepare draft submissions and reports as directed by the NCC

Liaise with Commonwealth and State/Territory officials as required

#### Administration of the NCC

Maintain NCC website

Organise scheduled quarterly Council meetings and other meetings/teleconferences as required

Coordinate travel arrangements for NCC President and Councillors (The NCC will remain responsible for the costs of Councillor travel and accommodation)

Generally assist the NCC in meeting its statutory obligations, including in relation to freedom of information and privacy legislation

Prepare the NCC's Annual Report, including reporting required under s 290(2) of the CCA.

Prepare responses to parliamentary questions

Prepare briefing material for the NCC President's attendance at Senate Estimates and other similar inquiries

Prepare speaking notes and conference presentations for the NCC President and councillors

Prepare and distribute NCC media releases (NCC media releases will generally be issued in the name of the Council President. Day to day media inquiries will be handled by the Executive Director and escalated to the President as required).

Maintain the NCC's financial records and payroll (the ACCC currently provides the NCC's financial and personnel administration, it is assumed that these functions would be as part of the provision of overall secretariat services)

Liaise with the NCC's auditors in relation to the NCC's financial statements

Liaise with Treasury and other agencies in relation to the NCC's budget and financial management

Coordinate the NCC's provision of information to and dealings with Treasury, Finance, Comcare, Comcover, APSC, Office of Legal Services Coordination, and other government agencies

Maintain NCC records in accordance with National Archives and other requirements