



ACCC Report

Annual Report

2015–16

Australian Competition and Consumer Commission and
the Australian Energy Regulator



Australian
Competition &
Consumer
Commission



AUSTRALIAN
ENERGY
REGULATOR

ANNUAL REPORT

2015-16

Contact us

If you have any questions or ideas regarding this report, please contact:

Director, Corporate Communications
Australian Competition and Consumer Commission

23 Marcus Clarke Street
Canberra ACT 2601
Australia

Internet: www.accc.gov.au

Email: publishing.unit@acc.gov.au

Phone: (02) 6243 1111
+61 2 6243 1111
(international)

Web address of this report: www.accc.gov.au/annualreports

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Australian Competition and Consumer Commission
23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

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www.accc.gov.au



**Australian
Competition &
Consumer
Commission**

EXECUTIVE OFFICE

29 August 2016

The Hon. Scott Morrison MP
Treasurer
Parliament House
CANBERRA ACT 2600

Dear Treasurer

We are pleased to present to you the Annual Report of the Australian Competition and Consumer Commission (ACCC) and the Australian Energy Regulator (AER) in accordance with section 46 of the *Public Governance, Performance and Accountability Act 2013*.

This report covers operations for the year ended 30 June 2016. The ACCC and AER have obligations under section 171 and section 44AAJ of the *Competition and Consumer Act 2010* to provide an annual report to the responsible Minister within 60 days of the end of the financial year. Accordingly, we provide you with a copy of this report.

We certify that the ACCC and AER have prepared fraud risk assessments and fraud control plans. We have in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes that meet the specific needs of the agency and comply with the Commonwealth Fraud Control Guidelines.

Rod Sims
Chairman, ACCC

Paula Conboy
Chair, AER

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Part 1

Year in review



Introduction

As the national agency responsible for consumer protection, competition law, and infrastructure regulation our work this year has taken us everywhere from the boardrooms of multi-national merger applicants to remote Indigenous communities targeted by unscrupulous sales people. We have visited cattle country, toured gas hub infrastructure and assisted our counterparts in the Asia-Pacific region; all in the name of making markets work.

We have been a champion for competition and consumers in more ways than one. We continued to voice our concerns about actions taken by governments to sell significant assets without appropriate market structures or regulatory arrangements in place. We think governments should use privatisation as an opportunity to put in place pro-competitive market structures. We have also used our legal, economic, investigative and regulatory expertise to complete market studies in several key areas of the economy. In fact, like most other agencies around the world, market studies are now a permanent feature of what we do. We will use them to focus on important markets of concern and identify any relevant issues that need to be addressed.

We have achieved some significant enforcement outcomes this year involving, among others, Visa Worldwide, Colgate-Palmolive, Woolworths and Optus, to name a few. From our perspective, strong and visible enforcement defines the boundaries within which the profit motive can work. To achieve this objective, we must constantly explain what we are doing and why. On that note, I am pleased to introduce this report and highlight some of our activities.

A steady stream of consumer outcomes

Our consumer laws underwrite confident consumers, enhance transparency and inform choice. The Australian Consumer Law (ACL) seeks to ensure businesses compete on merit and not falsehoods, and to protect all consumers and small businesses from unfairness that has no place in a properly functioning market.

In 2015–16, the ACCC was involved in 48 consumer protection court cases (19 new proceedings) resulting in penalties totalling more than \$15 million. We also accepted 12 court enforceable undertakings and received payment for 43 infringement notices from 20 traders with penalties totalling over \$450 000. Our activities covered everything from bacon to boots and beds.

This is a great effort especially when you consider we had to shuffle our resources to deal with some urgent issues, including private training colleges and dairy issues.

Working with and for small business

We continue to seek to ensure that small businesses have the opportunity to compete on their merits, and to educate them about their rights and responsibilities under the *Competition and Consumer Act 2010* (Cth) (the Act). This year we undertook several court actions against firms preying on small firms, revised and revamped our consultation by creating a merged Small Business and Franchising Consultative Committee, grew our Small Business Information Network and our Franchising Information Network, and began preparing for the introduction of the new business-to-business unfair contract term provisions that will provide more protections from November 2016.

Underscoring the importance of what we do in product safety

I believe our case against Woolworths Limited for misleading consumers about product safety hazards was one of our most significant actions. The Federal Court ordered Woolworths to pay more than \$3 million in penalties for breaches of the ACL relating to safety issues with house brand products sold in Woolworths supermarkets, Big W and Masters stores. In some cases, Woolworths was aware of serious injuries resulting from defective products, but did not remove the item from sale or recall the product. Woolworths subsequently removed the products from sale and recalled them, but not always before further injuries. Because of this case, all companies should now pay closer attention to quality assurance and do more to detect and remove unsafe products from their shelves.

Questioning claims made by big business

Consumers understand businesses sometimes get things wrong, but deliberate, systematic and cynical conduct can damage consumer confidence. That is why we focused on truth in advertising and claims made by larger firms. Our actions cover some extremely well known products such as Nurofen, Arnott's Shapes, Uncle Toby's Oats, and Rainbow Paddle Pops. Each action serves a purpose, but the underlying message is consumers must have accurate information when making their purchasing decisions.

Indigenous consumer protection becomes an enduring priority

We have had a focus on protecting Indigenous consumers for many years. In 2016, we have gone a step further and elevated Indigenous consumer protection to an enduring compliance and enforcement priority. This is a significant change to our policy and one that recognises Indigenous consumers, particularly those living in remote areas, continue to face challenges in asserting their consumer rights. The elevation means we will prioritise our work in these areas while these challenges remain.

Private health insurance and consumer protection

This year our private health insurance market study for the Senate focused on information provided to consumers. We examined the transparency, accuracy and consistency of information about policies and the impact on consumer decision-making. We are reviewing consumer protection issues arising from this report.

Separately, we have instituted proceedings in the Federal Court against Medibank Private Limited alleging it contravened the ACL by engaging in misleading conduct, making false or misleading representations and engaging in unconscionable conduct. The allegations centre on Medibank's failure to notify members about its decision to limit benefits for in-hospital pathology and radiology services.

The first year of the Food and Grocery Code of Conduct

We are committed to doing what we can to ensure the new Food and Grocery Code of Conduct succeeds. The code did not get off to the best start; and we publicly expressed our concerns about the way retailers presented new supply agreements. Our immediate concerns were then resolved and we are confident the code can help redress the continuing imbalance in bargaining power often existing between suppliers and larger grocery retailers. We will continue to monitor complaints under the code, conduct compliance checks and investigate potential breaches.

Major developments in key competition cases

The operation of our market economy depends on competition to drive innovation and benefit consumers. It is, therefore, important for the ACCC to take action when a company damages the competitive process. Indeed, in the past year, we have seen some major developments in several long-running cases.

In September, the Federal Court handed Visa Worldwide Pte Ltd an \$18 million penalty for engaging in anti-competitive conduct which prevented competing currency conversion providers from expanding.

In another important case, the Federal Court ordered Cement Australia Pty Ltd and related companies to pay penalties totalling \$17.1 million for anti-competitive flyash agreements. We have since appealed the penalty arguing it is manifestly inadequate, and not of appropriate deterrent value. Our broad view is penalties must be commercially relevant. In other words, penalties must be high enough for businesses not to see them as merely an acceptable risk of doing business.

Cartel cases continue to unfold

The fact we have around a dozen in-depth investigations suggests there is too much cartel conduct occurring in Australia. We need to send a strong message regarding cartel conduct and the Commonwealth Department of Public Prosecution laying Australia's first criminal cartel charges in July 2016 will certainly help with that. In the meantime, business executives should take notice of our recent civil actions.

The Federal Court ordered Colgate-Palmolive Pty Ltd to pay \$18 million after it admitted to entering understandings to limit the supply and control the price of laundry detergents. As a part of the same proceedings, the Federal Court ordered Woolworths Limited to pay

\$9 million in penalties following admissions. The Woolworths penalty is the largest ordered against an accessory to competition law breaches. The case continues against PZ Cussons Australia Pty Ltd.

In another significant development, the Full Court of the Federal Court upheld the ACCC's appeal in the air cargo case. The Full Court found PT Garuda Indonesia's and Air New Zealand's conduct breached Australia's price fixing laws when it agreed to surcharges for carrying air cargo from overseas ports to destinations within Australia.

In the year ahead, the Federal Court will hand down a penalty against Yazaki Corporation after it engaged in collusive conduct in supplying wire harnesses to Toyota Australia. We also keenly await the High Court ruling on the Flight Centre case.

Using undertakings to get petrol price information for motorists

Late in 2015, the ACCC accepted undertakings from Informed Sources and four petrol retailers in resolving court proceedings instituted in 2014. We believe the undertakings will achieve a key objective of the ACCC; that is, open and transparent markets. Enabling consumers to access data and information, previously only available to Informed Sources subscribers, will enable informed decisions and increased competition.

A spate of important and complex merger reviews

The ACCC considered 319 mergers and conducted 31 public reviews during the year. Significantly, and in accordance with our stated objectives, we cleared 90 per cent of mergers without the need for a public review. We believe we are getting the right balance in ensuring our limited time and energies focus on the more complex or contentious end of the merger spectrum while less contentious mergers are cleared expeditiously. With our mergers work, we never know what is coming around the corner, but looking back, we assessed some important and complex mergers and acquisitions; Iron Mountain's acquisition of Recall Holdings; Halliburton's proposed acquisition of Baker Hughes; the Qube/Brookfield acquisition of Asciano; and Metcash's proposed acquisition of Home Timber & Hardware Group.

An authorisation decision for the ages

The early pioneers of competition law in Australia could have never imagined an authorisation application involving a smartphone taxi booking app. Authorisation enables businesses to engage in anti-competitive arrangements without the risk of legal action. In this example, the ACCC granted conditional authorisation to the ihail app, a joint venture between the major taxi networks and other industry participants, including Cabcharge. All up, we issued more than 30 final authorisation decisions across a wide range of industries.

A formal inquiry into the complex wholesale gas industry

We completed our formal inquiry into the competitiveness of wholesale gas prices in eastern and southern Australia. As part of the 12-month inquiry, we held more than 30 hearings and considered over 73 000 documents. We found the development of liquefied natural gas (LNG) facilities in Queensland created unprecedented change in the east coast gas market. Our report explains how a triple whammy of events has created an increasingly complex environment for many gas market participants. We also reported that meeting future

domestic and LNG demand will require extensive development of undeveloped gas reserves and resources. We also said the current test for pipeline regulation is not fit for purpose. The ACCC has made a number of recommendations that the COAG Energy Council and state and territory governments can consider to alleviate gas market issues.

Running a ruler over the new car industry

The ACCC has started a market study into the new car retailing industry and we expect to issue a draft report in the first quarter of 2017. With more than one million new cars sold in Australia each year, the study will focus on compliance with consumer guarantees obligations, after sales care, fuel efficiency claims and restrictions on accessing vehicle data.

Ramping up our work in the farm sector

Market studies will also be a feature of our work in agriculture. In fact, one of the first actions of our new Agricultural Unit was to conduct a study into the beef cattle industry. We are interested in a range of issues such as competition between buyers of cattle, the strength of competition among bidders at saleyards and the transparency of cattle pricing information. We hope to complete the report on the study in November 2016. With engagement, our new unit has also held the first of a series of workshops for fruit and vegetable growers in regional areas. We also established an Agricultural Consultative Committee to act as a sounding board on competition and fair trading concerns related to the agriculture sector.

Making our mark on the global stage

With an increasingly global market place, our international activities grow in significance every year. The Global Competition Review ranks us as one of the top 10 agencies in the world. One of our main activities is delivering a major capacity building initiative, the Competition Law Implementation Program, to support ASEAN Member States to introduce and implement national competition laws and policies. Strengthening competition law enforcement is a vital part of Australia's international engagement, and our regional relationships have never been closer.

An industry in change

The telecommunications industry is experiencing prolonged change due to technological developments, new consumer use patterns and, principally, structural change from the rollout of the NBN. The ACCC has various roles in this transition and this year we issued our first quarterly report detailing the size and structure of emerging NBN wholesale access markets.

The need for monitoring broadband speed

The ACCC wants to see consumers provided with better information about broadband speeds; to improve competition and consumer outcomes in the retail broadband market. We completed a three-month broadband performance monitoring and reporting pilot program this year and next year we will invite comment from industry and consumers views on broadband speed and performance information.

Making the water charge rules better

Last year, we started preparing advice for the Minister on making, amending or revoking the water charge rules and water market rules. In preparing our advice, we held eight forums across the Murray-Darling Basin and met with many industry stakeholders. Our focus is on improving transparency around charging arrangements, promoting efficient and sustainable use of water infrastructure, and reducing the regulatory burden on infrastructure operators. In line with the review's terms of reference, our draft advice proposed changes to reduce the red tape for infrastructure operators while increasing safeguards for irrigators and other water users. Our final advice will go to the Minister in the second half of 2016.

Putting regional petrol prices under the microscope

The ACCC undertook a number of 'micro' petrol market studies in targeted regional locations. These studies aim to explain prices paid at the bowser to understand why prices are higher in some regional locations. Our first report covered Darwin where we found that petrol prices were significantly higher than in a competitive market. Interestingly, Darwin's average petrol prices came down during the year because of the increased scrutiny. We also completed a report on Launceston petrol prices and will continue to examine prices in Armidale and Cairns.

Considering exemptions from the Wheat Code

The ACCC is keen to reduce regulation where it is not necessary, such as where competition has developed. The Port Terminal Access Code of Conduct regulates the conduct of port terminal service providers to ensure exporters of bulk wheat have fair and transparent access to port terminal services. Where appropriate, the ACCC may reduce regulation at a specific port terminal by exempting port terminal service providers from certain parts of the code. This year, we assessed and granted a series of exemption applications.

Australian Energy Regulator

The Australian Energy Regulator's job is to ensure consumers pay no more than necessary for a reliable supply of energy. The AER has completed some fascinating work dealing with consumer hardships policies, increased consumer consultation and the all-important revenue decisions. In the past year, the AER broke some new ground; the AER's work extended to the regulation of networks in the Northern Territory for the first time and the National Energy Customer Framework applied in Queensland for the first time.

Changes in the Commission ranks

We welcomed Mick Keogh as a new Commissioner in February. Agriculture is a priority for the ACCC and Mick's experience in the farm sector will be invaluable to us. In April, we farewelled Commissioner Dr Jill Walker after she was appointed to the New Zealand Commerce Commission (NZCC). Jill has made an enormous contribution to the ACCC in so many areas; we all owe her a great deal. The NZCC will benefit greatly from her expertise.

An exciting time to be a competition and consumer law expert

In November, the Australian Government accepted the majority of the Harper review panel's recommendations in making sure our competition policy and laws are fit for purpose. We are working constructively with the government as it implements these recommendations.

The first review of the ACL is now well underway. The ACL review will test whether consumer protections suit the modern marketplace and whether the tools and sanctions are delivering compliance. For example, one of the big questions for the review is whether the maximum available penalty of \$1.1 million is enough to deter larger firms. The ACCC considers consumer law penalties ought to be more in line with competition law penalties. The review will also consider the 'single law multiple regulator' model which underpins the ACL.

Looking forward—a law rarely standing still

There are several changes to the law covering important areas of our economy. We have new laws banning excessive payment surcharges. The ban essentially stops businesses from charging customers more than what it costs the business to process the payment. The ban will have a staged introduction applying to large businesses from 1 September 2016 and to all other businesses from 1 September 2017. We will focus on education and awareness in the early stages but there will also be an enforcement focus, particularly for those large businesses clearly on notice of these changes.

Many companies use standard form contracts when doing business with multiple customers or suppliers. From 12 November 2016, a new law will protect small businesses from unfair terms in standard form contracts. If the court finds a term unfair, that particular term will be void and treated as if it never existed. We think the new protections are an important development in supporting a vibrant small business sector.

Clear and accurate food labelling is important from both a consumer and competition perspective. On 1 July 2016, a new country of origin food labelling system will start under the ACL. Businesses will have two years to sell their current stock and change their labels to comply with the new law before it becomes mandatory on 1 July 2018. The labelling standard regulates the type and amount of information businesses provide to consumers about the food they buy.

On behalf of everyone at the ACCC, who have worked hard all year to deliver the excellent outcomes outlined in these pages, it is a pleasure to introduce our Annual Report. There is much going on and much, much more to come.

Finance and staffing snapshot

The ACCC received an unqualified audit report on the 2015–16 financial statements from the Australian National Audit Office. These statements can be found in part 5 from page 233 to page 292.

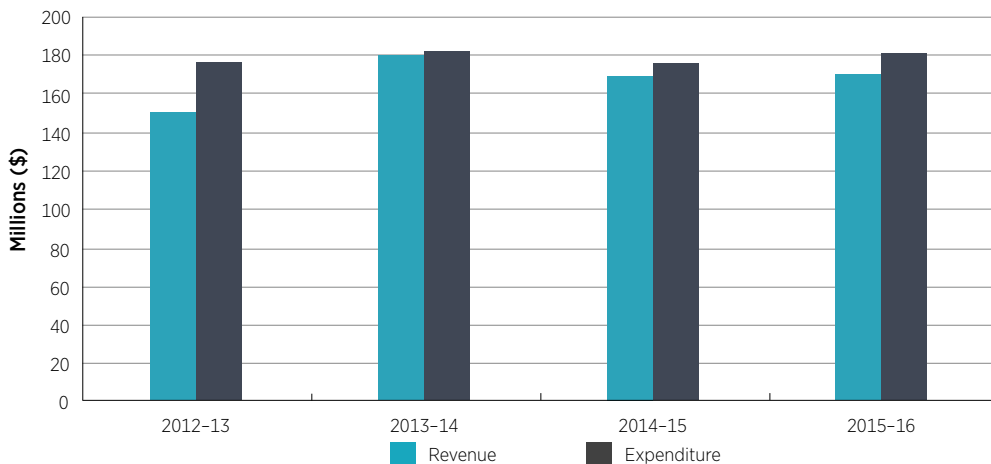
The agency achieved an operating deficit of \$5.5 million excluding depreciation and amortisation in 2015–16 compared to a \$0.6 million deficit in 2014–15. The loss includes \$3.3 million relating to legal settlements where the ACCC was required to pay costs. This amount is funded by equity injection and we have approval for losses generated by legal settlements. The remaining \$2.2 million is largely attributable to additional litigation expense incurred during the year.

The ACCC's net cost of services for 2015–16 was \$176.4 million (2015: 173.8 million), with revenue from Government of \$165.3 million (2015: 167.4 million).

Revenues from other sources increased by \$2.8 million in 2015–16 due to revenue generated from a sub-lease entered into in June 2015 and new services rendered during 2015–16.

Expenditure on ACCC activities increased by \$5.4 million in 2015–16. This primarily related to legal settlements of \$4.3 million. A comparison of revenue and expenditure trends over the last four years is illustrated in figure 1.1 below.

Figure 1.1: ACCC revenue and expenditure



Key financial results for ACCC for the financial years 2013–14 to 2015–16 are shown in table 1.1.

Table 1.1: ACCC comparative financial results, 2013-14, 2014-15 and 2015-16

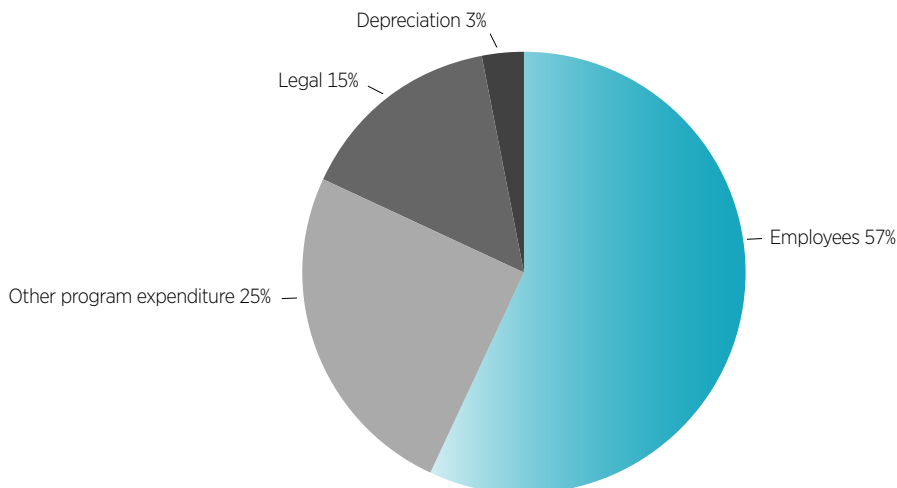
	2015-16 \$'000	2014-15 \$'000	2013-14 \$'000
Expenses			
Employee benefits	103 731	97 372	107 091
Legal fees	26 769	24 533	23 366
Other expenses	51 448	54 627	52 645
Total expenses	181 948	176 532	183 102
Own-source revenue	-		
Other revenue	5 544	2 621	1 056
Gains	-	91	105
Total own-source revenue	5 544	2 712	1 161
Net cost of services	176 404	173 820	181 941
Revenue from Government	165 346	167 446	179 517
Net operating surplus/(deficit)	(11 058)	(6 374)	(2 424)
Changes in asset revaluation reserve	(48)	247	(14)
Total comprehensive income	(11 106)	(6 127)	(2 438)
Operating cash balance	1 289	1 083	1 941
Receivables	33 781	36 576	26 662
Total assets	54 503	60 199	53 585
Total liabilities	59 234	57 117	49 089
Total equity	(4 731)	3 082	4 496
Administered fees and fines revenue	83 861	34 050	32 345

Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 57 per cent of total expenditure on employee costs, this compares to 55 per cent in 2014-15.

Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. Legal expenditure increased by \$2.2 million or 9 per cent in 2015-16, compared to 2014-15.

Other expenses (excluding depreciation and amortisation) decreased by \$2.9 million or 6 per cent in 2015-16. This is primarily due to a reduction in consultancy and contractor expenses offset largely by an increase in legal settlements. Depreciation and amortisation has remained constant over the same period.

Figure 1.2: ACCC expenditure, 2015–16

Operating statement

The ACCC recorded an operating loss for 2015–16 of \$11.1 million, as compared to an operating loss of \$6.1 million in 2014–15. The increase is largely due to legal settlements and external legal expenditure.

Balance sheet

The ACCC's net assets as at 30 June 2016 totalled (\$4.7) million as compared to \$3.1 million in 2014–15.

Assets

Total assets as at 30 June 2016 were valued at \$54.5 million compared to \$60.2 million on 30 June 2015, representing a 9.5 per cent decrease. This decrease largely relates to a reduction in appropriation receivable consistent with the decrease in annual appropriation for 2015–16 and a decrease in the carrying value of leasehold assets consistent with the depreciation expense for the year.

All assets have been managed in accordance with Commonwealth policies and reported following the relevant accounting standards.

Liabilities

Total liabilities increased from \$57.1 million in 2014–15 to \$59.2 million in 2015–16. Contributing factors include the recognition of a provision for litigation and an increase in employee provisions, which resulted from an increase in ACCC's average staffing level and a decrease in the 10-year bond rate. These two increases have been largely offset by a reduction in salary and wage accruals at 30 June 2016.

Administered revenue

In 2015-16 the ACCC received \$83.9 million in revenue administered on behalf of the government, an increase of \$49.8 million from 2014-15. This amount includes court-imposed fines and costs.

Staffing summary

Table 1.2: Average staffing level

	Budgeted	Actual
2011-12	813	807
2012-13	745	798
2013-14	802	788
2014-15	735	715
2015-16	739	752

Part 2

Overview of the ACCC and AER

About the ACCC and the AER

The Australian Competition and Consumer Commission is an independent Commonwealth statutory authority whose role is to enforce the *Competition and Consumer Act 2010* (CCA) and a range of additional legislation, promoting competition and fair trading, and regulating national infrastructure for the benefit of all Australians. The Commission comprises six full-time members, including the chair, two deputy chairs, three members and one part-time member. Full-time members are appointed by the Governor-General for terms of up to five years and appointments are made after the majority of state and territory jurisdictions support the selection.

The Australian Energy Regulator is Australia's national energy market regulator. The AER's functions are set out in national energy market legislation and rules, and mostly relate to electricity and gas markets in eastern and southern Australia. The AER has its own independent Board, with one Commonwealth member and two state/territory members, any one of whom may be appointed as the chair. It is supported by staff who are engaged exclusively on energy matters and has access to the ACCC's specialist legal and economic staff.

While specific functions vary according to the legislated responsibilities that underpin the ACCC and AER, the two bodies share many common objectives, both working to protect, strengthen and supplement competitive market processes.

ACCC Commissioners and AER Board members are statutory officers. The staff forms part of the Australian Public Service (APS). Both agencies are within the Treasury portfolio.

The responsible minister until September 2015 was the Hon. Bruce Billson MP, Minister for Small Business. After September 2015 the responsible minister was the Hon. Kelly O'Dwyer MP, Minister for Small Business and Assistant Treasurer.

Role and functions

For competition to remain healthy, businesses need to operate within the boundaries of acceptable and fair behaviour towards their customers, competitors and suppliers. Those boundaries are set out in the Competition and Consumer Act and the other Acts the ACCC enforces. The ACCC's role is critical in making markets work for consumers now and in the future by:

- maintaining and promoting competition and remedying market failure by preventing anti-competitive mergers, stopping cartels and intervening when misuse of market power is identified
- protecting the interests and safety of consumers and supporting a fair marketplace—addressing misleading behaviour, removing unsafe goods and tackling unconscionable dealings
- driving efficient infrastructure through industry-specific regulation and access regimes.

The AER's functions as set out in national energy legislation include:

- setting the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy
- monitoring networks and wholesale and retail energy markets to ensure businesses comply with the legislation and rules, and taking enforcement action where necessary.

Government expectations

The Australian Government has issued a Statement of Expectations for the ACCC, which outlines its expectations of the ACCC's role and responsibilities, its relationship with the government, the responsible Minister and the Commonwealth Treasury, issues of transparency and accountability, and organisational governance and financial management. In it, the government states it is imperative that the ACCC act independently and objectively in performing its functions and exercising its powers as set out in the *Competition and Consumer Act 2010*.

The government's vision is for the ACCC to be a high performing and responsive agency that administers a principles-based regulatory framework.

The Statement of Expectations is available via the ACCC website.

The ACCC provides a Statement of Intent responding to the government's Statement of Expectations for the ACCC.

The AER reports to the Council of Australian Governments (COAG) Energy Council which is responsible for pursuing priority issues of national significance and key reforms in the energy and resources sectors. COAG expects the AER to perform its functions as defined in the Competition and Consumer Act and in accordance with all relevant legislative requirements and agreements.

To strengthen accountability and performance frameworks, the COAG Energy Council in 2014 developed a Statement of Expectations for the AER.

The AER's Statement of Intent sets out the AER's work program in regulating energy networks and markets, and benchmarks that will measure its performance. The Statement also sets out how it aims to achieve principles of accountability and transparency, efficient regulation and effective engagement with stakeholders and other energy market bodies.

Legislative framework

In addition to administering the Competition and Consumer Act, the ACCC has responsibilities under many other Acts and Rules, as does the AER. These are outlined in appendix 6.

Purpose

The ACCC's purpose is to make markets work for consumers now and in the future. The ACCC works to enhance the welfare of the Australian community by fostering competitive, efficient, fair and informed Australian markets. Its aim is to bring greater competitiveness and fair trading to the Australian economy, working on the fundamental principle that this benefits consumers, business and the wider community.

The AER works to promote efficient investment in, and efficient operation and use of, energy services in the long-term interests of consumers with respect to price, quality, safety, reliability and security of supply. It does this through setting revenues that the network businesses can recover from consumers based on its assessment of efficient costs, ensuring wholesale energy markets operate competitively, and by educating and protecting consumers.

Values

The ACCC and AER appreciate and uphold the APS Values: Impartial, Committed to Service, Accountable, Respectful and Ethical (ICARE), and hold four additional complementary values as unique and meaningful to our work:

Independent: We pursue the interests of the Australian community, objectively and transparently.

Expert: We make timely decisions based on evidence and rigorous analysis.

Strategic: We make best use of our resources by taking considered and targeted action.

Trustworthy: We communicate honestly and directly and act respectfully.

Organisational model

The ACCC is a government organisation that enforces the Competition and Consumer Act and other legislation, but, as an independent statutory authority, it acts independently of government. The AER operates within the same business model.

The Competition and Consumer Act and other legislation require the ACCC and AER to protect consumers, encourage competition and regulate certain industries.

The ACCC and AER apply the law without fear or favour, to achieve universal compliance.

As well as enforcing the law, the ACCC and AER provide information to educate businesses and consumers about the laws they administer to encourage more effective voluntary compliance.

Making decisions in the public interest

ACCC decisions are made through formal meetings of the Commission. Only the Commission itself can decide to start court action, oppose a major merger proposal or authorise anti-competitive behaviour where there is sufficient public benefit.

AER decisions are made through formal meetings of the AER Board.

Both the Commission and the AER Board may delegate certain other decisions and powers to Commissioners, members or senior staff.

Outcome and program structure

Under the outcome and program framework as presented in the government's budget, the ACCC has one outcome and two programs:

Outcome: Lawful competition, consumer protection, and regulated infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.

Program 1.1: Australian Competition and Consumer Commission.

Program 1.2: Australian Energy Regulator.

The details of the ACCC and AER strategies and deliverables and performance indicators are listed in our Annual Performance Statement (pages 21 to 196).

Organisational structure 2015–16

Commissioners

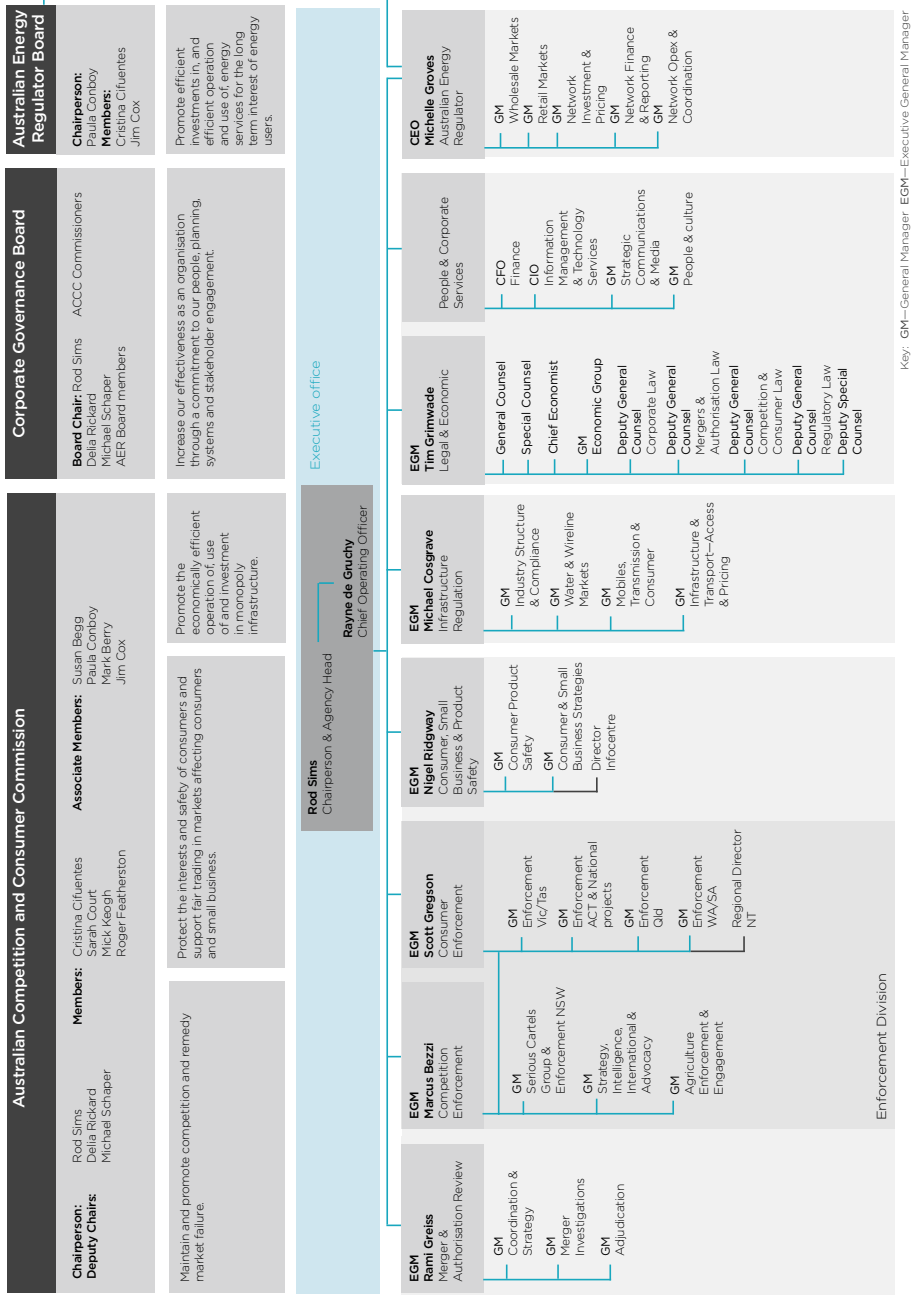
Chair	Rod Sims
Deputy chairs	Delia Rickard
	Michael Schaper
Members	Cristina Cifuentes
	Sarah Court
	Jill Walker (until 29 April 2016)
	Roger Featherston
Part time Associate member*	Mick Keogh (from 23 February 2016)
Associate members	Paula Conboy
	Jim Cox
	Christopher Chapman
	Mark Berry
	Susan Begg

* Mr Mick Keogh serves as a member of the Commission working three days a week, primarily focused on agriculture matters.

Australian Energy Regulator

Chair	Paula Conboy
Members	Cristina Cifuentes
	Jim Cox

Figure 2.1: Organisational structure of the ACCC/AER (at 30 June 2016)



Offices and contact details

ACCC national office

Address	23 Marcus Clarke Street, Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601 Telephone: 02 6243 1111
ACCC Infocentre	Business and consumer enquiries 1300 302 502
ACCC website	www.accc.gov.au

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service: telephone 13 3677 or visit the website www.nationalrelayservice.com.au.

AER national office

Address	Level 35, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne Vic 3000 Telephone: 03 9290 1444
AER email	AERinquiry@aer.gov.au
AER website	www.aer.gov.au

Part 3

Annual performance statement

Performance reporting framework

This chapter reports on our performance for 2015–16 using the framework in both the 2015–16 ACCC Portfolio Budget Statements (PBS) (contained in the Treasury portfolio PBS) and the ACCC and AER Corporate Plan 2015–16. The ACCC and the AER jointly report against one outcome, with the ACCC reporting against Program 1.1 and the AER against Program 1.2, as shown in table 3.1.

Table 3.1: Performance reporting framework

Drivers	<i>Competition and Consumer Act 2010</i> (Cth) ACCC Portfolio Budget Statement ACCC and AER Corporate Plan 2015–16
Outcome 1	Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. These include enforcement, education, price monitoring and deciding access terms to infrastructure services.
Program 1.1	Australian Competition and Consumer Commission
Program 1.2	Australian Energy Regulator

Purpose

Competitive markets increase the prosperity and welfare of Australian consumers. Our role is to protect, strengthen and supplement the way competition works in Australian markets and industries to improve the efficiency of the economy and to increase the welfare of Australians.

This means we will take action where this improves consumer welfare, protects competition or stops conduct that is anti-competitive or harmful to consumers, and where it promotes the proper functioning of Australian markets.

The AER is the national energy market regulator. The AER's roles encompass the retail and wholesale electricity and gas markets and energy network infrastructure.

The objectives of the national energy legislation guide the AER's priorities and work program. The common objective through the legislation is to promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of end users of energy with respect to price, quality, safety, reliability and security.

Note: This purpose from the 2015–16 Corporate Plan is consistent with the objective in the 2015–16 PBS.

Strategies to achieve our purpose

To achieve our purpose, we focus on these strategies:

- maintain and promote competition (Strategy 1)
- protect the interests and safety of consumers, and support fair trading in markets affecting consumers and small business (Strategy 2)
- promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure (Strategy 3)
- promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security (Strategy 4).

How we deliver the strategies that achieve our purpose

Below are deliverables we use to progress each strategy as we work towards achieving our outcome and purpose. Performance indicators underpin each of these. In our Annual Performance Statement we provide:

- the targets and results for each deliverable under each strategy
- some highlights that demonstrate how our performance in a specific area contributes to our strategy and thus to achieving our purpose.

Program 1.1 ACCC

Strategy 1: Maintain and promote competition

To maintain and promote competition, we:

Deliverable 1.1	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct
Deliverable 1.2	Assess mergers to prevent structural changes that substantially lessen competition
Deliverable 1.3	Make decisions on authorisation, notification and certification trade mark applications in the public interest
Deliverable 1.4	Assist the Australian Competition Tribunal, as required

Strategy 2: Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

To protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business, we:

Deliverable 2.1	Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law
Deliverable 2.2	Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships
Deliverable 2.3	Identify and address the risk of serious injury and death from safety hazards in consumer products
Deliverable 2.4	Support a vibrant small business sector
Deliverable 2.5	Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

Strategy 3: Promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure

To promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure, we:

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry-specific competition and market rules

Program 1.2 AER

Strategy 4: Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

To promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security, we:

Deliverable 4.1	Provide effective network regulation
Deliverable 4.2	Build consumer confidence in retail energy markets
Deliverable 4.3	Support efficient wholesale energy markets

Structure of Annual Performance Statement

This Annual Performance Statement separately covers Program 1.1 (ACCC) and Program 1.2 (AER). The performance reporting sections for each program are organised according to the strategies and deliverables outlined above.

For **Strategy 1** we have divided our performance reporting into three areas of activity:

- advocacy and taking enforcement action to promote competitive markets (deliverable 1.1)
- ensuring competitive arrangements between businesses, including through merger and authorisation review (deliverables 1.2, 1.3 and 1.4).
- Other work we do that promotes and enhances competition

For **Strategy 2** our reporting aligns directly with the four deliverables under this strategy.

For **Strategy 3** our reporting is organised by industry, noting the deliverables as they apply.

For **Strategy 4** our reporting aligns directly with the three deliverables under this strategy.

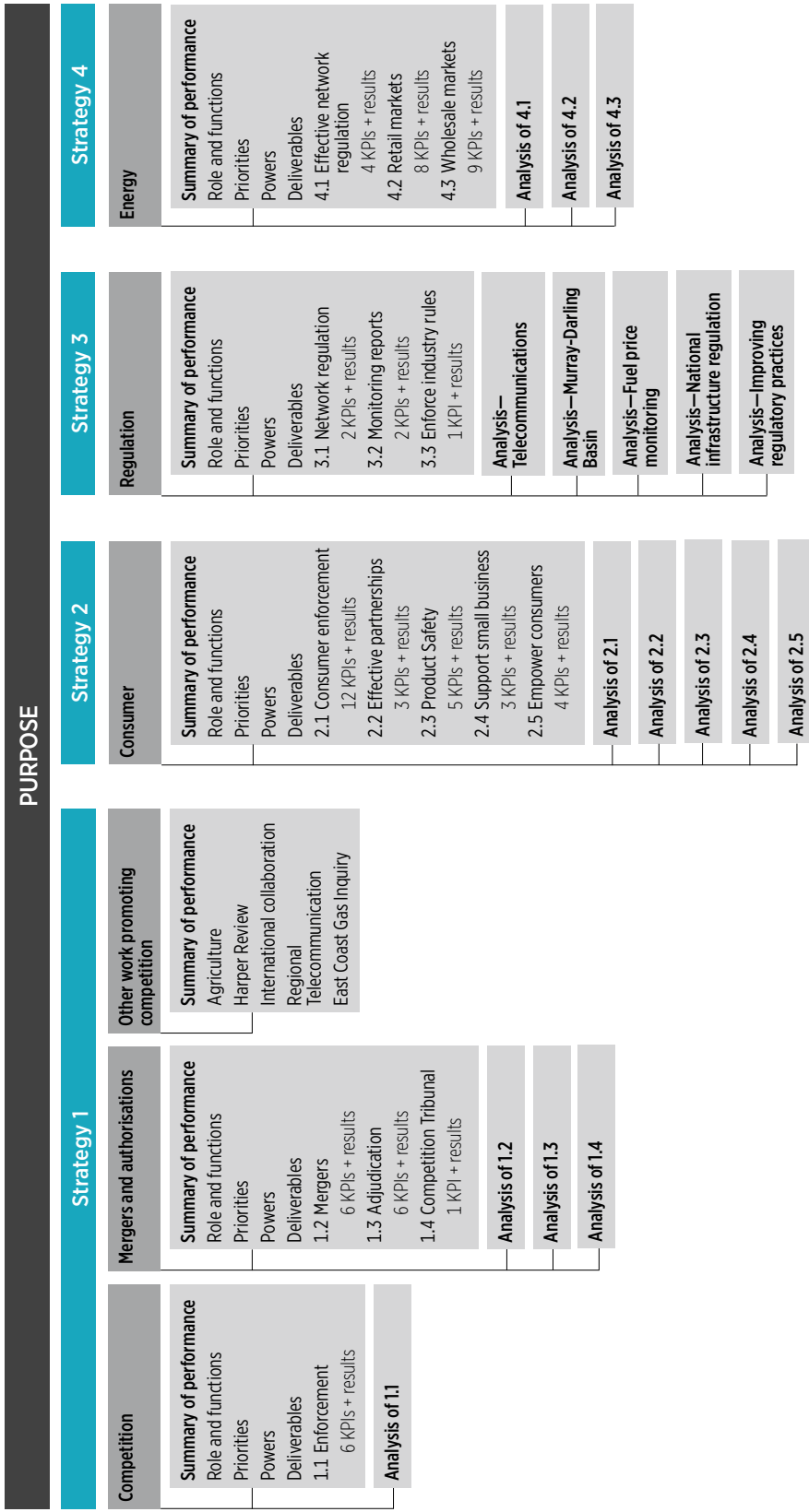
We have provided a 'Summary of performance' for each strategy. These sections:

- outline our role and functions, powers and priorities
- present our results against the performance indicators for each deliverable
- outline the factors that affected our performance during the reporting period.

We have also provided an 'Analysis of performance' section for each strategy where we discuss our work in more detail, including examples that demonstrate how we carry out the strategies to achieve our purpose.

Figure 3.1 provides a guide to the structure of the Annual Performance Statement.

Figure 3.1: Structure of Annual Performance Statement



Statement of preparation

I, as the accountable authority of the Australian Competition and Consumer Commission, present the 2015–16 financial year annual performance statements of the ACCC, as required under paragraph 39(1)(a) of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act). In my opinion, these annual performance statements are based on properly maintained records, accurately reflect the performance of the entity in the reporting period, and comply with subsection 39(2) of the PGPA Act.



Rod Sims
Chairman, ACCC

Program 1.1
Australian Competition and
Consumer Commission

Strategy 1: Maintain and promote competition

Summary of performance for enforcement actions to promote competitive markets

Role and functions

Competitive markets lead to lower prices, better quality products and services, greater efficiency and more choice, all of which benefit consumers.

As Australia's only national competition regulator, the ACCC works to enhance the welfare of Australians by:

- maintaining and promoting competition
- addressing market failures.

We do this by enforcing Part IV of the *Competition and Consumer Act 2010*, which prohibits:

- cartels and anti-competitive agreements
- misuse of market power
- exclusive dealing and resale price maintenance
- mergers that substantially lessen competition.

Our reporting on this strategy is in three sections:

- our competition enforcement and advocacy function
- our mergers and authorisations review function
- the other work we do to promote competition.

This section deals with our competition enforcement and advocacy functions. For reporting on our merger and authorisation review functions, see 'Summary of performance for mergers and authorisation review'.

Our deliverable for the competition enforcement function under Strategy 1 is:

Deliverable 1.1	Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct.
------------------------	---

Priorities

With the resources and litigation funding available to us, we prioritise our actions to address conduct that does the greatest harm to competition.

Our annually revised Compliance and Enforcement Policy sets out priorities for the year and the factors we take into account when deciding whether to pursue particular matters.

We revised and released our Compliance and Enforcement Policy in February 2015 and again in February 2016. Our 2015 and 2016 Compliance and Enforcement Policies prioritise:

- cartel activity in government procurement
- anti-competitive agreements and practices between competitors and by union officials that may breach prohibitions on secondary boycotts
- misuse of market power
- competition issues in the agricultural, health and medical sectors
- competition issues in highly concentrated market sectors.

We focus on these areas because of their potential for significant harm to consumer welfare and competition.

Powers

We have the power to take court action, accept court enforceable undertakings, resolve matters administratively and prevent breaches through education and advice. A description of these powers and our approach to using them is in appendix 6.

Table 3.2: Resources for Strategy 1

Actual for 2015-16	
Expenditure (millions)	\$58.81
Average staffing level	238.7

* Each figure includes an allocation for corporate overheads, legal and economic advice and executive support

Performance indicators

Deliverable 1.1: Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct

This deliverable is about the court or other actions we take that deliver outcomes that help to maintain or promote competition.

Table 3.3: Deliverable 1.1 performance indicators

Performance indicator	Annual target	Result
Number of in-depth competition investigations completed	40	41
Percentage of initial competition investigations completed within three months	60%	63%
Percentage of in-depth competition investigations completed within 12 months	60%	70%
Number of competition enforcement interventions (court proceeding commenced, s. 87B undertakings accepted)	8	3
Percentage of competition enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	80%	100%
Percentage of competition enforcement interventions in the priority areas, or demonstrate the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%

Factors affecting performance

Our first year of setting and recording against the public indicators on the timeliness of our investigations has revealed imperfections in our case management systems that capture and record the duration of investigations. For example, our system has not accounted for some pauses in investigations, such as when we are waiting for judicial decisions in related matters. A review of matters also showed a difference between the reported end of investigations—such as when we notified a trader of no further action—and the date we record administratively. Therefore our compliance with this measure includes in a 10 per cent tolerance in the end date of matters to accommodate these imperfections. Efforts in the year ahead will be directed to refine our case management systems to consistently record and capture this information.

The ACCC achieved three new competition enforcement interventions in 2015–16. This is lower than our target. There are four main reasons the target has not been met:

- Resources have been directed to conducting a number of criminal cartel and complex anti-competitive conduct investigations. These investigations are time consuming and ongoing. Prosecutions which it was anticipated may commence in the financial year were not begun however the first criminal cartel matter was indicted in the Federal Court shortly after the end of the 2015–16 financial year.
- Some investigations which were expected to result in proceedings were instead not pursued because ultimately the evidence did not support legal action.
- Two market studies were conducted utilising significant competition enforcement resources which focused on competition concerns in the East Coast Gas Market and the Darwin fuel retail market.
- Significant competition enforcement resources were allocated to 18 continuing competition court cases, with a number of complex competition matters involving court action close to complete. In addition we are involved in a number of complex competition appeals.

Analysis of performance: Stopping anti-competitive conduct

Deliverable 1.1: Deliver outcomes to address harm to consumers and businesses resulting from anti-competitive conduct

Our Compliance and Enforcement Policy governs our annual priorities in this area. This year our priorities under Deliverable 2.1 are:

- cartels
- anti-competitive agreements and practices
- misuse of market power
- competition and consumer issues in concentrated markets
- resale price maintenance
- competition and consumer issues in the agriculture sector
- competition in the health and medical sectors.

In 2015–16 the ACCC was involved in 18 court proceedings relating to competition enforcement.

These proceedings relate to competition matters in a range of industries including pharmaceuticals, travel, fuel retailing and financial services. A complete list of these proceedings is included in appendix 9.

Of the 18 competition enforcement proceedings:

- 17 cases were carried over from the previous year
- 1 new case commenced in the year
- 5 cases were finalised
- 13 cases remained ongoing at the end of the year.

We achieved significant outcomes in competition matters in 2015–16 in:

- proceedings involving Yazaki Corporation—findings of contraventions of the anti-cartel laws
- Informed Sources Australia and five fuel retailers—enforceable undertakings to stop sharing real time fuel prices unless they are also shared with consumers
- Visa Inc and its subsidiaries—penalties of \$18.3 million
- Cement Australia—\$17.1 million penalty
- the Laundry Detergent cartel case against Colgate-Palmolive (\$18 million penalty) and Woolworths Ltd (\$9 million penalty).

Cartels

Cartel behaviour involves businesses agreeing with their competitors to fix prices, rig bids, share markets or restrict supply of products and services. By conspiring to control markets in these ways, a cartel protects and rewards its inefficient members while penalising honest, innovative and well-run companies.

The ACCC has extensive powers to investigate cartels. We can compel relevant individuals and companies to give us information about suspected cartels and, under warrant, we can search company offices and the homes of company officers.

Companies and individuals, including cartel participants, help us to detect cartels. Under the ACCC *Immunity and Cooperation Policy for Cartel Conduct*, participants can apply for immunity from civil and criminal prosecution by reporting their own involvement in a cartel. The policy and the frequently asked questions for the policy outline how the immunity application process works, and the following table shows the number of applications for immunity and markers received by the ACCC in 2015–16.

Table 3.4: Cartel immunity applications 2015–16

Financial year 15–16	Number
Approaches	14
First in approaches	13
Approaches resulting in no marker	1
Immunity application proffers	8
Proffers not resulting in conditional immunity	3
Civil conditional immunity granted	5
Criminal conditional immunity granted by CDDP on ACCC recommendation	1

Example of ACCC enforcement action to remedy damage from a cartel

In April 2016 the Federal Court ordered **Colgate-Palmolive Pty Ltd** (Colgate) to pay total penalties of \$18 million for contraventions of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*). In June 2016 the Court ordered a penalty of \$9 million against **Woolworths Limited** (Woolworths) for the same conduct.

Colgate is a manufacturer of household products, including some of Australia's best-known brands of laundry detergent. Woolworths is a major Australian company with extensive supermarket and retail interests throughout Australia and New Zealand.

In 2011 **Unilever Australia Ltd** (Unilever) approached the ACCC alleging that Colgate, **PZ Cussons Australia Pty Ltd** (Cussons) and Unilever had been involved in cartel and anti-competitive behaviour in supplying laundry detergent, with the knowledge of Woolworths. The companies had agreed that in early 2009 they would stop supplying standard concentrate laundry detergents to major supermarkets and supply only ultra concentrates from that time on.

Unilever alleged they were selling ultra concentrates for the same price per wash as the equivalent standard concentrated products. However, the ultra concentrate detergents were cheaper to produce, store and transport and these cost savings were not passed onto consumers.

The ACCC pursued this case because it displayed serious conduct by large corporations that affected the supply and pricing of a consumer staple. The effect on the market and on the competitive process in this market was profound.

In December 2013, we filed proceedings in the Federal Court against Colgate, Cussons, Woolworths and **Mr Paul Ansell** (a former sales director at Colgate).

In April 2016, during the Federal Court proceedings, Colgate admitted that it had entered into understandings that limited the supply and controlled the price of laundry detergents. Specifically, Colgate admitted that it had made and given effect to an understanding with Unilever and Cussons.

Colgate also admitted that Colgate and Unilever had shared sensitive market information—for example, information about when they would increase the price of their laundry detergents. It admitted that Mr Ansell and senior Unilever executives, including Unilever’s sales director at the time, had shared this information by telephone.

Mr Ansell admitted to being knowingly concerned in the conduct that we alleged. The ACCC has resolved its proceedings against him by consent. The Court ordered that Mr Ansell be disqualified from managing corporations for seven years and pay a contribution of \$75 000 towards the ACCC’s costs.

In addition, the Federal Court made other orders by consent that Colgate:

- update its trade practices compliance program and maintain that program for three years
- contribute \$450 000 towards the ACCC’s costs.

In June 2016 Woolworths admitted to being knowingly concerned in the making of, and giving effect to, an understanding between Colgate, Cussons and Unilever that they would each cease supplying standard concentrate laundry detergents to Woolworths in early 2009 and supply only ultra concentrates to Woolworths from that time. The Federal Court also made orders by consent that Woolworths update its trade practices compliance program and pay a contribution of \$250 000 towards the ACCC’s costs in the proceedings.

Our case against Cussons was heard in July 2016. The ACCC is seeking pecuniary penalties, declarations, injunctions, compliance programs and costs.

Court cases

The ACCC brought a cartel matter in the Federal Court against three businesses and related individuals alleging cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia.

The following cases were finalised in 2015–16. Refer to appendix 9 for details.

Table 3.5: Cartel conduct proceedings finalised

Cartel	Colgate-Palmolive Pty Ltd & Ors
	commenced 12 December 2013
	concluded 28 April 2016—Colgate-Palmolive Pty Ltd
	concluded 3 June 2016—Woolworths Ltd
	jurisdiction Federal Court Sydney
	outcome Colgate-Palmolive: pecuniary penalties of \$18 million, declarations, compliance program, ACCC costs of \$450 000. Mr Ansell: seven year disqualification order and payment of ACCC costs \$75 000. Woolworths Ltd: pecuniary penalties totalling \$9 million, declarations, compliance program, costs \$250 000.

Cartel	AECL & Zelko Lendich		
	commenced	28 May 2014	
	concluded	29 April 2016	
	jurisdiction	Federal Court Adelaide	
	outcome	In respect of Mr Lendich pecuniary penalties of \$120 000, declaration, compliance program, ACCC costs of \$10 000. Matter is ongoing in respect of other parties. See Australian Egg Corporation Limited & Ors below.	

The following cases were instituted in 2015–16.

Table 3.6: Cartel conduct proceedings commenced

Cartel	Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd & Ors		
	commenced	23 June 2016	Alleged cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia
	jurisdiction	Federal Court Brisbane	

The following cartel cases were ongoing in 2015–16.

Table 3.7: Cartel cases ongoing

Cartel	Air New Zealand Limited (appeal)		
	commenced	12 May 2010	Alleged cartel conduct concerning price fixing of surcharges on air cargo services
	jurisdiction	Federal Court Sydney	
Cartel	Australian Egg Corporation Limited & Ors (appeal)		
	commenced	28 May 2014	Alleged attempt to induce members of AECL into an arrangement, for the purpose of reducing the available egg supply
	jurisdiction	Federal Court Adelaide	
Cartel	Cascade Coal Pty Ltd & Ors		
	commenced	25 May 2015	Alleged bid rigging conduct involving mining exploration licences in the Bylong Valley, NSW
	jurisdiction	Federal Court Sydney	
Cartel	Colgate-Palmolive Pty Ltd & Ors		
	commenced	12 December 2013	Alleged cartel and anti-competitive behaviour in supplying laundry detergent
	jurisdiction	Federal Court Sydney	
Cartel	OLEX Australia Pty Ltd & Ors		
	commenced	4 December 2014	Alleged cartel and exclusionary conduct in the supply and acquisition of electrical cable throughout Australia
	jurisdiction	Federal Court Melbourne	

Cartel	Prysmian Cavi e Sistemi		
	commenced jurisdiction	23 September 2009 Federal Court Adelaide	Alleged cartel in relation to the allocation of projects supplying high voltage or extra-high-voltage land or submarine cable
Cartel	P.T. Garuda Indonesia Ltd (appeal)		
	commenced jurisdiction	2 September 2009 Federal Court Sydney	Alleged cartel conduct concerning price fixing of surcharges on air cargo services
Cartel	Yazaki Corporation & Australian Arrow Pty Ltd		
	commenced jurisdiction	13 December 2012 Federal Court Adelaide	Alleged price fixing and market sharing in relation to the supply of wire harnesses to Toyota

Anti-competitive agreements and practices

The Act prohibits contracts, arrangements and understandings between two or more parties that aim to, or are likely to, substantially lessen competition, even where they do not amount to cartel conduct.

Example of action against anti-competitive conduct in market for ready-mix concrete

In April 2016 the Federal Court ordered penalties totalling \$17.1 million against **Cement Australia Pty Limited** and related companies for numerous contraventions of s. 45 of the *Trade Practices Act 1974* (now the *Competition and Consumer Act 2010*).

Cement Australia is a large supplier of cement products and services. This matter concerned contracts that Cement Australia had in place for the supply of concrete grade flyash.

Flyash is a cheap partial substitute for cement in ready-mix concrete. It is a by-product of burning black coal at power stations.

The ACCC alleged that, between 2002 and 2006, Cement Australia made contracts with several south-east Queensland power stations for the supply of flyash. Under those contracts Cement Australia paid high prices to obtain almost all of the available flyash, although it did not need or use the amount of flyash that it bought. The contracts were therefore anti-competitive in that they effectively prevented competitors from entering the market.

Section 45 of the Act prohibits contracts, arrangements or understandings that substantially lessen competition or that restrict dealings by competitors.

The ACCC first brought the proceedings in 2008 against five related companies:

- **Cement Australia Pty Limited** (currently 50 per cent owned by Holcim and 50 per cent owned by the Heidelberg Cement subsidiary Hanson)
- **Cement Australia Holdings Pty Ltd**
- **Cement Australia Queensland Pty Ltd** (formerly Queensland Cement Ltd)
- **Pozzolan Enterprises Pty Ltd**
- **Pozzolan Industries Pty Ltd.**

Following a lengthy, fully contested hearing, the Court found that all companies except Cement Australia Holdings Pty Ltd were involved in numerous contraventions of s. 45 of the Act.

The ACCC also brought proceedings against two individuals. The case against one individual was dismissed. However, declarations were made against **Mr Christopher White** (a manager in the Cement Australia flyash business during the relevant period) for his involvement in making the contravening contracts with the operator of the Swanbank power station in 2005. Mr White was given a penalty of \$20 000 for his role in the conduct.

In June 2016 we appealed the decision on the penalty amount due to the serious nature and extent of the conduct, the apparent benefit derived by Cement Australia from the contraventions, and the market harm caused. The matter is ongoing.

Court cases

The following cases were finalised in 2015–16.

Table 3.8: Anti-competitive agreements and practices proceedings finalised

Anti-competitive agreements	Australia and New Zealand Banking Group Ltd (appeal)	
	commenced	9 December 2013
	concluded	31 July 2015
	jurisdiction	Federal Court Brisbane
	outcome	ACCC appeal dismissed
Anti-competitive agreements	Informed Sources (Australia) Pty Ltd & five fuel retailers	
	commenced	19 August 2014
	concluded	21 December 2015
	jurisdiction	Federal Court Melbourne
	outcome	s. 87B undertaking for 5-year period
Anti-competitive agreements	Little Company of Mary Health Care Limited	
	commenced	10 December 2014
	concluded	26 October 2015
	jurisdiction	Federal Court Sydney
	outcome	Declaration, payment of ACCC costs of \$100 000
Anti-competitive agreement	Omniblend Australia Pty Ltd	
	commenced	14 August 2014
	concluded	17 August 2015
	jurisdiction	Federal Court Melbourne
	outcome	Pecuniary penalty of \$17 000, injunction, declaration, CCA training for employees, contribution of \$10 000 to ACCC costs

The following cases were ongoing in 2015-16.

Table 3.9: Anti-competitive agreements and practices proceedings ongoing

Anti-competitive agreements	Flight Centre Ltd (High Court appeal)	
	commenced	9 March 2012
	jurisdiction	Federal Court Brisbane Appeal on issues
Anti-competitive agreements	Cement Australia Pty Ltd & Ors (appeal)	
	commenced	12 September 2008
	jurisdiction	Federal Court Brisbane Appeal on penalty
Anti-competitive agreements	Construction Forestry Mining and Energy Union (CFMEU)	
	commenced	20 November 2014
	jurisdiction	Federal Court Melbourne

Example of action against anti-competitive practice in concentrated fuel market

On 19 August 2014, we instituted proceedings in the Federal Court against **Informed Sources Australia Pty Ltd** and five fuel retailers (**BP Australia Pty Ltd**, **Caltex Australia Petroleum Pty Ltd**, **Woolworths Limited**, **7-Eleven Stores Pty Ltd** and Eureka Operations Pty Ltd trading as **Coles Express**).

For a number of years Informed Sources operated a petrol price information service for the five petrol retailers in Melbourne. The five subscribers to the service provided pricing data to Informed Sources at frequent, regular intervals and in return received from it collated data from the other subscribers as well as reports containing pricing information across particular regions. We alleged that this allowed the five subscribers to increase retail petrol price coordination and cooperation; therefore, the service was likely to decrease competitive rivalry.

The ACCC alleged that the information sharing arrangements between Informed Sources and the petrol retailers, through the service provided by Informed Sources, had the effect or likely effect of substantially lessening competition in markets for the sale of petrol in Melbourne in contravention of s. 45(2) of the Act.

Section 45(2) of the Act prohibits this type of information sharing where it excludes other businesses and consumers.

On 15 December 2015, we accepted an undertaking from Coles Express:

- not to enter into any price information sharing service agreement that is similar to the one operated by Informed Sources (Australia) Pty Ltd
- not to give effect to any such arrangement at the expiration of the current term of its agreement with Informed Sources in April 2016.

The Federal Court also ordered, by consent, that the proceedings against Coles Express be discontinued and it noted the undertaking.

On 22 December 2015 we accepted s. 87B undertakings and the Federal Court made orders by consent which discontinued the proceedings against Informed Sources and the five petrol retailers which are subscribers to its retail petrol price information system.

The undertakings require that Informed Sources will not supply a petrol price information exchange service unless it makes available at the same time the retail petrol price information that it provides to petrol retailers to:

- Australian consumers
- third-party information service providers, consumer organisations, motorist organisations, research organisations and regulatory agencies carrying on business or operating in Australia, on reasonable commercial terms.

The undertakings for BP, Caltex, Woolworths and 7-Eleven require that they will not enter into or give effect to any price information exchange service unless the petrol price information each receives is made available to consumers and third-party organisations at the same time.

Undertakings

The following undertakings were accepted in 2015–16. Details of competition enforcement s. 87B undertakings are in appendix 8.

Table 3.10: Undertakings accepted

Anti-competitive agreements	Peter McInnes Pty Ltd s. 87B undertaking dated 20 October 2015 Undertaking withdrawn due to business cessation
Anti-competitive agreements	Eureka Operations Pty Ltd trading as Coles Express s. 87B undertaking dated 15 December 2015
Anti-competitive agreements	BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd, Informed Sources (Australia) Pty Ltd s. 87B undertaking dated 22 December 2015

Misuse of market power

Misuse of market power occurs where a business with substantial market power in a market uses this power to:

- eliminate or substantially damage a competitor
- prevent another business from entering a market
- deter or stop another business from acting competitively in any market.

This behaviour is prohibited under the Act.

Example of action against Visa to remove restrictions in currency conversion services

In September 2015 the Federal Court ordered **Visa Worldwide Pte Ltd** (Visa Worldwide) to pay a pecuniary penalty of \$18 million for engaging in anti-competitive conduct which prevented competing currency conversion providers from expanding.

Visa Worldwide is the subsidiary of Visa Inc. In Australia, Visa Worldwide contracts with financial institutions to allow them to access and participate in the Visa Network.

When international travellers to Australia use their Visa card to make purchases at point of sale (POS), Visa uses its own currency conversion services so that the Australian merchant is paid in Australian dollars. The purchases are then billed to the cardholder in their home currency.

Visa earns substantial revenue from its currency conversion services. The revenue it receives is from foreign currency trading and fees.

Dynamic Currency Conversion (DCC) is a currency conversion service that competes with Visa's currency conversion services. DCC's service allows international cardholders to make a transaction in either their home currency or the local currency of the merchant (including online merchants). If a consumer chooses to use DCC, the exchange rate is locked in and disclosed to the cardholder at the time of the transaction.

Between 1 May 2010 and 6 October 2010, Visa Worldwide changed the Visa rules to prohibit the use of DCC services on POS transactions on the Visa Network in many parts of the world, including Australia.

This prohibition meant that retail stores, hotels and restaurants that were not already offering DCC to their customers as at 30 April 2010 could not choose to offer DCC. In effect, this froze the pool of merchants who could offer DCC. This in turn prevented DCC from expanding further during that period.

Section 47 of the Act prohibits companies from supplying goods and services on the condition that the person or company being supplied only purchases goods and services from that company.

The Court declared that by this conduct Visa contravened s. 47 of the Act.

Court cases

The following cases were finalised in 2015-16.

Table 3.11: Misuse of market power cases finalised

Misuse of market power	Visa (Inc) & Ors
	commenced 4 February 2013
	concluded 4 September 2015
	jurisdiction Federal Court Sydney
	outcome Pecuniary penalty of \$18 million, declaration, payment of ACCC costs of \$2 million

The following cases were ongoing in 2015–16.

Misuse of market power	Pfizer Australia Pty Ltd (appeal)
	commenced 13 February 2014
	jurisdiction Federal Court Sydney
	status Judgment reserved

Concentrated markets

The Australian economy features some markets that have a relatively small number of suppliers. There is a risk that these suppliers could misuse their power in those markets to prevent or damage competition. Therefore the ACCC closely monitors their behaviour.

In line with our published priorities, the ACCC focused on competition in concentrated market sectors. For example, we are reviewing agreements in the fuel sector on sharing price information and agreements by major participants in transport services and the agricultural sector. By the end of 2015–16, we had two cases in court alleging these kinds of anti-competitive agreements.

In 2015, as part of our work on concentrated markets, we negotiated a s. 87B undertaking from **Informed Sources** and **five fuel retailers** (see page 39).

Resale price maintenance

Resale price maintenance occurs when a supplier pressures a reseller to charge their recommended retail price or any other set price. The conduct therefore restricts businesses from competing on price. This conduct is anti-competitive regardless of its impact on competition.

A supplier may recommend that resellers charge an appropriate price for particular goods or services, but it cannot prevent a reseller from charging or advertising below that price.

It is illegal for suppliers to pressure resellers to charge their recommended retail price or any other set price—for example, by threatening to stop supply or stop resellers from advertising, displaying or selling the goods below a specified price. It is also illegal for resellers to ask suppliers to use recommended price lists to stop competitors from discounting.

However, in most cases a supplier can specify a maximum retail price.

Section 48 of the Act specially prohibits resale price maintenance. However, where it would benefit the public, businesses can apply for authorisation from the ACCC.

Example of action against an attempt to prevent discounting of blenders

In August 2015 the Federal Court ordered **OmniBlend Australia Pty Ltd** (OmniBlend) to pay a pecuniary penalty of \$17 500 for aiding, abetting, counselling and procuring the relevant supplier to engage in resale price maintenance.

OmniBlend sells OmniBlend branded kitchen blenders through its online store. It is a major distributor of OmniBlend blenders in Australia. However, OmniBlend blenders are also sold by other retailers, including one of OmniBlend's major competitors.

The ACCC alleged that OmniBlend attempted to induce the major competitor not to discount the prices of OmniBlend blenders and that OmniBlend also refused to supply the blenders to the competitor unless it stopped discounting the price of certain blenders. We alleged that this amounted to an attempt to persuade the competitor to engage in resale price maintenance.

The ACCC instituted proceedings against OmniBlend on 14 August 2014.

The Court accepted undertakings from OmniBlend and its sole director, Mr Neal Bowhay, regarding future conduct. It also made declarations and orders by consent for:

- compliance training by OmniBlend and Mr Bowhay
- the payment of a contribution to the ACCC's costs.

Following agreement between the ACCC and OmniBlend regarding consent orders other than penalties, on 17 August 2015 the ACCC's proceedings against OmniBlend were dismissed.

Competition in the health and medical sectors

The ACCC has pursued competition issues in the health and medical sectors as part of its 2015–16 compliance and enforcement priorities.

In 2015 we identified that there were competition and consumer issues in the health sector which were highlighted in our *Report to the Australian Senate on anti-competitive and other practices by health funds and providers in relation to private health insurance* and in a number of allegations received about attempts to limit access to products, patients, procedures or facilities. The effect of anti-competitive conduct by medical professionals can be significant, particularly in regional areas. The case study below of **Little Company of Mary Healthcare Limited** and **Calvary Health Care Riverina Limited** highlights the issues in this area.

Court cases

Example of intervention to promote competition in medical services

In October 2015 the Federal Court declared that **Little Company of Mary Healthcare Limited** and **Calvary Health Care Riverina Limited** (jointly known as Calvary) had engaged in exclusive dealing conduct that was likely to have an anti-competitive effect in the supply of day surgery services in Wagga Wagga.

Calvary is a national healthcare organisation that operates private hospitals and a range of other medical facilities across Australia.

Medical practitioners enter into contracts with Calvary to use Calvary's medical facilities. However, medical practitioners will generally have rights to use multiple medical facilities, including hospitals and day surgeries. This gives consumers increased access to surgical procedures.

In March 2011 Calvary introduced new by-laws that applied to its facilities in Wagga Wagga. Certain clauses of the by-laws allowed Calvary to refuse or revoke a medical practitioner's right to use its facilities if the practitioner also operated from a competing day surgery facility. We alleged that this had the likely effect of deterring new entrants into the day surgery market in Wagga Wagga.

The Court declared that by engaging in this conduct Calvary contravened the Act.

The Court ordered by consent that Calvary pay \$100 000 towards the ACCC's costs. Calvary has given an undertaking to the Court to delete the clauses of the by-laws that are of concern to the ACCC.

Strategy 1: Maintain and promote competition

Summary of performance for merger and authorisation review

Review arrangements between businesses, including mergers and authorisations, to maintain competition and/or the public interest

Our reporting on this strategy is divided into three sections:

- our competition enforcement function
- our merger and authorisation review function
- the other work we do to promote competition.

This part deals with our merger and authorisation review function. For reporting on our competition enforcement function, see 'Summary of performance for enforcement actions to promote competitive markets'.

Role and functions

The ACCC reviews mergers and acquisitions to determine whether they are likely to substantially lessen competition, with the aim of ensuring that markets work well for consumers. Competition can be reduced when one firm buys another firm or its assets, potentially resulting in fewer competitors, increased prices or lower product quality, service, choice or innovation for consumers. However, not all mergers and acquisitions raise competition issues and s. 50 of the *Competition and Consumer Act 2010* only prohibits those that are likely to substantially lessen competition in any market in Australia.

Merger parties can seek 'informal' clearance from the ACCC and we will provide our view on whether an acquisition is likely to substantially lessen competition. Alternatively, parties can apply to the ACCC for formal clearance or to the Australian Competition Tribunal (the Tribunal) for merger authorisation on public benefit grounds. Formal clearance or merger authorisation, if granted, provides statutory exemption from s. 50.

The ACCC has never received an application for formal merger clearance and there have been a total of four applications to the Tribunal for merger authorisation with two of these proceeding to a final Tribunal decision.

The ACCC has a role to assist the Tribunal in assessing merger authorisation applications, including by making inquiries, calling and examining witnesses, making submissions, and preparing a report for the Tribunal. We also assist the Tribunal in reviewing our authorisation decisions on non-merger proposals.

Under the authorisation and notification review function, we can provide or allow legal protection to enable non-merger conduct that might restrict competition to go ahead when the public benefit outweighs the public detriment, including detriment that results from any lessening of competition. This recognises that in certain circumstances allowing conduct that might restrict competition in order to enhance efficiency and welfare may be in the public interest. The ACCC also assesses the rules for certification trade marks to determine whether they are in the interests of consumers and competitive markets.

Our deliverables for the mergers and authorisation review function under Strategy 1 are:

Deliverable 1.2	Assess mergers to prevent structural changes that substantially lessen competition
Deliverable 1.3	Make decisions on authorisation, notification and certification trade mark applications in the public interest
Deliverable 1.4	Assist the Australian Competition Tribunal, as required.

Priorities

Our priority is to assess and review mergers to prevent structural changes in markets that substantially lessen competition, with a particular focus on concentrated markets and proposed acquisitions arising through privatisation of public sector assets. Mergers are predominantly brought to our attention by merger parties who request an informal clearance. Alternatively, we may become aware of a merger proposal through the media, from complainants, or by referral from other regulatory bodies.

Our review of authorisations, notifications and certification trade marks is made in response to a formal application being lodged. Our priority is to assess and make decisions about applications for authorisation and notifications involving potentially anti-competitive conduct by determining if such arrangements may result in a net public benefit and warrant exemption from the Act.

Powers

Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in any market in Australia, or are likely to do so.

There is no legislation underpinning the informal clearance process; this process has developed over time so that merger parties can seek the ACCC's view before they complete a merger. Appendix 6 has more details on informal clearance and pre-assessments.

As part of our role to review mergers and acquisitions under s. 50 of the Act, we have the power to bring court proceedings where it considers that an acquisition is likely to breach s. 50. We are also able to accept court enforceable undertakings offered by merger parties to address or 'remedy' competition concerns raised by an acquisition.

In response to an application for formal merger clearance, we may grant clearance to the applicant which would provide exemption from s. 50.

Part VII of the Act provides the ACCC with the power to grant authorisation or allow notifications involving non-merger conduct that may breach the competition provisions of the Act where it is in the overall public interest. An outline of our authorisation function is in appendix 6.

Under the *Trade Marks Act 1995* (Cth), the ACCC is responsible for assessing the rules for certification trade marks to determine whether they are in the interests of consumers and competitive markets.

Table 3.12: Resources for Strategy 1

Actual for 2015–16	
Expenditure (millions)	\$58.81
Average staffing level	238.7

Performance indicators

Deliverable 1.2: Assess mergers to prevent structural changes that substantially lessen competition

This deliverable is about assessing proposed or completed mergers and acquisitions to determine whether they substantially lessen competition.

Table 3.13: Deliverable 1.2 performance indicators

Performance indicators	Annual target	Result
Number of merger matters considered (externally driven)	N/A	319
Percentage of merger matters cleared without a public review (pre-assessed)	70%	90%
Number of merger matters involving Phase 1 only of public review (Phase 1 only of a public review means a statement of issues is not released) (externally driven)	N/A	14
Number of merger matters involving Phase 1 and Phase 2* of public review (externally driven)	N/A	7
Percentage of merger matters subject to Phase 1 only of public review that were finalised within eight weeks (excluding time periods where information is outstanding)	50%	64%
Percentage of merger matters subject to Phase 2 of public review that were finalised within 20 weeks (excluding time periods where information is outstanding)	90%	100%

* Phase 2 involves release of Statement of Issues and/or acceptance of a court enforceable undertaking to remedy competition concerns

Deliverable 1.3: Make decisions on authorisation, notification and certification trade mark applications in the public interest

This deliverable is about assessing and making timely decisions on applications for authorisation, notifications of exclusive dealing or collective bargaining, and certification trade marks to maintain competition and the public interest.

Table 3.14: Deliverable 1.3 performance indicators

Performance indicators	Annual target	Result
Number of authorisation applications assessed (externally driven)	N/A	37
Number of exclusive dealing notifications assessed (externally driven)	N/A	495
Number of collective bargaining notifications assessed (externally driven)	N/A	5
Number of Certification Trade Marks assessed (externally driven)	N/A	44
Percentage of authorisation applications assessed within statutory timeframe(s) (excluding time periods where information is outstanding) ¹	100%	100%
Percentage of notifications assessed within statutory timeframe ²	100%	99.8%

1. The ACCC is required to assess the validity of an authorisation application within five business days of lodgment and to issue a final determination about a new authorisation application within six months (unless extended).

2. The ACCC is required to assess the validity of a notification within five business days of lodgment.

Deliverable 1.4: Assist the Australian Competition Tribunal, as required

This deliverable is about the assistance we give to the Tribunal in its role in either assessing applications for authorisation of merger proposals or reviewing our authorisation decisions on non-merger conduct.

Table 3.15: Deliverable 1.4 performance indicators

Performance indicators	Annual target	Result
Number of matters where assistance was provided to Australian Competition Tribunal (externally driven)	N/A	1

Analysis of performance: Assessing mergers

Deliverable 1.2: Assess mergers to prevent structural changes that substantially lessen competition

Merger reviews

In reviewing mergers, the ACCC aims to work efficiently, transparently and effectively, taking account of the commercial needs of the parties involved. We take a scaled approach to merger assessments whereby merger proposals are triaged to ensure that non-contentious mergers are dealt with expeditiously and information required from merger or other parties is tailored according to the contentiousness and complexity of the issues raised. The ACCC also seeks to inform the public, businesses and their advisers about the merger review process. The ACCC publishes indicative timelines for merger assessments under public consideration on our online mergers register unless the merger is cleared after an initial assessment (that is, 'pre-assessed') or subject to a confidential review. Our approach to informal merger reviews is outlined in appendix 12.

We considered 319 matters under s. 50 of the Act in 2015–16—a decrease of 1 per cent on the 322 matters in 2014–15. Of the 319 mergers considered:

- 287 were assessed as not requiring a public or confidential review (pre-assessed)—an increase of three per cent on the 278 pre-assessments in 2014–15
- 31 mergers were subject to a public review
- one merger was subject to a confidential review.

Of the 31 public reviews and one confidential review that were conducted in 2015–16:

- we publicly opposed two mergers outright¹
- we expressed confidential opposition to or concerns about one confidential merger that did not proceed
- we accepted court enforceable undertakings in five mergers to address competition concerns resulting in these mergers being cleared subject to undertakings
- six reviews were discontinued either because the transactions did not proceed or the parties withdrew their request for clearance, in four of these we issued a statement of issues raising significant concerns
- we did not oppose unconditionally 17 mergers that underwent a public informal review. Of these, one was a review of a completed acquisition and we discontinued the investigation
- we accepted a new undertaking replacing one previously accepted in 2011, to ensure that the obligations previously imposed to remedy the ACCC's competition concerns in relation to the 2011 acquisition were transferred to a new owner.

We unconditionally cleared 53 per cent of those mergers that underwent a public or confidential review. This figure increases to 95 per cent when all mergers (including pre-assessments) are included. In seven matters we used our formal information-gathering powers under s. 155. This figure is similar to previous years.

¹ One of the mergers was restructured and was subsequently cleared by the ACCC subject to undertakings.

**Example of a lessening, but not a substantial lessening of competition:
TPG's acquisition of iiNet**

On 20 August 2015, the ACCC announced its decision not to oppose TPG's proposed acquisition of iiNet. At the time of the proposed acquisition, the five major suppliers of retail fixed broadband services were Telstra, Optus, iiNet, TPG and M2.

Our review focused on whether the proposed acquisition would be likely to lessen competition in the retail fixed broadband market. We conducted a public forum to ensure that interested consumers had the opportunity to put their views directly to us. We received a large number of submissions from interested parties, including consumers, regarding iiNet's competitive influence and its high standard of customer service.

We found that both TPG and iiNet were regarded as vigorous competitors in the retail market, with offers differentiated from each other. We concluded that the acquisition would result in a lessening of competition but that it did not reach the threshold required to establish a contravention of s. 50 of the Act—that is, that there would likely be a substantial lessening of competition.

Significantly, we considered that after the acquisition the combined entity would remain constrained by the other major retail fixed broadband suppliers: Telstra; Optus; and M2. We were satisfied that consumers would continue to have a choice of broadband suppliers.

We also considered the vertical effects of the proposed acquisition relating to the supply of wholesale transmission services, finding that a number of purchasers and suppliers of wholesale transmission services would remain following the proposed acquisition, even if TPG/iiNet reduced its demand from non-vertically integrated transmission suppliers.

Notwithstanding our decision not to oppose the proposed acquisition, we noted the growing consolidation in what is becoming a relatively concentrated broadband market. Any future proposed merger between the remaining four large suppliers of retail fixed broadband services will face very close scrutiny.

Example where expressing 'red light' concerns prompted a restructured proposal

GPC proposed to acquire the Covs Parts business from AHG. Both Covs Parts and GPC (via its Repco and Ashdown-Ingram stores) supplied automotive parts to trade customers in metropolitan and regional Western Australia.

On 17 December 2015, we opposed the proposed acquisition as we considered that it would have the effect, or be likely to have the effect, of substantially lessening competition in relation to the supply of automotive parts to trade customers in a number of local markets in Western Australia.

Following our decision to oppose the proposed acquisition, GPC and AHG modified the proposed acquisition to exclude the Covs Parts stores in Albany, Esperance, Karratha and Port Hedland (the retained stores)

After further targeted market inquiries, we decided not to oppose the revised acquisition subject to an undertaking that AHG retain and operate each of the retained stores as a going concern, in the ordinary course of business, and in substantially the same manner as at the execution date of the undertaking.

Statements of issues

When the ACCC reaches a preliminary view that a merger raises competition concerns requiring further investigation, it releases a 'statement of issues'. A statement of issues provides our preliminary views, drawing attention to particular issues of varying degrees of competition concern and identifying the lines of further inquiry that we wish to take. The purpose of the statement of issues is to provide guidance to the merger parties and other interested parties and to invite further information that may either alleviate or reinforce our concerns.

After public consultation on a statement of issues, we may decide that our concerns are valid and, where competition concerns remain, we may consider any undertakings put by the merger parties to resolve them.

In 2015–16, we issued statements of issues in 10 mergers and these were all published on our online mergers register. Two of these reviews were still under consideration at the end of the financial year, and we were yet to reach a final view.

Example where our statement of issues was informed by a consumer forum: Coles' proposed acquisition of Supabarn supermarkets

We held a public consumer forum on 3 August 2015 that enabled us to hear directly from consumers about their views as to the likely effect on competition of the proposed acquisition by Coles of a number of Supabarn stores.

The feedback we received from consumers formed part of a statement of issues that identified areas of concern with the initial proposal that involved Coles acquiring nine Supabarn supermarkets in New South Wales and the Australian Capital Territory.

We received feedback regarding Supabarn's competitiveness and differentiated offer compared with the other major supermarket chains, including range and quality of products, and customer service. Our concerns focused on whether the acquisitions by Coles would have led to significant competitive harm in some of the local markets in the ACT and NSW, particularly where Coles and Supabarn stores were located close together with few other supermarkets nearby.

Coles and Supabarn later revised the transaction after we expressed concerns that the proposed acquisition of the nine stores would be likely to substantially lessen competition. On 10 March 2016, we announced our decision not to oppose Coles's revised proposal to acquire Supabarn's five stores at the Canberra Centre, Kaleen and Wanniasa (in the ACT), and at Five Dock and Sutherland (in NSW).

The ACCC issued a statement of issues in the following matters:

Table 3.16: Statements of issues issued

Statement of Issues issued 2015–16

Consortium comprising Brookfield, Qube and others proposed acquisition of Asciano Limited

DYWIDAG-Systems International Group proposed acquisition of Jenmar Australia

Iron Mountain Incorporated proposed acquisition of Recall Holdings Limited

Halliburton Company proposed acquisition of Baker Hughes Incorporated

GPC Asia Pacific Pty Ltd proposed acquisition of Covs Parts from Automotive Holdings Group Limited

Brookfield consortium proposed acquisition of Asciano Limited

APA Group proposed acquisition of EnergyAustralia's Iona Gas Plant

Royal Dutch Shell plc proposed acquisition of BG Group plc

Foxtel Management Pty Ltd proposed acquisition arrangements with Ten Network Holdings Ltd

Coles Supermarkets Australia Pty Ltd proposed acquisition of nine Supabarn supermarkets

Significant merger proposals withdrawn before reviews completed

A number of significant merger transactions that were withdrawn from consideration by the merger parties following the release of a statement of issues and before we completed our review. These included:

- **Halliburton—proposed acquisition of Baker Hughes:** Halliburton and Baker Hughes are the second and third largest oilfield services providers, both globally and in Australia. In a statement of issues released on 23 October 2015, we expressed strong competition concerns; however, in April 2016, Halliburton and Baker Hughes announced that they had abandoned the deal.
- Reviews of **Heath Care Corporation's proposed acquisition of Wollongong Day Surgery** and **APA's proposed acquisition of the Iona Gas Plant** were both discontinued following successful bids by rival bidders. We issued a statement of issues in relation to both transactions (the statement of issues regarding the Heath Care acquisition was released in 2014–15).
- The separate reviews of competing bids—**Brookfield consortium's proposed acquisition of Asciano**; and **Qube consortium's proposed acquisition of Asciano**—were discontinued following an announcement by Asciano that it had entered into a new binding agreement with Brookfield, Qube and others. We issued a statement of issues in relation to the Brookfield consortium bid. We began a review of the new joint proposal to acquire Asciano on 30 March 2016.

Public competition assessments

A public competition assessment is a document that gives a detailed summary of the issues that we considered when deciding whether a merger would substantially lessen competition or would be likely to do so.

We use public competition assessments to help the public to understand our analysis of the competition issues involved in certain merger reviews. We generally publish a public competition assessment on our online mergers register when:

- we oppose a merger
- a merger is subject to enforceable undertakings
- the parties to the acquisition seek the disclosure
- a merger is cleared but raises important issues that we believe should be made public.

In 2015–16, we issued public competition assessments in these 10 mergers:

Table 3.17: Public competition assessments issued

Public competition assessments issued 2015–16
Iron Mountain Incorporated proposed acquisition of Recall Holdings Limited
GPC Asia Pacific Pty Ltd proposed acquisition of Cova Parts from Automotive Holdings Group Limited
Foxtel Management Pty Ltd proposed acquisition arrangements with Ten Network Holdings Ltd
Royal Dutch Shell plc proposed acquisition of BG Group plc
TPG Telecom Limited proposed acquisition of iiNet Limited
Federation Centres and Novion Property Group proposed merger
Elgas Limited proposed acquisition of Wesfarmers Kleenheat Gas Pty Ltd's east coast LPG assets
Australian Amalgamated Terminals Pty Ltd proposed acquisition of Automotive and RoRo Terminal at the Port of Fremantle
Victoria Quay International RoRo Terminal Pty Ltd proposed acquisition of Automotive and RoRo Terminal at the Port of Fremantle
CSR Limited and Boral Limited proposed clay brick joint venture

Merger remedies

The ACCC can accept court enforceable undertakings under s. 87B of the Act to resolve competition concerns about an acquisition.

In 2015–16, we accepted s. 87B undertakings to address competition concerns in five mergers and enabled the acquisitions to be cleared subject to the undertakings.

Public s. 87B undertakings are summarised in appendix 8.

Example of how undertakings resolve concerns with Iron Mountain's proposed acquisition of Recall

On 31 March 2016, the ACCC announced its decision not to oppose the proposed acquisition by **Iron Mountain Incorporated** (Iron Mountain) of **Recall Holdings Limited** (Recall) after accepting a court enforceable undertaking from Iron Mountain that it would sell most of its Australian business following the acquisition of Recall.

Iron Mountain supplies physical document management services (PDMS). The service allows companies to store their physical documents off site at Iron Mountain premises and retrieve them whenever required or arrange for their destruction. Recall offers similar services.

We had significant concerns that, in the absence of the undertaking, the proposed acquisition would have been likely to substantially lessen competition for the supply of PDMS. We concluded that a limited number of suppliers compete for PDMS customers with national or semi-national PDMS needs (for example, for each of their offices in Australia's major capital cities). We considered that Recall and Iron Mountain were each other's closest competitors for the supply of PDMS to those large national customers.

We received submissions from many large customers with either a national or a multi-regional presence stating that they used competition between Iron Mountain and Recall to negotiate better deals, including through tender processes and benchmarking.

The proposed acquisition (in the absence of the court enforceable undertaking) was likely to leave customers vulnerable to price increases or reduced service levels in a market where there are high costs to switch providers.

In response to our concerns, Iron Mountain provided an undertaking that we accepted under s. 87B of the Act. The undertaking requires Iron Mountain to divest most of its Australian business to a purchaser approved by the ACCC within a specified period. In effect, the undertaking means that in the markets of concern in Australia, Iron Mountain will acquire the Recall business but must sell its existing business. The acquirer of the divested business is expected to be an effective independent competitor to Iron Mountain and other PDMS suppliers in the future.

Analysis of performance: Authorisations and notifications

Deliverable 1.3: Make decisions on authorisation, notification and certification trade mark applications in the public interest

Authorisation applications

The Act primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise consumer welfare, some restrictions on competition may be allowed in the public interest. Authorisation provides businesses with statutory immunity from legal action to engage in potentially anti-competitive arrangements.

The ACCC can, upon application, grant authorisations that impose restrictions on competition where the likely public benefit outweighs any likely public detriment.

In assessing an authorisation application to determine the likely public benefit and detriment, we consult with the public (including contacting many businesses that may have an interest in the matter) and publish submissions on a public register, unless confidentiality is requested.

After considering submissions, we issue a draft decision, which the applicant and interested parties can discuss with the ACCC in a conference. We then reconsider the application in light of any further submissions and release a final decision.

During 2015–16, we issued 33 final authorisation decisions, excluding minor variations, for arrangements involving a wide range of industries. Among them were aviation, finance, mining, agriculture, wagering, electricity, waste services, healthcare and retailing.

Applicants sought authorisation for conduct such as collective bargaining, coordination agreements, joint tender processes and other price or fee agreements.

Example of conditional authorisation to preserve potential competition: ihail taxi booking app

Major taxi networks planned to develop and launch a new smartphone taxi booking app (ihail) and sought authorisation from the ACCC. Following our draft decision by to deny authorisation, the applicant made significant modifications and we ultimately granted authorisation in March 2016.

The initial members of the ihail joint venture are Yellow Cabs, Silver Top Taxi Service, Black and White Cabs, Suburban Taxis and Cabcharge. As well as providing in-taxi payment terminals to most taxis in Australia, Cabcharge operates taxi networks in Sydney, Melbourne, Adelaide and Brisbane.

We were originally concerned that the public benefits of the ihail app (for example, convenience for consumers and reduced waiting times) would not outweigh the detriments to competition likely to result from ihail becoming a dominant taxi booking app and from foreclosing opportunities for payment processing providers other than Cabcharge to supply services to passengers using the ihail app. Both were likely outcomes due to ihail's ownership structure.

To address our concerns, ihail amended the app to enable passengers to pay their fare in the taxi (rather than just via the app) and to choose either their preferred taxi network, based on certain performance information during the booking process, or the nearest available taxi (regardless of network).

We granted authorisation subject to the conditions that ihail explicitly inform drivers that they remain free to use competing booking apps and that ihail and its shareholder networks not prevent drivers from using other booking apps or disadvantage drivers who do so in preference or in addition to using the ihail app.

Example of public benefits not sufficient to grant authorisation: Australian Cotton Shippers Association Incorporated

The ACCC issued a draft decision in October 2015 proposing to deny an application by the Australian Cotton Shippers Association for authorisation of changes that would enable its merchant members to coordinate the way the industry classes cotton for contracts between growers and merchants. The association withdrew its application in November 2015.

Cotton is classed according to five attributes. Current practice in Australia is for two of these attributes—colour and leaf (or trash content)—to be classed visually, while the other three attributes are classed by machine. The Australian Cotton Shippers Association was requesting authorisation for all of its members to move to machine classing for all attributes.

We were not satisfied that the proposal was likely to result in a public benefit that would outweigh the anti-competitive detriment resulting from the majority of cotton buyers collectively refusing to contract with growers unless the cotton had been machine classed.

While there may be benefits from full machine classing, and individual merchants are free to adopt a machine classing system at any time, we were concerned that a coordinated shift to machine classing was not an appropriate market intervention and would result in a loss of competition between merchants.

Exclusive dealing notifications

If a business wants to engage in an exclusive dealing arrangement that is likely to result in public benefits that outweigh the public detriments it can protect itself from legal action under the Act by lodging an application for authorisation or notification with the ACCC. Notification is an alternative to authorisation for certain arrangements such as exclusive dealing. Like authorisation, the notification process provides protection from legal action under the Act if the conduct is in the public interest. However, the notification process for exclusive dealing conduct is a more common option than authorisation because it provides automatic legal protection from the lodgment date, or after 14 days in the case of third line forcing. The legal protection remains in place unless we revoke it. At any time, we can review the public benefit and harm from the conduct that a notification covers.

We received and assessed 766 exclusive dealing notifications, involving 495 separate matters, in 2015–16—9 per cent more than the previous year.

Example of third line forcing notification being allowed after extensive public consultation: Equestrian Australia

On 30 July 2015, Equestrian Australia Limited lodged a notification for third line forcing conduct seeking to address the risks that may arise from horses from Hendra virus affected areas attending equestrian events.

The notification enables Equestrian Australia, or event organising committees acting as its agent, to require that horses are vaccinated against the Hendra virus as a condition of entry into particular events. The immunisation requirement applies to horses that have been living in Hendra-endemic areas (northern New South Wales and Queensland) within a specified period as determined by the relevant organising committee based on a biosecurity risk assessment for the particular event.

The ACCC received a large number of submissions, both in favour of and against, the notification. We held a public forum in Brisbane to enable participants to put their views directly to an ACCC Commissioner.

After carefully considering the views of Equestrian Australia and interested parties, we considered that having the Hendra vaccination required as a condition of entry to particular equestrian events (after an event specific biosecurity risk assessment has been undertaken) is likely to result in public benefits by reducing the risk of transmission of the Hendra virus to other horses or to humans. The decision to allow the notification was particularly guided by the finding of the national veterinary medicine regulator, the Australian Pesticides and Veterinary Medicines Authority, that the Hendra vaccine was generally safe to use and effective against the Hendra virus.

Collective bargaining arrangements

In 2015–16, we issued 14 determinations authorising collective bargaining arrangements and allowed five collective bargaining notifications. The collective bargaining arrangements we considered during the year included dairy, chicken growing, coal handling and supply, wagering and gaming, plumbing supplies and drag car racing.

Collective bargaining is often used by small businesses, including farmers, as a means of improving their position in negotiations with their larger suppliers or customers. Small businesses can seek legal protection from the ACCC to engage in collective bargaining by lodging a notification or by applying for authorisation.

We released a new guide for small business to highlight some issues to take into account when considering negotiating as a group and to outline our approval process.

Other work assessing the public interest

The *Trade Marks Act 1995* (Cth) requires the ACCC to assess the certification trade marks and rules before they can be registered. A certification trade mark is used by businesses to indicate to consumers that a product or service meets a particular standard. Our role is important to ensure that competition and public interest issues are appropriately assessed. In particular, we assess how effective the certification trade mark rules are in ensuring that the specified standards are met; that the rules do not unfairly exclude those that meet the requirements to use the mark; and that the certification bodies are competent to decide whether the requirements are met and continue to be met. During 2015–16 the ACCC finalised 44 assessments of CTM applications.

Analysis of performance: Australian Competition Tribunal

Deliverable 1.4: Assist the Australian Competition Tribunal, as required

Merger parties may seek legal protection from court action under s. 50 of the Act by applying to the Australian Competition Tribunal (the Tribunal) for authorisation of the merger proposal. The Tribunal may grant authorisation if it is satisfied that the proposed merger is likely to result in such a benefit to the public that the merger should be allowed to occur.

An applicant for authorisation, or an interested party with sufficient interest, who is dissatisfied with an ACCC determination of a non-merger proposal or an ACCC decision to give a notice revoking a notification may ask the Tribunal to review the determination.

We have a role in assisting the Tribunal in its assessment of merger authorisations and in its review of our decisions on non-merger authorisations and revocation of notifications.

Tribunal granted merger authorisation for Sea Swift Pty Ltd acquisition of Toll Marine following ACCC decision to oppose the acquisition

On 9 July 2015, the ACCC opposed the proposed acquisition by Sea Swift Pty Ltd (Sea Swift) of the Northern Territory and far north Queensland marine freight business of Toll Marine Logistics Australia (Toll Marine). Toll Marine is a division of Toll Holdings Limited, whose ultimate owner is Japan Post. We were concerned that the proposed acquisition was likely to lead to a substantial lessening of competition in markets for the supply of scheduled marine freight services in the Northern Territory and far north Queensland.

Sea Swift and Toll Marine were the two largest suppliers of marine freight services in the Northern Territory and far north Queensland and, on many routes, were the only two suppliers of scheduled marine freight services.

Prior to the acquisition, Sea Swift and Toll Marine had been engaged in a price war. During this price war, Toll agreed to sell the Toll Marine business to Sea Swift for a substantial amount of money, including a significant shareholding in Sea Swift. Toll Marine claimed that it would exit the market if the merger did not occur.

We considered that the proposed acquisition would result in a near monopoly position for Sea Swift in the supply of scheduled marine freight services in both the Northern Territory and far north Queensland and increase the barriers to entry or expansion for other freight providers.

After we opposed the proposed acquisition, on 4 April 2016, Sea Swift applied to the Tribunal for authorisation subject to conditions. In merger authorisation determinations, the Tribunal must apply a public benefit test under s. 95AZH of the Act. The test requires the Tribunal to be satisfied in all the circumstances that the proposed acquisition would result, or be likely to result, in such a benefit to the public that it should be allowed to occur. This differs from reviews under s. 50 of the Act where a substantial lessening of competition test is applied.

Merger authorisation proceedings in the Tribunal are administrative in nature, in contrast to judicial proceedings which are adversarial. As the Tribunal does not have a secretariat to conduct an investigation into a proposed acquisition, the Act requires the ACCC to assist the Tribunal. Our assistance includes making inquiries, calling and cross-examining witnesses and providing a report to the Tribunal. As there is generally no natural contradictor to a merger authorisation application, our assistance extends to testing the submissions and evidence put forward by the merger parties.

In the case of the Sea Swift-Toll merger, our report expressed the view that the proposed acquisition was likely to result in significant detriments to customers in the Northern Territory and far north Queensland with little or no public benefit.

On 1 July 2016, following a 9-day hearing, the Tribunal granted conditional authorisation to Sea Swift after concluding that the proposed acquisition would result in such public benefit that it should be allowed to occur.

The Tribunal imposed conditions on its authorisation. The conditions place an obligation on Sea Swift to cap its maximum prices for certain categories of freight and maintain services to all of the communities currently serviced by either Toll or Sea Swift for five years. Sea Swift must not enforce any exclusivity, first right of refusal or minimum volume requirements in any customer contract that is transferred from Toll Marine to Sea Swift, and must also provide access to other freight providers to the roll-on roll-off ramp at the port of Nhulunbuy (Gove) on the terms set out in an undertaking to be provided to the ACCC.

Strategy 1: Maintain and promote competition

Other work promoting competition

We use our expertise to advise on and advocate for competition in Australia, working with government and other organisations and agencies on legislative or policy reforms affecting competition law.

We also work with counter-part agencies internationally, collaborating, sharing information and working to improve competition and consumer protection practices. We also advise on competition regimes, particularly in the Asia-Pacific region.

Key matters where we sought to promote competition or worked to improve the competitive environment, either domestically or internationally, are discussed below.

Agriculture sector engagement and enforcement

Addressing competition and consumer issues in the agriculture sector is one of our 2015–16 priorities. In August 2015 we established the ACCC Agriculture Unit to assist in achieving our outcomes for this priority.

On 24 February 2016 the government appointed Mr Mick Keogh as a commissioner of the ACCC. Commissioner Keogh and other commissioners have a strong focus on agriculture issues and work closely with the Agriculture Unit.

Since its formation, the Agriculture Unit has undertaken extensive consultation with farmers and industry representatives to identify key competition and fair trading issues in agriculture markets. This consultation has informed the unit's broader work, which includes:

- the cattle and beef market study, which examines competition, efficiency, transparency and trading issues in the beef and cattle supply chain. The final report on the study will be released in late 2016
- horticulture and viticulture workshops in regional Australia, which were held so that the unit could hear directly from growers and other horticulture and viticulture industry participants about the key competition and fair trading issues that affect them.

We have also established an Agriculture Consultative Committee, which is chaired by Commissioner Keogh. This committee provides a forum for open discussion on key issues. Its membership includes a variety of organisations and individuals from across the agriculture sector.

Our agriculture enforcement work prioritises matters that are pertinent to farm-gate outcomes—namely, competition and unfair trading issues in agricultural supply chains. Our agriculture enforcement work in 2015–16 included investigations of matters across a range of agriculture industries.

Harper review

The Competition Policy Review (Harper review) is the first major review of competition policy in Australia since the Hilmer review 20 years ago. We have engaged extensively with the review panel and in discussions since its final report was released, sharing the benefits of our expertise in administering competition law in Australia. We have positively advocated for changes that in our experience will enhance and protect the competitive process.

International collaboration on competition

The ACCC collaborates with international counterparts through forums such as the International Competition Network (ICN). See 'International Competition Network' on page 110 for details of our work with the ICN.

Throughout the year we continued to expand its capacity building assistance to countries in South-East Asia through the Competition Law Implementation Program (CLIP) .

We continued to engage closely with competition counterparts around the world by participating in and presenting at a number of seminars dealing with a range of matters, including product safety, consumer and competition investigations and regulatory developments.

With an increasing number of cross-border transactions occurring globally and many of these requiring review by the ACCC, there has been a corresponding increase in the level and closeness of engagement between the ACCC and other agencies on these merger reviews. During the year, we liaised with counterparts in other jurisdictions on mergers including: Iron Mountain/Recall; AB InBev/SABMiller;Tullet Prebon/ICAP; Staples/Office Depot; Pfizer/Hospira; Shell/BG; and Fedex/TNT.

Most notably, in relation to the review of Halliburton's proposed acquisition of Baker Hughes, we liaised very closely with a number of competition agencies including the United States Department of Justice, the European Commission, the Brazilian Conselho Administrativo de Defesa Econômica and the Competition Commission of India. Following concerns raised by a number of agencies, Halliburton and Baker Hughes announced that they had abandoned the deal.

ACCC's work with the Competition Law Implementation Program in South-East Asia

We are committed to supporting our counterparts in the Association of Southeast Asian Nations (ASEAN) to build the foundations for effective competition law and regulation in South-East Asia.

Throughout 2015-16, the ACCC has been a key partner and mentor for its ASEAN counterparts and cooperation among regional competition authorities has never been closer.

We contribute to ASEAN goals through our work with the Competition Law Implementation Program (CLIP). CLIP delivers targeted capacity building assistance to ASEAN member states to help to develop effective national competition laws and policies. It is funded under the framework of the ASEAN-Australia-New Zealand Free Trade Agreement Economic Cooperation Work Program.

CLIP is focused on practical skills and knowledge transfer to strengthen regional competition law enforcement.

In 2015–16, we expanded our program of CLIP activities in response to increased demand from ASEAN countries. We provided significant support to ASEAN in its work to build a ‘competition-aware’ region and a framework for cooperation on competition rules and their enforcement.

Our staff also spent time working alongside officials in Cambodia, Laos, Myanmar and the Philippines and at the ASEAN Secretariat in Jakarta to build individual and organisational capacity to develop, promote and enforce competition laws.

In March 2016, we received an additional \$1.7 million from the Australian aid program to deliver a second phase of CLIP activities to June 2017. The focus will remain on delivering practical, hands-on capacity-building assistance, drawing on the experience we have developed over 40 years of competition law enforcement in Australia.

The cooperative relationships we are developing in South-East Asia are a vital part of our international engagement. It is clear that the long-term cooperation that is developing now will be the platform from which future cross-border enforcement cooperation will grow.

Regional Telecommunications Review

The ACCC made a submission to the Regional Telecommunications Review on 30 July 2015. Our submission supported the direction of the review, particularly in relation to redefining the Universal Service Obligation to reflect consumer use and expectations in relation to mobile technology and broadband services.

The submission also expressed support for a customer service guarantee scheme to continue to apply for telecommunications services, particularly during the migration to the National Broadband Network (NBN), and for initiatives to efficiently deliver and use infrastructure, including the NBN, to support competition in regional, rural and remote areas.

We also provided information on our role in relation to backhaul, including the current public inquiry into making a final access determination for the domestic transmission capacity service. Backhaul is a critical part of a telecommunications network. It refers to getting data to a point from which it can be distributed over a network. The high cost of backhaul in regional, rural and remote areas has been identified as a potential barrier to entry for competitive mobile services in these areas.

East Coast Gas Markets Inquiry

On 13 April 2015 the Minister for Small Business directed the ACCC to hold an inquiry into the competitiveness of the wholesale gas industry.

The East Coast Gas Markets inquiry, held under Part VIIA of the Act, enabled us to use compulsory information gathering powers to gather information and hold hearings to assess the level of competition in the market. This meant we could bring together information that has previously not been available to other inquiries into or studies of the market.

We undertook the inquiry between June and August 2015. In its public hearings in July and August, the inquiry heard from over 30 market participants—including large gas users, gas retailers and shippers, small and large producers and pipeline owners—and considered over 73 000 documents.

We presented our final report to the Minister in April 2016. The report makes a number of recommendations to the Council of Australian Governments Energy Council and state and territory governments for alleviating gas market issues, particularly for industrial users. For example, it recommends:

- enabling new gas supply to come to market, particularly in south-eastern Australia
- revisiting the regulatory coverage of pipelines, increasing the ability for pipelines with market power to be regulated
- addressing the consistency and transparency of the provision of information to the market.

The report has been well received across the industry. Although some in the industry do not agree with all the recommendations, the report contains significant findings that will assist in making changes in the availability and terms of gas supply, offering ways to settle matters previously in dispute, and better informing policymakers in order to improve the efficiency of the gas market.

This inquiry, along with other studies—for example, those of agriculture and petrol markets—continues the important role the ACCC plays in improving the transparency of Australia's markets.

Strategy 2: Consumer protection and fair trading

Summary of performance

Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

Role and functions

The Australian Consumer Law (ACL) governs a range of conduct that can have a negative impact on both consumers and small business. The law is designed to enable all businesses to compete on their merits in a fair and open market, while ensuring consumers are also treated fairly.

The ACCC supports consumers and small business by:

- addressing harm done by non-compliance with the ACL
- ensuring that consumers and small businesses know what their rights and responsibilities are under the ACL.

We also work to ensure unsafe products do not harm Australian consumers, taking a range of actions to prevent unsafe products from being sold, and removing them from the market if they are, and taking action against traders and suppliers where warranted.

We use educational campaigns to ensure that consumers and small businesses are fully aware of their rights and responsibilities under the Act and to encourage businesses to comply with the Act.

We also work closely with state and territory counterparts to educate, monitor and enforce compliance with the ACL under a one-law, multi-regulator model.

Our deliverables in this area are:

Deliverable 2.1	Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law
Deliverable 2.2	Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships
Deliverable 2.3	Identify and address the risk of serious injury and death from safety hazards in consumer products
Deliverable 2.4	Support a vibrant small business sector
Deliverable 2.5	Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

Priorities

While we carefully consider all reported matters, we rarely get involved in individual disputes and complaints; rather we dedicate our resources and litigation funding to matters that provide the greatest overall benefit for competition and consumers. This includes pursuing matters that can influence broader industry behaviour.

The ACCC's Compliance and Enforcement Policy sets out our priorities for the year and the factors we take into account when deciding whether to pursue matters. This policy can be found at www.accc.gov.au/about-us/australian-competition-consumer-commission/compliance-enforcement-policy.

Our Compliance and Enforcement Policies for 2015 and 2016 prioritised the following areas or factors:

- unconscionable conduct
- online consumer issues
- consumer guarantees
- scams disruption
- vulnerable and disadvantaged consumers, including elderly consumers
- Indigenous consumers (now an enduring priority)
- small business protection
- truth in advertising, and misleading claims by large businesses
- consumer medical and health issues
- unfair contract terms protections for small businesses
- industry codes of conduct
- product safety and recalls
- new car retailing.

Powers

Under the consumer protection provisions of the Act, we have powers to take court action, seek court enforceable undertakings, seek corrective advertising or consumer refunds and other forms of redress, issue infringement notices or resolve matters administratively. A description of these powers and our approach to using them is in our Compliance and Enforcement Policy on our website and in appendix 6.

We also have certain powers under industry codes and schemes.

Table 3.18: Resources for Strategy 2

Actual for 2015-16	
Expenditure (millions)	\$50.48
Average staffing level	230.6

* Each figure includes an allocation for corporate overheads, legal and economic advice and executive support

Performance indicators

Deliverable 2.1: Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law

This deliverable is about court or other actions we take, such as non-enforceable initiatives to enhance compliance, which protect consumers and small businesses from conduct that harms them. With finite resources, we direct our efforts to those areas with the greatest harm, determining our priorities for action each year. As a strategic regulator with finite resources we look to intervention that can influence behaviour across industry and the economy.

Table 3.19: Performance indicators for Deliverable 2.1

Performance indicators	Annual target	Result
Number of in-depth ACL investigations completed	80	126
Percentage of in-depth ACL investigations that are in the priority areas outlined in the Compliance and Enforcement Policy	60%	83%
Percentage of initial ACL investigations completed within three months	80%	83%
Percentage of in-depth ACL investigations completed within 12 months	80%	81%
Number of ACL enforcement interventions (court proceedings commenced, s. 87B undertakings accepted, infringement notices paid)	40	48
Percentage of ACL enforcement interventions in the priority areas outlined in the Compliance and Enforcement Policy	60%	77%
Percentage of ACL enforcement interventions in the priority areas, or demonstrating the priority factors, outlined in the Compliance and Enforcement Policy	100%	100%
Number of emerging CCA market issues affecting consumers and small business that are identified, considered and advice developed	2	2
Number of new or revised business compliance resources (published guidance)	10	17
Number of times online business education resources have been accessed	600 000	1 239 192
Number of surveys and audits for CCA compliance, including in relation to product safety regulations	20	40
Percentage of business compliance projects that are in priority areas identified in the Compliance and Enforcement Policy	60%	88%

Deliverable 2.2: Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships

This deliverable is about the partnerships we make to assist us in taking proactive, timely and effective compliance and enforcement action—for example with Treasury, the Australian Securities and Investment Commission and state and territory consumer protection agencies, businesses, industry associations and consumer groups.

Table 3.20: Performance indicators for Deliverable 2.2

Performance indicators	Annual target	Result
Percentage of business compliance resources developed or updated in consultation with business, stakeholder groups and peak bodies	80%	76.5%
Number of business compliance projects that are delivered jointly with ACL regulators (Business compliance projects may include one or more of the following to address an identified sector-based compliance risk: monitoring, surveillance, audits, research, stakeholder engagement, business compliance resources, consumer education resources)	5	7
Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies, industry or consumer groups.	5	3

Deliverable 2.3: Identify and address the risk of serious injury and death from safety hazards in consumer products

This deliverable is about the methods we use to identify product safety issues and the kinds of actions we take where it is warranted.

Table 3.21: Performance indicators for Deliverable 2.3

Performance indicators	Annual target	Result
Percentage of product safety mandatory reports made by businesses of serious injury or death preliminary assessed by the ACCC within seven days	100%	63%
Percentage of recall notifications by businesses to the ACCC that, after assessment and engagement, can be published within 48 hours	80%	85%
Number of detailed assessments of emerging product safety hazards	40	51
Number of reviews of mandatory product safety standards completed	6	6
Number of new or updated published business compliance resources about responsible sourcing of consumer products	2	4

Deliverable 2.4: Support a vibrant small business sector

This deliverable is about how we help to ensure that small businesses understand and comply with their obligations and encourage them to exercise their rights as the customers of larger suppliers.

Table 3.22: Performance indicators for Deliverable 2.4

Performance indicators	Annual target	Result
Number of small business Infocentre contacts served (Small business contacts are contacts through separate small business phone line and webforms)	12 000	15 073
Number of new or revised business compliance resources (published guidance) to empower small business	5	8
Number of CCA and ACL enforcement interventions with substantial benefits to small business sector	10	8

Deliverable 2.5: Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

This deliverable is about how we educate consumers about their consumer rights and empower them to take action when those rights are not respected.

Table 3.23: Performance indicators for Deliverable 2.5

Performance indicators	Annual target	Result
Number of new or revised consumer education resources (published guidance)	10	25
Number of times online consumer education resources have been accessed	1.5 million	3 million
Number of Infocentre contacts served	150 000	139 980
Number of unique visits to the Scamwatch website*	1.5 million	1 932 879

* The new Scamwatch website was launched on 11 July 2015. The annual Scamwatch figures cover the period 11 July 2015 to 30 June 2016 and due to a change in the analytics tool used for the site, reflect visits rather than unique visits.

Factors affecting performance

Our first year of setting and recording against the public indicators on the timeliness of our investigations has revealed imperfections in our case management systems that capture and record the duration of investigations. For example, our system has not accounted for some pauses in investigations, such as when we are waiting for judicial decisions in related matters. A review of matters also showed a difference between the reported end of investigations—such as when we notified a trader of no further action—and the date we record administratively. Therefore our compliance with this measure includes a 10 per cent tolerance in the end date of matters to accommodate these imperfections. Efforts in the year ahead will be directed to refine our case management systems to consistently record and capture this information.

We did not meet the target for the 'Number of business compliance and consumer education projects that involve partnership or joint delivery with businesses, peak bodies and industry or consumer groups'. The majority of our projects involve consultation with these stakeholders in planning and delivering business compliance and consumer education rather than partnership or joint delivery. We aim to consult relevant industry groups and to utilise these networks to disseminate information. For more information on our work with partners, see section 2.2.

In 2015–16 we developed 76.5 per cent of business compliance resources in consultation with business, stakeholder groups and peak bodies, just below the target of 80 per cent. We consulted with these groups for major projects such as business-to-business unfair contract terms, the Food and Grocery Code of Conduct and the safe sourcing of consumer products; however, it is not feasible to consult during the development of all resources. Some resources, such as webinars, are presented in a format on which it is impractical to consult; however, the content used in webinars has often been drawn from sources such as published guidance that has already been developed in consultation with stakeholders.

We assessed 63 per cent of product safety mandatory reports made by businesses of serious injury or death with preliminary assessment within seven days, which was under the target. In many instances where there were delays, we needed to seek additional information from the supplier in order to conduct the assessment, and this clarification delayed the outcome of the assessment. While we were under target overall, we prioritise detailed assessment of the *moderate or high-risk* reports over finalisation of *low-risk* assessments.

The Infocentre experienced reduced capacity to serve telephone calls from January 2016 which has resulted in fewer contacts served than the goal of 150 000. Relevant internal committees have been kept informed throughout this period and have recently endorsed a revised scope for the Infocentre role. The intention of this approach is to reduce handling times and increase the number of consumers and small businesses we can manage. We have improved system support and are revising our business processes to do this.

Analysis of performance: Deliver priority consumer law outcomes

Deliverable 2.1 Deliver outcomes to address harm to consumers and small businesses resulting from non-compliance with the Australian Consumer Law

The ACL gives the ACCC a range of remedies and powers to effectively respond to breaches of fair trading and consumer protection laws. To enforce these consumer protection laws, we:

- institute court proceedings. This year, we were involved in 48 cases (with 19 being new proceedings) with total penalties in excess of \$15 million
- accept enforceable undertakings where a breach, or a potential breach, might otherwise justify litigation. This year, we accepted 13 consumer protection related undertakings
- issue infringement notices. This year, we received payment for 43 infringement notices from 20 traders, with penalties totalling \$450 000
- accept an administrative resolution. These generally involve a business agreeing to stop a particular type of conduct, compensate consumers and take other measures to ensure that the conduct does not recur. This year, we resolved a number of matters administratively with seven matters resolved through a formal administrative resolution.

Our Compliance and Enforcement Policy governs our annual priorities in this area. In line with these, in this section we have grouped our outcomes under:

- unconscionable conduct
- online consumer issues
- consumer guarantees
- scams disruption
- vulnerable, disadvantaged and Indigenous consumers
- small business
- truth in advertising
- the medical and health sector
- new car retailing
- other outcomes.

Unconscionable conduct

'Unconscionable conduct' is generally understood to mean conduct which is so harsh that it goes against good conscience. Business transactions or dealings can be 'unconscionable' when they are deliberate, involve serious misconduct or involve conduct which is clearly unfair and unreasonable.

Under the ACL, businesses must not engage in unconscionable conduct when dealing with other businesses or their customers. To be considered unconscionable, conduct must be more than simply unfair—it must be against conscience as judged against the norms of society.

Court cases

The following cases were instituted in 2015–16.

Table 3.24: Unconscionable conduct cases instituted

Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Unique International College Pty Ltd		Conduct
	commenced jurisdiction	27 October 2015 Federal Court Sydney	
Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Phoenix Institute of Australia Pty Ltd & Community Training Initiatives		Conduct
	commenced jurisdiction	24 November 2015 Federal Court Sydney	
Unconscionable conduct in relation to small business	Multimedia International Services Pty Ltd t/a The Community Network		Conduct
	See details under 'Unconscionable conduct cases finalised'		
Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Cornerstone Investment Australia Pty Ltd t/a Empower Institute		Conduct
	commenced jurisdiction	9 December 2015 Federal Court Sydney	

Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Acquire Learning & Careers Pty Ltd		Conduct
	commenced jurisdiction	17 December 2015 Federal Court Melbourne	ACCC alleged Acquire engaged in unconscionable conduct, making false or misleading representations and breaching the unsolicited consumer agreements provisions in the ACL by its conduct in telemarketing VET FEE-HELP diploma courses between July 2014 and March 2015. See case study on pages 75–76.
Unconscionable conduct in relation to vulnerable and disadvantaged consumers	FDRA Pty Ltd (Angel Digital) & Anor		
	See details under ‘Unconscionable conduct cases finalised’		
Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Australian Institute of Professional Education Pty Ltd		Conduct
	commenced jurisdiction	31 March 2016 Federal Court Sydney	ACCC and Commonwealth allege that AIPE made false or misleading representations and engaged in unconscionable conduct, when marketing and selling VET FEE-HELP funded courses between 1 May 2013 and 1 December 2015 in NSW, Queensland and WA. See case study on pages 75–76.
Unconscionable conduct and harassment/coercion in relation to vulnerable and disadvantaged consumers	ACM Group Ltd		Conduct
	commenced jurisdiction	2 June 2016 Federal Court Sydney	ACCC alleges that ACM Group Ltd engaged in misleading or deceptive conduct, harassment and coercion, and unconscionable conduct in debt collection dealings with two consumers between 2011–15. In each case, the debt being pursued had been sold to ACM by Telstra.
Unconscionable conduct in relation to small business	Woolworths Limited		
	commenced jurisdiction	10 December 2015 Federal Court Sydney	ACCC alleges that in December 2014 Woolworths engaged in unconscionable conduct in dealings with a larger number of its supermarket suppliers.
Unconscionable conduct	Medibank Private Ltd		Conduct
	commenced jurisdiction	15 June 2016 Federal Court Melbourne	ACCC alleges that Medibank Private engaged in misleading and unconscionable conduct when it failed to notify Medibank members and members of its subsidiary brand, AHM, regarding its decision to limit benefits paid to members for in-hospital pathology and radiology services.

The following cases are ongoing.

Table 3.25: Unconscionable conduct cases ongoing

Unconscionable conduct and unfair contract terms	Advanced Medical Institute Pty Ltd & Ors (appeal)		Conduct
	commenced jurisdiction	21 December 2010 Federal Court Melbourne	ACCC alleges that in promoting and supplying medical services and medications for men suffering from erectile dysfunction and premature ejaculation AMI engaged in unconscionable conduct. ACCC took contempt proceedings in August 2015. NRM have appealed various aspects of the April 2015 judgment.
Unconscionable conduct	Clinica Internazionale Pty Ltd (appeal)		Conduct
	commenced jurisdiction	15 May 2015 Federal Court Melbourne	ACCC alleges that Clinica made false or misleading representations and engaged in misleading conduct and unconscionable conduct in relation to a program offering migrants training and employment that it represented would lead to permanent residency in Australia. Mr Laski is appealing an aspect of the relief ordered by the Court in March 2016. The following cases were finalised in 2015-16.

Table 3.26: Unconscionable conduct cases finalised

Unconscionable conduct in relation to vulnerable and disadvantaged consumers	Lux Distributors Pty Ltd (appeal)		Conduct
	commenced	10 May 2012	ACCC alleged that between 2009 and 2011, Lux engaged in unconscionable conduct in relation to the sale of vacuum cleaners to five elderly consumers in contravention of s. 51AB of the <i>Trade Practices Act 1974</i> and s. 21 of the Australian Consumer Law.
	concluded	21 August 2015	
	jurisdiction	High Court of Australia	
	outcome	Appeal dismissed. Pecuniary penalty of \$370 000, injunction and compliance training program for Lux employees and its agents.	

Unconscionable conduct in relation to small business	Multimedia International Services Pty Ltd t/a The Community Network	Conduct	
	commenced	30 November 2015	ACCC alleged that Multimedia engaged in unconscionable conduct, making false or misleading representations and wrongly accepting payments from small businesses. For details see case study on page 126.
	concluded	29 April 2016	
	jurisdiction	Federal Court Brisbane	
outcome	Pecuniary penalty of \$230 000, declarations, ACL compliance program and \$35 000 ACCC costs.		
Unconscionable conduct in relation to vulnerable and disadvantaged consumers	FDRA Pty Ltd (Angel Digital) & Anor	Conduct	
	commenced	23 December 2015	ACCC alleged unconscionable conduct, false or misleading conduct, and breaches of the unsolicited consumer agreement provisions of the ACL in the supply of electronic tablet devices to Indigenous consumers in remote communities. For details see case study on page 89.
	concluded	6 May 2016	
	jurisdiction	Federal Court Darwin	
outcome	Undertaking not to enter any Indigenous community in Australia or the Royal Darwin Hospital and its associated hostels to sell any goods or services for a period of five years, and \$20 000 consumer redress.		

Undertakings

The following s. 87B court enforceable undertakings were finalised in 2015–16. Details of the undertaking are in appendix 8.

Table 3.27: Unconscionable conduct undertakings finalised

Unconscionable conduct	Multimedia International Services Pty Ltd t/a The Community Network s. 87B undertaking dated 27 April 2016
Unconscionable conduct	Careers Australia Group Limited s. 87B undertaking dated 16 May 2016

Example of unconscionable conduct and misleading claims in the vocational education and training sector

In 2015, as a result of extensive investigations, the ACCC instituted proceedings against several Australian private colleges alleging unconscionable conduct, false or misleading representations and misleading or deceptive conduct in breach of the ACL.

The conduct concerned representations the colleges made to prospective students about Commonwealth Government VET FEE-HELP loans.

VET FEE-HELP is a type of student loan for those who wish to take vocational education and training courses. Under the scheme, the Commonwealth Government initially lends the money to the student and then the student pays back those fees once they earn more than a specified amount in a financial year (in some cases \$54 126 in the 2014–15 year). Education providers can offer students VET FEE-HELP loans if they have been approved to do so.

In 2015 we became aware of complaints that, in an effort to increase their enrolment numbers and therefore their profits, some private colleges were leading potential students to believe that the courses were free. Many students were not aware that the money was a loan that must be repaid the government once their income reaches a specific level. Many of these sales were also unsolicited—many of the private colleges used door-to-door salespeople and telemarketing to reach the consumers.

The private colleges and their agents also appeared to be targeting disadvantaged and vulnerable consumers, including jobseekers, high school students, Indigenous consumers in rural areas and those with low levels of literacy and numeracy skills.

The ACL plays an important role in protecting consumers against businesses that make these types of misleading claims. It also protects consumers' rights when businesses engage in unsolicited sales techniques such as door-to-door selling and telemarketing. It particularly protects consumers who have a level of disadvantage in the market place. A priority area for the ACCC in 2015–16 has been the rights of Indigenous, disadvantaged and vulnerable consumers.

In 2015 we launched a joint investigation with NSW Fair Trading and worked with other federal and state agencies, including the Department of Education and Training, the Australian Skills and Quality Authority, the Australian Taxation Office, and other state based agencies and consumer protection bodies.

Once the investigations were completed, in late 2015 and 2016 the ACCC (and in some matters the Commonwealth on behalf of the Department of Education and Training) instituted proceedings against:

- **Unique International College Pty Ltd** (Unique), which sells VET FEE-HELP diploma courses using face-to-face marketing, including door-to-door sales
- **Phoenix Institute of Australia Pty Ltd** (Phoenix), which sold VET FEE-HELP funded courses in New South Wales, Victoria, Queensland, Northern Territory and Western Australia between January and October 2015. Community Training Initiatives Pty Ltd (CTI), which assisted Phoenix by providing administrative support and processing enrolment forms
- **Cornerstone Investment Australia Pty Ltd** trading as Empower Institute (Empower), which marketed and sold VET FEE-HELP funded courses to consumers in New South Wales, Western Australia, Victoria, Queensland and South Australia. Between March 2014 and October 2015 Empower enrolled over 10 000 new students in its Diploma courses and received over \$90 million from the Commonwealth in respect of those enrolments

- **Acquire Learning & Careers Pty Ltd**, which is a broker of education services that markets on behalf of Registered Training Organisations that offer vocational courses under the VET FEE-HELP system
- **Australian Institute of Professional Education Pty Ltd (AIPE)**, which markets and provides courses in Queensland, New South Wales and Western Australia

In relation to the private colleges the ACCC and the Commonwealth sought declarations, injunctions and orders for the repayment of course fees paid by the Commonwealth to the private colleges in respect of any VET FEE-HELP loans cancelled by the court order, as well as costs.

The cases against Unique, AIPE, Phoenix, CTI, Acquire and Empower are ongoing.

We also investigated **Careers Australia Group Limited**, (Careers Australia), which is one of the largest private training providers in Australia. Careers Australia's marketing agents marketed and sold its courses to consumers across Australia, including through door-to-door sales and telemarketing. In addition to misrepresentation over course fees and employment opportunities, Careers Australia offered inducements such as free iPads if students signed up for courses. In May 2016 we accepted a court enforceable undertaking from Careers Australia. It provided the undertaking after admitting that some of its marketing agents breached the ACL by making false or misleading representations and engaging in unconscionable conduct. Careers Australia has cancelled at least 12 130 of these student enrolments and either repaid or partially repaid to the Commonwealth amounts totalling at least \$44.3 million, including cancellations made in the course of the ACCC investigation.

Further details of the undertakings are provided in appendix 8.

Online consumer issues

The online market remained a focus for the ACCC in 2015–16.

Under the ACL, Australian consumers are entitled to the same safety protections and outcomes when shopping online as they have when shopping with traditional 'bricks and mortar' retailers.

In 2015–16 an ACCC priority was emerging systemic consumer issues in the online marketplace. We have been actively monitoring and engaging with businesses about online supply to make sure that they continue to comply with the consumer protections in the ACL, regardless of their geographic location or business model.

We have been focusing on:

- fake online testimonials
- drip pricing
- misleading representations
- the safety of products purchased from online businesses
- misleading claims on comparator websites
- issues in relation to the expanding 'sharing economy'.

'Drip pricing' is a pricing practice where consumers see a 'headline' price advertised but find that additional fees and charges have been added at the payment stage. Drip pricing can lack transparency, may mislead consumers and makes it difficult for businesses to compete on a level playing field.

Comparator websites

Comparator websites, which allow consumers to compare offers from various providers, are popular in the energy, travel and insurance sectors. They are an important marketing tool for businesses. The websites can improve transparency and promote competition but also mislead consumers when they overstate the savings that can be achieved or fail to provide full information about the comparisons being made. In August 2015 we released guidance for comparator website operators and suppliers to assist operators and suppliers when making decisions about all aspects of comparator services, including in advertising and marketing. This guidance is intended to encourage an industry-wide consideration of business practices to promote fair trading and better consumer experiences in this growing sector. The ACCC also released consumer guidance with tips on how to get the best outcomes when using comparator websites.

Sharing economy

The sharing economy is a rapidly expanding part of the Australian economy. There are many different definitions of what the term includes. However, in general it covers economic activity that involves individuals or businesses making goods or services available for use by other individuals through an online facilitator that manages the market and 'back-office functions'. This can include the use of cars, accommodation or finance.

The ACCC commenced a project to consider competition and consumer issues that may arise within the sharing economy. We commissioned Deloitte to undertake research to explore competition and consumer protection in the context of this activity that is disrupting traditional markets. In October 2015, we released *The sharing economy and the Competition and Consumer Act report (Deloitte Access Economics)*, which found that the Act provides sufficient tools to effectively address competition or consumer issues arising in the sharing economy. The report recommended that we develop guidance to increase awareness of our expectations and business's legal obligations.

We have commenced the development of guidance material for sharing economy platforms and users. This guidance will be released in the second half of 2016.

Case study: 'Free' offers in betting services

In June 2016 the Federal Court ordered **Hillside (Australia New Media) Pty Ltd** (trading in Australia as **Bet365**) and its UK service company, **Hillside (Shared Services) Limited** (together, **Bet365**) to pay penalties totalling \$2.75 million for making false representations by Bet365's 'free bets' offer to new customers.

Bet365 is an online gambling service based in the UK but offering services in Australia.

Between March 2013 and 13 January 2014 Bet365 held a promotion that offered '\$200 FREE BETS FOR NEW CUSTOMERS' to customers in Australia. The promotion suggested that new customers of Bet365 would be entitled to up to \$200 in bets without limitation or restriction. In fact, there were a number of conditions on the offer that were not prominently displayed and not brought to customers' attention. For example, before a new customer could receive the \$200 'free bet', they had to deposit and then gamble \$200 of their own money first. Other conditions also applied.

The result of the conditions was that a customer who made an initial deposit of \$200 and received \$200 in bets was required to then gamble \$1200 before being able to withdraw any money.

The ACL protects consumers against businesses that make false or misleading claims about promotional offers. These protections also apply when consumers purchase products and services online.

In 2014 we instituted proceedings against Bet365 alleging misleading representations in breach of the ACL. We focused on this case because we considered it an example of concerning behaviour in the market.

In September 2015, the Federal Court found that Bet365's conduct was misleading and deceptive and involved false representations.

This case makes it clear to businesses that it is not acceptable to promote 'free' offers without disclosing any restrictions or limitations in a prominent way so that consumers are fully informed before they accept the offer. This is particularly relevant in an emerging industry like the online gambling market, where online and print advertisements target consumers who may not previously have used online gambling services.

Court cases

The following cases were finalised in 2015–16.

Table 3.28: Online issues cases finalised

Misleading representations	Homeopathy Plus! Australia Pty Ltd & Ors		
	commenced	19 February 2013	ACCC alleged that statements on the Homeopathy Plus! website relating to the effectiveness of the whooping cough vaccine and recommending homeopathic treatments as an alternative were potentially misleading.
	concluded	15 October 2015	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalties of \$115 000 for Homeopathy Plus! and \$23 000 for Frances Sheffield, injunction and ACCC costs.	
Fake online testimonials	A Whistle (1979) Pty Ltd t/a Electrodry Carpet Cleaning		
	commenced	1 July 2014	ACCC alleged that A Whistle, the franchisor of the Electrodry Carpet Cleaning business, was involved in the posting of fake online testimonials.
	concluded	18 December 2015	
	jurisdiction	Federal Court Sydney	
	outcome	Declarations, injunctions, pecuniary penalty of \$215 000, corrective notice and \$10 000 towards ACCC costs.	
Misleading representations	Hillside (Australia New Media) Pty Ltd trading as Bet365		
	commenced	12 August 2014	ACCC alleged Bet365 made misleading representations in relation to offers of 'free bets' and 'deposit bonus' to new customers who joined up online. See case study on page 77.
	concluded	10 June 2016	
	jurisdiction	Federal Court Melbourne	
	outcome	Pecuniary penalties of \$2.75 million, declaration, corrective notice, and costs as per court order.	

Product safety	Online Dealz Pty Ltd & Janet Lucas		
commenced	30 March 2015		ACCC took proceedings against Online Dealz and its director and sole shareholder Janet Lucas in respect of baby cots and strollers which we alleged did not comply with mandatory safety standards.
concluded	21 June 2016		
jurisdiction	Federal Court Sydney		
outcome	Pecuniary penalty of \$100 000 for Online Dealz and \$20 000 for Janet Lucas, declarations, injunction, corrective advertising, and payment of 70 per cent of ACCC costs.		

The following cases are ongoing.

Table 3.29: Online issues cases ongoing

Drip pricing	Jetstar Airways Pty Ltd		
commenced	19 June 2014		ACCC alleged that Jetstar made representations on its website and mobile site and in certain promotional emails that certain domestic airfares were available for purchase at specific prices, when in fact those prices were only available if payment was made using particular methods.
jurisdiction	Federal Court Sydney		
outcome	Judgment handed down. ACCC case partially successful. Awaiting judgment on relief.		
Drip pricing	Virgin Australia Airways Pty Ltd		
commenced	19 June 2014		ACCC alleged that Virgin made representations on its website and mobile site and in certain promotional emails that certain domestic airfares were available for purchase at specific prices, when in fact those prices were only available if payment was made using particular methods.
jurisdiction	Federal Court Sydney		
outcome	Judgment handed down. ACCC case partially successful. Awaiting judgment on relief.		

Undertakings

The following s. 87B court enforceable undertakings were finalised in 2015–16. Details of the undertakings are in appendix 8.

Table 3.30: Online issues undertakings finalised

Misleading representations	Danoz Direct Pty Ltd s. 87B undertaking dated 2 September 2015
Drip pricing	Airbnb Ireland (Ireland Company Registration Number 511825) Pty Ltd s. 87B undertaking dated 12 October 2015
Drip pricing	Vacaciones eDreams, SL (sociedad unipersonal con CIF B-61965778) s. 87B undertaking dated 12 October 2015
Misleading representations	Hertz Pty Ltd s. 87B undertaking dated 4 April 2016

Administrative resolutions

The following administrative resolutions for online issues were finalised in 2015–16.

True Value Solar Pty Ltd 11 April 2016	<p>Between February 2015 and September 2015, True Value Solar implemented a program offering its customers a free solar panel service valued at \$199 for publishing a review on the online review platform www.productreview.com.au. The free solar panel service was only offered to customers who indicated that they had a positive experience with True Value Solar, and were therefore likely to provide a positive review. The offer of the incentive was not disclosed in the review.</p> <p>Following contact by the ACCC, True Value Solar immediately discontinued its incentives program. It also agreed that if it were to reintroduce a similar program in the future, incentives would be offered to all customers regardless of whether their review was a positive or a negative one, and the offering of the incentive would be prominently disclosed to readers of the review.</p>
JustFab Inc trading as Fabletics 22 June 2016	<p>Fabletics, a US-based exercise clothing retailer, cooperated with the ACCC and agreed to change its website after we raised concerns about inadequate disclosure of conditions and the ongoing costs of its 'VIP' membership program.</p> <p>Following their first purchase of discounted active wear clothing, Fabletics' customers were charged a monthly US\$49.95 subscription charge for VIP membership. This membership entitled customers to purchase active wear each month using a membership 'credit' gained through their monthly payments. We received complaints that some Fabletics customers were unaware they had signed up to monthly subscription payments, and some had difficulty cancelling their memberships.</p>
Asia Deal Group Pty Ltd trading as ScootPrice 22 June 2016	<p>The ACCC investigated complaints regarding online retailer, Scootprice, failing to adequately disclose the fees for its 'Premium' membership, which ranged from \$29.90 per month to \$99 per quarter. We received complaints that some Scootprice customers were unaware they had signed up to ongoing subscription payments. Scootprice cooperated with our investigation, including by refunding customers who it signed up to its Premium membership without being fully aware of the fees payable for this service.</p>

Infringement notices

The following infringement notices for online issues were paid in 2015–16.

Table 3.31: Infringement notices paid

Citymove Pty Ltd 27 July 2015	Three notices totalling \$30 600 The ACCC issued the infringement notices because we had reasonable grounds to believe Citymove made false or misleading representations concerning testimonials about its furniture removal services that were published on the social network website Google+ and on YouTube, in contravention of the ACL.
Epharmacy Group Pty Ltd (owner of websites for Chemist Warehouse, My Chemist, and Epharmacy) 24 November 2015	Three notices totalling \$32 400 The ACCC issued three infringement notices to Epharmacy, because we had reasonable grounds to believe that Epharmacy made false or misleading representations that consumers would save money off the recommended retail price for certain Healthy Care branded products purchased through the Chemist Warehouse, My Chemist or Epharmacy websites when this was not the case.
Kogan.Com Pty Ltd 12 January 2016	Three notices totalling \$32 400 The ACCC issued three infringement notices because we had reasonable grounds to believe that Kogan had made false or misleading representations about the price of three computer monitors advertised by Kogan during a Fathers' Day promotion on its eBay store, in contravention of the ACL.

Consumer guarantees

Under the Australian Consumer Law, when you buy products and services they come with automatic guarantees that they will work and do what you asked for. If you buy something that isn't right, you have consumer rights. If a business fails to deliver any of these guarantees, you have consumer rights for repair, replacement or refund; cancelling a service; compensation for damages and loss. The ACCC has powers to enforce compliance with the ACL where businesses mislead consumers about their rights under consumer guarantees.

Consumer guarantees ensure that consumers are not disadvantaged if they unknowingly buy defective products. It is important that consumers are aware of their rights when purchasing goods and that businesses act in accordance with the ACL and do not try to mislead consumers about the extent of these rights.

Questions and complaints about guarantees and warranties are one of the most common reasons why consumers contact us and other ACL regulators.

This year, under our Compliance and Enforcement Policy, we have focused on representations made by large retailers about express and extended warranties. Consumers already have a warranty on goods they buy, so retailers must not sell consumers warranties that are already guaranteed under the ACL.

Example of actions to prevent companies misleading consumers about refunds and extended warranties

Under the ACL, products and services come with automatic guarantees on repair, replacement and refund.

In 2015–16 the ACCC's work in the area of consumer guarantees resulted in positive outcomes in two matters. The companies involved were **Valve Corporation Pty Ltd** (Valve) and **WFI Insurance Limited** trading as **Lumley Retail Warranty** (Lumley).

Rights to refunds

Valve is an entertainment software and technology company located in the United States of America. Valve owns and operates an online computer game distribution platform known as 'Steam', which has over 65 million users worldwide. Valve sells computer games through Steam to Australian consumers but does not have a physical presence in Australia.

Steam is offered to users on a subscription basis. The Steam Subscription Agreement states that consumers are not entitled to a refund from Valve for video games they purchased from Valve. However, under the ACL, customers are entitled to refunds for products they purchase, including online products.

The ACCC instituted proceedings against Valve in the Federal Court for breach of the ACL.

Valve argued that the ACL did not apply to it, in part because technically Valve did not conduct a business in Australia. However, In March 2016 the Federal Court found that Valve made misleading representations to Australian consumers about their consumer guarantee rights in contravention of the ACL. The Court found that Valve was indeed conducting a business in Australia and was therefore subject to the ACL. The Court is yet to make a decision on penalty.

The Federal Court's decision indicated that overseas businesses cannot avoid their obligations under the ACL even if their business predominately operates from a foreign jurisdiction and its contracts seek to apply foreign law over the ACL's consumer guarantees.

Extended warranties

In December 2015 the ACCC accepted a court enforceable undertaking volunteered by **WFI Insurance Limited** trading as **Lumley Retail Warranty** as a result of our concerns over its customer care plan brochures.

Lumley is an extended warranty underwriter and claims administrator for a number of Australian retailers of household electronic and white goods that sell extended warranties (known as customer care plans) to consumers.

Under the ACL consumers who purchase goods have rights and remedies available to them if the goods they purchase do not meet their expectations. Extended warranties can offer further rights and remedies that are not covered by the ACL.

Many consumers purchase extended warranties because they do not realise they already have protection under the ACL. Therefore, those offering extended warranty products must clearly identify the benefits that go beyond the ACL protections already available to consumers.

From 2011 Lumley distributed customer care plan brochures that offered extended warranties for consumer products supplied by retailers. However, we were concerned that Lumley's brochures did not sufficiently identify the degree of overlap between the remedies available under its extended warranty customer care plans and those already available to consumers in the ACL. As a result, we considered that the brochures had the potential to mislead consumers.

Lumley cooperated with our investigation and provided an enforceable undertaking to:

- change the extended warranty customer care plan brochures to include additional information to assist consumers to compare the features of the plan being sold with the existing remedies available under the ACL
- provide consumer law compliance training to Lumley and retailer staff, and
- design and work with retailers to implement a program for monitoring retailers' customer care plan selling practices, including by mystery shopping, and if necessary improving those practices.

Lumley is the first underwriter in the industry to agree to roll out such a program, and we acknowledged and welcomed the industry lead taken by Lumley by committing to the steps contained in the undertaking.

Details of the undertaking are provided in appendix 8.

Court cases

The following proceedings were instituted in 2015–16.

Table 3.32: Consumer guarantees proceedings instituted

Misleading representations	LG Electronics Pty Ltd	Conduct
commenced jurisdiction	15 December 2015 Federal Court Melbourne	ACCC alleged that LG made false or misleading representations to consumers about their rights in relation to faulty LG products.

The following matters were ongoing at the end of 2015–16.

Table 3.33: Consumer guarantees ongoing proceedings

Misleading representations	Valve Corporation Pty Ltd		
	commenced	28 August 2014	See case study on page 82.
	jurisdiction	Federal Court Sydney	
	outcome	Declaration that Valve made misleading representations to Australian consumers about their consumer guarantee rights in contravention of the ACL. Hearing on relief scheduled for November 2016.	

Table 3.34: Consumer guarantees finalised proceedings

Misleading representations	Bunavit Pty Ltd (trading as Harvey Norman AV/IT Superstore Bundall)	Conduct
	commenced	12 June 2013
	concluded	12 January 2016
	jurisdiction	Federal Court Brisbane
	outcome	Pecuniary penalty of \$52 000
		Sales representatives at the Harvey Norman Superstore Bundall in Queensland, operated by Bunavit, made ten false or misleading representations concerning the existence, exclusion or effect of a guarantee or right, when they made statements to consumers.

Undertakings

The following s. 87B undertakings was finalised in 2015–16. Details of the undertakings are in appendix 8.

Table 3.35: Consumer guarantees undertakings finalised

Extended warranties	WFI Insurance Limited trading as Lumley Retail Warranty s. 87B undertaking dated 7 December 2015
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Infringement notices

The following infringement notice was paid in 2015–16.

Table 3.36: Consumer guarantees infringement notices paid

APG & Co Pty Ltd, trading as Sportscraft 8 June 2016	Two notices totalling \$21 600 The ACCC issued the infringement notices because it had reasonable grounds to believe that Sportscraft had made false or misleading representations about consumer guarantees to its customers, in breach of the ACL.
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Administrative resolutions

The following administrative resolutions were finalised in 2015–16.

Table 3.37: Consumer guarantees administrative resolutions finalised

Fiat Chrysler Australia 11 September 2015	<p>Fiat Chrysler Australia provided an administrative undertaking to the ACCC following an investigation into consumer guarantee complaints concerning vehicle faults and Fiat Chrysler Australia's handling of those complaints. The undertaking includes a commitment to establish a consumer redress program and to review its handling of previous complaints, as well as an ACL compliance program which includes a complaints handling system.</p> <p>Fiat Chrysler Australia distributes several vehicle brands in Australia including Jeep, Alfa Romeo, Fiat and Chrysler.</p>
Yale Prima Pty Ltd 14 June 2016	<p>Yale Prima Pty Ltd has committed to the ACCC that it will comply with its ACL consumer guarantee obligations as a manufacturer in relation to providing remedies to consumers who purchased faulty JVC-branded televisions from Dick Smith prior to 5 January 2016. As required by the ACL, Yale Prima will offer full refunds to these consumers under its own 12-month manufacturer's warranty.</p> <p>Yale Prima provided this commitment following an ACCC investigation into consumer complaints after Dick Smith went into external administration.</p>

Scams disruption

The ACCC plays an important role in educating Australians about how to protect themselves from scams and this remained a priority issue in 2015–16.

A scam is a fraudulent business or scheme which takes money or other goods from an unsuspecting person. They can have a significant financial impact on individuals and businesses. Scams target people of all backgrounds, ages and income levels. Every year scams cost Australians millions of dollars and cause considerable non-financial harm.

In May 2016 we released *Targeting Scams* which reported on scams activity in the calendar year 2015. In 2015 we received 105 201 scam-related contacts from consumers and small businesses, with reported financial losses totalling \$84 941 766. We also reviewed data from other jurisdictions that receive reports or detect scams to gain a clearer picture of the significance of losses caused by scam activity in Australia. Reports to the Australian Cybercrime Online Reporting Network (ACORN) revealed losses of over \$127 million.² Additionally, various scam disruption programs, operated by the ACCC and other agencies, detect Australians sending funds to high risk jurisdictions. A combined estimate of losses to this unreported scam activity is \$17.1 million. Combining Scamwatch and ACORN data with losses detected through scam disruption work, total scam losses exceed \$229 million. The ACCC actively targets scam activity and works on several fronts to prevent and minimise the harm scams cause, including through ongoing education, communication and media stories, disruption work and enforcement action where possible.

² ACCC analysis of ACORN data specifically excludes reports that identify having reported to Scamwatch and those that do not identify whether they have reported elsewhere.

Dating websites

Online dating has become a popular form of social networking. Online dating sites offer services to facilitate relationships between their members. However, the online environment also provides opportunities for scammers, including international criminal networks, to target Australian consumers. In 2015–16 the ACCC prioritised work on scams that rely on building these types of deceptive relationships.

Reported losses by Australian consumers to online dating scams in 2015 totalled just over \$22.7 million. Typically, the scammer will create fake profiles and contact legitimate users to perpetrate financial fraud and identity theft. They will form a relationship with a legitimate user, sometimes over a significant period of time, and then defraud them.

Scam activity can also have a detrimental effect on the online dating business model by undermining consumer confidence in the service.

In February 2016 we released the revised Best practice guidelines for dating websites to assist dating websites and their users to respond to scams. The guidelines help dating website operators disrupt and prevent scam activity on their platforms.

Australasian Consumer Fraud Taskforce

The ACCC is the chair of the Australasian Consumer Fraud Taskforce (ACFT). We work closely with public, private and community sectors to educate the public and disrupt scams. This coordinated response is the most effective approach to minimising consumer harm. The taskforce plays an important role in the relationship scam disruption project that the ACCC is coordinating.

National Consumer Fraud Week

National Consumer Fraud Week is a campaign to raise awareness of scam activity within our community. In 2016 in line with our priority concerning vulnerable consumers, the focus of the campaign was on scams that target older Australians.

Using the theme ‘Wise Up to Scams’, the campaign encouraged older Australians to take the time to understand how they can identify and avoid the increasingly sophisticated methods scammers use to part them from their money. The aim was to raise awareness about the types of scams that target older Australians, how to identify and avoid scams and actions that consumers can take if they have been scammed.

The ACFT Fraud Week Partners Program included 28 major partners supporting the campaign, in addition to ACFT member support. Partners primarily promoted the campaign via social media, with many developing website and blog content and electronic newsletters.

A coordinated approach to the use of social media using Twitter and Facebook generated an estimated reach of over 590 000 people. Digital content on websites and blogs and via newsletters also assisted in promoting the campaign to a wider audience.

Scamwatch

The ACCC uses a range of media and communications channels to raise community awareness about scams.

Our Scamwatch website (www.scamwatch.gov.au) received over 1.9 million visitors in 2015–16. We also distributed 16 Scamwatch radar email alerts on emerging scams to over 44 000 subscribers as part of our free alert service. For those consumers who do not have internet access, we operate the Scamwatch hotline (1300 795 995), which gives information and advice about scam-related issues. In 2015–16, we received 45 139 contacts through the hotline.

We also use our Scamwatch Twitter profile (@Scamwatch_gov) to provide information to Australian consumers and businesses about scams that are targeting them. We issued 331 tweets in 2015-16.

Scam disruption project

In August 2014 we commenced a scam disruption project, aimed at stopping scam victims from sending more money to scammers.

The project involves collaboration between the ACCC and the Australasian Consumer Fraud Taskforce, including state and territory police and consumer affairs agencies. The project alerts at-risk individuals to the possibility of being a victim of a scam. The project uses financial intelligence to identify Australians who are sending funds to two high risk jurisdictions and advises them they may have been targeted by a scam.

Since the program commenced in August 2014 the ACCC has sent more than 7200 letters to potential scam victims.

Approximately 75 per cent of those receiving our warning letters stopped sending money overseas within six weeks of receiving the letter.

Court cases

The following cases were finalised in 2015-16.

Table 3.38: Scams and pyramid selling cases finalised

Pyramid selling	Lyonesse Australia Pty Ltd & Ors	Conduct
commenced	28 August 2014	ACCC alleged Lyonesse International AG, Lyonesse Asia Limited, Lyonesse UK Limited and Lyonesse Australia Pty Limited (together 'Lyonesse') operated a pyramid selling scheme engaging in referral selling.
concluded	23 October 2015	
jurisdiction	Federal Court Sydney	
outcome	Case dismissed.	

Table 3.39: Scams cases ongoing

Scam	Sensaslim Australia Pty Ltd & Ors	Conduct
commenced	15 July 2011	ACCC alleged that Sensaslim and several of its officers engaged in misleading and deceptive conduct and made false representations in relation to the identity of Sensaslim officers, the Sensaslim Spray and the business opportunities offered by Sensaslim.
concluded	11 May 2016	
jurisdiction	Federal Court Sydney	
outcome	Injunctions, pecuniary penalty of \$3.55 million against Sensaslim; penalty of \$660 000 against Peter Foster and permanent disqualification from managing corporation; penalty of \$75 000 against Michael Boyle and 3-year disqualification from managing a corporation; penalty of \$55 000 against Peter O'Brien and 10-year disqualification from managing corporation. Foster and O'Brien to pay ACCC costs. Case has been appealed.	

Vulnerable, disadvantaged and Indigenous consumers

We actively address business practices that affect the interests of vulnerable and disadvantaged consumers, particularly where awareness of consumer rights is low. Consumer rights may be less known by people:

- on a lower income
- from a non-English speaking background
- with a disability
- with low reading, writing and numerical skills
- who are homeless
- living in a remote area.

Where awareness of consumer rights is lower, there is more scope for opportunistic business practices. We address this through education about consumer rights and issues as well as enforcement action.

In 2015–16 we prioritised issues affecting both older consumers and consumers newly arrived in Australia.

This year we have taken action where a range of goods and services aimed at either older or vulnerable consumers have been involved. By concentrating our efforts, we would like to give these consumers extra confidence that their rights are being protected.

Indigenous consumers

This year, we elevated Indigenous consumer issues to an enduring priority. This is a significant change to our policy recognising that Indigenous consumers, particularly those living in remote areas, continue to face challenges in asserting their consumer rights. The elevation means that we will always prioritise our work in this area while these challenges remain.

Our work this year has also aimed to assist Indigenous consumers by:

- raising awareness of their rights
- improving access to our services
- increasing our capacity to detect unscrupulous traders operating in remote communities
- vigorously enforcing the law.

Unfortunately, Indigenous consumers continue to face some of the most outrageous selling tactics.

We continue to forge partnerships with remote communities and key stakeholders to improve consumer literacy, build the confidence of Indigenous consumers to complain about consumer law breaches and detect and stop illegal conduct at an early stage.

In partnership with the Indigenous Consumer Assistance Network (ICAN), the Queensland Office of Fair Trading and the Wujal Wujal Aboriginal Shire Council we worked to implement community road side signage aimed at alerting traders and empowering consumers with respect to the ACL and door-to-door trade. We have also worked with these partners to empower Indigenous consumers.

Examples of consumer protection issues affecting Indigenous consumers

The ACCC this year has prioritised consumer protection issues that impact on disadvantaged consumers, with a particular focus on Indigenous consumers.

The ACL contains rules governing lay-by payments, unsolicited sales and 'free' offers. Businesses must comply with these rules when selling to customers.

In 2014–15 proceedings were brought against **Chrisco Hampers Australia Ltd** (Chrisco), **Lifestyle Photographers Pty Ltd** trading as Expression Sessions and **FDRA Pty Ltd** (formerly known as Angel Digital) for alleged breaches of the ACL that have affected vulnerable and Indigenous consumers.

Also, see the case study on private colleges on page 76, which examines unsolicited sales that target Indigenous consumers among others.

Lay-by payments

In March 2016 the Federal Court ordered that Chrisco pay a pecuniary penalty of \$200 000 for contravening the ACL.

Chrisco offers food and drink hampers and a variety of other goods to consumers, including homewares and gifts, by way of lay-by agreements, throughout most areas of Australia, including remote Indigenous communities. The consumer makes interest-free instalment (lay-by) payments and the goods are delivered after the final lay-by payment is made, usually coinciding with the Christmas period. Chrisco does not operate a physical retail outlet but does have administration, call centre and warehousing facilities in Australia.

Chrisco promotes its goods on television, on a website, in print advertising and in printed catalogues.

The ACL provides that consumers have a right to cancel a lay-by agreement at any time before they receive the goods, including after paying their final lay-by instalment. However, Chrisco told consumers they could not cancel their lay-by agreement after making their final payment.

The ACL also protects consumers from unfair contract terms. However, Chrisco's lay-by agreement contained an unfair term that allowed Chrisco to continue to take payments by direct debit after the consumer had fully paid for their lay-by order. Consumers were required to 'opt out' in order to avoid having further payments automatically deducted by Chrisco after their lay-by had been fully paid.

We were alerted to the alleged conduct by ICAN during an Indigenous outreach visit to Palm Island (Bwngcolman), as part of our broader Indigenous consumer protection and outreach work.

'Free' offers to disadvantaged consumers

Expression Sessions sells photography packages, including photographic prints, canvases, glass tiles and key rings. Between 2012 and 2014, Expression Sessions operated from pop-up stores and kiosks in shopping centres in all states and territories in Australia. Expression Sessions' customers were in many cases Aboriginal or Torres Strait Islander people or were financially disadvantaged. In addition, it appeared that some of the customers were in considerable financial distress or had a limited capacity to understand commercial contracts.

The ACCC alleged that Expression Sessions offered prospective customers a free photo shoot or free photographs and told customers they would be able to receive photographs of their children at no cost and without entering into a contract. These representations induced customers to participate in a photo shoot, which they thought would be free of charge.

We alleged that customers were not able to receive free photographs and were required to enter into a contract with Expression Sessions to purchase photographs. Expression Sessions failed to clearly advise its customers of the total price of their photographic products at the time the customers signed the contract.

We took legal action in September 2015, alleging that Expression Sessions' representations were false or misleading. We considered that the sales method used by Expression Sessions, its use of unfair tactics and undue pressure and its failure to provide clear and accurate information about its contractual terms were unconscionable.

In May 2016 the Federal Court noted that Lifestyle Photographers had agreed to pay a penalty of \$1.1 million and make refunds through a consumer redress scheme, despite its financial position. The case is ongoing, with judgment expected in the later part of 2016.

Unsolicited sales

In December 2015 we instituted proceedings against FDRA Pty Ltd (formerly known as Angel Digital, and its shareholder and director Mr Jackson Anni (also known as Temitope Ayodele Anifowose). We alleged that FDRA had engaged in unconscionable conduct, false or misleading conduct, and breaches of the unsolicited consumer agreement provisions of the ACL in the supply of electronic tablet devices.

FDRA is a seller of electronic tablet devices. In September 2014 it was approaching Indigenous consumers in remote communities and in the Royal Darwin Hospital and persuading them to make agreements to buy the tablet devices.

FDRA was using unsolicited sales techniques to sell its tablets. The ACL contains rules concerning unsolicited agreements and businesses must comply with those rules when dealing with consumers.

We alleged that some of the conduct by FDRA and Mr Anni included:

- employing local Indigenous community members as FDRA sales representatives to gain access to, and establish trust in, those communities
- calling uninvited upon consumers and offering to supply Nextbook electronic tablet devices and related extras such as memory cards, warranty and 24/7 support
- seeking to charge and, in some cases, charging consumers a fee for the 1-year manufacturer's warranty that the manufacturer of the tablet already provided free of charge
- obtaining the consumer's signature on pro forma documents prepared by Mr Anni for use by FDRA. The documents included a form authorising payroll deduction, a credit card authorisation form and a form authorising periodical payments from a bank account. In some cases, FDRA used the consumer's internet banking to schedule future payments from their online bank accounts
- not establishing whether the Indigenous consumer understood or could read English
- not properly assessing whether the Indigenous consumer was financially literate
- retaining consumers' bank cards and/or BasicsCards to take payment
- driving some consumers to the bank to obtain their bank account details
- breaching a trespass order at Royal Darwin Hospital and approaching people and attempting to sell tablets.

In May 2016 FDRA and Mr Anni gave undertakings to the Federal Court not to enter any Indigenous community in Australia or the Royal Darwin Hospital and its associated hostels to sell any goods or services for a period of five years. Also the undertakings require Mr Anni and FDRA to provide a cooling-off period, have written agreements with consumers and pay \$20 000 for consumer redress, to be distributed by the ACCC.

Court cases

The following cases were finalised in 2015-16.

Table 3.40: Cases finalised regarding vulnerable and disadvantaged consumers

Vulnerable and disadvantaged consumers	Lux Distributors Pty Ltd (appeal)	Conduct
commenced	10 May 2012	ACCC alleged that between 2009 and 2011, Lux engaged in unconscionable conduct in relation to the sale of vacuum cleaners to five elderly consumers. Lux sales representative called upon each consumer under the premise of a free vacuum cleaner maintenance check. The consumers were then subjected to unfair and pressuring sales tactics to induce them into purchasing a vacuum cleaner for a price of up to \$2280.
concluded	21 August 2015	
jurisdiction	High Court	
outcome	Lux's High Court appeal dismissed. Pecuniary penalty of \$370 000, injunction and compliance training program for Lux employees and its agents.	

Indigenous consumers (unfair contract terms)	Chrisco Hampers Australia Ltd		
	commenced	19 December 2014	See case study on page 89.
	concluded	4 March 2016	
	jurisdiction	Federal Court Brisbane	
outcome	Pecuniary penalty \$200 000 and declaration.		
Indigenous consumers (unsolicited consumer agreements)	Adata Pty Ltd		
	commenced	19 June 2014	ACCC alleged that Adata's supply of end of year individual tax return services to Indigenous consumers receiving Centrelink payments in remote communities in the NT and WA breached the unsolicited consumer agreement provisions of the ACL.
	concluded	22 April 2016	
	jurisdiction	Federal Court Darwin	
outcome	ACCC case dismissed.		
Indigenous consumers (unconscionable conduct)	FDRA Pty Ltd (Angel Digital) & Anor		
	commenced	23 December 2015	ACCC alleged unconscionable conduct, false or misleading conduct, and breaches of the unsolicited consumer agreement provisions of the ACL in the supply of electronic tablet devices to Indigenous consumers in remote communities. See case study on page 89.
	concluded	6 May 2016	
	jurisdiction	Federal Court Darwin	
outcome	Undertaking to the court not to enter any Indigenous community in Australia or the Royal Darwin Hospital and its associated hostels to sell any goods or services for a period of five years, and \$20 000 consumer redress.		

Table 3.41: Cases ongoing regarding vulnerable and disadvantaged consumers

Indigenous consumers (unconscionable conduct)	Lifestyle Photographers Pty Ltd t/a Expression Sessions		
	commenced	18 September 2015	ACCC alleged that Expression Sessions made false or misleading representations and engaged in misleading or deceptive and unconscionable conduct when selling photography products. See case study on page 89.
	jurisdiction	Federal Court Sydney	
outcome	Awaiting final judgment.		

Vulnerable consumers	We Buy Houses & Rick Otton		
	commenced jurisdiction	2 March 2015 Federal Court Sydney	ACCC alleged that from about 1 January 2011 to the present, We Buy Houses and Mr Otton represented to consumers that by following or implementing the system and/or the strategies, consumers were able to buy a house for \$1 without needing a deposit, bank loan or real estate experience. In addition representing that consumers could create a passive income stream through property and quit their jobs, build property portfolios without their own money invested and without new bank loans, start making profits immediately, when there was no reasonable ground for making such representations.

Infringement notices

The following infringement notices were paid in 2015–16.

Table 3.42: Infringement notices issued regarding vulnerable and disadvantaged consumers

D Burnz Investments Pty Ltd 4 January 2016	Two notices totalling \$20 400 The ACCC issued the infringement notices because it had reasonable grounds to believe that D Burnz Pty Ltd, which supplies Better Living Australia products, had made false or misleading representations about its adjustable beds and associated mobility equipment, in breach of the ACL.
Clews Holdings Pty Ltd 8 February 2016	Two notices totalling \$20 400 The ACCC issued the infringement notices because it had reasonable grounds to believe that Clews Holdings Pty Ltd, which supplies Seniors Plus products, had made false or misleading representations about its adjustable beds and associated mobility equipment, in breach of the ACL.
Voiteck Pty Ltd 13 January 2016	One notice of \$10 200 The ACCC issued the infringement notice because it had reasonable grounds to believe that Voiteck had made false or misleading representations to residents of Lifestyle SA retirement villages about their right to choose a telecommunications services provider.

Product safety

Consumers have a right to expect that products they buy work properly and do not present an unreasonable risk of causing illness or injury. Under the ACL consumer products are expected to meet the consumer guarantee to be of acceptable quality, including being safe.

The ACCC's product safety enforcement work is discussed further on page 123.

Small business

Small business is an important part of the Australian economy. Currently there are more than two million small businesses actively trading across the country. However, small businesses are vulnerable given the comparatively low levels of resources and market power they have when compared with large businesses.

The ACCC aims to make markets work for everyone, including small businesses. We aim to ensure an even playing field for competing small businesses and to protect their legitimate points of difference from misleading conduct.

Under the Act and the ACL small businesses have certain rights—for example, the Act gives small businesses authority to bargain collectively in some circumstances and protects small companies from misleading and deceptive conduct and anti-competitive behaviour (such as price fixing and market sharing agreements).

The ACL encourages small businesses to exercise their rights under the Act as the customers of larger suppliers. Our aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them.

The ACL also imposes obligations on small businesses—for example, it is illegal for small businesses to mislead or deceive their customers or use unfair selling practices such as pressure tactics that might be unconscionable. We also work to ensure that small businesses know their obligations and comply with them.

This year one of we have been prioritising work to ensure that small businesses' rights are protected and that they know their obligations under the ACL.

An example is the action that we take on misleading product claims—such as with credence claims—that can disadvantage businesses that compete fairly. We use various compliance and enforcement tools, such as court orders and undertakings enforceable in court, to help ensure that businesses do not breach the Act in trying to gain a competitive advantage.

Court cases

The following cases were finalised in 2015–16.

Table 3.43: Small business cases finalised

Misleading representations	Safety Compliance Pty Ltd		
	commenced	16 April 2012	ACCC alleged false and misleading conduct and coercion by Safety Compliance in relation to sales of workplace safety materials to small businesses.
	concluded	22 December 2015	
	jurisdiction	Federal Court Sydney	
outcome	Declarations, injunctions, pecuniary penalties of \$515 000 for Safety Compliance, \$125 000 for King, \$30 000 for Black and \$10 000 for Schimmel. Disqualification orders and \$315 000 towards ACCC costs.		
Unconscionable conduct in relation to small business	Multimedia International Services Pty Ltd t/as The Community Network		
	commenced	30 November 2015	ACCC alleged that Multimedia engaged in unconscionable conduct, making false or misleading representations and wrongly accepting payments from small businesses.
	jurisdiction	Federal Court Brisbane	
outcome	See case study on page 126.		

Table 3.44: Small business cases ongoing

Scam	Sensaslim Australia Pty Ltd & Ors	Conduct
commenced	15 July 2011	ACCC alleged that Sensaslim and several of its officers engaged in misleading and deceptive conduct and made false representations in relation to the identity of Sensaslim officers, the Sensaslim Spray and the business opportunities offered by Sensaslim.
concluded	11 May 2016	
jurisdiction	Federal Court Sydney	
outcome	See details on page 105. Matter has been appealed.	

Infringement notices

The following infringement notices were paid in 2015–16.

Table 3.45: Small business infringement notices paid

Athena Solutions Pty Ltd t/a Froothie Australia 14 December 2015	One notice of \$10 800 The ACCC issued the infringement notice to Froothie because it had reasonable grounds to believe that Froothie made a false or misleading representation that consumers would obtain a saving if they purchased the Optimum 9400 blender when this was not the case.
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Truth in advertising

Under the ACL, claims can legitimately be made as long as they are not misleading and can be substantiated. But honest businesses selling premium products need to be protected from unscrupulous competitors that make false claims, and consumers need to be protected from paying premium prices for non-existent attributes.

Case study: Truth in advertising

In March 2015 the ACCC instituted proceedings in the Federal Court against **Reckitt Benckiser (Australia) Pty Ltd** concerning misleading representations in connection with the sale and promotion of its Nurofen Specific Pain products.

Reckitt Benckiser is a manufacturer of health products, including Nurofen—a well-known brand of pain relief medication. In 2010 Reckitt Benckiser began to market a range of Nurofen 'Specific Pain' products: Nurofen Migraine Pain, Nurofen Tension Headache, Nurofen Back Pain, and Nurofen Period Pain.

ACCC investigations found that retail prices of Nurofen Specific Pain products were almost double those of Nurofen's standard ibuprofen products, but each product contained the same active ingredient: ibuprofen lysine 342 mg. This is also the same active ingredient as regular ibuprofen gel capsules.

Reckitt Benckiser claimed that:

- each product was formulated to treat a particular type of pain
- each product solely or specifically treated a particular type of pain.

However, ibuprofen cannot directly target specific types of pain and that, because each Specific Pain product contained exactly the same active ingredient, each product was no more effective at treating the type of pain described on its packaging than either any of the other Nurofen Specific Pain products.

Under the ACL, businesses must not make false or misleading claims about the goods or services they supply.

We initiated proceedings against Reckitt Benckiser for the misleading claims it made about its Specific Pain products. We considered the conduct to be more than just a technical breach of the Act given that the company stood to make substantial profits from its misleading claims.

In December 2015 the Federal Court found that Reckitt Benckiser had made misleading representations on the packaging of each Nurofen Specific Pain product and on its website. The Court ordered that Reckitt Benckiser remove the Nurofen Specific Pain products from retail shelves within three months, publish website and newspaper corrective notices, implement a consumer protection compliance program and pay the ACCC's costs.

In April 2016 the Court ordered Reckitt Benckiser to pay a pecuniary penalty of \$1.7 million, finding that the conduct was longstanding and widespread. While the Court could not quantify the actual contravening profit, it found that Reckitt Benckiser intended to make substantial profits from the conduct. The court found that consumers suffered potential monetary loss due to the premium price attached. Reckitt Benckiser admitted that it had engaged in the contravening conduct and consented to the orders made by the Court.

We have appealed the decision because we claim the penalty does not reflect the seriousness of the breach and will not deter large companies from breaching consumer laws. The case is ongoing.

Court cases

The following truth in advertising claims cases were instituted in 2015–16.

Table 3.46: Truth in advertising claims cases instituted

Credence claims	H.J Heinz Company Australia Ltd		Conduct
	commenced jurisdiction	21 June 2016 Federal Court Adelaide	ACCC alleged that Heinz's use of particular statements and images represented to consumers that the products are of equivalent nutritional value to fruit and vegetables and are a healthy and nutritious food for children aged one to three years, when this is not the case.
False and misleading	Elusion New Zealand Limited		
	commenced jurisdiction	20 June 2016 Federal Court Perth	ACCC alleged Elusion New Zealand Limited breached the ACL by making representations on its website from at least August 2015 that the e-cigarette products being sold did not contain carcinogens or toxic chemicals, and did not contain any of the chemicals found in conventional cigarettes.
False and misleading	Social-Lites Pty Ltd		
	commenced jurisdiction	20 June 2016 Federal Court Brisbane	ACCC alleged Social-Lites Pty Ltd breached the ACL by making representations on its website from at least August 2015 that the e-cigarette products being sold did not contain carcinogens or toxic chemicals, and did not contain any of the chemicals found in conventional cigarettes.

The following cases were finalised in 2015–16.

Table 3.47: Truth in advertising claims cases finalised

Credence claims	Derodi Pty Ltd and Holland Farms Pty Ltd		Conduct
	commenced	5 December 2014	
	concluded	14 April 2016	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalty \$300 000, declaration, corrective notices, compliance program and costs of \$35 000.	ACCC alleged that Derodi and Holland Farms' use of 'free range' in relation to their Ecoeggs, Field Fresh and Port Stephens egg brands was false and misleading.
Credence claims	RL Adams Pty Ltd t/a Darling Downs Fresh Eggs		
	commenced	9 December 2014	
	concluded	11 September 2015	
	jurisdiction	Federal Court Brisbane	
	outcome	Pecuniary penalty of \$250 000, declarations, publication orders, compliance program and \$25 000 contribution to ACCC costs.	ACCC alleged that from 31 December 2013 to 6 October 2014, Darling Downs Fresh Eggs supplied eggs marketed and labelled as 'free range' when in fact the laying hens had been continuously confined to barns and had never had access to the outdoors.
Fake online testimonials	A Whistle (1979) Pty Ltd t/a Electrodry Carpet Cleaning		
	commenced	1 July 2014	
	concluded	18 December 2015	
	jurisdiction	Federal Court Sydney	
	outcome	Declarations, injunctions, pecuniary penalty of \$215 000, corrective notice and \$10 000 towards ACCC costs.	Alleged posting of fake online testimonials.
False and misleading representations	CLA Trading Pty Ltd t/a Europcar		
	commenced	10 November 2014	
	concluded	19 April 2016	
	jurisdiction	Federal Court Perth	
	outcome	Declarations, pecuniary penalty of \$100 000, corrective advertising and payment of ACCC costs of \$65 000.	ACCC alleged that Europcar made false or misleading representations on its website from at least December 2013 to July 2014 regarding consumers' liability cover.

The following cases are ongoing.

Table 3.48: Truth in advertising claims cases ongoing

False or misleading representations	Reckitt Benckiser (Australia) Pty Ltd (appeal)	Conduct
	commenced 4 March 2015	See case study on page 96.
	jurisdiction Federal Court Sydney	
	Case has been appealed.	
Credence claims	Snowdale Holdings Pty Ltd	Conduct
	commenced 9 December 2013	ACCC alleged that Snowdale in WA made false, misleading or deceptive representations by the images and wording on their egg cartons and website in that the eggs supplied and labelled as 'free range' were produced by hens that were not able to move about freely on an open range each day.
	jurisdiction Federal Court Perth	
	outcome In May 2016 Federal Court found that Snowdale made false or misleading representations that its eggs were 'free range' in contravention of the ACL. Awaiting judgment on relief.	
Credence claims	DuluxGroup (Australia) Pty Ltd	Conduct
	commenced 5 December 2012	ACCC alleges that Dulux made false, misleading or deceptive representations in relation to the promotion of the temperature reducing capabilities of its InfraCOOL and Weathershield Heat Reflect paints.
	jurisdiction Federal Court Perth Awaiting judgment.	
False or misleading representations	Taxsmart Group Pty Ltd	Conduct
	commenced 20 June 2013	ACCC alleged false, misleading or deceptive conduct in relation to job advertisements for graduate accountant positions to attain a tax agent licence and subsequently operate a Taxsmart franchise.
	jurisdiction Federal Court Melbourne	
	outcome In May 2014 Federal Court ordered compensation and costs orders arising from contraventions of the false representations and misleading or deceptive conduct provisions of the ACL. In June 2016 freezing order obtained by the ACCC due to default by parties regarding court orders. Case is ongoing.	

Undertakings

The following undertakings were finalised in 2015–16. Details of the undertakings are in appendix 8.

Table 3.49: Truth in advertising claims undertakings finalised

P&M Quality Smallgoods Pty Ltd t/a Primo Smallgoods	s. 87B undertaking dated 24 July 2015
Conroys Pty Ltd	s. 87B undertaking dated 19 August 2015
George Weston Foods Pty Ltd t/a KR Castlemaine	s. 87B undertaking dated 2 September 2015
Pastoral Pork Company Pty Ltd t/a Otway Pork	s. 87B undertaking dated 2 September 2015
Arnott's Biscuits Ltd	s. 87B undertaking dated 20 November 2015

Infringement notices

The following infringement notices were paid in 2015–16.

Table 3.50: Truth in advertising claims infringement notices paid

Conroys Pty Ltd 19 August 2015	One notice of \$10 200 The ACCC issued the infringement notice because it had reasonable grounds to believe that Conroys made a false or misleading representation about the place of origin of its Breakfast Bacon 1kg packet in contravention of the ACL.
Arnott's Biscuits Ltd 23 November 2015	Five notices totalling \$51 000 The ACCC issued the infringement notices to Arnott's because it had reasonable grounds to believe that Arnott's made a false or misleading representation about the composition of Shapes Light & Crispy, in breach of the ACL.
Cereal Partners Australia Pty Ltd 26 November 2015	Three notices totalling \$32 400 The ACCC issued the infringement notices because it had reasonable grounds to believe that CPA made false or misleading representations about the protein content of certain Uncle Tobys brand oats products, in contravention of the ACL.
Kailis Bros Pty Ltd 8 December 2015	One notice totalling \$10 800 The ACCC issued the infringement notice because it had reasonable grounds to believe that Kailis Bros had engaged in conduct likely to mislead the public about the manufacturing process used to produce its frozen 'Just Caught Prawn Meat', in contravention of the ACL.
Kingdom Groups International Pty Ltd 2 May 2016	One notice of \$10 800 The ACCC issued the infringement notice because it had reasonable grounds to believe that Kingdom had breached the ACL by making a false or misleading representation on its website about the country of origin of its footwear branded 'UGG® Aries Sheepskin Australia'.

Unilever Australia Limited
23 June 2016

One notice of \$10 800

The ACCC issued the infringement notice because it had reasonable grounds to believe that Unilever had breached the ACL by making a false or misleading representation on the packaging of its Paddle Pop Rainbow (10 pack) packaging that the product has been approved or is suitable as healthy option for school canteens.

The packaging included a logo on the front, back and one side with the words 'School Canteen Approved' and a tick symbol.

Medical and health

In 2015–16 competition and consumer issues in the medical and health sector was an ACCC priority.

Our work in this area aims to increase awareness within the medical profession and the broader health industry about both rights and obligations under the law. We use market research and analysis to identify risks to consumers and the competitive process that may require intervention. These reviews also help us identify industry good practice and encourage it more broadly within the sector. Publicising this work can help inform consumers, encourage public debate over competition and consumer matters and inform policy consideration.

In October 2015 we released our report on the private health insurance industry *Information and informed decision-making*. The report followed extensive consultation with key industry and government stakeholders and consumer research. It had a particular focus on information that the medical and health industry provided to consumers, including the transparency, accuracy and consistency of information about policies and the impact this has on consumers' decision-making. We will further review consumer protection issues arising from this report.

We have begun work on our 17th annual report to the Senate on anti-competitive practices in the private health insurance industry for the 2014–15 financial year (*Private Health Insurance 2014–15 report*). The focus of this year's report will be on communicating policy changes to consumers. In March 2016 we invited public submissions to the report and on 1 June 2016 we chaired a forum with invited stakeholders from industry, consumer groups and government to further discuss the issue of policy change communication. The report is due to be published in the second half of 2016.

Our work in the area of health extends to investigating claims made by food manufacturers regarding nutritional claims relating to their products. Details are provided on page 96 under truth in advertising relating to the H.J Heinz, Arnott's Biscuits and Cereal Partners Australia matters.

We were also involved in proceedings against **Little Company of Mary Healthcare Limited** and **Calvary Health Care Riverina Limited** for exclusive dealing practices. For more information, see the case study on page 44.

Table 3.51: Health cases finalised

Misleading representations	Homeopathy Plus! Australia Pty Ltd & Ors		
	commenced	19 February 2013	ACCC alleged that statements on the Homeopathy Plus! website relating to the effectiveness of the whooping cough vaccine and recommending homeopathic treatments as an alternative were potentially misleading.
	concluded	15 October 2015	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalties of \$115 000 for Homeopathy Plus! and \$23 000 for Frances Sheffield, injunction and ACCC costs.	

Table 3.52: Health cases ongoing

Misleading representations and unconscionable conduct	Medibank Private Ltd		
	commenced	15 June 2016	ACCC alleges that Medibank Private engaged in misleading and unconscionable conduct when it failed to notify Medibank members and members of its subsidiary brand, AHM, regarding its decision to limit benefits paid to members for in-hospital pathology and radiology services.
	jurisdiction	Federal Court Melbourne	

Infringement notices

The following infringement notices were paid in 2015–16.

Table 3.53: Medical and health infringement notices paid

Epharmacy Group Pty Ltd	Three notices totalling \$32 400		
24 November 2015	The ACCC issued the notices because it had reasonable grounds to believe that Epharmacy made false or misleading representations that consumers would save money off the recommended retail price (RRP) for certain Healthy Care branded products purchased through the Chemist Warehouse, My Chemist, or Epharmacy websites, when this was not the case.		

Administrative resolutions

The following administrative resolutions were finalised in 2015–16.

Table 3.54: Medical and health administrative resolutions finalised

Calvary Health Care ACT Limited trading as Calvary Bruce Private Hospital	Calvary Health Care ACT Limited agreed in December 2015 to provide patients with more information in relation to potential out-of-pocket costs, following an investigation by the ACCC.		

New car retailing

Consumer issues arising in relation to new car retailing is a priority area in the 2016 ACCC Compliance and Enforcement Policy.

On 17 June 2016, we announced that we would be undertaking a market study into the new car retailing industry. The market study will be informed by a range of enforcement, education and research projects focusing on key competition and consumer issues that may be present in the industry. An issues paper inviting submissions from the public will be released later in 2016. A draft report is due in 2017.

Other work promoting consumer protection

Telecommunications sector

In the telecommunications and energy sectors we continue to see a range of conduct that may raise concerns under the ACL. Therefore, consumer protection in these sectors continues to be a focus area for us.

In 2015–16 we took action to address concerns about advertising and marketing in the telecommunications and energy sectors.

Court cases

The following cases were instituted in 2015–16.

Table 3.55: Telecommunications cases commenced

Unconscionable conduct	Harrison Telecommunication companies and James Harrison	Conduct
commenced jurisdiction	4 April 2016 Federal Court Melbourne	ACCC alleged that 11 corporations trading as SoleNet and Sure Telecom (the Harrison Companies) and their director James Harrison engaged in unconscionable conduct and undue harassment in the supply of telecommunications services.

Undertakings

The following s. 87B undertakings was finalised in 2015–16. Details of the undertaking are in appendix 8.

Table 3.56: Telecommunications undertakings finalised

Misleading representations	Optus Internet Pty Limited
	s. 87B undertaking dated 16 December 2015

Infringement notices

The following telecommunications and energy infringement notices were paid in 2015–16.

Table 3.57: Telecommunications and energy infringement notices paid

Optus Internet Pty Ltd 17 December 2015	Five notices totalling \$51 000 The ACCC issued the infringement notices because it had reasonable grounds to believe that Optus had made false or misleading representations in relation to the data transfer rates (or 'speeds') offered on its existing cable broadband plans.
Voiteck Pty Ltd 13 January 2016	One notice of \$10 200 The ACCC issued the infringement notice because it had reasonable grounds to believe that Voiteck had made false or misleading representations to residents of Lifestyle SA retirement villages about their right to choose a telecommunications services provider.
Momentum Energy Pty Ltd 21 April 2016	Five notices totalling \$54 000 The ACCC issued the infringement notices because it had reasonable grounds to believe that an advertising campaign by Momentum, which included television, print, radio, social media and its website, represented that Momentum generated and supplied renewable electricity, when this is not the case.

Administrative resolutions

The following telecommunications administrative resolutions were accepted in 2015–16.

Table 3.58: Telecommunications administrative resolutions accepted

Exetel Pty Ltd 18 January 2016	Exetel Pty Ltd agreed to compensate consumers affected by changes made to its fixed-term residential broadband plans, after the ACCC raised concerns.
Vaya Pty Ltd 8 March 2016	Vaya agreed to address concerns raised by the ACCC following consumer complaints regarding Vaya's emails to customers about contract variations.

Non-compliance with our compulsory information-gathering power and contempt of court

Under s. 155 of the Act, the ACCC can issue a notice to answer questions, produce documents or attend an oral examination. Refusing or failing to comply with the notice by the due date and providing false or misleading evidence are criminal offences that may attract fines under the Act. Individuals may also face 12 months imprisonment. If an individual or corporation refuses or fails to comply with a notice or provides false or misleading evidence, we may refer this non-compliance to the Commonwealth Director of Public Prosecutions.

ACCC action against false evidence given in compulsory examination

In September 2015 the Federal Court convicted **Michael Anthony Boyle** of knowingly giving false or misleading evidence to the ACCC about his knowledge of Mr Peter Foster's involvement in **Sensaslim Australia Pty Ltd** (in liquidation). Mr Boyle pleaded guilty to two charges of breaching s. 155(5) of the Act and the Court imposed a \$3500 fine. In 2011, we issued a compulsory notice under s. 155(1)(c) of the Act requiring Mr Boyle to appear before the Commission to give evidence. We issued this notice as part of our investigation into misleading and deceptive conduct and false representations relating to the identity of Sensaslim officers, the Sensaslim product and the business opportunity offered by Sensaslim. The investigation culminated in successful civil proceedings against Sensaslim and several individuals, including Mr Foster and Mr Boyle, and contempt proceedings against Mr Foster. At the examination of Mr Boyle pursuant to the s. 155 notice, he knowingly gave false or misleading evidence about his knowledge of Mr Foster's involvement with Sensaslim. Mr Foster's involvement was a key matter in the allegations being investigated and ultimately pursued.

Court cases

The following cases were finalised in 2015–16.

Table 3.59: Non-compliance with statutory orders cases finalised

Non-compliance with statutory order	Robert Paul Davies	Conduct
commenced	2 October 2014	ACCC alleged Robert Paul Davies aided, abetted, counselled or procured the failure by Natural Food Vending Pty Ltd to comply with a compulsory notice issued by us following his earlier conviction for this offence.
concluded	20 November 2015	
jurisdiction	Federal Court Brisbane	
outcome	200 hours of community service.	
Non-compliance with statutory order	Michael Anthony Boyle	Conduct
commenced	11 September 2014	ACCC alleged Michael Boyle provided false or misleading evidence in the course of the investigation into Sensaslim Australia Pty Ltd.
concluded	10 September 2015	
jurisdiction	Federal Court Brisbane	
outcome	Conviction and fine of \$3500.	

The following cases were instituted in 2015–16.

Table 3.60: Non-compliance with statutory orders cases commenced

Contempt of court	Laurence Glynne Hann	Conduct
commenced	15 December 2015	ACCC alleged that Mr Laurence Glynne Hann was in contempt of orders made by Justice Tracey on 28 May 2012. We alleged that Mr Hann breached a 15-year court order imposed by Justice Tracey which prevents Mr Hann from, in trade or commerce, carrying on a business or supplying certain goods or services.
jurisdiction	Federal Court Melbourne	

Analysis of performance: Working with partners

Deliverable 2.2: Enhance the effectiveness of the ACCC's compliance and enforcement initiatives through partnerships

The ACL is a single national set of consumer protection laws. Because the ACL is applied nationally, the ACCC is involved in partnerships to ensure the laws are consistently coordinated and enforced in Australia and that Australian consumer regulators can work collectively on broader issues.

We work with other government agencies (such as Treasury, the Australian Securities and Investments Commission (ASIC) and state and territory consumer protection agencies) as well as consumer groups, industry associations and businesses.

We also work with regional and international partners to develop and promote effective competition and consumer protection regimes around the globe.

This year, under Deliverable 2.2 we supported our priority areas by:

- partnering with specific Australian organisations to advance our priorities
- engaging with overseas agencies and regulators
- contributing to legislative development in Australia and liaising with government, including parliamentary committees.

Australian partnerships

We enhance the effectiveness of our compliance and enforcement initiatives by working with Australian businesses, industry associations and consumer groups to promote awareness of the ACL. We also engage with specific stakeholders, including peak industry associations, to promote industry-wide compliance with the requirements in the ACL.

Much of the coordinated work is carried out through interagency and other committees. This year we continued our work with:

- ACL regulators, via Consumer Affairs Australia and New Zealand (CAANZ) including through:
 - the Education and Information Advisory Committee (EIAC)
 - the Compliance and Dispute Resolution Advisory Committee
 - the Policy and Research Advisory Committee
 - the Fair Trading Operations Group
- public stakeholders through our consultative committees, including:
 - the Consumer Consultative Committee
 - the Small Business and Franchising Consultative Committee
 - the Council of Australian Governments (COAG) Legislative and Governance Forum on Consumer Affairs.

Education and Information Advisory Committee

One of our major tasks is consumer education on and awareness of ACL. To achieve this, we work with EIAC—a national body that promotes cooperation and coordination of education and information activities relating to the ACL and consumer issues more generally. We are members of the committee along with other Australian, state and territory ACL regulators.

This year the committee has been involved in:

- collaborating on the development and communication of nationally consistent information on the ACL using a range of media in order to reach diverse audiences
- launching a project to communicate to consumers with disability about their rights in preparation for the roll-out of the National Disability Insurance Scheme. The ACCC also worked with the National Disability Insurance Agency and many stakeholders in the disability sector on this project
- updating six ACL guides for industry and legal practitioners
- leading an EIAC project which aims to bring together a range of ACL regulator education materials and align these with the new National Curriculum for Australian schools.

Compliance and Dispute Resolution Advisory Committee

The Compliance and Dispute Resolution Advisory Committee aims to ensure that compliance and dispute resolution across Australia is coordinated, efficient, responsive and, where appropriate, consistent. It is currently chaired by NSW Fair Trading and its members include representatives of all ACL regulators. The committee supports broader and targeted approaches to consumer law enforcement and, with the Fair Trading Operations Group, day-to-day liaison on enforcement issues.

Policy and Research Advisory Committee

The Policy and Research Advisory Committee aims to ensure that consumer protection research, policy development and legislative reform are best practice and undertaken in a nationally consistent and cooperative manner. The committee is chaired by the Commonwealth Treasury with members from all ACL regulators.

The committee has participated in a number of national projects to improve policy coordination and research activities and supports the operation of Consumer Affairs Australia and New Zealand.

Consumer product safety

Since the introduction of the harmonised national product safety system, the ACCC has continued to strengthen relationships with state and territory counterparts. We interact on a formal basis, via Consumer Affairs Australia and New Zealand and its subject matter committees. The newly created intergovernmental Product Safety Operations Group will provide a forum to develop joint policy and operational activities in future.

We have also worked in partnership with other federal agencies to deliver and coordinate actions that ensure better safety outcomes. We build relationships with organisations including the Department of Immigration and Border Protection and the Australian Border Force, the Department of Health, the Department of Infrastructure and Regional Development, Kidsafe, the Royal Life Saving Society, various industry associations, Standards Australia and state and territory fire safety agencies. In 2016 we worked closely with suppliers of products containing lithium coin cell batteries to develop a voluntary industry code to improve safety of these products. We also continued to work closely with state and territory electrical safety regulators and industry on the recalls of Infinity cable.

Consumer Consultative Committee

The Consumer Consultative Committee provides a forum through which consumer protection issues can be addressed collaboratively between the ACCC and consumer representatives. It is chaired by Catriona Lowe.

Current membership includes: CHOICE, Consumer Action, Financial Counselling Australia, the Public Interest Advocacy Centre, the Indigenous Consumer Assistance Network, the Council of the Ageing, the Australian Communications Consumer Action Network, the Australian Council of Social Services, the Brotherhood of St Laurence, the Youth Action and Policy Association, the Adult Multicultural Education Service and the Consumers Health Forum.

In 2015–16, the Consumer Consultative Committee members continued to inform the ACCC's consumer protection work by:

- identifying current consumer issues
- providing input into ACCC priority projects
- supporting ACCC initiatives through their networks and communities.

Members were also actively involved in committee-led workshops on elderly consumers and current product safety initiatives, and assisted the ACCC in developing the National Consumer Congress program.

Australasian Consumer Fraud Taskforce

The Australasian Consumer Fraud Taskforce enhances the Australian and New Zealand governments' enforcement activity against fraud and scams and runs an annual coordinated information campaign for consumers—National Consumer Fraud Week.

The ACCC chairs the taskforce, whose members include 23 government regulatory agencies and departments with responsibility for consumer protection against frauds and scams. The taskforce also partners with a range of community, non-government and private sector organisations in the effort to increase the level of scam awareness in the community. This partnership allows us to improve our effectiveness in protecting consumers from harm.

Regional and international partnerships

The ACCC recognises the benefits that efficient regional and international markets deliver to Australian consumers and businesses. This is particularly important in a global economy.

To achieve our aims under our priority areas, we work through our regional and international partnerships by:

- engaging and sharing information with overseas regulators
- helping to combat anti-competitive conduct in our region
- cooperating with international investigations and proceedings.

Regional engagement

The ACCC works actively in our Asia-Pacific region to promote the development of effective competition and consumer protection regimes.

Our regional engagement activities in 2015–16 included participation in the following events:

- 5th Asian Forum on Consumer Policy
- Competition Matters, New Zealand Commerce Commission
- 5th ASEAN Competition Conference
- East Asian Top Level Competition Officials Meeting

- Competition Law and Policy Institute of New Zealand Workshop
- 2nd ASEAN Consumer Protection Conference
- American Bar Association Cartel Workshop, Tokyo
- Utility Regulator Forum, Wellington.

Full details of our regional engagement and participation are detailed in our quarterly report, *ACCCount*, on our website.

We are also involved in numerous programs and committees, including:

- Competition Law Implementation Program
- Product Safety Consultative Committee
- Australasian Consumer Fraud Taskforce.

Competition Law Implementation Program

The Competition Law Implementation Program, run by the ACCC, aims to build the capacity of ASEAN member states to combat anti-competitive activities in individual markets and the region more broadly. Further details are available on page 60.

Product Safety Consultative Committee

The Product Safety Consultative Committee is a key forum through which the ACCC and state and territory fair trading agencies collaborate on a range of emerging product safety issues.

The committee is made up of representatives of product safety regulators from all Australian states and territories, the Commonwealth Treasury, as well as New Zealand and Papua New Guinea. The ACCC chairs the committee.

International engagement

In 2015–16 we were involved in numerous international forums, including:

- international regulators dealing with investigations and merger assessments
- organisations that deal with product safety
- the International Competition Network
- the Organisation for Economic Co-operation and Development
- the International Consumer Protection Enforcement Network.

Engagement with international regulators

Sharing Australian information about investigations and experience in best practice facilitates international enforcement, develops the capacity of counterpart agencies and strengthens relationships. Receiving information from other regulators helps us to stay abreast of international best practice and increases the efficiency and effectiveness of our merger and enforcement investigations.

We regularly engage and exchange information with other regulators internationally on investigations and merger assessments. In 2015–16, we:

- received and responded, or made requests to agencies in Armenia, Austria, Belgium, Botswana, Brazil, Brussels, Canada, Chile, China, Colombia, the European Union, Fiji, Finland, France, Germany, Hong Kong, Hungary, Iceland, Indonesia, Israel, Italy, Ireland, Japan, Kiribati, Korea, Malaysia, Mauritius, New Zealand, the Netherlands, Norway, Pakistan, Papua New Guinea, Poland, Portugal, Saudi Arabia, the Seychelles, Singapore, South Africa, Spain, Swaziland, Sweden, Switzerland, Thailand, Turkey, Uganda, the United Kingdom and the United States of America

- hosted study visits by officials from Brunei, Darussalam, Cambodia, China, Indonesia, Hong Kong, Japan, Lao PDR, Malaysia, Myanmar, the Philippines, Saudi Arabia, Singapore, Thailand, and Vietnam
- prepared reports and made presentations on Australian competition, consumer and regulatory law developments at many international events
- hosted staff on secondment from the Taiwan Fair Trade Commission and the United States Consumer Product Safety Commission
- seconded staff to the New Zealand Commerce Commission and the Competition Commission of Singapore. These secondments enhance enforcement capacity and strengthen collaboration
- seconded experts to Myanmar, Cambodia and Laos to assist in the development and implementation of their respective competition laws (funded under the ASEAN Australia New Zealand Free Trade Agreement)
- seconded expert staff to the ASEAN secretariat.

Staff from the AER participated in exchanges with international regulators such as the Office of Gas and Electricity Markets in the United Kingdom and the Market Surveillance Administrator in Alberta, Canada. The exchanges enhanced the skills of staff involved and developed the relations between the agencies.

Product safety

Recognising the impact of global marketplaces, we cooperate with the international safety community to address emerging safety hazards and harmonise regulatory approaches. Our international partners include:

- the United States Consumer Product Safety Commission
- the European Union and Commission
- Health Canada
- the New Zealand Ministry of Business, Innovation and Employment
- the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China.

International Competition Network

The International Competition Network (ICN) provides competition authorities with a specialised yet informal venue for maintaining regular contacts and addressing practical competition concerns.

Our ongoing work within the ICN in 2015-16 included:

- co-chairing several working groups
- presenting at a number of ICN conferences and teleseminars
- organising and presenting at international workshops and teleseminars on competition issues, including mergers, cartels and unilateral conduct
- contributing to the 2016 special project on government advocacy and disruptive innovations, the Cartel Working Group's catalogue of investigative powers for cartel investigations and agency effectiveness work products on agency evaluation and ethics rules
- playing an active role in the Mergers Working Group drafting team to update and revise the Merger Remedies Guide.

Organisation for Economic Co-operation and Development

We continue to provide input to the Organisation for Economic Co-operation and Development (OECD) through a variety of forums. Commissioner Dr Jill Walker continued as an active member of the OECD Competition Committee Bureau.

We also work with the OECD to improve regulatory practice and policy (for more information, see page 171).

In 2015–16 we:

- continued to advocate for international cooperation in competition investigations and proceedings
- contributed to numerous papers on competition issues that impact on Australia and the region
- attended two meetings of the OECD Regulatory Policy Committee, which included roundtables examining best practice principles for the governance of regulators and how productivity and economic growth potential can be unlocked through better regulatory policies
- attended an expert meeting specifically addressing how regulatory performance can be measured
- participated in two face-to-face meetings of the OECD Working Party on Consumer Product Safety
- participated in a coordinated international campaign to promote the safety of corded internal window coverings
- coordinated an international online product safety sweep to assess the extent to which banned consumer goods are available for sale online. A total of 25 countries participated, inspecting over 1800 products online.

International Consumer Protection Enforcement Network

The International Consumer Protection and Enforcement Network (ICPEN) is composed of consumer protection authorities from over 50 countries. Its main objective is to protect consumers' economic interests around the world, share information about cross-border commercial activities that may affect consumer welfare, and encourage global cooperation among law enforcement agencies.

This year we continued our long engagement with ICPEN, presenting at conferences, co-chairing the Intelligence Steering Group and as a member of the network's Advisory Group. This year, we also took on the role of ICPEN Webmaster and initiated an ICPEN project to improve the Network's online presence.

Other ICPEN work over the year included:

- co-leading a project to develop ICPEN-branded Guidelines on Online Reviews and Endorsements (see the case study on page 112)
- gathering intelligence on consumer protection priority areas from members and preparing the twice-yearly intelligence report
- participating in the annual ICPEN online sweep. This year, the sweep focused on drip pricing in the travel and tourism sector and e-commerce subscription traps. Twenty-four countries participated in the coordinated sweep, reviewing over 3300 websites.

Working internationally to produce guidance on online reviews and endorsements

In 2015 the International Consumer Protection Enforcement Network (ICPEN) identified online reviews and endorsements as a key piece of international consumer protection enforcement work.

Consumers are increasingly using online reviews and endorsements to inform their online purchasing decisions. Online reviews can also provide businesses with an important source of feedback to allow them to improve their products and services.

However, where an online review or endorsement is not based on a genuine user experience or displays elements of bias (such as where there has been payment for the review without appropriate disclosure), this can have a negative impact on consumers and competition.

Consumers can be misled into making decisions that they would not otherwise have made (for example, purchase decisions). This diminishes consumer trust in online reviews.

Competitors who do not engage in misleading practices are penalised at the expense of traders who do, or those who are damaged by false reviews posted by competitors.

During 2015–16 an international project team, co-led by the ACCC, worked to develop a suite of guidance material on online reviews and endorsements.

The ICPEN project team comprised consumer protection enforcement experts from Australia, Belgium, Canada, Denmark, France, Latvia, Norway, Sweden, the United Kingdom, and the United States.

The ICPEN project team developed three targeted stakeholder guidance documents, released in June 2016:

- ICPEN Guidelines for Review Administrators
- ICPEN Guidelines for Traders and Marketing Professionals
- ICPEN Guidelines for Digital Influencers

The guidance documents provide an overview of the ICPEN consumer protection enforcer expectation for stakeholders and participants in the online reviews and endorsement functional chain.

Legislative developments and government liaison

Legislative developments

Competition and Consumer Amendment (Payment Surcharges) Act 2015

The *Competition and Consumer Amendment (Payment Surcharges) Act 2015* will prohibit merchants from charging a surcharge beyond their cost to accept a payment type. The Act received Royal Assent on 25 February 2016.

The ACCC engaged with the Reserve Bank of Australia as it developed and published the standard that sets out the costs that can be included by a merchant as part of their costs of acceptance. The standard was released on 26 May 2016. The ACCC will have investigation and enforcement powers under the new framework, which will take effect for large merchants on 1 September 2016 and for other merchants on 1 September 2017. The ACCC guidance on payment surcharges was published in June 2016.

Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015

The *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* extends the current protection afforded to consumers against unfair contract terms in standard contracts for small businesses. It received Royal Assent on 12 November 2015. The protections will come into effect in November 2016. The ACCC has continued to engage with businesses so that they are ready to comply with the new laws.

Country of Origin Food Labelling Information Standard 2016

During 2015 the government announced its intention to change Australia's country of origin food labelling laws and consulted on proposed changes to the laws.

On 13 April 2016, the then Minister for Industry, Innovation and Science, the Hon. Christopher Pyne MP, made the Country of Origin Food Labelling Information Standard 2016 under s. 134 of the Australian Consumer Law. The standard will commence on 1 July 2016.

The Standard applies to all food sold or offered for retail sale in Australia, including food that is sold or offered for sale as being suitable for retail sale without any further processing, packaging or labelling. The Standard commenced on 1 July 2016 and has a two-year transition period during which businesses can continue to comply with the country of origin food labelling requirements in the Australia New Zealand Food Standards Code or adopt the new labelling requirements in the Standard. From 1 July 2018, businesses must comply with the new labelling requirements in the Standard.

Under the Standard's new country of origin labelling requirements, most foods that are grown, produced, made or packed in Australia must carry a standard mark on the label comprised of:

- a statement indicating that the food was grown, produced, made or packed in Australia
- a bar chart and statement indicating by percentage the minimum proportion, by ingoing weight, of ingredients grown or produced in Australia
- the kangaroo triangle logo (only for foods that are grown, produced or made in Australia).

In some circumstances, more detailed information about Australian ingredients can be voluntarily added to the text statement in the standard mark.

Under the new requirements, most imported food must bear a statement indicating the country of origin in a clearly defined box on the label.

The ACCC will educate business on the application of the Standard and how to comply with it, take enforcement action where appropriate and conduct market surveillance.

Government liaison

Australian Consumer Law Review

A review of the ACL formally commenced with the release of an Issues Paper on 31 March 2016. This is the first review of the ACL. The review will:

- assess the effectiveness of provisions of the law and whether it is operating as intended
- consider the 'single law multiple regulator' model (the joint enforcement arrangements between the Commonwealth, state and territory consumer protection agencies) and examine whether the national consumer policy framework is sufficiently flexible to address new and emerging issues.

Consumer Affairs Australia and New Zealand are undertaking the review of the law and the Productivity Commission is conducting an independent assessment of the multiple regulator model.

Feedback on the issues paper (submissions for which closed on 27 May 2016) will inform the development of an interim report, which will be released for consultation in the second half of 2016.

ACCC reports

As part of our role, we are required to produce a range of reports, many of which are provided to the government and various government agencies. For a list of our monitoring and regulatory reports see appendix 11.

Contributions to inquiries and reviews

In 2015–16 we:

- contributed to the Competition Policy Review (the Harper review). On 24 November the government released its response to the review's final report. We are continuing to engage with the government on implementation
- provided a submission in February 2016 to the Treasury's discussion paper on improving the misuse of market power provision
- engaged with the development of a new information standard for free-range eggs. The Commonwealth, state and territory consumer affairs ministers agreed to introduce a standard on 31 March 2016. The standard will require eggs labelled as 'free range' to have been laid by hens with meaningful and regular access to the outdoors and there will be a ceiling on outdoor stocking density of 10 000 hens per hectare. It is intended the standard will be in place within a year
- provided input into the review of the Horticulture Code of Conduct, which is due to sunset on 1 April 2017. Our submission to the review included recommendations such as the removal of the current exemption of pre-code contracts, the availability of pecuniary penalties and infringement notices for a breach of the code, and including an obligation to act in good faith
- continued to engage with the review of the *Motor Vehicle Standards Act 1989*. The government announced in February 2016 that it would introduce changes to the law to allow consumers to personally import new and near-new vehicles from markets with comparable standards. We emphasised the significant benefits likely to flow from easing the current restrictions, including increased competition, greater consumer choice and ultimately lower priced vehicles
- made a submission to the review of the Oilcode recommending the fuel reselling provisions be harmonised with the updated Franchising Code of Conduct, the current terminal gate pricing arrangements be retained and the Dispute Resolution Advisor be consolidated with other industry code mediation advisory services in Australia.

Intellectual property

In August 2015 the Australian Government asked the Productivity Commission (PC) to undertake a 12-month public inquiry into Australia's intellectual property (IP) system, including its effect on investment, competition, trade, innovation and consumer welfare.

In November 2015 the ACCC made a submission in response to the PC's issues paper. The submission strongly supported the PC's approach, including the overarching framework and the principles guiding the inquiry.

We recognised that competition and IP laws are for the most part complementary, as both seek to promote innovation and efficiency and ensure that markets operate more effectively in the long-term interests of consumers. The ACCC considers that IP rights should be designed to balance incentives to invest and to create the initial intellectual property, with the incentives and ability to make maximum use of it once invented.

We were concerned that current arrangements may have the potential to stifle innovation, particularly in the fast-evolving digital economy. In order to better equip the IP system for the opportunities of the modern age, we recommended that the PC:

- review access frameworks for IP with a view to harmonising access arrangements in Australia
- consider that access frameworks for IP should have a clear focus on promoting competition and economic efficiency
- explore IP access frameworks in other jurisdictions—in particular Canada’s Competition Act, which provides for ‘special remedies’ to apply to IP where the court finds that exclusive rights have been used to unduly restrain trade or lessen competition.

We considered it imperative that Australia retain the flexibility to introduce reforms (such as flexible fair use exceptions) that promote competition, stimulate innovation and, where necessary, limit the ambit of IP protections.

We made a supplementary submission in March 2016. The PC released its draft report on 29 April.

Analysis of performance: Product safety for consumers

Deliverable 2.3: Identify and address the risk of serious injury and death from safety hazards in consumer products

Consumers have a right to expect that products they buy work properly and do not present an unreasonable risk of causing illness or injury. Under the ACL consumer products are expected to meet the consumer guarantee to be of acceptable quality, including being safe. Banned products cannot be sold. Products or product-related services that are subject to mandatory safety or information standards must comply with those standards before they are offered for sale. Products subject to voluntary recall must be effectively removed from supply chains.

This year the ACCC's priority under Deliverable 2.3 was the effectiveness of action taken by suppliers to recall unsafe consumer products. We also continued our work on:

- assessing current and emerging safety hazards
- ensuring that businesses comply with mandatory reporting requirements
- preparing product safety standards, which set safety requirements for products
- developing product safety compliance strategies.

We will always prioritise the assessment of product safety issues which have the potential to cause serious harm to consumers.

Emerging hazards

We receive and assess information about product safety issues from diverse sources including complaints, mandatory reporting, global recalls, media and the health system. Product safety issues with potential for serious or widespread harm to consumers are given priority.

When we are alerted to a potential consumer product safety hazard we immediately assess the risk and prioritise the matter. If our initial assessment rates the risk as moderate or high we proceed to a more detailed assessment to determine whether we should intervene. When the results of the hazard assessment indicate our intervention is warranted we may take actions including:

- encouraging the voluntary recall of goods
- raising awareness of hazards by educating industry and consumers
- negotiating voluntary changes to packaging, labelling or product design
- working with Industry to encourage safe sourcing and supply
- introducing or reviewing mandatory safety standards and bans
- recommending the responsible Minister contemplates compulsory recall.

We value voluntary compliance and will work cooperatively with stakeholders where this is appropriate. In circumstances where suppliers fail to comply with product safety laws we may consider enforcement action.

Each option is considered against the priority of achieving the best safety outcome for consumers.

Voluntary recalls

By far the majority of consumer product recalls are initiated by responsible suppliers who quality assure their products and recognise their responsibility to provide goods that are safe.

Suppliers must advise the Commonwealth Minister within 48 hours of commencing voluntary recall action. We set ourselves a matching performance measure to publish 80 per cent of voluntary recalls within 48 hours of receiving legally correct notification from a supplier. This year we did not quite meet our target, publishing 78 per cent of recalls within 48 hours. Our target recognises that some suppliers are less familiar with the recall process and may need a bit more time to assemble all the necessary information. We published all of the recalls of which we were notified within 14 days.

During the year we received a total of 671 recall notifications. Of these 315 are recalls that we monitor. The remainder are monitored by other specialist regulators including: the Department of Infrastructure and Regional Development, State and Territory gas, electrical and consumer protection regulators, Food Safety Australia and New Zealand and the Therapeutic Goods Administration.

ACCC initiated safety outcomes

Sometimes we are the first to recognise a systemic problem with a consumer product. We monitor sources of information about consumer products and also directly respond to consumer and stakeholder concerns. If we consider a recall may be needed, we advise the supplier and will offer to assist.

During 2015–16 we alerted suppliers to the need to recall 48 consumer products.

Figure 3.2: Year-on-year growth (based on financial years) of recalls monitored by the ACCC

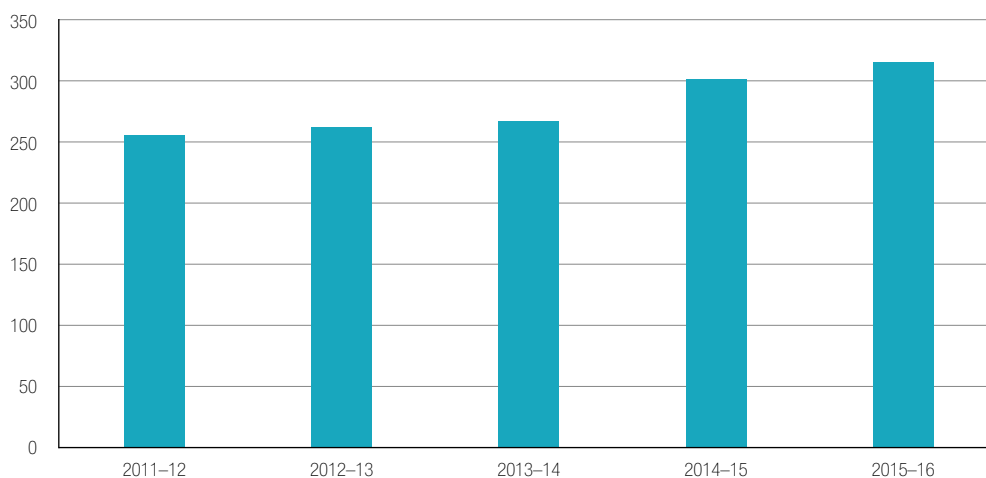
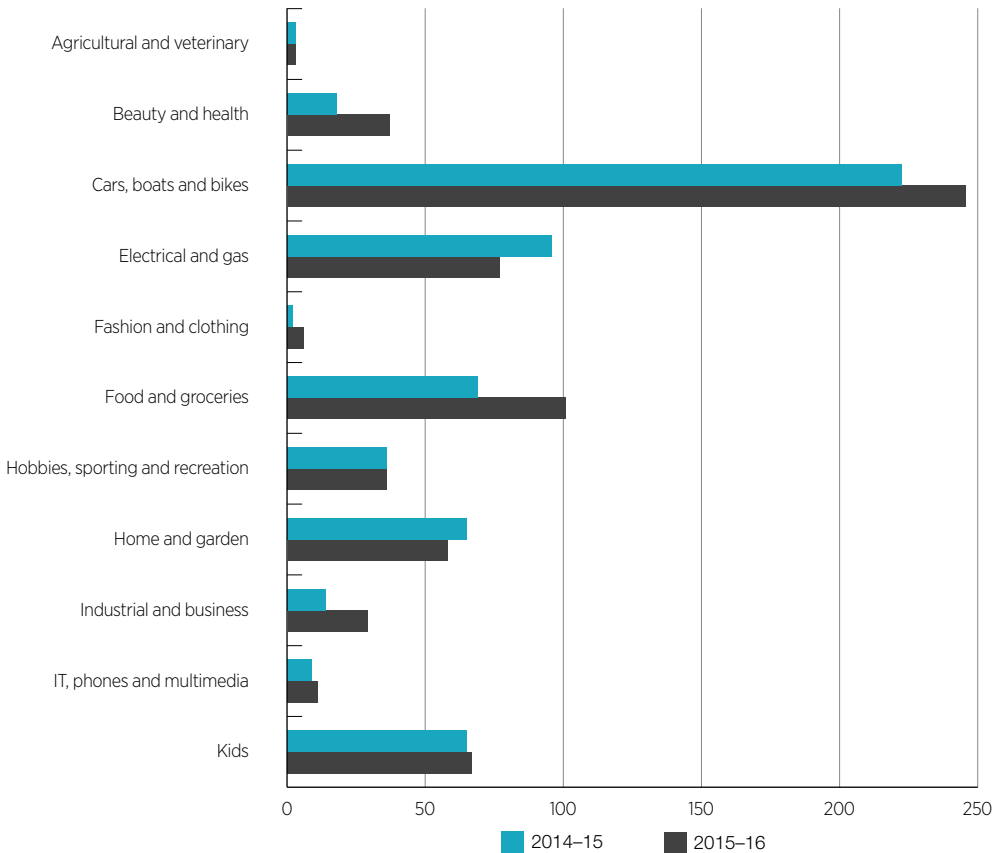


Figure 3.3 sets out a comparison of the number of recalls by product category. The number of recalls noted is higher than the number of recalls received because recalls may appear in a number of categories.

Figure 3.3: Year-on-year recall by category comparison

Effectiveness of voluntary recalls

In the past four financial years the number of recalls received and administered by Australian regulators has steadily increased by nearly 14 per cent annually. The number of recalls administered by the ACCC has increased proportionately.

Consequently a 2016 compliance and enforcement priority relevant to consumer product safety was to assure the effectiveness of action taken by suppliers to recall unsafe consumer products.

This year we undertook a project to define recall effectiveness and to determine what factors may influence recall success. The major findings were that recall rates are influenced most by price point; the availability of a customer list (so suppliers can contact affected consumers); the lifespan of a product; and consumer perception of the risk and hazard of the product. Our study also indicated that the first eight weeks following notification are the most important. During the first six to eight weeks of a recall campaign, over 80 per cent of all products that are likely to come back are returned.

A consumer survey was also conducted as part of the project, to determine if there is a specific price point at which consumers would be motivated to return recalled consumer products. The poll results suggest that 70 per cent of people will return a recalled good that cost \$25 or more.

In June 2016 we commissioned a review of our risk-based approach to monitoring and identifying consumer product safety hazards, including recalls, and the results of preliminary work in this area. Based on the results of the review we will further align resources in 2016-17

to improve and assure focus on matters identified as high risk and priority. Leading from this review, in 2016–17 we also intend to review the recall reporting obligations of suppliers to ensure that reporting frequency and duration is proportional to risk and predicted recall effectiveness.

Progress on recall of Infinity cable

A national recall is underway to remediate premises that have been installed with approximately 3900 km of substandard Infinity electrical cable.

Infinity cable was supplied in Australia by the Infinity Cable Co Pty Ltd in May 2010 and August 2013. The cable was found to become prematurely brittle with age and could potentially cause electric shock and house fires. As a result a number of voluntary and compulsory recalls of the product were initiated in 2013. However, as at March 2015 the results of the recall were disappointing, with only 15 per cent being recovered.

In June 2015 we commenced an awareness-raising strategy urging consumers to take action to return the cable. In January 2016 we coordinated nationwide distribution of a bulletin to all licensed electricians and builders advising them of their obligations and potential liabilities if they do not take appropriate action to remediate cable they supplied or installed. There was a positive response to the bulletin and the recall is now 41 per cent complete.

In 2016 we commenced an audit of Infinity electrical cable suppliers to verify that suppliers are meeting their obligations under the ACL.

We also commissioned an external audit of our internal recall reporting system for the Infinity cable recalls. The auditor's report concluded our methodology was sound.

Other notable recalls we negotiated in 2015–16 included recalls by multiple suppliers of replica designer metal kitchen chairs. Consumer injuries identified as resulting from one brand of chair led to our identification of a more systemic design flaw, held in common with many other similar chairs.

Our serious concerns about the safety of child-attractive consumer products containing easily released, hazardous button or coin cell batteries resulted in recalls we negotiated of Inside Out drink cups sold by cinema promoters, Cosmic Light Beam promotional torches provided to young customers of the Commonwealth Bank and other stationery and novelty products.

Mandatory reports

If a business becomes aware that a product it has supplied caused serious injury or death, it must report this to the ACCC. We rely on timely mandatory reporting to quickly identify product safety issues and assess whether further action is needed. Mandatory reports do not necessarily indicate that the relevant product is defective or at fault. We will take many factors into account before responding, including the reasonable and foreseeable use or misuse of the product, any vulnerabilities associated with the injured party, any inherent product hazards, its age, use instructions and whether they have been followed, the nature of the injury and how the supplier intends to respond. If our preliminary assessment identifies a safety concern we will then undertake a more detailed assessment. This may include seeking advice from suppliers about their quality assurance programs and safety testing. Where needed we will commission product testing.

We received 3294 mandatory reports in 2015–16. We referred 1818 reports to other regulators and assessed 1476 ourselves.

We conducted a preliminary assessment of 68 per cent of reports relating to serious injury or death within seven days, falling short of our target of 100 per cent. We will continue to strive to have all such reports preliminarily assessed within seven days. In many instances where there were delays, we needed to seek additional information from the supplier in order to conduct the assessment. We will consider this issue in relation to the current ACL review, to ensure we have the necessary information to quickly and thoroughly review potential safety hazards.

Product safety standards

After review and consultation with the relevant stakeholders the ACCC makes recommendations to the Commonwealth Minister responsible for product safety about amending or developing product safety regulations to address products that have the potential to harm consumers. The Minister can also introduce interim and permanent product bans for unsafe products.

We periodically review product safety standards to ensure that they work in a changing economy and continue to provide the intended safety outcomes for consumers. Product safety standard reviews are part of our ongoing contribution to the Australian Government's policy objectives, including its regulatory reform agenda.

Example of interim ban: Hoverboards

The ACCC alerted the public to safety hazards with hoverboards in early December 2015. Hoverboards are also known as self-balancing scooters.

The then Minister for Small Business and Assistant Treasurer, Kelly O'Dwyer MP imposed an interim ban on unsafe hoverboards on 18 March 2016 because of the risk of house fires. We reviewed the interim ban twice and based on our recommendations, the Minister extended it twice. We also reviewed the safety of these products more generally and consulted on regulatory options. In July 2016 the Minister introduced a mandatory standard under the ACL to ensure the safety of hoverboards.

We are also working with state and territory electrical regulators to address the longer term fire risks associated with hoverboards.

Review of mandatory safety standards

In 2015, the ACCC published criteria for accepting trusted international standards as part of mandatory safety standards for consumer goods. Trusted international standards often form the basis for mandatory safety standards. We will apply the criteria whenever we review or consider mandatory standards under the ACL. We developed the criteria after wide consultation, with more than 80 submissions from industry, associations, test agencies, product safety experts, consumer groups and individual consumers.

In May 2016, we released a consultation paper about a list of trusted standards associations that we proposed to include in a regulation. Currently, the Minister cannot declare a safety standard under s. 105 of the ACL made by any organisation other than Standards Australia. The consultation seeks the views of stakeholders on what associations to include in a regulation that would then allow a Minister to declare a standard made by those associations. The consultation closed on 7 June 2016.

In 2015-16 we revised internal processes to ensure all regulatory proposals that are developed follow the government's regulation impact statement requirements, including considering the impacts of regulation and costing proposals using the Commonwealth Regulatory Burden Measurement Framework. In 2016 we reconfigured key resources and set a goal to review all consumer product mandatory safety standards by the end of 2016.

Revoked product safety standard

On 27 November 2015, based on our extensive review and recommendation, Minister O'Dwyer revoked the safety standard for protective helmets for motor cyclists. Every state and territory has laws enforced by the police that specify the kinds of helmets that motorcyclists must wear. Our safety standard duplicated and impeded the further development of those laws. Since the Minister revoked our safety standard, all of the states and territories have allowed riders to wear helmets that comply with either the Australian Standard or the United Nations Economic Commission for Europe Regulation 22-05.

Reviewed product safety standards

In 2015 we completed our review of the safety standard for hot water bottles. The review found widespread industry compliance with the safety standard and that suppliers could use the 2012 British Standard (BS 1970:2012) to demonstrate compliance. The review concluded that the safety standard worked well and did not need to be changed.

We reviewed the safety standard for bean bags in 2014 and a revised safety standard came into force in November 2014. In response to new industry concerns first raised in 2015, we reviewed the transition arrangements and the Minister amended the safety standard to enable suppliers to comply with the new standard immediately but not supply products under the old standard after 30 June 2016.

Product safety compliance

Strategies

To achieve our product safety compliance objectives, we use three integrated and flexible strategies:

- We encourage compliance by educating and informing consumers and businesses about their rights and responsibilities under the Act.
- We enforce the ACL by resolving possible contraventions administratively and by litigation.
- We work with other agencies to implement these strategies.

The ACCC investigates possible non-compliance with mandatory standards and bans. We receive information on possible non-compliance from a range of sources. We assess these matters and take action where warranted by issuing warnings or seeking clarifications, instigating broad compliance or educative activity or taking appropriate enforcement action.

Market surveillance of consumer products

We regularly survey the market to identify compliance concerns in relation to existing regulations and to assist in the identification of new hazards.

In partnership with ACL regulators and other organisations, we also coordinate and conduct joint surveillance, testing and compliance activities to address safety concerns.

During 2015-16, we conducted 2086 inspections of wholesalers, retailers and online suppliers against 130 mandatory safety standards, bans or product types. Inspections resulted in suppliers withdrawing 88 product types from sale and recalling 29 product types.

Non-compliance identified in market surveillance activities resulted in 29 non-compliant product types being voluntarily recalled by suppliers.

Recalled products included children's nightwear, vehicle child restraints, portable vehicle ramps, portable vehicle stands, face and finger paints, toys for children, novelty toy-like cigarette lighters, sunglasses, treadmills, exercise cycles, babies' dummies and puff cigarettes.

Supplier education

We continued to provide guidance to industry on existing and new product safety regulations.

Under the ACL consumer products are expected to meet the consumer guarantee to be of acceptable quality, including being safe. This includes goods subject to a mandatory safety standard or ban.

There is a growing trend among suppliers towards direct sourcing of less expensive products from overseas by retailers of Fast-Moving Consumer Goods (FMCG). At the same time, there has been an increase in consumer injuries and a sharp increase in the number of recalls of FMCG products.

We are concerned about a number of suppliers, including some major retailers, distributing unsafe products. To help suppliers to understand their responsibilities, we provide information to help them ensure that they buy products from a supply chain that guarantees the safety of the consumer product. In 2016 we published four pieces of guidance about safe sourcing of consumer products—one in standard English, one in plain English, one in Chinese and one in Vietnamese.

We also published guidance for small businesses and industry stakeholders affected by the Infinity cable recalls.

Example of working with suppliers to address a hazard: Ingestion of button batteries

Ingestion of button batteries can lead to serious internal injuries and death. In Australia two children have died from button battery injuries and an estimated 20 children visit an emergency department each week due to a swallowed or inserted button battery.

In 2013 four-year-old Summer Steer died after ingesting a button battery. On 3 November 2015 the Queensland Coroner released the findings of the inquest into her death. The Coroner recommended the regulation of button batteries and button battery powered consumer products.

We continue to work with stakeholders to raise awareness of the hazard and to improve packaging and labelling of relevant consumer products. We are also assisting industry to prepare a guide for suppliers, which will be finalised in 2016.

We are also leading development of a two-year national button battery safety strategy, which commenced in July 2016.

Education campaigns

Educating suppliers and consumers about potential consumer product safety risks is one of the strategies we use to address emerging hazards.

Online tools

Anchoring unstable furniture to the wall prevents death or serious injury to small children. We published a video in 2016, highlighting the risks to suppliers and consumers, and explaining how to avoid them: Toppling furniture safety—anchor it and project a child.

The ACCC and the Queensland Office of Fair Trading (Qld OFT) have worked together to educate suppliers and consumers about the risk of burn injuries when using ethanol fireplaces and tabletop burners. In July 2015, the ACCC and Qld OFT published a consumer education video, Don't fuel the fire—Ethanol fireplace and burner hazards, and safety alert on the Product Safety Australia website.

The ACCC also:

- conducted a Safe Summer social media campaign
- participated in the OECD social media corded window coverings international campaign in June 2016
- participated in the 2016 Poisons Awareness Week.

Product safety enforcement

Businesses must ensure products they supply comply with mandatory product safety and information standards and are not banned under the ACL. The supply of a product that does not comply with a safety standard is a breach of the ACL and suppliers may be subject to enforcement action where we consider this is warranted in accordance with the priorities outlined in our Compliance and Enforcement Policy. We may also take action where a business misleads consumers in relation to the safety of a product.

Example of product safety enforcement action: Safety issues in Woolworths Homebrand products

In February 2016 the Federal Court ordered **Woolworths Limited** to pay total penalties of \$3.057 million for breaches of the ACL relating to safety issues with Homebrand products sold in Woolworths supermarkets and Big W and Masters stores.

The ACCC instituted proceedings against Woolworths in September 2014, alleging that Woolworths made false or misleading representations about the safety of certain products and that it failed to file mandatory reports as required by the ACL once it had become aware that serious injury or illness may have been caused by certain Woolworths products.

The products that were considered to have safety issues were:

- the Abode 3L Stainless Steel Deep Fryer
- Woolworths Select Drain Cleaner 1L
- Homebrand Safety Matches (10 boxes per pack)
- Woolworths Home Collection Padded Flop Chair
- Masters Home Improvement Folding Stepping Stool.

The Federal Court declared that Woolworths had engaged in misleading and deceptive conduct and in some cases had made false or misleading representations about the safety of the five Homebrand products. In addition to penalties Woolworths was ordered to implement an upgraded product safety compliance program, publish on its websites a link to product safety requirement information, publish details of recalled products on the Woolworths supermarket smartphone application, and pay a contribution of \$50 000 to the ACCC's costs.

Woolworths consented to the orders.

Court cases

We instituted the following cases in 2015–16.

Table 3.61: Product safety cases instituted in 2015–16

Product safety	Ozsale Pty Ltd t/a BuyInvite		
	commenced	8 December 2015	ACCC alleged that Ozsale sold children's nightwear between July 2014 and October 2015 which did not comply with the mandatory Australian safety standard, and made a false or misleading representation about the fire risk of one garment.
	jurisdiction	Federal Court Sydney	

We finalised the following cases in 2015–16.

Table 3.62: Product safety cases finalised

Product safety	Dateline Imports Pty Ltd (appeal)		Conduct
	commenced	25 June 2012	ACCC alleged that Dateline Imports made misrepresentations about the ingredients and safety of a hair straightening solution, Keratin Complex Smoothing Therapy.
	concluded	22 September 2015	
	jurisdiction	Federal Court Perth	
	outcome	Pecuniary penalties totalling \$85 000 and declaration. Further findings in ACCC's favour. Part of ACCC's appeal dismissed. ACCC to pay Dateline's costs of appeal.	
Product safety	Woolworths Ltd		Conduct
	commenced	17 September 2014	ACCC alleged that Woolworths made false or misleading representations about the safety of certain Woolworths products, and that Woolworths failed to file mandatory reports as required by the ACL once it had become aware that serious injury or illness may have been caused by certain Woolworths products. For details see case study on page 123.
	concluded	5 February 2016	
	jurisdiction	Federal Court Sydney	
	outcome	Pecuniary penalties of \$3.057 million, Woolworths to implement a compliance program, publish on its websites a link to product safety requirement information, publish details of recalled products on its supermarket smartphone application, and contribute of \$50 000 to ACCC costs.	

Infringement notices

We issued the following infringement notices in 2015–16

Table 3.63: Product safety infringement notices

Sun Yee International Pty Ltd 16 March 2016	One notice totalling \$10 200 The ACCC issued the notices because it had reasonable grounds to believe that Sun Yee International, Outbax and Autoplus (see below) had supplied a high-lift jack that did not comply with the mandatory safety standard. This is because jacks tested by the ACCC from each of these suppliers did not meet overload safety requirements and did not have the required safety markings.
Smartchannel Pty Ltd trading as Outbax Camping 5 April 2016	One notice totalling \$10 200 As above.
Autoplus Pty Ltd 12 April 2016	One notice totalling \$10 200 As above.
Update Technology Pty Ltd 9 May 2016	One notice totalling \$10 200 The ACCC issued the infringement notice because it had reasonable grounds to believe that Update Technology had supplied high lift jacks that did not comply with the applicable mandatory safety standard, in contravention of the ACL.

Analysis of performance: Support Small business

Deliverable 2.4: Support a vibrant small business sector

The ACCC helps to ensure small businesses understand and comply with their obligations and encourages them to exercise their rights under the Act as the customers of larger suppliers. Our aim is to promote a competitive and fair operating environment for small business and, importantly, ensure small businesses understand how the legislation can help them.

In 2015–16, a priority under our Compliance and Enforcement Policy was ensuring small businesses receive the protections of:

- industry codes of conduct, including the Franchising Code of Conduct, the Food and Grocery Code of Conduct and the revised Horticulture Code of Conduct
- new legislative provisions extending unfair contract term protections to small businesses.

To support the priority, we:

- enforced provisions of the ACL that relate to small business
- provided information, education and services to small businesses
- developed partnerships to help us better engage with and inform small businesses
- addressed compliance with codes of conduct
- allowed collective bargaining in certain circumstances in the public interest.

Our new Agriculture Unit established in 2015–16 is undertaking engagement, market studies, investigations and enforcement in the agriculture sector, which over time will benefit many farmers and small agribusinesses.

Enforcement activities

We aim to make markets work for everyone, including small businesses.

Court cases

Example of action to protect small businesses against breaches of Australian Consumer Law

In November 2015, to resolve certain aspects of our proceedings that were instituted the Federal Court, **Multimedia International Services Pty Ltd t/a The Community Network** provided an undertaking to address allegations they engaged in unconscionable conduct, misleading or deceptive conduct, making false or misleading representations and wrongly accepting payments from small businesses. In the proceedings, the Federal Court also ordered The Community Network to pay penalties for breaches of the ACL.

The Community Network sells digital advertising services to small businesses throughout Australia. The advertising is presented on branded LCD screens at various sites such as fitness centres, newsagencies and shopping centres.

In 2014 a small business owner engaged The Community Network for advertising services. The small business owner understood that the advertising was to appear in a specific location within four weeks. However, he found that the advertising was not shown at that location within that time or in the months that followed. The company then charged him for the advertising even though it had not been shown. When he tried to end his contract with The Community Network, the company refused to do this and then pursued him for non-payment, threatening him with legal action and engaging debt collectors.

Complaints were also made about terms of The Community Network's contracts with small businesses:

- At the front of the contract, it was stated that the contract was for a fixed two-year term. However, fine print on the back of the contract stated that, unless the small business gave 12 months notice by registered post, the contract would be automatically renewed.
- The specific location for the advertising was stated at the front of the contract. However, the fine print on the reverse side of the contract allowed The Community Network to alter the advertising location without consulting the small business concerned.

The ACCC received numerous complaints from small businesses that The Community Network was requiring payments to be continued under its contracts despite not providing the digital advertising services promised. We also received referrals from the Western Australian, South Australian, New South Wales and Victorian small business commissioners, who also assisted with our enquiries in this matter. We believed that the behaviour of The Community Network amounted to unconscionable conduct. Some small businesses had also complained that the company misled them by not clearly disclosing the effect of the automatic renewal term. We believed that the contract terms had the potential to be misleading or deceptive to prospective advertisers.

Under the ACL, small businesses are protected against unfair contract terms such as those contained in The Community Network's contracts. Also, businesses must not make claims about their services that are incorrect or misleading and they cannot accept payment where they know they have not provided the services they undertook to perform. Under our priorities in 2015-16, our focus has been on protection of small business against these types of breaches.

In 2015 we commenced proceedings in the Federal Court against The Community Network. After the proceedings commenced, The Community Network provided refunds to the small businesses named in the proceedings. We also accepted an undertaking from The Community Network under which the company will address our concerns about its standard form contract and its automatic renewal term.

In May 2016 the Federal Court found that the company had engaged in unconscionable conduct in its dealings with small businesses and made false and misleading representations to two others and wrongly accepted payment from them. The Court ordered The Community Network to pay penalties totalling \$230 000 for breaches of the ACL in its dealings with certain small businesses.

The Community Network cooperated with us in resolving these proceedings and consented to orders including declarations, the implementation of an ACL compliance program and a contribution to our costs.

Table 3.64: Small business cases

Anti-competitive agreements	Little Company of Mary Health Care Limited and Calvary Health Care Riverina Limited	
	commenced	10 December 2014
	concluded	26 October 2015
	jurisdiction	Federal Court Sydney
	outcome	Declaration, payment of ACCC costs of \$100 000. Calvary's by-laws that applied to its facilities in Wagga Wagga allowed Calvary to refuse or revoke a medical practitioner's right to use its facilities if the practitioner also operated from a competing day surgery facility. We alleged that this had the likely effect of deterring new entrants into the day surgery market in Wagga Wagga. For details see case study on page 44.
Unconscionable conduct	Woolworths Ltd	
	commenced	10 December 2015
	jurisdiction	Federal Court Sydney ACCC alleges that in December 2014 Woolworths engaged in unconscionable conduct in dealings with a large number of its supermarket suppliers.
Unconscionable conduct in relation to small business	Multimedia International Services Pty Ltd t/as The Community Network	
	commenced	30 November 2015
	concluded	29 April 2016
	jurisdiction	Federal Court Brisbane
	outcome	Pecuniary penalty of \$230 000, declarations, ACL compliance program and \$35 000 ACCC costs. ACCC alleged that Multimedia engaged in unconscionable conduct, making false or misleading representations and wrongly accepting payments from small businesses. For details see case study on page 126.
Cartel	Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd & Ors	
	commenced	23 June 2016
	jurisdiction	Federal Court Brisbane Alleged cartel conduct in the supply of polycarbonate roof sheeting to retailers in Australia including hardware stores and construction companies.

Other enforcement activities

Public warning notice

The following public warning notice was issued in 2015–16.

Table 3.65: Public warning notices issued

False or misleading representations in relation to small businesses	Australian Business Funding Centre Pty Ltd	Conduct
	In June 2016 the ACCC alleged that the ABFC website, and its sales representatives, purported to offer access to an online database of the Australian government grants and loans available to small businesses. Small business owners paid fees ranging from \$497 to \$701 to access the database, only to find there were no suitable grants or that they were ineligible for grants listed.	The public warning notice alleges ABFC has made false or misleading representations about the service's capability and quality, and the role the service has played in assisting small businesses gain government grant funding.

Extending unfair contract term protections to small business

The *Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015* received Royal Assent on 12 November 2015. It extends the current protection afforded to consumers against unfair contract terms in standard form contracts to small businesses. The protections will come into effect following a 12-month transition period.

The ACCC has been developing guidance materials and educational activities to ensure that businesses are aware of their rights and obligations and to promote a fair operating environment for small business.

The ACCC commenced an education campaign to raise awareness among businesses of their rights and responsibilities under the new law. This education campaign will run throughout the 12 month transition period. Activities have included a media release, website guidance, social media, the release of two animated videos, digital advertising and promotion through key small business stakeholders.

The ACCC and ASIC hosted a webinar on 16 March about the new law. The ACCC's Dr Michael Schaper and ASIC's Queensland Regional Commissioner, Brett Bassett, provided a general overview of the new protections. A video of the presentation is available on the ACCC's YouTube channel.

During the transition period, we are engaging with five industries (franchising, retail leasing, advertising services, telecommunications services and independent contracting) to identify potentially unfair terms in standard form contracts and invite businesses to make voluntary changes to their agreements to address any concerns.

Our engagement with industry coupled with the guidance material will help ensure compliance readiness following the 12-month transition period.

A report will be released in November 2016 outlining the industry engagement, listing the potentially unfair terms and commenting on the willingness of traders to make changes to their contracts.

Country of Origin Food Labelling Information Standard 2016

On 13 April 2016 the government made the Country of Origin Food Labelling Information Standard 2016 under s. 134 of the ACL. The standard will come into effect on 1 July 2016 and businesses will have two years to change their labels.

The Standard applies to all food sold or offered for retail sale in Australia. Under the Standard's new country of origin labelling requirements, most foods grown, produced, made in Australia must carry a standard mark on the label, which comprises the kangaroo triangle logo, a bar chart with accompanying text that shows the proportion of Australian ingredients and a statement indicating that the food was grown, produced, made or packed in Australia.

The ACCC is engaging with industry and producing guidance materials to assist compliance with the new Standard. On 1 July 2016 we released industry guidance on the Standard. The guidance includes content on our website and a guide to assist businesses to comply with the standard.

Small business information, education and services

Under the both the Act and the ACL small businesses have certain rights—for example, the Act gives small businesses authority to bargain collectively in some circumstances and protects them from misleading and deceptive conduct and anti-competitive behaviour (such as price fixing and market sharing agreements).

The ACL also imposes obligations on small businesses—for example, it is illegal for small businesses to mislead or deceive their customers or use unfair selling practices such as pressure tactics. The ACCC works to ensure that small businesses know their obligations and comply with them.

To help small businesses to understand their rights and obligations under the ACL, we provide them with information, education and services.

Our main tools for communicating with small business are:

- our website (which includes a link to a dedicated page for small businesses) and an online small business complaint form
- the Infocentre small business hotline (1300 302 021)
- the Small Business Information Network, which small businesses can subscribe to, provides information about enforcement action, new guides and changes to the Act
- the Franchising Information Network, which franchisees can subscribe to, provides information on guides, changes to the code and the Act and enforcement action in the franchising sector
- targeted publications, mobile apps, online education modules and videos
- face-to-face and online education and compliance sessions.

Online small business program

The ACCC hosts an online education program for small businesses covering the major aspects of the Act and the ACL. This year there were almost 7000 users of the program, bringing the total number of users since the program's launch in April 2013 to almost 25 000. Also, there were more than 15 000 users of our online education program for tertiary students, bringing the total number of users since the program's launch in November 2013 to almost 30 000.

Small business webinar

In partnership with the Australian Securities and Investments Commission, the Australian Taxation Office and the Fair Work Ombudsman, we ran a live webinar for small businesses in August 2015. The webinar provided useful tips and new tools and resources to assist small businesses to understand their rights and obligations. The webinar was well received by the small business sector, with over 460 small businesses and small business representatives watching live. A video of the webinar is available on our YouTube channel.

Franchise pre-entry education program

More than 2000 people enrolled in the ACCC sponsored franchise pre-entry education program, delivered by Griffith University, bringing the total number of enrolments since the program's launch in July 2010 to over 10 500.

Speeches, presentations and publications

ACCC staff gave more than 40 speeches and presentations to small business audiences as well as attending expos and other events.

We published two editions of *Small business in focus*—a twice-yearly summary of our activities in the small business and franchising sectors and our update on industry codes.

Infocentre

The Infocentre serves the Small Business telephone line (1300 302 021) as well as a dedicated web form for small business. The web form encourages use by small business to submit complaints about possible breaches of the Act. Enquiries from small business generally centre on rights and responsibilities under the Act and the industry codes we regulate, and accessing ACCC guidance materials.

Small business contacts are submitted through other phone lines and web forms too. When a small business calls our general enquiries line, they will select from the small business options to ensure their call goes to the in-house team of extensively trained staff members. These contacts are subject to the same service level objectives as general enquiries—that is, written responses will be made within 15 working days and 60 per cent of calls will be served within 60 seconds.

In 2013 the Infocentre led the review of the ACCC Service Charter and developed the factsheet *What we can and can't do for small business*. Infocentre staff members rely on its content in explaining the role of ACCC to small business and a link is included in all relevant written responses.

The information we provide for businesses includes instructions on how to notify us of any collective bargaining proposals. The instructions help small businesses to get timely decisions on ventures that improve efficiencies and savings, result in public benefit and do not impede competition.

Partnerships for small business

Small Business and Franchising Consultative Committee

The Small Business and Franchise Consultative Committee is a forum where competition and consumer law concerns related to the small business and franchising sectors can be discussed by industry and government.

Membership of the committee includes industry representatives, legal professionals, small business and franchising advocates and academics. It is chaired by our Deputy Chair, Dr Michael Schaper. Committee meetings will be held at least twice a year.

The first meeting of the committee took place on 13 May 2016. Topics discussed in detail with committee members in this meeting included the ACL review, the role of the newly formed Small Business and Family Enterprise Ombudsman and upcoming regulatory developments (excessive card surcharging, business-to-business unfair contract terms and country of origin food labelling).

Small business commissioners

In 2015–16 we continued to work with the four state small business commissioners from Western Australia, South Australia, New South Wales and Victoria, and the Australian Small Business Commissioner/Small Business and Family Enterprise Ombudsman on a range of matters. The group meets several times a year and discusses the types of complaints received by each of the commissioners as well as new and proposed laws affecting small businesses.

Regulators group on small business issues

A range of Australian Government agencies have small business roles and responsibilities. The Federal Regulatory Agency Group—a cross-government group comprising the ACCC, ASIC, the Australian Taxation Office and the Fair Work Ombudsman and chaired by the Australian Small Business Commissioner—was established to improve regulatory coordination on small business matters.

The group meets quarterly to discuss ways to more collaboratively engage with and educate small businesses. Its activities have led to initiatives such as the (now annual) joint regulator webinar for small businesses and ‘fix-it squads’ (rapid-design groups made up of small business operators and intermediaries and representatives from federal, state and local government, all working together to examine and solve small business problems).

Codes of conduct

An ACCC priority for 2015–16 was ensuring small business receive the protections of industry codes of conduct.

We are responsible for promoting and enforcing compliance with five mandatory prescribed industry codes—the Franchising Code of Conduct, the Horticulture Code of Conduct, the Oilcode, the Port Terminal Access (Bulk Wheat) Code of Conduct and the Unit Pricing Code—and one voluntary prescribed industry code, the Food and Grocery Code of Conduct. For more information on the codes, see www.accc.gov.au/business/industrycodes.

Food and Grocery Code

The *Competition and Consumer (Industry Codes—Food and Grocery) Regulation 2015* (the Food and Grocery Code) came into effect on 3 March 2015. The code governs certain conduct by grocery retailers and wholesalers in their dealings with suppliers. It requires that these parties act in good faith and that supply agreements be in writing. It also contains a dispute resolution procedure.

Coles and Woolworths agreed to be bound by the code on 1 July 2015, joining Aldi and About Life as signatories.

The ACCC published guidance on the code and released a video. We also ran a six-week education campaign on the code targeting suppliers to grocery retailers and wholesalers. The campaign improved awareness of the code and its protections and promoted our role as the agency responsible for enforcing the code.

In September 2015 we investigated reports about the approach supermarket retailers were taking to implement the code—in particular, the way retailers were presenting new grocery supply agreements (GSAs), which might have given the impression that the supplier is not able to negotiate the terms of the GSA. As a result, retailers took steps to clarify the code by writing to suppliers advising that they are able to negotiate the terms of their GSAs and the circumstances in which certain payments may arise.

We will continue to monitor complaints under the code, conduct compliance checks and investigate potential breaches.

Industry code compliance checks

The ACCC administers and enforces the Franchising Code of Conduct and conducts checks on franchisor compliance with the code's obligations. By identifying potential breaches of the code and taking enforcement action where appropriate, this supports our objective of promoting a fair operating environment for small businesses.

In 2015–16 we issued 14 notices under s. 51ADD of the Act to franchisors to check their level of compliance with the code. A s. 51ADD notice requires the addressee to give information or produce documents to the ACCC that they are required to keep, generate or produce under an industry code of conduct. These traders were either selected because they had a history of code-related complaints or randomly selected from industries that appear to generate a disproportionate volume of complaints.

Since 1 January 2011 we have served 103 s. 51ADD notices to monitor compliance with the franchising and horticulture codes. The majority of traders have been found to be compliant with the relevant code. Where compliance issues have been identified, these concerns have largely been addressed administratively.

We will continue to conduct industry disclosure compliance checks in 2016–17.

Voluntary codes of conduct

We support voluntary industry initiatives to develop codes that promote good business practices consistent with the Act. Effective codes potentially increase consumer protection and reduce regulatory burdens for business.

During 2015–16 we engaged with Live Performance Australia about a new draft Ticketing Code of Practice.

We also provided the Australian Association of National Advertisers (AANA) with information relating to our guidelines on voluntary codes to assist them to develop the AANA Wagering Advertising and Marketing Communications Code.

Allowing collective bargaining in the public interest

Other decisions relating to small business

We can approve collective bargaining arrangements—whereby two or more competing businesses jointly negotiate with a supplier or a customer over terms, conditions, and prices—where we are satisfied that the arrangement provides an overall public benefit. Without ACCC approval, such arrangements may contravene the Act.

Working together, small businesses might be able to negotiate better terms and conditions with large businesses than they could achieve on their own. Potential benefits include sharing the time and cost of negotiating contracts, coordinating ordering and/or delivery, accessing new marketing opportunities from combining volume, and gaining better access to information.

There can also be benefits for the business the group negotiates with, such as reduced negotiation costs, more certainty of supply and savings from aligning transport and distribution.

To assist small businesses to consider whether collective bargaining would suit their circumstances we issued a new guide for small businesses and farmers. The aim of the guide is to provide some basic information about what collective bargaining and collective boycotts are, some issues to take into account if small businesses are thinking of working together, and an outline of our approval process.

During 2015–16, we considered 19 collective bargaining proposals under the authorisation and notification provisions of the Act, the majority of which involved small business participants and covered sectors such as dairy, chicken growing, hotels, and retailers of plumbing and hardware.

In addition to the small business collective bargaining authorisations, the ACCC also granted authorisation for a range of other small business arrangements.

Table 3.66: Overview of authorisations 2015–16

Total authorisations decided (excluding minor variations)	33
Small business authorisations decided (excluding minor variations)	10

We also received and assessed more than 765 exclusive dealing notifications, a significant number of which involve small businesses—for example, to facilitate their participation in promotional and reward schemes or as part of a franchise supply arrangement.

Analysis of performance:

Empower consumers

Deliverable 2.5: Empower consumers by increasing their awareness of their rights under the Australian Consumer Law

The ACCC's educative function is central to our role in protecting the interests and safety of consumers, because awareness and information are the tools that empower people to understand and exercise their rights as consumers. Our educational and publicity campaigns help consumers to make smart choices even in complex or difficult markets.

Deliverable 2.5 applies beyond what is generally understood to be the scope of consumer issues. Whenever we take on new responsibilities, identify new issues or focus on new priorities, our activities generally progress, in order, through:

- engaging with the relevant industry
- developing guidance materials on rights and responsibilities
- educating consumers and/or small business
- looking out for potential breaches of the relevant regulations
- investigating and taking action on breaches.

These activities may overlap.

To empower consumers by increasing their awareness of their rights, we:

- develop and distribute information materials targeted to particular groups
- publicise our enforcement actions
- conduct public education campaigns on specific issues
- operate the ACCC contact centre (the Infocentre) to respond directly to enquiries and complaints on consumer issues and to gather information about current trends to inform our educational work
- gather and analyse intelligence on current trends and emerging issues relating to consumer rights.

Distributing consumer information

In 2015–16 we distributed targeted and general information, including tips and tools, through a wide range of channels to help consumers and small business. This included:

- using the consumer-facing section of our website to provide tips, videos and other tools
- engaging with influencers and other third parties on campaigns, such as members of the Consumer Consultative Committee and Australasian Consumer Fraud Taskforce
- engaging with consumers on social media.

Publicising enforcement activities

We seek to maximise the effect of ACCC court cases and other enforcement actions by publicising them. In many instances we conduct consumer education and business compliance initiatives alongside enforcement activities, each reinforcing the message of the other. The penalties and reputational damage that follow a court judgment are not only powerful deterrents to other traders but also highlight to consumers how they can use their rights.

In 2015–16 we publicised enforcement actions by:

- issuing media releases for every matter
- organising regular media appearances for the ACCC Chairperson and Commissioners in which they offered consumer tips and advice as well as discussing the actions more broadly
- engaging on social media
- using actions we have taken as examples in speeches, at conferences and at other events
- sharing our results via our email lists
- preparing content for industry on our court outcomes.

Campaigns

We conduct campaigns, including in our broader priority areas, to educate and empower consumers on specific issues and we put on events to promote and discuss consumer issues with a range of stakeholders.

For examples of our targeted campaigns in 2015–16, see:

- ‘Comparator websites’ on page 77
- ‘Scams’ on pages 85–87
- ‘Our work with Australian Consumer Law partners’ on page 106.

As well as conducting issue-based campaigns we use our involvement in various consumer forums to raise awareness about particular aspects of consumer law. In 2015–16 these opportunities included the National Consumer Congress, the Ruby Hutchison Memorial Lecture, and meetings of the ACCC Consumer Consultative Committee.

National Consumer Congress

The 2016 National Consumer Congress was held in Sydney on 16 March. This event was themed ‘A fit for purpose consumer law? The Australian Consumer Law review’. It was attended by approximately 210 delegates from consumer groups, government agencies, academia, the legal profession and business. Panels and keynote speakers discussed a number of issues, including adapting the ACL to the online world, alternative technologies and the energy sector, and empowering and protecting disadvantaged and vulnerable consumers.

This high-profile annual event is a valuable opportunity for us to generate interest in and awareness of issues relating to consumer empowerment.

Ruby Hutchison Memorial Lecture

The Ruby Hutchison Memorial Lecture is held annually. Ruby Hutchison was the founder of the Australian Consumers’ Association which is now known as CHOICE. The lecture held on 15 March 2016, was presented by Gordon Renouf, consumer advocate and founder Ethical Consumers Australia. Titled ‘Can consumers buy a better world?’, it examined whether conscious consumption is a responsibility or a right, and whether consumer choices really make a difference.

Bannerman Competition Lecture

The Australian Competition and Consumer Commission and the Business Law section of the Law Council of Australia hosted the annual Bannerman Competition Lecture in Melbourne on 11 February 2016.

The Bannerman lecture is named in honour of Ronald Bannerman AO, the first and only Commissioner of Trade Practices and the inaugural Chairman of the ACCC's forerunner, the Trade Practices Commission. The lecture provides an annual forum for an eminent speaker to reflect on competition and consumer law in Australia—to deliver new ideas and perspectives, which the community can debate.

The 2016 Bannerman Competition Lecture was delivered by Dr Philip Williams AM, Head of Legal and Competition Practice at Frontier Economics Australia. Dr Williams reflected on the Queensland Co-Op Milling Association Limited and Defiance Holdings Limited (QCMA) matter, which the Trade Practices Tribunal ruled on in 1976.

The Tribunal's determination in the QCMA matter is significant as it defined what a 'market' is under Australian consumer law. Professor Maureen Brunt AO, who also spoke at the lecture in honour of Ron Bannerman, contributed to this determination as a Tribunal member.

Consumer Consultative Committee

The Consumer Consultative Committee brings consumer engagement and empowerment issues to our attention, and provides a forum for us to inform, discuss issues and seek feedback on the effectiveness of our consumer empowerment activities (see details on page 108).

Infocentre

The ACCC Infocentre is the initial contact point for enquiries and complaints on competition, consumer and fair trading issues. These contacts are received by telephone, by letter and through forms on our websites.

The majority of contacts are:

- scam reports
- consumers seeking information about consumer guarantees
- complaints about business conduct that may breach the Act.

Infocentre officers record information they receive from businesses and consumers in the ACCC complaints and enquiries database. This data is used throughout the ACCC for investigation, analysis and reporting purposes.

The Infocentre manages the process to escalate complaints for investigation and possible enforcement action. All complaints are assessed against the law and the ACCC Compliance and Enforcement Policy and, where appropriate, escalated for further assessment or investigation. The compliance and enforcement policy supports Infocentre officers in informing customers of current and enduring priorities.

Where contacts are beyond the jurisdiction of the ACCC or cannot be individually addressed, Infocentre officers refer customers to appropriate services or agencies and take every opportunity to educate the consumer or business on the options available to them.

For complaints and enquiries, the emphasis is on consumer rights, business obligations and the role of the ACCC. The template complaint letter, available on our website, is widely used by consumers in asserting their rights. Infocentre officers frequently refer to publicly available guidance materials.

Responding to enquiries and complaints

The contact statistics for 2015–16 are:

- 139 980 contacts served by telephone or written response
- 38 816 web form responses made

- 904 letter responses made
- 100 260 calls answered.

The service level statistics for 2015–16 are:

- 46 per cent of calls answered within the service level
- 43 per cent of written responses sent within 15 working days.

As these results fall short of our goals, we have considered some other options for how we handle contacts and will introduce some positive change in 2016–17 with the goal of providing consumers and small businesses with more timely guidance and responses to reports of conduct that may represent a breach of the Act and cause significant consumer detriment.

Escalation of investigations

Complaints we receive may go through a series of increasingly intensive investigations.

An initial investigation is the first stage of a detailed complaint assessment. It may result in escalation to an in-depth investigation. Alternatively, the matter may be resolved administratively or no further action may be taken.

The most serious matters may become in-depth investigations. Depending on the seriousness of the complaint, we may use our coercive investigative powers and resolve the complaint by using court enforceable undertakings or infringement notices or by initiating legal action.

We analyse the information contained in our complaints and enquiries database to establish complaint trends, identify issues for further inquiry and develop compliance responses.

Table 3.67: Complaint actions

Category	2014–15	2015–16
Contacts received (phone, email and letters)	260 343	340 042
Contacts recorded in the database	165 544	207 090
Under-assessments commenced	1 062	590
Initial investigations commenced	584	427
In-depth investigations commenced	100	167
Litigation	27	43

Table 3.68: Small business and franchising contacts

Category	2014–15	2015–16
About a small business matter	13 931	15 071
About a franchise matter	809	931
About an online trader or e-commerce	5 600	6 126

Table 3.69: Top 10 industries, excluding scams, for complaints and enquiries

Industry	2015-16
Non-store retailing	3708
Motor vehicle manufacturing	3524
Other electrical and electronic goods retailing	2899
On-selling electricity and electricity market operation	2328
Wired telecommunications network operation	1273
Supermarket and grocery stores	1150
Department stores	1082
Fuel retailing	1047
Other store-based retailing	909
Car retailing	903

Table 3.70: Top categories of consumer and competition conduct for complaints and enquiries

Conduct	2015-16
Fair trading and consumer protection, including ACL	
18—Misleading or deceptive conduct	13 615
54—Guarantee as to acceptable quality	15 117
36—Wrongly accepting payment	3 985
104-108—Safety standards	3 243
60—Guarantee as to due care and skill	3 261
29(1)(i)—False representation price	2 260
56-57—Guarantee relating to the supply of goods by description, sample or demonstration	1 489
55—Guarantee as to fitness for any disclosed purpose etc.	1 205
29(1)(a)—False representations of goods—standard, quality, value, grade, composition, style etc.	1 474
29(1)(b)—False representations re: standard, quality, value, or grade	932
Effective competition and informed markets, Parts IV and IVB of the Act	
Codes	836
Exclusive dealing	430
Misuse of market power	393

Table 3.71: Geographical location of contacts recorded in the national database

Location	ACL		Scams		Consumer protection		Restrictive trade practices		Industry codes		Other	
	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15	2015-16	2014-15
NSW	14 148	52 280	39 946	52 280	54 094	735	473	180	218	7 378	5 587	
Queensland	13 745	41 594	28 819	41 594	42 564	546	438	160	217	4 790	4 608	
Victoria	11 743	40 595	28 632	40 595	40 375	669	396	170	204	6 195	3 974	
WA	4 868	17 145	15 204	17 145	20 075	229	171	69	94	1 934	1 607	
SA	3 912	14 083	11 118	14 083	15 030	199	126	65	59	1 955	1 406	
ACT	1 930	6 214	3 868	6 214	5 798	116	80	6	14	958	586	
Tasmania	1 019	4 324	3 357	4 324	4 376	39	41	12	15	466	333	
NT	488	1 738	1 149	1 738	1 637	18	13	6	3	208	170	
Overseas or not specified	867	3 561	3 434	3 561	4 301	57	41	14	12	629	535	

Intelligence

The ACCC continually invests in intelligence gathering and analysis to inform strategic enforcement and compliance priorities.

We continue to perform trend analysis on complaints to identify new issues and threats. Regular analysis not only provides a safety net for complaints assessment but also enhances our intelligence and industry knowledge and helps us identify new priority areas.

In 2015–16 our intelligence activities included:

- gathering information received through the Infocentre from businesses and consumers and analysing it as outlined above under ‘Infocentre’
- working with state and territory consumer agencies to further develop all ACL regulators’ intelligence capabilities and enhance cooperation, including through the Compliance and Dispute Resolution Advisory Committee
- engaging with our intelligence counterparts overseas to inform our understanding of emerging consumer and competition issues that are likely to affect Australia.

For reporting on our international engagement, see ‘Regional and International partnerships’ on page 108.

Strategy 3: Efficient investment, operation and use of infrastructure

Summary of performance

Promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure

Role and functions

As some key infrastructure is provided by only one or a few suppliers, efficient access to infrastructure may be limited, thereby undermining competition and investment. This matters because appropriate economic regulation and the efficient provision of infrastructure contributes to the efficiency and productivity of the overall economy.

The ACCC is the national regulator of natural monopoly infrastructure facilities in a number of industries. We apply regulation and access conditions to promote effective competition in upstream and downstream markets and deliver benefits in the long-term interests of end users—in effect, of all Australians.

Our role encompasses price regulation, monitoring and enforcement of industry-specific rules in a number of key infrastructure sectors, including telecommunications, rail, water, ports and airports.

Our objective is to promote the long-term interests of end users through competition and efficient investment in key infrastructure services. To do this we regulate access to bottleneck infrastructure and the pricing for monopoly services. We also monitor and report on the price and quality of goods and services in these monopoly markets and, where relevant, business compliance with industry-specific laws.

In pursuing this objective our key functions include:

- regulating access to monopoly services that businesses need to compete in upstream or downstream markets
- regulating access prices where competitive pressures on a supplier are not sufficient to produce efficient prices
- monitoring and enforcing compliance with industry-specific laws for rural water services in the Murray-Darling Basin and communications services
- monitoring and reporting on the prices and quality of particular goods and services to inform industry and consumers about the effects of market conditions
- advising governments and policy agencies about how efficient regulatory outcomes and competitive, well-functioning markets can be achieved.

We also review our practices and regulatory frameworks on an ongoing basis to ensure they remain fit for purpose by drawing on internal expertise, consulting with industry and other regulators domestically and internationally, and holding an annual regulatory conference.

We carry out these functions across a range of sectors, including:

- telecommunications
- water
- fuel
- airports
- container stevedoring
- wheat export ports
- rail
- postal services.

Deliverables

Our deliverables in this area are:

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end-users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry-specific competition and market rules

Priorities

Our infrastructure regulation priorities for 2015–16 were:

- finalising determinations of terms and conditions for fixed-line telecommunications services
- implementing the structural separation of Telstra and associated structural reforms of fixed-line telecommunications
- assessing and administering access undertakings under Part IIIA of the *Competition and Consumer Act 2010*
- considering applications for exemptions from the Wheat Code
- undertaking petrol monitoring, as directed by the Minister, and price notifications under Part VIIA of the *Competition and Consumer Act 2010*, and other market studies.
- increasing confidence in the operation of emerging water markets.

Powers

Our powers and responsibilities to regulate infrastructure arise under several different legislative and administrative frameworks. These include:

- the National Access Regime in Part IIIA of the Act (rail)
- industry-specific access regimes in the Act (communications)
- price monitoring directions from governments (airports, stevedoring, petrol)
- price notification provisions (post, air services)
- rules made by Ministers in markets where competition is newly emerging (rural water) or there is a deregulatory agenda (wheat, ports).

Table 3.72: Resources for Strategy 3

Actual for 2015–16	
Expenditure (millions)	\$24.50
Average staffing level	122.4

* Each figure includes an allocation for corporate overheads, legal and economic advice and executive support.

Performance indicators

Deliverable 3.1: Deliver network regulation that promotes competition in the long-term interests of end-users

This deliverable is about the ACCC using its regulatory powers to facilitate access to bottleneck infrastructure and competitive pricing for that access.

Table 3.73: Performance indicators for Deliverable 3.1

Performance indicators	Annual target	Result
Number of major regulatory decisions	3	7
Percentage of regulatory decisions completed within statutory timeframes (including 'stop the clock' and timeframe extension provisions in the CCA)	100%	100%

Deliverable 3.2: Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

This deliverable is about keeping a close watch on the price and quality of goods and services available in markets that may be inefficient because they are highly concentrated or developing.

Table 3.74: Performance indicators for Deliverable 3.2

Performance indicators	Annual target	Result
Number of annual monitoring reports	4	7
Number of reports on monitoring of unleaded petroleum products	4	5

Deliverable 3.3: Improve the efficient operation of markets by enforcing industry-specific competition and market rules

This deliverable is about the ACCC using its powers to enforce industry-specific rules that promote competitive, efficient markets.

Table 3.75: Performance indicators for Deliverable 3.3

Performance indicators	Annual target	Result
Number of investigations into potential breaches of rules	5	15

Analysis of performance: Telecommunications

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end-users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry specific competition and market rules

The ACCC's work in the telecommunications sector contributes to all three of the deliverables for Strategy 3, as it encompasses regulation, monitoring and enforcement.

We are responsible for the economic regulation and monitoring of the communications sector.

Our role is to provide effective telecommunications regulation that will protect, strengthen and supplement competitive market processes to improve the efficiency of the economy and increase the welfare of Australians.

Access regulation reduces barriers for competing operators that seek to enter and compete in downstream markets and invest in new infrastructure. As a result of regulating access to monopoly wholesale communications services, new entrants are often able to grow and innovate. Consumers then benefit in terms of both price and service quality.

The telecommunications industry is currently experiencing prolonged change due to technological developments, new consumer use patterns and, principally, structural change from the rollout of the National Broadband Network (NBN). Some of our key work therefore relates to the transition to the NBN.

We have additional responsibilities under the following Commonwealth legislation:

- *Broadcasting Services Act 1992*
- *Copyright Act 1968*
- *National Broadband Network Companies Act 2011*
- *Radiocommunications Act 1992*
- *Telecommunications (Consumer Protection Services Standards) Act 1999*
- *Telecommunications Act 1997.*

More information on our communications role is detailed on our website and in publications such as *ACCCount*. We also publish a number of statutory reports specific to the communications industry—in particular, the annual ACCC telecommunications report.

This year our priorities relating to telecommunications were:

- finalising determinations of terms and conditions for fixed-line telecommunications services
- implementing the structural separation of Telstra and associated structural reforms of fixed-line telecommunications.

The section below discusses our outcomes in these priority areas and other significant areas.

Access to telecommunication networks and services

In regulating the telecommunications sector, we aim to establish reasonable access terms that:

- balance the interests of infrastructure owners, users and the broader public
- achieve any-to-any connectivity
- encourage efficient investment in, and use of, infrastructure
- promote competition for the long-term benefit of consumers and businesses.

Declaration of telecommunications services

The telecommunications access regime contained in the Act supports the development of a competitive telecommunications industry by allowing services to be ‘declared’—a process that determines which services are regulated by the ACCC. Once declared, a service must be supplied, on request, to other providers.

The ACCC can declare a service by:

- holding a public inquiry and allowing access providers, access seekers and consumers to comment
- accepting a special access undertaking from the provider of a service that effectively declares a particular service.

There is another method for declaring a service, which applies only to NBN corporations (such as NBN Co). Where NBN Co supplies or intends to supply a service and publishes a standard form of access agreement for that service on its website, that service is declared.

Superfast Broadband Access Service declaration inquiry

The ACCC commenced an inquiry on 11 September 2014 into whether to declare the Superfast Broadband Access Service (SBAS). This followed the conclusion of our investigation into a proposal by TPG Ltd to deploy a fibre-to-the-basement network, and recommendations by the NBN Panel of Experts (the Vertigan panel) that we commence a declaration inquiry into vectored VDSL2 networks.

On 6 November 2015 we released a draft decision proposing to declare an SBAS for five years. We considered that that declaration would promote the long-term interests of end users because it is likely to promote competition in the downstream markets for retail superfast broadband services.

The service to be declared was defined as the wholesale supply of a Layer 2 broadband service with a downstream data rate normally more than 25 Mbps on all fixed-line networks except the NBN, hybrid fibre coaxial (HFC) networks contracted to be transferred to NBN Co, networks already subject to the Local Bitstream Access Service (LBAS) declaration and those that exclusively supply business, public body and charity customers.

As a declaration would raise several complex issues—including the expected benefits of declaring the SBAS, the costs of complying with the declaration for smaller operators of superfast networks, and whether and how any exemptions from the declaration (or any subsequent access determination) should apply—we sought further views from stakeholders.

Submissions on the draft decision were received in December 2015, and further targeted consultation occurred in March 2016. We released a final decision on declaration of the SBAS in July 2016.

Determinations of terms and conditions

Fixed services review—final access determinations inquiry

An ACCC priority for 2015–16 was to finalise determinations of terms and conditions for fixed-line telecommunications services.

On 9 October 2015 we made final access determinations (FADs) setting price and non-price terms of access to the seven declared Telstra fixed-line services. Ensuring efficient prices for wholesale services on Telstra's networks supports competition in retail telecommunications as the industry transitions to the NBN as the wholesale infrastructure provider. The declared fixed-line services are the unconditioned local loop, line-sharing service, wholesale line rental, local carriage service, fixed originating access service, fixed terminating access service and wholesale ADSL.

Our final decision was for a one-off uniform decrease in regulated charges of 9.4 per cent, with effect from 1 November 2015 until 30 June 2019. We dealt with a number of complex issues in making these determinations, including how to take into account the unique circumstances of the structural change in the telecommunications industry as wholesaling transitions from Telstra's copper network to the NBN.

The main contributors to the 9.4 per cent fall in prices were a revised methodology for forecasting Telstra's fixed line expenditure, a decline in the cost of capital since the previous regulatory period, and the adjustments made to account for the effects of the migration of services to the NBN. This migration affected both asset redundancy and the loss of scale economies.

Telstra has sought judicial review of the ACCC final decision. The Federal Court heard Telstra's appeal on 3–4 March 2016, with respondents including the ACCC and five access seekers. The judgment will be delivered in due course.

Domestic transmission capacity service—final access determination inquiry

The ACCC released its final access determination for the Domestic Transmission Capacity Service (DTCS) on 21 April 2016. The DTCS is a high-capacity transmission service capable of carrying large volumes of voice, data and audio-visual traffic. It is often used by telecommunications companies to carry the combined traffic of separate services across long distances.

The DTCS FAD set DTCS pricing at a level significantly lower than the regulated prices set in the 2012 DTCS FAD. For example, compared to the 2012 FAD:

- average regulated prices for low-capacity (2 Mbps) short-distance services fell by 13 per cent in metro areas and 22 per cent in regional areas
- average regulated prices for high-capacity (100 Mbps) long-distance services fell by 76 per cent in metro areas and 78 per cent in regional areas.

However, the extent of the reduction in regulated prices for a specific route depends on the geographical route type, capacity and distance of a particular service. We have provided a calculator on our website to help access seekers and providers to determine regulated prices for declared DTCS routes.

In addition to the primary price terms, the DTCS FAD includes a number of supplementary price terms, including connection charges. The DTCS FAD also sets an uplift factor of 140 per cent for services that use an undersea cable link across Bass Strait, to reflect the higher cost of providing and maintaining those services.

The DTCS FAD also created new non-price terms and conditions for special linkage charges. These require access providers to itemise special linkage charges, unless otherwise agreed, in order to allow access seekers to assess the reasonableness of the charge.

For all other non-price terms and conditions that apply to the DTCS, the FAD adopts the terms and conditions set out in our final report for related declared services (released on 24 August 2015).

The release of the FAD in April 2016 followed an extensive process of analysis and consultation by the ACCC. On 4 September 2015 we released a draft decision on the primary price terms, supplementary price terms and non-price terms and conditions to be included in the FAD for the DTCS. In December 2015 we released a further consultation paper seeking submissions on a range of data and modelling issues. We also sought stakeholder views in March 2016 on the pricing of transmission services to Tasmania.

The DTCS FAD applies from 21 April 2016 to 31 December 2019.

Mobile terminating access service—final access determination inquiry

The ACCC released its final decision on the primary price and non-price terms for the mobile terminating access service (MTAS) FAD on 24 August 2015. The MTAS is a wholesale service provided by mobile network operators (MNOs) to other network operators (such as other MNOs and fixed-line network operators) to terminate calls or SMS messages on their networks. It enables mobile subscribers to receive calls and SMS on their mobile phone.

The determination, effective from 1 January 2016 to 30 June 2019, sets a price of 1.7 cents per minute for mobile voice termination, down from the current 3.6 cents per minute, and sets a price of 0.03 cents per SMS.

The final regulated rates reflect the costs of terminating calls and SMS messages on Australian networks, based on benchmarking the costs of these services against those in other countries. In Australia, the majority of mobile calls and SMS are carried on 3G networks, which are more efficient than the 2G networks used to a larger extent overseas. The mobile networks in Australia also carry a much larger amount of data traffic than overseas networks, which reduces the share of network costs for carrying calls. These features reduce the cost of terminating calls on Australian networks and were taken into account in our final decision.

While we do not regulate retail charges, either for mobile calls or SMS, we expect the MTAS FAD final decision to lead to lower charges or improved call and SMS inclusions in retail plans.

Non-price terms and conditions—final access determination inquiry

The ACCC conducted a joint consultation on non-price terms and conditions that would apply to the DTCS, fixed-line services and the MTAS FADs. Non-price terms and conditions range from commercial terms—such as billing and general dispute resolution processes—to the operational processes by which the declared services are to be accessed.

On 24 August 2015 we released a final report on non-price terms and conditions for the MTAS and our then-current views on non-price terms of access for the fixed-line services and the DTCS. We developed a targeted subset of non-price terms and conditions to provide guidance on issues such as information security and recourse to regulatory terms where commercial agreement is less likely to result. We did not consider that a FAD setting out comprehensive terms and conditions of access was warranted, as it would place a significant burden on industry. These non-price terms and conditions were also included in the October 2015 fixed-line services FADs and the April 2016 DTCS FAD.

Local Bitstream Access Service—final access determination inquiry

The ACCC commenced a Local Bitstream Access Service FAD inquiry in April 2015. The period for the inquiry was initially extended to 7 February 2016, and on 24 February 2016 we decided to further extend the period for making the LBAS FAD to 7 October 2016.

The LBAS is an access service used by access seekers to supply superfast broadband services (defined as having a download speed of normally 25 Mbps or higher) to customers connected to non-NBN networks, primarily in new housing estates. The LBAS was declared by the ACCC in February 2012.

The reason for the extensions of time is that it is efficient to conduct the LBAS FAD inquiry concurrently with any SBAS FAD inquiry, as any declared SBAS is likely to have similar characteristics to the LBAS. We therefore intend to release a discussion paper on the LBAS and SBAS FADs in the early part of the 2016–17 reporting period, following the conclusion of the SBAS declaration inquiry.

Transition to the NBN

The telecommunications sector in Australia is undergoing major structural reform, as wholesale services transition from being provided by Telstra's network to the new NBN. The ACCC has various roles in this transition, including ensuring that the new monopoly NBN services are provided efficiently and support competition in retail markets, and that competition, efficiency and good outcomes for consumers are not compromised during the period of transition. A range of our activities stem from these roles.

Our telecommunications priority for 2015–16 relates to this transition:

- implementing the structural separation of Telstra and associated structural reforms of fixed-line telecommunications.

Telstra's compliance with the Structural Separation Undertaking

As part of our role in promoting a smooth transition to the NBN, we oversee Telstra's Structural Separation Undertaking (SSU) and Migration Plan. Together these outline how Telstra will progressively stop supplying telephone and broadband services over its copper and hybrid-fibre coaxial (HFC) networks and migrate those services to the NBN.

Telstra's SSU also includes commitments to safeguard competition until the NBN is built and Telstra has migrated its fixed-line services to the new network. Of particular significance is Telstra's commitment to providing equivalent service levels to wholesale customers and its own retail businesses.

The ACCC is required to prepare a report to the Minister for Communications and the Arts (under s. 105C of the *Telecommunications Act 1997*) on Telstra's compliance with its SSU. This report was tabled in Parliament on 15 April 2016.

The report found that there was a reduction in the number of breaches reported by Telstra in 2014–15. The most common compliance issue continued to be Telstra's failure to prevent unauthorised disclosure of wholesale customer confidential or commercially sensitive information. This included a small number of incidents of inadvertent disclosure, as well as ongoing IT system issues. For each breach of the SSU, we have continued to focus on stopping the conduct, ameliorating its impacts, promoting transparency and safeguarding against recurrence.

The report also described actions we took to identify areas for improvement in Telstra's systems and processes to ensure its SSU and Migration Plan obligations are being implemented effectively. This includes an independent review of Telstra's IT systems to assess whether they had been fully remediated to prevent retail business unit staff from accessing wholesale customer protected information. Telstra worked in cooperation with us and our external consultant to address the remaining IT systems issues. We are satisfied that all of Telstra's IT systems are now remediated or in the final process of being remediated.

We also publish quarterly, half-yearly and annual Telstra Economic Model (TEM) reports, which detail Telstra's costs, revenues and demand, as well as comparing internal and external

wholesale prices. We have commenced the publication of quarterly time series data taken from the TEM public reports, comprising internal and wholesale prices in relation to three product bundles (voice bundle, voice and DSL bundle, and total bundle of fixed-line services) developed by Telstra. We recently added half-yearly demand data to the published time series of TEM data.

Competition implications of HFC delivery agreement

During 2015–16, we monitored Telstra’s involvement in NBN design, construction and service delivery activities. In doing so, we voiced concerns that particular aspects of these arrangements, including aspects of the HFC delivery agreement announced in April 2016, would materially advantage Telstra in NBN markets.

While these arrangements provide NBN Co with access to Telstra’s technical expertise and contribute to a quicker rollout of the NBN, they can also provide Telstra with preferential access to information about the NBN, and the opportunity to use NBN Co funded infrastructure ahead of other NBN service providers.

After we raised these concerns, NBN Co and Telstra proposed a set of measures intended to curtail the potential for Telstra to be advantaged over other NBN service providers in these ways, while still allowing NBN Co to acquire services from Telstra. We have undertaken targeted market inquiries with industry to help us assess the proposals and are currently considering them.

Assessment of Telstra’s revised Migration Plan

Telstra’s Migration Plan outlines how it will progressively migrate voice and broadband services from its copper and HFC networks to the NBN as the new fixed-line network is rolled out across Australia.

Following ACCC approval of the revised Migration Plan in June 2015, Telstra and NBN Co identified aspects of the Migration Plan where additional flexibility was needed to ensure service continuity for end users. Telstra sought regulatory forbearance on a number of occasions to depart from its obligations under the Migration Plan in order to provide extended disconnection arrangements for premises with an NBN order.

We did not object to Telstra’s requests to implement these revised arrangements, as they provide greater assurance of service continuity for end users in the migration process by allowing NBN Co more time to connect services to premises before Telstra disconnects them from its networks. Our ongoing monitoring of the number of premises that have migrated to the NBN shows that most consumers have successfully migrated to the NBN within the standard timeframes allowed. However, a material number of consumers have benefited from the extended disconnection arrangements that are now in place.

On 9 May 2016 Telstra submitted a formal variation to the Migration Plan for our approval. The proposed variation was primarily intended to promote greater service continuity for consumers migrating to the NBN, and included changes to provide additional time for premises with an NBN order to be connected before mandatory disconnection occurs. We released a discussion paper on 20 May 2016, seeking stakeholder views on whether the proposal complies with the Migration Plan Principles issued by the Australian Government in 2015. Public consultation closed on 20 June 2016.

During 2015–16 Telstra also provided us with replacement required measures 1, 2, 3 and 4. These are detailed process documents which exist as schedules to the Migration Plan. The revised Migration Plan obliged Telstra to develop and publish the replacement required measures to reflect revised processes associated with the shift to a multi-technology mix NBN. Following consultation, we notified Telstra on 17 February 2016 that we considered the replacement required measures were compliant with the Migration Plan Principles and did not object to Telstra publishing them.

Migration Assurance Policy

On 26 August 2015 we made a submission on the government's draft Migration Assurance Policy (MAP). The MAP is intended to facilitate an improved experience for consumers migrating to the NBN. Its primary goals are to minimise disruption to end users, prioritise continuity of service, and target vulnerable end users for assistance. We advocated for the development of protections under the MAP to see that consumers migrating to the NBN do not lose their services through no fault of their own. In particular, we encouraged greater focus on promoting service continuity for those categories of end-users with complex requirements, including business applications or medical or fire alarms, which require additional information and planning to migrate successfully, or where the end-user is located in 'hard-to-connect' premises.

On 1 February 2016 the government released its MAP, which contains a policy statement and a framework. The policy statement establishes a number of principles on the government's expectations with the migration arrangements. The framework, a more detailed document, sets out the roles and responsibilities of the various parties involved in the NBN migration process and other important components of successful end-to-end migration. The MAP can be found on the Department of Communications and the Arts website.

Working groups and other processes

The ACCC is an observer on the quarterly NBN Fire Alarm and Lift Phone Roundtable meetings convened by the Department of Communications and the Arts. The roundtable and associated working groups have been established to inform the policy framework for the migration of fire alarm and lift phone services to the NBN. The roundtable comprises stakeholders from the fire alarm industry, the elevator industry, NBN Co and the telecommunications industry.

During 2015-16, we attended NBN Co's public information on migration briefings as an observer. NBN Co is responsible for funding an information and education campaign to inform consumers about the migration of copper services to the NBN. NBN Co develops its information campaign in consultation with the government, industry and community stakeholders.

We have also taken part in the Service Continuity Assurance Working Group, which involves NBN Co, Telstra, Optus, Communications Alliance and relevant government agencies. The purpose of the working group is to help resolve issues that may affect people's ability to rely on their telephones and internet as services are disconnected from Telstra's legacy networks and migrated to the NBN.

The ACCC is also an observer on the following Communications Alliance working groups established to consider issues in migrating consumers to the NBN or supporting consumers transferring their NBN services to another NBN access seeker:

- Copper Migration Working Committee, which considers the roles of different stakeholders involved in the migration of consumers to the NBN
- NBN Over-the-top Services Transition Working Group, which considers the migration of services that operate over legacy networks, such as monitored medical alarms, monitored fire alarms and monitored lift phones
- NBN FTTN/B and HFC Migration Processes Working Committee, which considers the processes to follow in migrating a service onto the NBN FTTN/B and HFC networks
- NBN Fibre Access Transfer Working Committee, which considers the processes to follow in transferring an active NBN service between retail service providers.

During the year, these working groups issued the NBN Migration Management Guideline, the industry guideline on NBN FTTN/B migration processes, and the Industry Guidance Note on Migration of Legacy Services, and developed a proposed industry code for transferring NBN services between retail service providers.

Regulating the NBN

NBN special access undertaking—Long-Term Revenue Constraint Methodology

On 3 June 2016, we issued a final determination on NBN Co's revenue controls for the 2014–15 financial year. We are required to make annual determinations on NBN Co's revenue controls in accordance with the Long Term Revenue Constraint Methodology (the LTRCM), which is set out in NBN Co's special access undertaking (the SAU). The SAU establishes part of the regulatory framework for the NBN and includes important provisions to encourage NBN Co to incur expenditure efficiently.

In our determination we accepted NBN Co's actual capital and operating expenditure for the year and the proposed values for regulated assets and accumulated losses. We also accepted that NBN Co's prices did not exceed maximum regulated prices during 2014–15.

NBN Co requested a minor amendment to our 2013–14 determination to correct for an error in its submission. We considered NBN Co's proposed amendment in the same process as the final determination and decided to accept the proposal.

Under the SAU, NBN Co must submit for each financial year a set of information relating to its LTRCM, including capital expenditure, operating expenditure, allowable revenue and accumulated losses. Following consideration of NBN Co's set of information relating to its LTRCM which was submitted to us in October 2015, we issued our preliminary views in December 2015 and our draft determination in March 2016.

Reappointment of NBN Co resolution advisor

On 6 April 2016, we approved NBN Co's proposal to reappoint its current resolution advisor and the draft terms of appointment.

Endispute Pty Ltd was reappointed. The resolution advisor functions are to be carried out by Professor Tania Sourdin until 31 October 2016, with a further option to extend the term until 31 October 2017.

NBN non-commercial services funding options

In November 2015 the ACCC made a further submission to the Bureau of Communications Research's second consultation on NBN non-commercial services funding options.

The submission expressed broad support for the bureau's proposal to adopt an NBN-equivalent funding approach (that is, funding should be limited to NBN Co and NBN-equivalent industry participants) rather than a broader industry-based funding arrangement. It also noted that we could have a role in determining the required funding amount in future years.

The Australian Government asked the bureau to assess the non-commercial losses expected to be incurred from building and operating satellite fixed wireless services in regional areas, and to consider funding these losses via contributions from owners of high speed broadband access networks. This followed our June submission on the bureau's first consultation paper.

Industry monitoring and reporting

Competition in telecommunications markets

- In March 2016 we provided the Minister for Communications and the Arts with our annual telecommunications reports to be tabled in parliament. We are required to prepare two reports under s. 151CM of the Act. These are Competition in the Australian telecommunications sector (Division 11 report) and Price changes for telecommunications services in Australia (Division 12 report). Both reported positive developments in competition in the communications sector during the last year.
- The Division 11 report outlined the key competitive developments in the communications industry over the 2014–15 financial year, as well as discussing our key activities. It highlighted that consumers are benefiting from competition in the form of increased data allowances, new services and lower prices. It also highlighted some regional mobile issues and the ongoing need for consumer protection. It noted that the sector faces a number of challenges during the transition to the NBN, as network operators continue to manage increasing demand for data.
- The Division 12 report found that overall prices for telecommunications services were relatively stable—a 0.5 per cent fall in real terms in 2014–15 compared to 3.3 per cent average price decreases recorded in the previous eight years.

First report on the NBN wholesale market

Over 2015–16, we consulted publicly on a proposal to establish a NBN wholesale market indicators report. In March 2016, we concluded this consultation by issuing a direction that NBN Co prepares specified reports for publication each quarter.

The specified reports concern the size and structure of emerging NBN wholesale access markets, and will assist in the continued development of competitive NBN markets that benefit broadband consumers.

On 29 April 2016 we released the initial NBN wholesale market indicators report, for the period ending 31 March 2016. Key points from the initial report are that:

- NBN Co was supplying 941 235 wholesale access services and had contracted to supply 1004 gigabits per second of aggregate network capacity (connectivity virtual circuits) over the NBN.
- NBN access seekers were present at the 121 listed points of interconnection, of which 115 had three or more access seekers.
- Telstra has the largest national market share with 49 per cent of NBN wholesale access services, followed by TPG with 27 per cent, Optus with 14 per cent and M2 Group with 6 per cent.
- TPG was acquiring the most higher speed NBN wholesale access services (50 Mbps and higher), closely followed by Telstra and Optus.

Quarterly reporting of access agreements

The Act requires carriers or carriage service providers (CSPs) who supply declared (regulated) services to lodge quarterly reports with the ACCC regarding all access agreements that are on foot in relation to declared services. These quarterly reports assist us in monitoring industry developments and fulfilling our responsibilities under Parts XIB and XIC of the Act. During 2015–16, we found that compliance by carriers and CSPs who currently report was generally consistent with the requirements of the Act. In March 2016, we undertook a review to confirm if all carriers and CSPs who supply declared services were providing quarterly reports. We identified several carriers who may provide declared services and we are working constructively with these carriers to determine if they are required to lodge quarterly reports.

Enforcement and compliance

During 2015–16, we continued to focus on promoting compliance with the Act, including with the Australian Consumer Law (ACL), in the marketing of broadband services. We also undertook our own research to ascertain more generally the types of broadband performance issues that could be tested in a broadband performance monitoring and reporting program if implemented in Australia.

Investigations

We investigated 15 allegations about potential contraventions of the Act and of the *Telecommunications Act 1997* specific to telecommunications markets. In particular, we assessed complaints of misuse of market power under the telecommunications-specific anti-competitive conduct provisions in Part XIB of the Act. Those complaints related to concerns that vertically integrated telecommunications providers refused to provide certain wholesale telecommunications services on appropriate terms, which it was alleged affected competition in downstream markets. We also investigated allegations of non-compliance with the 'level playing field' provisions in Parts 7 and 8 of the Telecommunications Act, which restrict owners of certain superfast telecommunications networks from using those networks to provide services directly to retail consumers, and we investigated allegations of misleading and deceptive conduct under the ACL.

In December 2015 Optus paid penalties totalling \$51 000 following the issue of five infringement notices by the ACCC. The infringement notices were issued because we had reasonable grounds to believe that Optus Internet had made false or misleading representations in relation to the data transfer rates offered on its cable broadband plans.

We were concerned that Optus's use of the term 'NBN-like speeds' represented that the advertised cable broadband plans provided speeds comparable to the speeds available on the NBN, when that was not the case for the plans advertised.

Optus also provided a court enforceable undertaking to us acknowledging that its conduct may have contravened the ACL and agreeing, among other things, to allow customers who acquired a cable broadband service during the advertising period to cancel their contract at no cost and refund any start-up fees they paid.

Broadband performance monitoring and reporting program

During 2015–16 we successfully completed a three-month pilot broadband performance monitoring and reporting (BPMR) program and released a public report on the findings in September 2015.

The pilot showed that a program to monitor and report to consumers and industry on the quality of broadband services in Australia could be readily established. Such a program would provide transparency as to the quality of broadband services and as such would better inform consumers about broadband performance, allowing them to make more informed purchasing decisions and enabling retail service providers to better compete on service performance.

The pilot program tested factors known to affect broadband performance, including download/upload speeds, latency, packet loss, webpage load times, video streaming, jitter and DNS resolution. We used hardware-based probes (which pilot volunteers attached to their home internet connection) to test fixed-line broadband connections on various technologies. This was a similar approach to that of monitoring programs currently operating in the United Kingdom, the United States, Singapore and Canada. We observed a range of results through the pilot, including a noticeable deterioration of performance, particularly in download speeds, during peak use periods.

We were greatly encouraged by the results of the pilot and are continuing to pursue steps to implement a BPMR program, including securing appropriate funding. A decision to proceed with a program has not yet been made, and any final program will involve further stakeholder consultation.

Assistance to government and agencies

We have contributed to, or been asked by government to provide advice or assistance on, a range of projects affecting regulation of telecommunications. In our contributions we seek to promote competitive outcomes, including the efficient use of infrastructure and the long-term interests of consumers.

Regional telecommunications review

A Regional Telecommunications Independent Review Committee was established in 2015 under the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to review telecommunications services in regional, rural and remote areas. In 2015 the review considered issues such as the NBN rollout, mobile coverage and the continuing operation of the Universal Service Obligation (USO) in the contemporary communications environment.

We made a submission to the review on 30 July 2015. Our submission supported the direction of the review, particularly in relation to redefining the USO to reflect consumer use and expectations in relation to mobile technology and broadband services. The submission also expressed support for some form of customer service guarantee scheme to continue to apply to telecommunications services, particularly during the migration to the NBN, and for using infrastructure, including the NBN, to support competition in regional, rural and remote areas. It also noted that the cost of backhaul in regional, rural and remote areas had been identified as an issue in our inquiry into a final access determination for the Domestic Transmission Capacity Service.

1800 MHz spectrum auction

In October 2015 we assisted the Australian Communications and Media Authority (ACMA) in preparing for its auction of 1800 MHz spectrum band in regional areas. We helped with assessing affiliations of participants in the auction, which was important to enable the ACMA to monitor compliance with competition limits applicable to the auction. We had previously provided the ACMA with advice on these issues.

Radiocommunications Bill

In March 2016 the Department of Communications and the Arts released a consultation paper with proposals for a new Radiocommunications Bill as part of the government's response to the department's 2015 spectrum review. The proposed bill would be aimed at simplifying and streamlining regulatory structures and processes for managing spectrum, and would implement a number of changes to Australia's spectrum management framework.

We made a submission to the consultation paper in May 2016 broadly supporting the proposed approach and emphasising the importance of considering competition issues in a spectrum management framework. We expressed support for continuing our role in providing advice on competition limits for allocating spectrum, and for s. 50 of the Act continuing to apply. We also commented on other areas of spectrum management that could benefit from our consideration.

Numbering

In late 2016 we engaged with the Department of Communications and the Arts, the ACMA and Communications Alliance in relation to a potential framework for an industry body to undertake a range of telecommunications numbering functions currently undertaken by the ACMA. The Communications Legislation Amendment (Deregulation and Other Measures) Bill 2015, which was subsequently introduced to parliament, set out a framework to facilitate an industry body to manage certain aspects of telecommunications numbering resources. The bill lapsed on 17 April 2016 when parliament was prorogued.

Analysis of performance: Murray-Darling Basin water markets

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end-users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets
Deliverable 3.3	Improve the efficient operation of markets by enforcing industry specific competition and market rules

The ACCC's work in the rural water market sector in the Murray-Darling Basin contributes to all three of the Strategy 3 deliverables, as it encompasses regulation, monitoring and enforcement.

The *Water Act 2007* (Cth) aims to promote efficient water markets and sustainable use and management of water resources and water services infrastructure in the Murray-Darling Basin (the Basin). It was introduced because of concerns about the impact of irrigation on the environment, over-allocation of water and increasing water scarcity.

Our role helps to ensure that efficient water markets function in the Basin. This is important because water markets are a key way to allocate water—a scarce but vital resource—between competing uses, in a way that ensures it moves to its most productive use.

Under the Water Act, we are responsible for regulating and monitoring a range of water charges. We also monitor and enforce compliance with water market and charge rules made under the Water Act. The rules:

- help irrigators to transform their irrigation right held against an irrigation infrastructure operator into a separately held water access entitlement (transformation arrangements)
- regulate the maximum fee that an operator can impose on an irrigator who terminates their access to an irrigation network
- require infrastructure operators, water authorities and government departments to publish information about their regulated charges and, in some instances, their infrastructure-related investment plans
- restrict an infrastructure operator from imposing different charges for the same infrastructure service, in some circumstances
- allow the ACCC or another accredited regulator to set the regulated charges of specific water infrastructure operators.

As an observer, we participate in the Murray-Darling Basin Authority's Trade Working Group and Trade Operators' Panel, both of which discuss interstate water trade issues in the Basin. We also participate in the Trading Rules Working Group, which considers matters relating to the Basin Plan water trading rules.

This year our priority relating to water markets was increasing confidence in the operation of emerging water markets.

The following section discusses our outcomes in this priority area and other significant areas.

Regulating access terms, conditions and prices

Under the Water Charge (Infrastructure) Rules 2010, the ACCC is the default regulator responsible for approving or determining regulated charges for WaterNSW (formerly State Water). In September 2015, we accredited the New South Wales Independent Pricing and Regulatory Tribunal (IPART) to be the regulator for WaterNSW under these rules. The Essential Services Commission of Victoria has previously been accredited to be the regulator for Goulburn-Murray Water and Lower Murray Water.

The Water Charge (Infrastructure) Rules provide for an annual review of charges under which the ACCC or an accredited regulator can vary the charges that are set under the original determination where it is reasonably necessary to do so because of changes in the demand or consumption forecasts or for price stability.

Decision on WaterNSW charges

In May 2016 we released our final decision on proposed charges for WaterNSW's infrastructure services in the Murray-Darling Basin for 2016-17. These charges are consistent with our 2014 determination and are based on the principles and rules established under the Commonwealth Water Act. The charges have been set to recover WaterNSW's prudent and efficient costs of providing infrastructure services to water users.

This is our second and final annual review of WaterNSW charges. WaterNSW's charges from 1 July 2017 will be approved or determined by IPART, as the accredited regulator under the Commonwealth Water Charge (Infrastructure) Rules.

Accreditation of IPART

On 23 September 2015 the ACCC accredited IPART to regulate WaterNSW's infrastructure charges in the Murray-Darling Basin for a period of 10 years (unless revoked or extended) from 1 June 2016.

Our decision maximises the efficient use of government resources devoted to the management of Basin water resources by providing a single regulator for the determination of WaterNSW's infrastructure charges. IPART had already exercised price determination powers in relation to certain metropolitan water utilities in New South Wales and bulk water services in non-Basin areas of the state. It had also previously been responsible for approving or determining charges for operators in the Basin before we were required to undertake the role in 2011.

IPART's accreditation is subject to the same conditions we applied to the Essential Service Commission of Victoria (granted in 2012). The conditions are designed to achieve consistent regulatory approaches across the Basin and to contribute to achieving the Basin water charging objectives and principles set out in the Water Act. IPART is required to apply pricing principles we developed when making its decision and provide information to us on request to enable it to monitor and enforce the accreditation arrangements and the water charge rules.

On 21 March 2016 we signed a memorandum of understanding (MOU) with IPART relating to our respective roles under the Water Charge (Infrastructure) Rules and other relevant legislation. The MOU sets out arrangements to promote effective communication, cooperation and coordination between IPART and us regarding our respective legislated roles in the Basin. It seeks to improve consistency in regulatory approaches and contribute to the achievement of the Basin water charging objectives and principles.

Water Act and water charge rules review

Under the Water Act, the ACCC is required to provide advice to the Minister on the making, amending or revoking of water charge rules and water market rules. Acting on the recommendations of an independent review of the Water Act, in December 2014 the Minister requested that we provide advice on possible amendments to the water charge rules. The water charge rules regulate the charges imposed on rural water users in the Murray-Darling Basin. The current rules have been in place for five years.

We issued its draft advice on 24 November 2015 following an extensive period of stakeholder consultation. The consultation included eight regional forums across the Basin and individual consultations with water service infrastructure operators, regulators and government departments. We also received 28 public submissions in response to an issues paper.

Our focus was to improve transparency around charging arrangements, promote efficient and sustainable use of water infrastructure, and reduce the regulatory burden on infrastructure operators. In line with the review's terms of reference, we proposed changes to reduce the red tape burden for infrastructure operators while increasing safeguards for irrigators and other water users.

The draft advice set out stakeholder views and our reasoning for proposals to:

- promote a 'level playing field' by streamlining the application of the rules to apply to all infrastructure operators, by removing distinctions based on size, ownership structure and the purpose for which they deliver water
- remove overly prescriptive reporting requirements on medium-sized operators to produce network service plans. These plans were costly for operators and little valued by customers
- improve pricing transparency requirements so that water users have confidence in how charges are determined and how charges relate to service provision
- expand protections against charging arrangements that unfairly advantage some customers over others
- prevent discriminatory charges being unreasonably imposed by infrastructure operators when irrigators engage in trade
- reduce regulatory cost and complexity for infrastructure operators by returning the role of regulatory determinations to the economic regulators in each Basin State where possible
- merge the three sets of water charge rules into one.

We received 32 submissions in response to the draft advice, expressing a diversity of views.

Our final advice will be provided to the relevant Minister in August 2016.

Monitoring activities

We monitor regulated water charges, transformation arrangements and compliance with rules made under the Water Act across the Basin. We report annually on the monitoring results.

We provided our annual water monitoring report to the Minister in May 2016, relating to the 2014–15 water year. Our *Water Monitoring Report* was released publicly on 6 June 2016 and is available on our website.

Enforcing water industry-specific laws

We enforce the water market and water charge rules made under the Water Act. In carrying out this role, we pursue a risk-based approach aimed at fostering a culture of compliance among regulated water stakeholders and minimising the risk of their policies and practices causing harm to water users or impeding the functioning of water markets.

Issues related to pricing transparency have been an important part of our compliance agenda. These include:

- accuracy of the schedule of charges (ensuring the inclusion of all regulated charges on bills)
- timeliness of making available the schedule of charges
- how operators pass through bulk water and other charges and represent this on the schedule of charges.

Through our compliance and enforcement activities we have raised awareness of the rights and obligations of water stakeholders under the rules. As a result of this, we have seen improvements in pricing transparency and the ability of water users to access water markets without unreasonable delay or cost.

During consultations for the water charges rules review, we have engaged with stakeholders on a broad range of compliance and policy issues. This has been an important input informing our compliance approach. During 2015–16 we addressed a number of water charging related queries and complaints and undertook several preliminary investigations. Some of these focused on key pricing obligations under the water charge rules while others raised issues of conduct under the Act and the ACL. A number of the issues investigated were also relevant to preparing our final advice to the Minister on the water charge rules review.

Analysis of performance:

Fuel price monitoring

Deliverable 3.2 Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

The ACCC's work in fuel price monitoring contributes to Deliverable 3.2.

We monitor the downstream petroleum industry, including the refining, importing, wholesale and retail sectors, as directed by the Minister under Part VIIA of the *Competition and Consumer Act 2010* (the Act).

We do this because of the high level of community concern about fuel prices and the degree of competition in the Australian petroleum industry.

To fulfil our responsibilities in this area we keep abreast of industry developments and provide timely information and advice to government and the public.

Our fuel monitoring program has three broad objectives:

- to comply with the direction of the Minister for Small Business by analysing prices, costs and profits in the downstream petroleum industry
- to improve consumer awareness by increasing the information available about the petrol industry
- to focus on areas where competition may be less effective and on industry conduct that we may need to consider more closely.

This year our priority relating to fuel price monitoring was to provide quarterly petrol monitoring reports and undertake market studies, under revised directions on petrol monitoring from the Minister.

The section below discusses our outcomes in this priority area.

Implementation of new fuel monitoring arrangements

In December 2014 the then Minister for Small Business, the Hon. Bruce Billson MP, gave the ACCC a new direction³ to monitor prices, costs and profits of unleaded petroleum products in Australia for three years, and report at least four times per year. These arrangements enable the ACCC to undertake more timely and targeted monitoring and analysis of particular topics and fuel markets that are of concern to consumers.

Quarterly petrol monitoring reports

In 2015–16 the ACCC published four quarterly petrol monitoring reports, which provided analysis and commentary on a number of topics. These included movements in:

- international crude oil and refined petrol, diesel and LPG prices
- wholesale petrol prices
- average retail prices in all capital cities and around 190 regional locations
- the AUD–USD exchange rate.

³ The new direction is available at <http://www.accc.gov.au/system/files/Ministerial%20direction%20%26%20letter%202014.pdf>

The reports also provided analysis of issues such as gross retail margins (that is, the difference between retail prices and wholesale prices), price differentials between regional and city locations, and petrol price cycles, as well as reporting on developments in the industry and ACCC activities over the quarters.

Regional petrol market studies

Under the new petrol monitoring arrangements implemented in 2015, we undertook a number of 'micro' petrol market studies in targeted regional locations. These studies aim to explain each component of the petrol prices paid at the bowser to understand why prices are higher in some regional locations. Companies throughout the supply chain were required to provide us with information under the compulsory information-gathering powers it has under s. 95ZK of the Act.

In March 2015 we announced that Darwin would be the location of the first regional petrol market study. We released the Darwin fuel market study report on 23 November 2015. The report concluded that higher retail petrol margins in Darwin had imposed a significant cost on motorists. Prices in Darwin in recent years were around 10 cents per litre higher than would be expected in a competitive market.

There were essentially two main reasons for the high prices and profits in Darwin: the decrease in the number of independent retail sites; and weak retail competition. As a result of increased scrutiny on petrol prices in Darwin, including through our market study, average petrol prices decreased during 2015–16.

Petrol market studies continued in Launceston and Armidale during 2015–16.

On 19 April 2016 we announced that Cairns would be the location for the fourth petrol market study. We announced that on conclusion of the four regional market studies we would review the overall lessons learned and how they may apply in other areas.

Informing stakeholders

We updated fuel-related consumer and industry information through the year on our website. The fuel-related web pages were some of the most visited on the website. Making pricing information constantly available to consumers improves price transparency, allowing them to make better informed purchasing decisions and therefore creating greater competition in petrol pricing. The petrol price cycles web page also showed movements in average prices of petrol in each of the five largest cities, along with consumer buying 'tips'.

Engagement with stakeholders included responding to representations from members of parliament on behalf of constituents about fuel-related matters and fielding fuel-related enquiries referred from the ACCC Infocentre and other line areas of the ACCC. ACCC staff also participated in public forums on fuel-related issues, including the Queensland Government's fuel summit in March 2016.

We also hosted two meetings of the ACCC Fuel Consultative Committee in 2015–16. The committee was established in 2010 to provide an opportunity for dialogue between the ACCC, the fuel industry and motoring organisations. The information shared increases our understanding of fuel industry issues and assists us in undertaking our role on issues related to competition and consumer protection in the fuel industry. Matters discussed in 2015–16 included implementation of our new petrol monitoring arrangements, and industry and motoring groups' views on the implications of ethanol and biofuels mandates in NSW and Queensland. New fuel price information arrangements, which arose from the undertaking given by Informed Sources to the ACCC in December 2015 to resolve proceedings relating to petrol price information sharing, were also discussed.

Analysis of performance: National infrastructure regulation— rail, wheat exports, airports, stevedoring and post

Deliverable 3.1	Deliver network regulation that promotes competition in the long-term interests of end-users
Deliverable 3.2	Provide industry monitoring reports to government in relation to highly concentrated, newly deregulated or emerging markets

Beyond those covered in the chapters above, the ACCC has industry regulation responsibilities in a number of major infrastructure sectors of the economy. These include:

- airports
- ports and shipping
- wheat export infrastructure
- rail
- postal services
- financial market infrastructure.

Our work in these areas contributes to deliverables 3.1 and 3.2, as it encompasses both regulation and monitoring.

The government has asked us to regulate or monitor these sectors because suppliers of these services are either monopolies or only face limited competition. This means that the suppliers do not have the same incentives to deliver high quality services or keep prices down as they would in a more competitive industry. Regulation can produce better outcomes for consumers by requiring suppliers to offer their services in a manner that is more reflective of a competitive industry. For other sectors, monitoring helps to inform government of whether regulation is required and may act as a deterrent to firms taking advantage of market power.

In relation to Australia’s four major airports, we monitor and publish information about prices, costs, profits and service quality of aeronautical services and facilities. We also monitor the prices, costs and profits and quality of car parking services at those airports.

We also have a role in assessing notifications by Airservices Australia of increases in prices for terminal navigation, en-route navigation, and aviation rescue and fire-fighting services. Under the Act, we can decide whether or not to object to the proposed price increases.

Similarly, we have a role in assessing proposed price increases by Sydney Airport Corporation Ltd for regular public transport air services operating wholly within New South Wales. After assessing the proposed increases we can decide whether to object or not object.

In the container stevedoring industry we monitor performance, including prices, costs and profits of container terminal operators at the ports of Adelaide, Brisbane, Fremantle, Melbourne and Sydney. We report to the government and community on our findings.

We also have a role under Part X of the Act in relation to international liner cargo shipping. There are limited exemptions from certain provisions of the Act for registered international liner cargo shipping conferences. A ‘liner conference’ or ‘shipping conference’ is an agreement between two or more shipping companies to operate a scheduled cargo service on a particular trade route under which particular shipping rates and terms of carriage

apply to the conference members. Under Part X the ACCC is responsible for investigating complaints about conference agreements.

In relation to wheat export port terminal services, our responsibilities include monitoring and assessing compliance with the Wheat Port Code, and making determinations on whether a port terminal service provider is exempt from requirements under the code. We also assess and approve capacity allocation systems of terminal operators.

In the rail sector our responsibilities include assessing and administering access undertakings proffered by the Australian Rail Track Corporation (ARTC). The interstate access undertaking, accepted by the ACCC in 2008, facilitates competition by regulating access for freight and passenger services on the interstate rail network leased by ARTC. The Hunter Valley access undertaking, accepted in 2011, regulates terms and conditions for access to the Hunter Valley rail network in New South Wales, which is predominantly used to ship coal to the Port of Newcastle for export.

Our involvement in regulating postal services involves assessing notifications from Australia Post for increases in the price of monopoly services, including the basic postage rate, and monitoring for cross-subsidies between Australia Post's monopoly and contestable services. A further role involves inquiring into disputes about the terms and conditions on which Australia Post provides bulk mail services to users.

We also have a developing role in relation to financial market infrastructure. We have participated in working groups of the Council of Financial Regulators to explore the development of competition for clearing and settlement services for cash equities.

This year our priorities relating to these infrastructure sectors were:

- assessing access undertakings under Part IIIA and price notifications under Part VIIA of the Act
- consideration of applications for exemptions from the Wheat Code from wheat port terminal operators.

The section below discusses our outcomes in these priority areas and other significant areas.

Airports and air services

The ACCC monitors the prices, costs and profits of aeronautical and car parking services at Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports under Part VIIA of the Act. Under the *Airports Act 1996*, we also monitor the quality of the aeronautical services and facilities provided at monitored airports. We publish our monitoring results in the annual Airport monitoring report.

The Australian Government has directed the ACCC to monitor the four major Australian airports until June 2020 owing to concerns that airports could use their position to earn monopoly profits to the detriment of consumers. The ACCC does not set prices for airport services.

The 2014–15 *Airport monitoring report* was released in March 2016. It found that, while domestic passenger growth was relatively flat with an increase of 0.7 per cent, international passenger growth was 3.7 per cent. This growth in international passenger numbers and the higher fees international passengers attract resulted in three of the monitored airports reporting increases in aeronautical revenue of between 1.8 and 10.7 per cent in real terms.

As the only suppliers of car parking on the airport grounds, the four monitored airports continued to earn significant profits from car parking. All airports apart from Perth Airport reported increases in car park aggregate margin. Return on sales for car parking revenue ranged from a high of 73.2 per cent for Melbourne Airport to a low of 63.7 per cent for Perth Airport.

Overall quality of service outcomes for the monitored airports was mixed during 2014–15. Brisbane Airport once again came out on top. Both Brisbane and Perth airports were rated in the ‘good’ category. The performance of the larger airports of Melbourne and Sydney placed them at the top end of ‘satisfactory’.

We took a closer look at airport rail links in the report on 2014–15. There are existing rail links at Brisbane and Sydney airports, while one is under construction in Perth. We found that, where rail links have been built, they have struggled to gain significant market share due to a variety of price and non-price factors. The relatively low patronage of these services suggests that airport rail has not provided a strong degree of constraint on airports’ car parking pricing. Furthermore, there is some evidence that airport rail competes more closely with other modes of transport, such as taxis and other public transport services.

Container stevedoring monitoring

The ACCC monitors the prices, costs and profits of container terminal operators at the ports of Adelaide, Brisbane, Fremantle, Melbourne and Sydney under a standing direction from the then Treasurer. As part of this role the ACCC releases an annual monitoring report which provides information to the government and the wider community about the state and development of Australia’s container stevedoring industry. This includes the industry’s operating performance and its levels of competition, productivity and investment.

Our *Container stevedoring monitoring report no. 17*, focusing on 2014–15, found that average stevedoring prices for the industry fell for the second consecutive year and, in real terms, are now at the lowest level recorded by the monitoring program.

The report noted that there has been significant capital investment by the stevedores over the last three years. New entrant Hutchison Ports Australia has been developing terminals in Sydney and Brisbane, while the incumbent stevedores have been investing in automation, cranes and other equipment.

While these are positive results the report identifies some of the challenges faced by new entrants seeking to establish themselves in the Australian stevedoring market. In particular, most major container ports have monopoly characteristics and can have a considerable impact on the costs and efficiency of stevedores and the supply chain. We are concerned that the existence of entrenched and inadequately regulated monopoly port operators is adding costs to the economy and effectively amounts to a tax on consumers and exporters.

The report also focused on opportunities to improve road, rail and sea connections to container ports, for example through road and coastal shipping reform measures.

Wheat export port terminal services

New code of conduct

On 30 September 2014 the Port Terminal Access (Bulk Wheat) Code of Conduct commenced, replacing the previous wheat port access regime under the *Wheat Export Marketing Act 2008 (Cth)*.

The code is a mandatory code of conduct prescribed under the Act. Its purpose is to regulate the conduct of port terminal service providers to ensure that exporters of bulk wheat have fair and transparent access to port terminal services. The regulations under the code include:

- an obligation on all port terminal operators to negotiate in good faith with wheat exporters for access to port terminal services
- an obligation to comply with continuous disclosure rules

- obligations on port terminal operators not to discriminate or hinder access in the provision of port terminal services
- the ability for wheat exporters to seek mediation or binding arbitration on terms of access in the event of a dispute
- obligations relating to publishing and ACCC approval for port loading protocols for managing demand for port terminal services
- publishing requirements.

The ACCC enforces the regulations in the code and has an ongoing role in monitoring compliance. We also have certain specific roles, including:

- assessing and making determinations on whether a port terminal service provider is an exempt provider (and, if appropriate, revoking such a determination)
- assessing and approving the capacity allocation system for a port terminal service provider.

Unlike the previous undertaking regime, the new code does not give us a role in arbitrating disputes between port terminal service providers and access seekers.

Exemptions

A priority for the ACCC in 2015–16 was consideration of applications from wheat port terminal operators for exemptions from the Wheat Code.

The code has two tiers of regulation, meaning some port operators may be exempted from some of the code requirements. Exempt service providers are not required to comply with Parts 3 to 6 of the code, including the non-discrimination obligation, recourse to arbitration, ACCC approval of port loading protocols, and publishing requirements.

The ACCC can make an exemption determination after having regard to a series of matters in the code, including the interests of exporters, the public interest in having competition and the legitimate business interests of the port operator.

The Minister for Agriculture can exempt a port terminal service provider from obligations under the code on the basis that it is a cooperative that meets certain characteristics defined in the code. The ACCC has no role in these cooperative exemptions.

Since the commencement of the code, we have conducted a series of exemption assessments of different geographic regions around Australia. Based on these assessments, we granted exemptions to GrainCorp Operations Ltd's Carrington port terminal at the Port of Newcastle as well as GrainCorp's Geelong port terminal and Emerald Grain Pty Ltd's Melbourne port terminal in 2014–15.

In 2015–16, we continued our assessments and granted the following exemptions:

- Newcastle Agri Terminal and Qube Holding Limited at Newcastle (30 July 2015)
- GrainCorp and Queensland Bulk Terminals Pty Ltd at their respective bulk wheat port terminals at the Port of Brisbane (24 September 2015)
- WA Chip & Pulp Company Pty Ltd at its Bunbury port terminal (24 September 2015)
- GrainCorp and Quattro Ports at their respective port terminals at Port Kembla (1 April 2016)
- Patrick Stevedoring Pty Ltd at its Port Adelaide port terminal facility (1 April 2016).

Capacity allocation approvals

Under the code, the ACCC also has a role in assessing and approving proposed changes to the capacity allocation systems that port terminal operators use to allocate their port capacity.

On 3 December 2015 we approved Viterra Operations Ltd's application to introduce long-term agreements to allocate port capacity at its six bulk wheat ports in South Australia. This decision followed Viterra submitting its initial application in March 2015, an extensive consultation process, and Viterra then lodging a revised proposal in November 2015.

Viterra's revised proposal substantially addressed concerns raised in our draft decision to not approve the initial application. Key amendments of the November proposal included a mechanism for the ACCC to review the initial long-term capacity allocation process and a reduction of the initial term of the agreements from five to three years.

Rail

The ACCC assesses and monitors compliance with access undertakings by rail access providers regarding rail track infrastructure ('below-rail' services). To date, only the Australian Rail Track Corporation (ARTC) has access undertakings in place with the ACCC. ARTC has one access undertaking for its Hunter Valley rail network in New South Wales and one for its national interstate rail network.

A priority for the ACCC in 2015-16 was assessing access undertakings under Part IIIA of the Act.

The Hunter Valley Access Undertaking (HVAU), which we accepted in 2011, regulates access to the rail network in the Hunter Valley leased by ARTC. The network is predominantly used to transport export coal from the region's mines to the Port of Newcastle in one of the world's largest coal export operations. It is also used for domestic coal and non-coal freight.

Annual compliance

The HVAU requires ARTC to annually submit documentation to the ACCC demonstrating its compliance with the financial model and pricing principles in the undertaking.

In June 2016 we finalised our assessment of ARTC's compliance documentation for the 2013 calendar year. We considered that ARTC had undertaken prudent capital expenditure and incurred efficient operating expenditure in accordance with the HVAU. However, we found that ARTC had not correctly reconciled its revenues and costs for 2013 as its proposed reconciliation was inconsistent with the principles set out in the undertaking and resulted in a cross-subsidy from one group of users to another.

This assessment involved extensive consultation with ARTC and other stakeholders, with four rounds of public consultation (including a draft determination in October 2015) and additional meetings and discussions throughout the process.

We considered a range of often opposing views from stakeholders relating to ARTC's reconciliation of its revenues and costs. Our view was informed by an independent consultant's comprehensive review of the costs of ARTC's Hunter Valley rail network.

ARTC was expected to resubmit its compliance documentation for the 2014 calendar year early in 2016-17, and to submit its compliance documentation for the 2015 calendar year later in 2016-17.

2016 Hunter Valley Access Undertaking

On 23 December 2015, ARTC submitted a new Hunter Valley Access Undertaking (2016 HVAU) to the ACCC for assessment. On 8 January 2016 we released a consultation paper, which subsequently received 12 stakeholder submissions. Overall, the stakeholder submissions reflected a view that it would not be appropriate to accept the 2016 HVAU in its current form.

ARTC withdrew the 2016 HVAU on 14 June 2016, and advised us of its intention to submit a revised undertaking for assessment. We continued to engage with the ARTC and stakeholders outlining our preliminary views on the withdrawn 2016 HVAU. Due to the timing of the withdrawal, ARTC sought to extend the 2011 HVAU (scheduled to expire in July 2016). The extension was accepted and the 2011 HVAU will now continue until 31 December 2016.

Postal services

Australia Post letter pricing

The ACCC is responsible for assessing notifications of proposed price increases for Australia Post's reserved letter services under s. 95Z of Part VIIA of the Act. We do not have the role of approving the proposed price increase. Rather, we are required to assess the proposed price increase and then notify Australia Post as to whether or not we object.

In addition to our assessment, Australia Post must give written notice to the Minister for Communications of its intent to vary its basic postage rate (BPR). Australia Post may increase the BPR only if the Minister does not disapprove the proposed increase within 30 days of receiving notification from Australia Post.

Decision on draft price notification

On 20 August 2015, Australia Post provided the ACCC with a draft price notification proposing a basic postage rate of \$1 for letters delivered at a new timetable, which allows an extra two business days for delivery to occur. Australia Post's proposal also included price increases for the delivery of large letters. Australia Post did not propose to increase the price of concession stamps or stamps for seasonal greeting cards.

The proposed rise in the BPR was aimed at increasing Australia Post's revenue from its reserved letter services so as to offset continuing losses as delivery volumes of these letters decline. Australia Post considered that its reserved letter business was not recovering its costs and, in the absence of price increases and efficiency reforms to its business practices, will experience further losses given that the volume of letters is expected to continue to fall.

On 27 November 2015 we released our view not objecting to Australia Post's draft price notification. Australia Post provided us with its formal price notification on 30 November 2015, which was consistent with its draft price notification. On 9 December 2015 we released our decision to not object to Australia Post's price notification.

In reaching this view we considered various factors. These included how efficient Australia Post is in managing the impact of declining letter volumes and the extent to which price increases are required. Prices were assessed with regard to Australia Post's ability to recover enough revenue to cover the efficient cost of providing a service, including a rate of return commensurate with the risks faced by the firm, without achieving excessive or monopoly profits.

As part of our assessment we undertook a review of Australia Post's forecast letter volumes and its forecasting method. We also considered Australia Post's allocation of costs to its ordinary letter services, the efficiency of its costs and its proposed business reform program to assess whether the proposed price increase would lead to an over-recovery of costs for letter services.

We considered it important that Australia Post continues to focus on achieving cost reductions and operational efficiencies, as any future proposals for price increases would involve the ACCC looking closely at Australia Post's progress in this area.

The ACCC found that Australia Post would not be likely to recover revenue in excess of its costs for postal services over the period to 2017–18 even with an increase of the postage rate to \$1.00.

Australia Post cross-subsidy assessment

The ACCC scrutinises Australia Post's regulatory accounts to determine whether the organisation is cross-subsidising its contestable services with revenue from its monopoly services. We have reported annually on our findings.

We issued our cross-subsidy report for 2014–15 on 14 April 2016. The report concluded that, as in previous years, the regulatory accounts did not show that Australia Post was cross-subsidising its contestable services.

Given that it is unlikely that Australia Post will be able to cross-subsidise its contestable services in future, we have decided to cease producing these reports.

Revisions to the Australia Post record-keeping rules

Following our decision to cease publication of the cross-subsidy report, we reviewed the record-keeping rules that apply to Australia Post's regulatory accounting framework. While we are legislatively obligated to have such rules in place, we revised the rules so that Australia Post will only be required to provide the information if we request it to do so. The revised rules took effect on 1 July 2016.

Financial market infrastructure

On 30 March 2016 the Australian Government responded to the review of competition in clearing Australian cash equities conducted by the Council of Financial Regulators with the assistance of the ACCC. The review included a consultation process during the first half of 2015 and a conclusions paper provided to the government in June 2015.

In its response, the government endorsed the conclusions and recommendations of the review. This included, among other things, implementing legislative changes to grant the ACCC an arbitration power to provide for recourse to binding arbitration in disputes about the terms of access to the Australian Securities Exchange's monopoly cash equity clearing and settlement services.

We are continuing to work with the Council of Financial Regulators and relevant stakeholders on the implementation of the recommendations in the review.

Supporting our performance—improving regulatory practices

Each year we seek to review and improve the way we apply regulatory practices. In 2015–16 we improved regulatory practices through a range of activities, including through those described here.

Regulatory Economic Unit

The ACCC Regulatory Economic Unit increases the quality of economic analysis available to the ACCC/AER and promotes the consistent use of economic principles across the different sectors that we regulate. Its economic specialists provide advice to all areas of the ACCC/AER, as well as researching and developing best practice regulatory techniques and contributing to economic discussion, debate and training on regulatory issues.

Industry engagement

The ACCC consults extensively as part of its regulatory processes, and has also established a number of forums for ongoing engagement with industry participants and other regulators, both nationally and internationally. The ACCC also participates in international activities to be at the forefront of developments in regulatory practice. These forums cover the range of regulatory functions that the ACCC performs and the variety of industry sectors with which we are involved.

Utility Regulators Forum

The Utility Regulators Forum is coordinated by the ACCC and comprises the ACCC/AER and state/territory and New Zealand regulators. Its meetings are an important vehicle for sharing regulatory practice between Commonwealth, state/territory and New Zealand economic regulators.

The forum meets every six months. The most recent meeting was held in June 2016.

ACCC/AER Infrastructure Consultative Committee

The Infrastructure Consultative Committee facilitates discussions on the broad issues of infrastructure and infrastructure regulation. Its members were selected to reflect the diversity of infrastructure interests. They include representatives from energy, telecommunication, water, rail, ports, and airports.

The committee meets every six months, most recently on 2 June 2016. At this meeting the ACCC outlined developments in advocacy on infrastructure and economic regulation, the east coast gas inquiry and the National Broadband Network (NBN) migration processes and outcomes. The AER provided updates on its work on network pricing, ring fencing and tariff reform.

The committee also provides an opportunity for industry representatives to give updates on issues affecting their sectors. For the ACCC and AER this is an important source of feedback from stakeholders in infrastructure sectors.

OECD Network of Economic Regulators

The ACCC participates in the OECD Network of Economic Regulators (NER) Forum. ACCC Commissioner Cristina Cifuentes sits on the board of the Bureau of the NER with seven representatives from other international regulators. The purpose of the NER Forum is to share learning on regulatory issues and develop best practices. Issues discussed at the most recent forum include building regulatory policy systems, stakeholder engagement, the role of regulators in the governance of infrastructure, and safeguarding regulators against undue influence.

ACCC/AER Regulatory Conference

The ACCC and AER host an annual regulatory conference, which brings together industry participants, policy makers, academics and regulators from around the world to consider the latest ideas about regulatory theory and practice.

The ACCC and AER Regulatory Conference was held in Brisbane on 6–7 August 2015 and was attended by more than 400 delegates. The conference provided an opportunity for local and international experts to discuss current and emerging issues affecting all regulated infrastructure sectors. The conference was organised under the broad theme of 'Better regulatory outcomes; less regulatory burden'. Issues covered included the features of good regulatory performance, implications of technological advancements in infrastructure sectors, regulatory flexibility and certainty and the use of benchmarking in regulatory determinations.

Program 1.2

Australian Energy Regulator

Strategy 4: Promote efficient investment in, operation of and use of energy services

Summary of performance

Promote efficient investment in, and efficient operation and use of, energy services for the long-term interests of consumers with respect to price, quality, safety, reliability and security

Role

Strategy 4 is the Australian Energy Regulator (AER) strategy, which reflects the objectives of the national energy legislation. This strategy is important because it is about ensuring consumers pay no more than necessary for a reliable supply of energy. The AER operates under the *Competition and Consumer Act 2010* (the Act) to promote a competitive, innovative and flexible energy sector with adequate consumer protections by applying:

- incentive regulation to natural monopoly infrastructure elements of the supply chain (energy networks)
- a compliance and enforcement regime to contestable segments (wholesale and retail markets).

In 2015–16, we regulated energy markets and networks in eastern and southern Australia, as well as networks in the Northern Territory. Our functions included:

- setting the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires, and gas pipelines), and ensuring that networks comply with electricity and gas laws and rules
- wide-ranging responsibilities in retail energy markets, including:
 - providing the Energy Made Easy comparator website (www.energymadeeasy.gov.au)
 - enforcing compliance with retail legislation
 - authorising retailers to sell energy
 - approving retailers' policies for dealing with customers in hardship
 - administering the national Retailer of Last Resort scheme
 - reporting on retailer performance and market activity
- monitoring wholesale electricity and gas markets to ensure compliance with legislation and rules, taking enforcement action where necessary
- publishing information on energy markets, including the annual *State of the energy market* report.

Deliverables

Deliverable 4.1	Provide effective network regulation
Deliverable 4.2	Build consumer confidence in retail energy markets
Deliverable 4.3	Support efficient wholesale energy markets

Priorities

The AER's priorities for 2015–16 were:

- delivering regulatory outcomes to promote efficient investment in energy network services that customers value, including preparing for the application of the National Electricity Law in the Northern Territory
- building consumer confidence in retail energy markets, including by applying the National Energy Customer Framework in Queensland for the first time.

Powers

The AER applies the following laws, regulations and rules, which together make up the national energy legislation and rules:

- National Electricity Law
- National Electricity Regulations
- National Electricity Rules
- National Energy Retail Law
- National Energy Retail Regulations
- National Energy Retail Rules
- National Gas Law
- National Gas Regulations
- National Gas Rules.

In Victoria the AER also regulates cost recovery for mandated smart metering infrastructure under the Victorian *Electricity Act 2000*.

Table 3.76: Resources for Strategy 4

Actual for 2015–16	
Expenditure (millions)	\$37.06
Average staffing level	161.2

* Each figure includes an allocation for corporate overheads, legal and economic advice and executive support

Performance indicators

Deliverable 4.1: Provide effective network regulation

This deliverable is about regulation that promotes economically efficient investment in, and efficient operation and use of, energy network services for the long-term interests of consumers. Such regulation also supports competition in upstream and downstream markets.

Table 3.77: Performance indicators for Deliverable 4.1

Performance indicator	Annual target	Outcome
Number of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed	11	11
Percentage of revenue reset determinations for electricity networks and gas pipelines and distribution networks completed within statutory timeframes	100%	27% (eight decisions for electricity and gas networks due 30 April 2016 were released 26 May 2016)
Number of annual tariff approval applications assessed	26	26
Number of annual benchmarking and performance reports for electricity networks	2	1 (benchmarking report completed; performance report outstanding)

Deliverable 4.2: Build consumer confidence in retail energy markets

This deliverable is about ensuring that consumer confidence—which is essential to effective participation in markets—is strong enough to drive competitive outcomes and innovation. We seek to empower consumers in retail energy markets through activity to raise awareness and understanding of their rights and choices.

Table 3.78: Performance indicators for Deliverable 4.2

Performance indicator	Annual target	Outcome
Number of annual reports on compliance in, and performance of, retail energy markets	2	2
Number of retailers' hardship policies and proposed amendments assessed	N/A (externally driven)	7
Percentage of retailers' hardship policies and proposed amendments assessed within 12 weeks of receiving all relevant information	100%	85%
Number of retail authorisations/exemptions assessed	N/A (externally driven)	8 authorisations 51 individual exemptions

Performance indicator	Annual target	Outcome
Percentage of retail authorisations/exemptions applications assessed within 12 weeks of receiving all relevant information	100%	75%
Support the timely transfer of affected customers in the event of a retailer failure	N/A (externally driven)	1 electricity RoLR event (Go Energy) 1 gas RoLR event (Go Energy)
Number of formal energy retail enforcement interventions (court proceedings commenced, s. 288 (NERL) undertakings accepted, infringement notices issued)	N/A (externally driven)	0 court proceedings 1 s. 288 undertaking accepted 26 infringement notices issued and paid
Percentage of new/replacement offers published on Energy Made Easy website within 48 hours of receipt from retailers	100%	100%

Deliverable 4.3: Support efficient wholesale energy markets

This deliverable is about conducting monitoring activities that allow the AER to assess whether the market is operating efficiently and, where we identify issues, to take action to prevent further detriment. Targeted enforcement action encourages broad compliance across the market.

Table 3.79: Performance indicators for Deliverable 4.3

Performance indicator	Annual target	Outcome
Number of quarterly compliance reports on wholesale markets and networks	4	4
Percentage of quarterly compliance reports published within six weeks of the end of the quarter	100%	50%
Audit the compliance systems of selected energy businesses, and report on outcomes	2	2
Number of weekly electricity and gas monitoring reports	104	104
Percentage of weekly reports published within 12 business days of the end of the relevant week	75%	94%
Number of reports on extreme price events in wholesale electricity and gas markets	N/A (externally driven)	7
Percentage of reports on extreme price events in wholesale electricity and gas markets published within statutory timeframes	100%	100%
Number of targeted reviews of compliance with the national energy rules	4	4
Publish the State of the energy market report	Yes	Yes

Factors affecting performance

The AER's focus in 2015–16 reflected challenges posed by our operating environment and market conditions. In particular, a continuing peak in the timing of regulatory reviews of energy networks obliged us to focus closely on our core legislative role in setting energy network revenues. A high work-load and the need to address the Australian Competition Tribunal's decisions on the appeals by New South Wales and ACT businesses, meant that our decisions for Victorian electricity distributors and gas networks were delayed by one month.

While the peak in regulatory reviews will ease in 2016–17, the impact on resourcing will likely be offset by ongoing appeals processes relating to our decisions.

Recent developments and policy reviews relating to wholesale energy markets led us to divert resources to those processes, with the aim of improving market efficiency. Much of this activity related to upstream gas markets.

Reprioritisation of our wholesale and retail market branch resources throughout the year meant that, while all required work was completed, some target deadlines for producing this work were missed.

Energy markets are undergoing significant change and require a flexible approach to managing resources. Future challenges include the emergence of new technologies and selling models in retail energy markets. We are aware of these challenges, which are a key focus of our strategic planning.

AER reporting

This annual report meets the AER's formal reporting requirements under the *Public Governance, Performance and Accountability Act 2013* and s. 44AAJ of the *Competition and Consumer Act 2010*. The AER publishes a separate annual report (available on the AER website) to provide more detail on its performance indicators, as well as information on activities, staff and expenditure.

Analysis of performance:

Provide effective network regulation

Deliverable 4.1 Provide effective network regulation

The AER's role in network regulation falls into two broad categories. First, we determine the amount of revenue that network businesses can recover from customers' use of regulated energy networks (electricity poles and wires, and gas pipelines). Second, we undertake broader regulatory oversight roles; some roles recur regularly (such as annual tariff approvals) while the timing of others is unpredictable (such as assessing cost pass throughs and resolving connection disputes).

Network revenue decisions

In 2015–16 we regulated electricity networks and covered gas pipelines in all jurisdictions other than Western Australia. Our regulatory functions for Northern Territory electricity networks commenced on 1 July 2015.

One of our 2015–16 priorities for the AER strategy was to deliver regulatory outcomes to promote efficient investment in energy network services that customers value, including preparing for the application of the National Electricity Law in the Northern Territory. We applied a new regulatory framework to deliver regulatory review outcomes that achieve this priority.

Network businesses must periodically submit (usually every five years) regulatory proposals (electricity) and access arrangements (gas) for the AER's approval. We assess the proposals with regard to legislative criteria, taking account of issues raised in consultation. Network businesses can appeal our decisions to the Australian Competition Tribunal.

In determining allowable revenues, we must account for the efficient costs of providing network services, allowing an adequate return on capital to network owners. We undertake extensive consultation in making network revenue determinations. In electricity reviews we publish a framework and approach, then an issues paper, draft decision and final decision. In gas reviews we publish a draft decision and final decision. Additionally we hold public forums and consult with network businesses and other stakeholders, including consumer representatives, governments and investment groups. The Consumer Challenge Panel advises us on issues important to consumers. We also consult with state and territory consumer representative groups.

In 2015–16, we completed eight electricity network revenue determinations and three gas network access arrangement reviews, and progressed a further six processes (table 3.81).

In our decisions we applied the Better Regulation guidelines encouraging network businesses to deliver services efficiently. The guidelines cover matters including:

- our process for setting efficient network expenditure and benefit sharing with consumers
- the approach to setting rates of return on network investments
- customer engagement.

In making our decisions we also applied benchmarking techniques to assess the comparative efficiency of forecast expenditure by network businesses.

Table 3.80: Regulatory reviews in 2015–16

Jurisdiction	Business(es)	Determination period	Status
Electricity transmission networks			
Queensland	Powerlink	1 July 2017–	Regulatory proposal received 28 January 2016
NSW	TransGrid	1 July 2018– 30 June 2023	Framework and approach process commenced December 2015
Victoria	AusNet Services	1 April 2017– 31 March 2022	Issues paper released 11 December 2015
SA	ElectraNet	1 July 2018– 30 June 2023	Framework and approach process commenced December 2015
Vic–SA	Murraylink interconnector	1 July 2018–	Framework and approach process commenced December 2015
Electricity distribution networks			
Queensland	Energex Ergon Energy	1 July 2015– 30 June 2020	Final determinations released 29 October 2015
SA	SA Power Networks	1 July 2015– 30 June 2020	Final determination released 29 October 2015
Victoria	AusNet Services Jemena CitiPower Powercor United Energy	1 January 2016– 31 December 2020	Preliminary determinations released 29 October 2015 Final determinations released 26 May 2016
Tasmania	TasNetworks	1 July 2017– 30 June 2019	Framework and approach released 9 July 2015 Regulatory proposal received 29 January 2016
Gas transmission pipelines			
NT	Amadeus Pipeline	1 July 2016– 30 June 2021	Draft access arrangement decision released 26 November 2015 Final access arrangement decision released 26 May 2016

Gas distribution networks

SA	Australian Gas Networks	1 July 2016– 30 June 2021	Draft access arrangement decision released 26 November 2015 Final access arrangement decision released 26 May 2016
ACT	ActewAGL	1 July 2016– 30 June 2020	Draft access arrangement decision released 26 November 2015 Final access arrangement decision released 26 May 2016

Addressing the regulatory process more generally, we:

- finalised a revised roll-forward model for electricity transmission determinations, which adjusts the approach to recognising capital expenditure and depreciation, and allows for annual updating of the return on debt
- continued to refine our database for collecting, storing and reporting on the large volumes of information received from network businesses.

Appeals against regulatory decisions

Network businesses, consumer groups and others participating in our processes can apply to the Tribunal for a limited merits review of our regulatory decisions. A successful review must demonstrate that addressing the grounds of review would lead to a 'materially preferable outcome in the long-term interests of consumers'. If the Tribunal finds that the AER has erred, it can substitute its own decision or remit the matter back to the AER to remake the decision. A network business, consumer or party that has lodged a submission to the AER's process may also apply to the Federal Court for judicial review of the AER decision or the Tribunal decision.

New South Wales and ACT networks

In May 2015 the New South Wales (electricity and gas) and ACT (electricity) distribution networks applied to the Australian Competition Tribunal for a limited merits review of our regulatory decisions for those networks made in April 2015. The grounds for review focused on rate of return issues and the use of operating expenditure benchmarks. The Public Interest Advocacy Centre also applied for a Tribunal review of our decisions on the New South Wales electricity distribution networks, contending the revenues we allowed are too high.

On 26 February 2016 the Tribunal handed down its decisions. While the Tribunal did not accept the revenues proposed by the businesses, it remitted to the AER the decisions on operating expenditure to reconsider using a broader range of modelling and benchmarking, and a bottom-up review of operating costs (electricity networks only) and the transition to a new method for estimating return on debt (all networks). Additionally the Tribunal substituted an alternative value of gamma (relating to tax imputation credits) for all networks.

The Tribunal found no error in the AER's decisions in relation to return on equity; efficiency benefit sharing and service target performance incentive schemes; and metering issues, although a reconsideration of the decision on operating expenditure may require some aspects of those areas to be also reconsidered.

The AER appealed the Tribunal decisions to the Full Federal Court. The appeals will be heard in October 2016.

Other appeal processes

South Australian Power Networks was granted leave in May 2016 to seek merits review of the AER's November 2015 revenue decision on the network. The Tribunal will conduct the merits review in August 2016. The Victorian electricity distribution networks and ACT gas distribution network have also sought merits review of the AER's May 2016 revenue decisions.

Oversight of network regulation

The AER's role in network regulation extends beyond making network decisions and approving access arrangements to a wide range of broader regulatory oversight roles.

Tariff assessments

The AER conducts annual reviews of tariffs for electricity distribution services and gas pipeline charges to ensure that they do not breach revenue or pricing limits and that they reflect underlying costs.

In 2015-16 we reviewed and approved tariff applications from 13 electricity distribution businesses and 11 gas transmission and distribution businesses. The proposals related to prices applying in 2016-17 (2016 for Victoria).

In 2015-16 we commenced our new role in assessing tariff structure statements for electricity distribution network businesses. The statements provide for network tariffs that better reflect the costs of supplying electricity to consumers. Pricing reforms will provide better signals to consumers on the timing of their consumption and investment in new appliances and technology. The reforms will also provide incentives for more efficient network investment. We will complete the assessments in 2016.

Cost pass-throughs

We assess applications by network businesses to pass through to customers costs arising from events outside their control that were not anticipated when their regulatory decisions were made.

Before approving a pass-through, we must consider the efficiency of the expenditure and actions to mitigate costs. In 2015-16 we approved eight cost pass-through applications, including for:

- the cost of restoration works on the New South Wales transmission network following storms in April 2015
- costs incurred by the Queensland networks under the Queensland Government Solar Bonus Scheme, which pays owners of solar panels for electricity they supply into the grid
- easement land tax costs for the Victorian electricity transmission network
- increased costs arising from a gas mains replacement program for a distribution network in Victoria, as the network business, Multinet, delivered a trigger volume of mains replacement
- a reduction in tax costs following a favourable tax ruling in respect of a network's participation in the Victorian Government's Powerline Replacement Fund program.

Incentive schemes

We operate incentive schemes for network businesses to improve their performance. We also administer the schemes and monitor compliance.

Electricity transmission incentives

The AER's service target performance incentive scheme for electricity transmission networks encourages the network businesses to maintain or improve service reliability in a way that customers value. The scheme promotes network development that supports efficient wholesale electricity prices. The network capability component applied to the South Australian network for the first time from 1 July 2015.

In May 2016 we completed our review of how the seven transmission networks in the national electricity market performed against the scheme for the 2015 calendar year. The businesses received incentive rewards totalling \$52 million.

On 17 September 2015, we launched an amended scheme to ensure that it continues to provide value for money by:

- introducing financial incentives for aspects of the service component
- making the market impact component symmetrical by introducing financial penalties for underperformance
- pro-rating financial incentive payments to the annual average cost of approved projects under the network capability component and strengthening the ex-post assessment of projects.

The amendments will first apply to upcoming determinations for the Victorian and Queensland networks in 2017–22.

Electricity distribution incentives

Our service target performance incentive scheme for electricity distribution networks encourages the network businesses to maintain or improve performance to benefit end users. It aims to ensure efficiencies are not achieved at the expense of service performance. We review businesses' performance against the scheme annually.

We also assess expenditure by distribution businesses under the demand management innovation allowance (DMIA).

In April 2016, we made decisions on the compliance of 13 energy networks with the DMIA scheme. We approved expenditure totalling \$16.3 million for the Queensland, New South Wales, South Australian and ACT businesses for the first period of the scheme's operation. In July 2016, an additional \$11.8 million was approved for the Victorian and Tasmanian businesses.

Victorian fire reduction incentives

The AER administers the f-factor scheme—a scheme introduced by the Victorian Government to provide incentives for Victorian distribution networks to reduce the risk of fire starts from electricity infrastructure and to reduce the risk of loss or damage caused by fire starts.

For the first four years of the f-factor scheme (2012–15), distribution networks are rewarded or penalised \$25 000 per fire below or above their respective targets.

On 11 September 2015 the AER released its determination for 2014 outcomes. All Victorian distribution network service providers except AusNet Services received a penalty for exceeding the benchmark number of fire starts. The penalties ranged from \$15 000 for CitiPower to \$2 245 000 for United Energy. AusNet Services received a \$1 870 000 reward for achieving a below-benchmark number of fire starts.

Complaints and dispute resolution

A customer who is dissatisfied with a connection offer from a distribution network business may request a review by the AER. In 2015–16 we received requests relating to:

- eight electricity connection disputes, of which seven were resolved and one is still under investigation. The connection charges of two customers were substantially reduced
- two gas connection disputes, both of which were resolved with no changes to the distributors' original quotes.

We also investigate customer and stakeholder complaints and advise the complainants of our findings. If we find that a distribution business has breached its regulatory obligations, we use our enforcement powers to ensure future compliance

Performance reporting

The AER uses regulatory information notices to collect performance information from regulated network businesses. To support transparency and ensure stakeholders can access information affecting their interests, we publish the non-confidential information we receive.

In 2015–16 we published data on the operational and financial performance of electricity distribution networks in New South Wales, Queensland, South Australia, Tasmania and the ACT for 2014–15, and in Victoria for 2015.

In November 2015 we released our annual benchmarking reports for electricity network businesses on their relative efficiency over 2006–14. We also published economic benchmarking and category analysis regulatory information notice responses from the businesses for 2014–15 (2015 for Victorian businesses).

Policy input

We engage in policy reviews and rule changes relating to our network regulation role. We made submissions to a number of Australian Energy Market Commission (AEMC) rule change processes in 2015–16, including on:

- the demand management incentive scheme
- expanding competition in metering and related services
- supporting customers in embedded networks to access retail competition
- aligning electricity distribution and retail tariffs for small customers.

Network exemptions

The AER can exempt small electrical networks such as those in apartment buildings, shopping centres and industrial parks from registering with the Australian Energy Market Operator (AEMO). These networks are subject to a simplified regulation regime, administered by the AER, covering safety, metering, dispute resolution, network charging and access to retail competition.

Anyone who owns, operates or controls a small network can register with us as an exempt network service provider. We maintain a register on our website of the holders of network exemptions. Since commencing the register in 2012 we have processed around 2200 registrations.

Network planning and expansion

We monitor and enforce the compliance of electricity network businesses in applying regulatory investment tests for proposed new investment. We also have a role in resolving disputes over how the tests are applied.

In November 2015 we published a final decision increasing a number of the cost thresholds associated with the tests.

In June 2016 we submitted a rule change proposal to improve transparency in the planning of network replacement expenditure. We will work with the AEMC to progress this rule change in 2016–17. The rule change proposes to widen:

- the scope of the regulatory investment tests to cover replacement capital expenditure (the tests currently only apply to augmentation expenditure)
- obligations on network businesses to report on asset retirement and replacement decisions in their annual planning reports.

The impetus for the rule change proposal has been recent growth in replacement expenditure as a proportion of all network investment, and the increasing viability of non-network alternatives to like-for-like replacement.

Analysis of performance: Build consumer confidence in retail energy markets

Deliverable 4.2

Build consumer confidence in retail energy markets

This deliverable aligns with one of the AER's priorities for 2015–16: to build consumer confidence in retail energy markets, including by applying the National Energy Customer Framework in Queensland for the first time.

The AER regulates retail energy markets in Queensland, New South Wales, South Australia, Tasmania (electricity) and the ACT. The Retail Law sets out consumer protections and obligations on energy retailers, including on how they market offers and help customers in financial hardship. We:

- maintain an energy price comparator website (www.energymadeeasy.gov.au) for residential and small business customers
- monitor and enforce compliance (by retailers and distributors) with obligations in the Retail Law
- oversee retail market entry and exit by assessing applications from businesses looking to become energy retailers, granting exemptions from the requirement to hold a retailer authorisation, and administering the national Retailer of Last Resort scheme to protect consumers and the market if a retailer fails
- report on the performance of the market and energy businesses (including information on energy affordability)
- approve customer hardship policies that energy retailers must implement for customers facing financial hardship and looking for help to manage their bills.

We do not set retail energy prices; rather, we guide and inform energy consumers so they can understand the range of energy offers available, make informed choices about those offers and be aware of their rights and responsibilities when dealing with energy providers. Our Energy Made Easy website is a key vehicle for providing this information in jurisdictions where the Retail Law operates.

We also produce publications (including new publications for consumers and consumer advocates) and web information on areas of the Retail Law.

In August 2015 we held events in Queensland, supporting its adoption of the National Energy Retail Law. The events included a workshop to increase community workers' energy literacy (conducted in collaboration with the Queensland Council of Social Services) and a local launch of our Energy Made Easy website.

Supporting consumers

Energy Made Easy

Our Energy Made Easy website (www.energymadeeasy.gov.au) includes a price comparator that shows all generally available offers to consumers, an electricity use benchmarking tool that allows households to compare their electricity use with that of similar-sized households in their area, and consumer information. The price comparison function was extended to Queensland on 1 July 2015.

In April 2016, we launched refinements to the site that make it easier for consumers to compare energy offers and for retailers to input offers. This followed a major redevelopment of the site in June 2015.

In 2015–16, Energy Made Easy had more than 400 000 visits. More than 5000 offers were published over the period, with approximately 2800 electricity and 280 gas offers available at any one time (including 345 from Queensland—311 electricity and 34 gas).

Retail pricing information guideline

We publish the *Retail pricing information guideline*, which mandates how retail energy prices are presented. The guideline aims to help customers to compare energy prices and make informed choices. It also gives direction to energy retailers about providing information for our price comparator website, Energy Made Easy.

We published a revised guideline in August 2015, which took effect from 1 February 2016. The changes reflect the enhancements to the Energy Made Easy website and aim to improve the quality and consistency of information given to consumers when entering retail contracts, allowing them to more easily compare offers in the market.

Hardship policies

Energy retailers must have a policy to help residential customers with payment difficulties to manage their bills. We assess retailers' hardship policies against the requirements in the Retail Law and monitors compliance with the policies. In 2015–16 we approved six new hardship policies and amendments to one existing policy.

Following our 2015 review of energy retailers' customer hardship policies and practices, we worked closely with stakeholders in 2015–16 to develop a voluntary sustainable payment plans framework to achieve better outcomes for customers experiencing financial difficulties. The framework aims to help customers and retailers agree on payment plans that are affordable and sustainable. It includes principles to guide retailers' conversations with customers on capacity to pay, and good practice actions and considerations for each stage of a payment plan.

Engaging with consumers

Customer Consultative Group

Our Customer Consultative Group help us understand consumer and small business concerns on retail energy issues. The group meets at least three times a year.

Topics discussed at the group's meetings in July and November 2015 and March and June 2016 included:

- the Go Energy Retailer of Last Resort events
- issues affecting small customers in a changing energy landscape
- regulatory arrangements for exempt selling
- current retail market compliance and enforcement priorities.

Other engagement

During 2015–16 the AER participated in forums and workshops to promote better consumer understanding of the energy framework and allow stakeholders to raise issues of concern to consumers:

- We participated in a number of events aimed at raising consumers' awareness of our Energy Made Easy website, as well as promoting our new consumer resources—such as translated and 'Easy English' factsheets and animated videos—to key stakeholder groups. The events included:
 - hosting stalls at Financial Counselling Australia's annual conference (Adelaide, May 2016) and Energy & Water Ombudsman New South Wales anti-poverty forum (Newcastle, October 2015)
 - working with stakeholder groups to increase community workers' energy literacy, included through workshops in collaboration with New South Wales Migrant Resource Centre (Liverpool, September 2015) and the Queensland Council of Social Services (Gold Coast, August 2015). We also presented on energy utility literacy at an expo organised by the University of South Australia for intellectually disabled tenants
 - hosting a stakeholder event for the launch of Energy Made Easy in Queensland (Brisbane, August 2015), following Queensland's adoption of the National Energy Retail Law. The launch generated significant media coverage.
- We engaged extensively with consumers, their representatives and other retail energy stakeholders in developing and reviewing AER guidelines and contributing to retail market policy issues. This engagement included:
 - conducting stakeholder workshops during the development of our sustainable payment plans framework, in late 2015 and early 2016
 - consulting on proposed revisions to our *Exempt selling guideline* and on exemption applications involving network conversions, also in late 2015 and early 2016. As part of these consultations, we held a public forum in October 2015.
 - providing input to retail market reviews and processes undertaken by regulators, industry and community groups.

Retail market entry and exit

The Retail Law requires a party selling energy 'to a person for premises' to either hold a national retailer authorisation or be exempt from that requirement. We are responsible for granting those authorisations and for the Retail Law's exempt selling regime. An authorisation allows a party to sell electricity or gas to any consumers in jurisdictions where the Retail Law operates.

Authorisations

A business must apply to the AER for an authorisation to sell energy. It must demonstrate appropriate capacity and suitability to perform as a retailer. We produce guidance for, and work closely with, potential new energy sellers during the application process to make sure they are aware of their obligations.

When we receive an application, we publish it on our website and seek submissions from interested parties before deciding whether to grant an authorisation. We granted electricity retailer authorisations in 2015–16 to:

- Savant Energy Power Networks Pty Limited, 3 July 2015
- 1st Energy Pty Ltd, 14 August 2015
- Urth Energy Pty Ltd, 21 August 2015

- Mojo Power Pty Ltd, 25 September 2015
- ElectrAg Pty Ltd, 19 November 2015
- Enova Energy Pty Ltd, 14 January 2016
- SparQ Pty Ltd (Sumo Power), 24 Feb 2016.

We also granted a gas retailer authorisation to Click Energy (24 March 2016) and were considering three authorisation applications at 30 June 2016.

Exemptions

Some energy sellers may be exempt from the requirement to obtain authorisation to sell electricity and gas. There are three types of exemptions:

- Deemed exemptions—for small-scale selling arrangements where the costs of registration would outweigh the benefits of increased regulation. A person covered by a deemed exemption need not apply to or register with the AER. Conditions generally apply.
- Registrable exemptions—for defined classes of energy selling activities that need regulatory oversight, usually because of scale and market impact. These exemptions apply to a particular person or company for a particular site. They must be registered with the AER. As at 30 June 2016 there were around 2080 published registrable class exemptions.
- Individual exemptions—for specific situations where the activity is not covered by a deemed or registrable exemption. In 2015–16 we granted 51 individual exemptions. Businesses selling electricity through solar power purchase agreements accounted for 33 of these exemptions, while retrofitting of existing sites to create embedded networks accounted for another 15.

Our *Exempt selling guideline* outlines the classes of deemed and registrable exemptions that apply, as well as the process for obtaining an individual exemption.

The energy market is evolving, and advances in technology—including energy storage—are creating new ways for businesses to sell energy. We revised our *Exempt selling guideline* in March 2016 to communicate our approach to assessing these alternative energy selling models and to provide further guidance to businesses looking to retrofit premises and create embedded networks. In particular, we highlighted that businesses retrofitting premises are generally limiting or removing their customers' access to retail competition and so are required to take additional steps to minimise or eliminate any negative impacts on customers.

Retailer of Last Resort

The AER manages the Retailer of Last Resort (RoLR) scheme. If an energy retailer fails, its customers are transferred to another retailer so that they continue to receive electricity and/or gas supply. In 2015–16 we:

- oversaw electricity and gas RoLR events for Go Energy Pty Ltd. Customers of the failed retailer in Queensland, New South Wales, South Australia and the ACT were transferred to default and additional RoLRs
- appointed default RoLRs for electricity and gas customers in South Australia; electricity customers on Ergon Energy's network in Queensland and NSW; and gas customers on Jemena's gas network in NSW
- appointed default electricity RoLRs for customers directly connected to transmission networks in various jurisdictions.

The AER must develop and maintain a RoLR plan and conduct regular RoLR exercises with plan participants.

We published an amended RoLR plan on 31 July 2015 incorporating improvements based on a review of outcomes from RoLR exercises and accounting for new Queensland-specific RoLR requirements.

We conducted a RoLR exercise for gas industry participants on 10 November 2015 and published a report on that exercise.

Compliance and enforcement

We employ various tools to monitor and enforce compliance with the Retail Law. They include:

- an exception reporting framework under which businesses must notify us within a given timeframe if they breach provisions
- a proactive monitoring program
- intelligence from our regular liaison with energy ombudsman schemes and consumer representatives
- complaints that we receive directly.

Our *Compliance and enforcement statement of approach* sets out how we go about these functions.

Enforcement action

The AER can respond to breaches by:

- accepting an administrative resolution
- seeking a court enforceable undertaking
- issuing an infringement notice of up to \$4000 for an individual or \$20 000 for a body corporate. We can issue an infringement notice if we have reason to believe that a business has contravened a civil penalty provision. Payment of an infringement notice penalty is not an admission of guilt, but finalises the matter
- starting court action with a civil penalty of up to \$20 000 for an individual or \$100 000 for a body corporate for each breach.

Infringement notices

In 2015–16 we issued 20 infringement notices to electricity distributors for allegedly failing to meet obligations to customers known to require life-support equipment. Nineteen of these related to failure to provide customers registered as using life-support equipment with the required four days' notice of planned interruptions to energy supply. For these infringements:

- SA Power Networks paid penalties of \$120 000
- Energex paid penalties of \$80 000
- Ausgrid paid penalties of \$60 000
- Ergon Energy and TasNetworks each paid penalties of \$40 000
- Endeavour Energy and Essential Energy each paid penalties of \$20 000.

ActewAGL Distribution paid a penalty of \$20 000 for allegedly failing to provide 473 customers registered as using life-support equipment with the information required to assist those customers to plan for a loss of supply. The businesses reported these incidents to us as required under the Retail Law and Rules.

We also issued six infringement notices to electricity retailers for allegedly failing to obtain explicit informed consent from customers before entering them into (or extending) gas and electricity contracts. Simply Energy paid penalties of \$80 000 and Red Energy paid penalties of \$40 000. Red Energy also provided us with a court enforceable undertaking that it will

not place customers whose retail contracts have expired on a new market contract without complying with the relevant provisions of the Retail Law, and will review and amend its compliance program.

Compliance checks

The AER periodically releases compliance checks for industry to highlight obligations and to emphasise the importance of effective compliance processes and systems. We may be made aware of issues that require guidance from retailer reports on their compliance with the Retail Law and Rules, or from discussions with ombudsman schemes.

In 2015–16, compliance reports from retailers recorded an increase in the number of breaches of the requirement to obtain explicit informed consent from customers before entering into market retail contracts with them. In response, we published a compliance check in November 2015 to highlight the provisions and provide general principles on obtaining consent.

We issued a further compliance check in April 2016 to remind retailers of their obligations around the presentation of their energy offers. This followed an AER review of retailer compliance with our amended retailer pricing information guidelines that came into effect on 1 February 2016.

Stakeholder forums

We held a forum in November 2015 for energy retailers, distributors and ombudsman schemes on findings in our 2014–15 annual compliance and performance reports. We also held a forum in April 2016 for distributors, focused on the protections for life-support customers under the Retail Rules.

Retail compliance report

In November 2015 we published our annual retail compliance report. The report covered compliance monitoring and enforcement activity in 2014–15 and priority areas for the coming year.

The report noted that, while the number of reported breaches from businesses was lower, the compliance issues were similar to those of previous years. Major issues included:

- life-support customers not receiving the required notice before their energy supply was interrupted
- disconnection of customers in financial hardship
- customers being placed on contracts without providing explicit informed consent.

Performance monitoring and reporting

We released our third annual retail market performance report (for 2014–15) on 23 November 2015. The report consolidated quarterly data on customer service and complaints, energy bill debt, payment plans, hardship programs, energy concessions and disconnections. It also reported on energy affordability.

In addition to a performance report, each quarter we publish key market and retail performance data on a range of indicators, including data on customer switching levels, customers experiencing payment difficulties, customer hardship, disconnections and reconnections, and complaints.

Analysis of performance: Support efficient wholesale energy markets

Deliverable 4.3

Support efficient wholesale energy markets

Wholesale market functions

The AER has responsibilities in wholesale electricity and gas markets in all jurisdictions other than Western Australia and the Northern Territory. The markets are:

- the national electricity market—an \$8.2 billion per year spot market in eastern and southern Australia, in which 336 generators compete to dispatch electricity
- spot markets for gas in Adelaide, Sydney, Brisbane and Victoria, in which 359 petajoules are traded each year; and gas supply hubs at Wallumbilla (Queensland) and Moomba (South Australia).

We monitor these markets to:

- ensure market participants comply with the underpinning legislation and rules
- detect irregularities and wider harm issues.

We report on these issues to strengthen market transparency and confidence. We draw on our monitoring work to support our compliance and enforcement activity; to advise the Council of Australian Governments (COAG) Energy Council, the AEMC and other bodies on wholesale market issues; and to assist the ACCC—for example, advising on mergers.

Wholesale market monitoring and reporting

We draw on our market monitoring function to publish weekly market reports, as well as special reports relating to significant price events.

In 2016–17 we may acquire a new role in monitoring the effectiveness of competition in the national electricity market, focusing on identifying features that impact on the market's efficient functioning. Our work would include publishing a market review at least every two years. In 2015–16 we engaged with the COAG Energy Council's consultation process on draft legislation to implement this workstream.

Significant event reporting

We publish a report whenever the spot price for electricity exceeds \$5000 per megawatt hour. We also report if an ancillary service price exceeds \$5000 per megawatt for a sustained period. The reports identify and describe factors contributing to the high prices such as rebidding, network issues, changes to demand and generator availability. We also report on significant price variations for gas.

During 2015–16 we published six reports on high price electricity events and one report on gas events:

- significant gas price variations in the Sydney hub of the short term trading market (on 13 and 23 January 2016)
- high electricity spot prices in New South Wales (on 23 September 2015 and 14 January 2016), Victoria (on 13 January 2016) and South Australia (on 13 January 2016)

- high electricity ancillary service prices in South Australia (on 11, 12 and 25 October 2015, 1 November 2015 and 26 March 2016).

All reports were published within statutory timeframes. A report on significant price variations in gas during June 2016 was scheduled for publication in August 2016.

Weekly reports on wholesale energy markets

We publish weekly reports on:

- activity in the national electricity market, including detailed analysis of extreme prices (those greater than three times the weekly average price in a region and above \$250 per megawatt hour, or those below -\$100 per megawatt hour) as they occur
- activity in the Victorian gas market; in the short-term gas trading markets operating in Adelaide, Sydney and Brisbane; and at the Wallumbilla and Moomba gas supply hubs.

We aim to publish the reports within 12 business days of the end of the relevant week. In 2015–16, we released 94 per cent of our reports within that timeframe.

State of the energy market 2015

On 18 December 2015 we published our ninth *State of the energy market report*, providing a user-friendly overview of energy market activity over the previous 12 to 18 months. It is written in accessible language to reach a wide-ranging audience. Our stakeholder surveys and other engagement provide consistently positive feedback on the report.

We update some data series, including on spot and financial market activity, every quarter on our website at www.aer.gov.au.

Wholesale market compliance and enforcement

Our *Compliance and enforcement statement of approach* sets out how we monitor compliance, how we respond to potential breaches, and factors we may consider when deciding whether to take enforcement action.

We take a risk-based approach to target and prioritise our monitoring and compliance activity. The risk assessment involves analysing and ranking each obligation to determine its compliance risk, taking into account both the impact and the probability of a breach.

Enforcement action

The AER can issue an infringement notice of up to \$4000 for an individual or \$20 000 for a body corporate if it has reason to believe that a business has contravened a civil penalty provision. Payment of an infringement notice penalty is not an admission of guilt but finalises the matter.

In 2015–16 we issued five infringement notices to generation businesses for failing to follow dispatch instructions from AEMO—two notices to CS Energy (in June 2016), two notices to ERM Power (in April 2016) and one notice to Origin Energy (in February 2016). CS Energy was issued a further two notices for failing to ensure that its generating units were able to comply with dispatch offers submitted to AEMO.

ERM Power and Origin Energy subsequently advised that they had taken action to reduce the risk of similar breaches recurring in future, including additional compliance training and implementing new systems and operating procedures. CS Energy provided court-enforceable undertakings committing to similar corrective actions.

Compliance reviews

During the year we targeted a number of compliance issues in wholesale energy markets.

In gas, we continued our focus on ensuring that participants comply with the information requirements of the National Gas Bulletin Board, which aims to make gas production and pipeline flows transparent. In 2015–16 we engaged with pipeline operators subject to new obligations following the introduction of the Curtis Island Demand Zone.

In electricity, we perform two technical audits of electricity generators or transmission network service providers each year. The audits assess whether participants have instituted and maintain robust and effective compliance programs consistent with good electricity practice. In 2015–16 we reviewed the performance standards compliance programs for EnergyAustralia's Yallourn Power Station and Snowy Hydro's Tumut 3 Power Station, and initiated a review of Origin Energy's Uranquinty Power Station. EnergyAustralia has implemented a number of minor changes to its processes to rectify issues that we identified in the review. We were largely satisfied with Snowy Hydro's approach to technical compliance.

We also undertook targeted compliance reviews of market participants' performance in providing information to AEMO, including:

- transmission network businesses' provision of outage information
- generators' provision of short-term plant availability data.

We also conducted a review of obligations around provision of interruptible load to AEMO.

Quarterly compliance reports

We publish quarterly reports on our compliance monitoring and enforcement activities in wholesale gas and electricity markets. The reports summarise the results of investigations (including special reports on significant market or power system events), compliance audits, targeted compliance reviews and rebidding inquiries undertaken during the quarter. In 2015–16 we published four compliance reports. Two of the reports were released outside our target timeframe of six weeks from the end of the relevant quarter.

Wholesale energy market development

We draw on our regulatory and monitoring work to advise the COAG Energy Council, the AEMC and other bodies on wholesale market issues and to advocate solutions. To the extent that resourcing allows, we engage in policy reviews and rule change processes by sharing information, making submissions and participating in forums.

During 2015–16 we participated in a rule change proposal on generator bidding; reviews of upstream gas markets conducted by the ACCC and AEMC; and the COAG Energy Council's review of governance arrangements for Australian energy markets.

Generator rebidding

In October 2015 we made a submission to the AEMC's consideration of an electricity rule change proposal, aiming to address concerns that the 'bidding in good faith' provisions did not adequately regulate participant behaviour, impacting on the quality of market forecasts.

The AEMC subsequently introduced a new rule, taking effect in July 2016, that prohibits false or misleading offers, requires offer variations to be made as soon as practicable and strengthens record-keeping requirements for certain rebids. We refined our monitoring and compliance systems to implement the new rule.

East coast wholesale gas market and pipeline framework review

On 12 February 2016 we made a submission to the AEMC's reviews of the east coast gas market and pipeline framework and the Victorian declared wholesale gas market. We supported the AEMC's efforts to develop a 'road map' to guide and inform future gas market development, and provided views on reform proposals for the Victorian market and the Gas Market Bulletin Board.

Governance review

On 1 September 2015 the AER made a submission to the COAG Energy Council's draft report on governance arrangements for Australian energy markets. We argued that the current arrangements deliver outcomes in the long-term interests of energy consumers. We noted the potential for refinements to streamline the rule change process and to enhance the COAG Energy Council's energy market leadership role.

International activity

The AER is a founding member of the Energy Intermarket Surveillance Group, the peak and only international group coordinating and sharing skills between energy market surveillance and enforcement bodies. It is a not-for-profit organisation, with 22 member agencies representing 17 electricity markets from North America, Latin America, South-East Asia, Australia and New Zealand.

We participated in a meeting of the group in April 2016, at which energy market monitoring agency representatives discussed electricity market monitoring, compliance and design issues.

Part 4

Management and accountability

Senior leadership

The ACCC's senior leadership comprises members of the Commission (appointed by the Governor-General) and Senior Executive Service (SES) employees.

Senior leadership of the AER comprises the AER Board and SES employees who are engaged exclusively on energy matters.

Details of the leadership structure are in figure 2.1.

Australian Competition and Consumer Commission

The ACCC has a chair, two deputy chairs, three full-time members and four associate members. Their names and appointment terms are shown in table 4.1.

Table 4.1: Terms of appointment—current ACCC members at 30 June 2016

Position	Name	Appointed until
Chair	Rod Sims	31 July 2019
Deputy chairpersons	Delia Rickard	3 June 2017
	Michael Schaper	29 May 2018
Members	Cristina Cifuentes	29 May 2018
	Sarah Court	30 April 2018
	Roger Featherston	12 June 2019
Associate member, part time*	Mick Keogh	22 February 2021
Associate members	Paula Conboy	30 September 2019
	James Cox	26 June 2017
	Susan Begg	16 June 2019

* Mr Mick Keogh serves as a member of the Commission working three days a week, primarily focused on agriculture matters.

Biographies—ACCC

Chair

Mr Rod Sims



Rod Sims was appointed Chairman of the Australian Competition and Consumer Commission in August 2011 for a 5-year term and was reappointed for a further 3-year term until 2019.

Rod has extensive business and public sector experience. Immediately prior to his appointment to the ACCC, he was the Chairman of the Independent Pricing and Regulatory Tribunal of New South Wales, Commissioner on the National Competition Council, Chairman of InfraCo Asia, Director of Ingeus Limited, and member of the Research and Policy Council of the Committee for Economic Development of Australia. Rod was also a Director of Port Jackson Partners Limited, where he advised the CEOs and boards of some of Australia's top 50 companies on commercial corporate strategy over many years. Rod relinquished all of these roles on becoming Chairman of the ACCC.

Rod is also a past Chairman of the New South Wales Rail Infrastructure Corporation and the State Rail Authority and has been a director of a number of private sector companies. During the late 1980s and early 1990s, Rod worked as the Deputy Secretary in the Commonwealth Department of Prime Minister and Cabinet responsible for economic, infrastructure and social policy and the Cabinet Office. He also worked as a Deputy Secretary in the Department of Transport and Communications.

Rod Sims holds a first-class honours degree in commerce from the University of Melbourne and a Master of Economics from the Australian National University.

Deputy chairs

Ms Delia Rickard



Delia Rickard was appointed to the position of Deputy Chair of the Australian Competition and Consumer Commission in June 2012 for a period of five years.

Delia brings extensive public service experience in the area of consumer protection.

She takes a particular interest in the ACCC's consumer protection work and plays an active role in the Commission's product safety work as well as its consumer protection compliance and enforcement work and scam disruption.

Immediately prior to her appointment to the ACCC, Delia held a range of senior positions at the Australian Securities and Investments Commission (ASIC). She led much of ASIC's consumer protection work covering areas such as financial literacy, dispute resolution schemes; e-payments and industry self-regulation. She was responsible for developing the first National Financial Literacy Strategy and chaired several Organisation for Economic Co-operation and Development financial literacy sub-committees. She also led ASIC's role in the implementation of the government's Super Choice policy and was the founding chair of ASIC's Corporate Social Responsibility program.

Delia is a former head of the ACCC's then Consumer Protection Branch and was a member of the secretariat to the Wallis inquiry into the regulation of Australia's financial system.

She is a trustee of the Jan Pentland Foundation—an organisation dedicated to providing scholarships for those who want to work as financial counsellors—and a judge for the annual MoneySmart Week awards. She is also a pro bono director of Fairtrade Australia New Zealand and chair of Good Shepherd's Advisory Committee on Financial Inclusion Action Plans.

In the January 2011 Australia Day Awards Delia was awarded the Public Service Medal for her contribution to consumer protection and financial services.

Delia is a member of the ACCC's Enforcement Committee, Adjudication Committee, Communications Committee and Enforcement Committee—Strategic Compliance. She is also Co-chair of the ACCC's Consumer Consultative Committee.

Delia holds a Bachelor of Arts and a Bachelor of Law from the University of New South Wales.

Dr Michael Schaper

Michael's work has a special focus on small business, franchising, industry associations and business liaison with the national competition and consumer protection regulator. Dr Schaper was first appointed in July 2008 and re-appointed for a second term in 2013.

A previous president of the Small Enterprise Association of Australia and New Zealand, he has also previously served as Small Business Commissioner for the Australian Capital Territory, chairperson of the ACT Small and Micro-Business Advisory Council and a director of the International Council for Small Business. In 2009 he was the recipient of the 'National Small Business Champion Award' from the Council of Small Business Organisations of Australia. Michael is also a Fellow of the Institute of Public Accountants, and a divisional councillor with the Australian Institute of Company Directors.

Michael has previously managed a community small business centre; been an adviser to government at both state and federal levels; and held lecturing, professorial and dean roles at a number of Australian universities. He is currently an adjunct professor with Curtin University and a senior honorary research fellow at the University of Western Australia, and chairs the advisory board of Griffith University's Asia-Pacific Centre for Franchising Excellence. He holds a PhD and a Master of Commerce, as well as a Bachelor of Arts. His latest books are *Entrepreneurship and small business: Asia-Pacific and Governments*, *SMEs and entrepreneurship development*. Dr Schaper is a member of the ACCC's Enforcement Committee and Adjudication Committee.

Members

Ms Cristina Cifuentes

See AER members for a full biography.



Ms Sarah Court



Sarah Court was appointed a Commissioner of the ACCC in April 2008 and was reappointed for a further five-year term in 2013.

Ms Court is a full-time Commissioner, and a former senior executive lawyer and director with the Australian Government Solicitor. She brings to her role extensive experience in Commonwealth legal work, including restrictive trade practices, consumer protection and law enforcement litigation.

Ms Court oversees the ACCC's enforcement and litigation program and is chair of the Commission's Enforcement Committee. She takes an active role in the Commission's enforcement and compliance work, and engages closely with investigating teams and lawyers on Commission policies and enforcement investigations. Ms Court also sits on the Commission's Merger Review Committee, Adjudication Committee and Infrastructure Committee.

Ms Court holds a Bachelor of Arts (Jurisprudence) and a Bachelor of Law (Honours) from the University of Adelaide as well as a Graduate Diploma in Legal Practice from the Australian National University.

Mr Roger Featherston



Roger Featherston was appointed a Commissioner of the ACCC in June 2014.

Roger is a full-time Commissioner who brings a wealth of experience from his previous roles as a lawyer in the private and public sectors. Roger was formerly a partner at Mallesons Stephen Jaques, leading the firm's competition law team and advising a broad spectrum of commercial and governmental clients on competition law and enforcement issues, consumer protection, informal merger clearances, access and pricing issues, and telecommunications matters.

In addition to this extensive private sector experience, Roger acted for the former Trade Practices Commission early in his career and, for the two years before his appointment, acted as Special Counsel at the ACCC advising on a range of major competition and consumer protection matters.

Roger is a life member and former Chairman of the Business Law Section of the Law Council of Australia, and a member and former Chairman of the Competition and Consumer Law Committee of the Law Council of Australia.

Roger is chair of the ACCC's Mergers Committee and Adjudication Committee. He is also a member of the ACCC's Enforcement Committee and Communications Committee.

Roger holds a Bachelor of Laws (Honours) and a Bachelor of Economics from the Australian National University.

Mr Mick Keogh

Mick Keogh was appointed as a Commissioner of the ACCC in February 2016 for a five-year term.

The ACCC has established an Agriculture Unit that contains additional staff to conduct investigations and engagement in rural and regional areas with funding provided through the Agricultural Competitiveness White Paper.

Mick will play a key role in the work of the Agriculture Unit, which has been working to identify competition and fair trading issues in agriculture markets and engaging with a range of key industry groups. He will oversee the ACCC's agriculture work program and will chair the ACCC's Agriculture Board and Agriculture Consultative Committee. Mick will also play a key decision making role on agriculture matters across the work of the ACCC.

Mick has a long and diverse history of involvement with the agriculture sector, which has included periods of employment as a farm manager, a university researcher, an agribusiness consultant and an agriculture policy advisor.

In 2003 Mick was appointed Executive Director of the Australian Farm Institute, an independent policy research institute that conducts research into strategic policy issues of importance to Australian agriculture. Mick continues to undertake this role.

In 2011 Mick was appointed chairperson of the Australian Government panel which reviewed drought support measures. He was also chairman of the Australian Government's National Rural Advisory Council from 2012 to 2015.

Additionally, Mick remains involved in family farming interests in southern New South Wales.

In 2015 Mick was awarded the Order of Australia Medal for services to agriculture. He holds bachelors and masters degrees in wool and pastoral sciences, both obtained at the University of New South Wales.

Australian Energy Regulator

The Chair of the AER Board is Paula Conboy. The board of the AER has two members.

Table 4.2: Terms of appointment—current AER members at 30 June 2016

Position	Name	Appointed until
Chair	Paula Conboy	30 September 2019
Members	Cristina Cifuentes	29 May 2018
	Jim Cox	26 June 2017

Biographies—AER

Chair

Ms Paula Conboy



On 21 July 2014, Ms Paula Conboy was appointed as the full-time state/territory member and AER Chair for a five-year period from 1 October 2014.

Paula has over 20 years' experience in public utility regulation in Australia and Canada. She has held roles at the Industry Commission, Sydney Water Corporation and Ontario electricity distribution utility PowerStream Inc. Most recently she was a full-time member of the Ontario Energy Board in Canada from March 2010, where she oversaw policy development and adjudicated applications for cost of service, performance-based regulation, mergers and acquisitions, and leave to construct electricity and gas networks. She was an active member of CAMPUT: Canada's Energy and Utility Regulators and chaired its 2013 annual conference. She is also a mentor with the International Confederation of Energy Regulators' Women in Energy initiative.

Paula holds Bachelor of Science and Master of Science degrees in agricultural economics from the University of Guelph and conducted her thesis research at La Trobe University.

Members

Ms Cristina Cifuentes



Cristina Cifuentes was appointed a Commissioner of the ACCC in May 2013 for a five-year term.

Cristina has a breadth of experience in both the public and private sectors across public policy, finance and utility regulation, including positions at the Reserve Bank of Australia, the New South Wales Treasury and the Australian Securities Commission. She served as the state part-time member of the AER between 2010 and 2013. She was a member of the New South Wales Independent Pricing and Regulatory Tribunal between 1997 and 2006.

Cristina is chair of the ACCC's Communications Committee and Infrastructure Committee. She oversees the ACCC's regulatory role in relation to key infrastructure in areas such as telecommunications, wheat ports, rail, and water. She is also the Commonwealth member of the AER Board, which has responsibility for regulating the national electricity and gas markets.

Before becoming an ACCC Commissioner, Cristina held a number of directorships including with the Hunter Water Corporation and First State Super Trustee Corporation.

Cristina holds a first-class honours degree in law and a degree in economics.

Mr Jim Cox



On 26 June 2014, Jim Cox was appointed as a full-time state/territory member of the AER for a three-year period.

Jim was previously appointed as acting full-time state/territory member of the AER from September 2013.

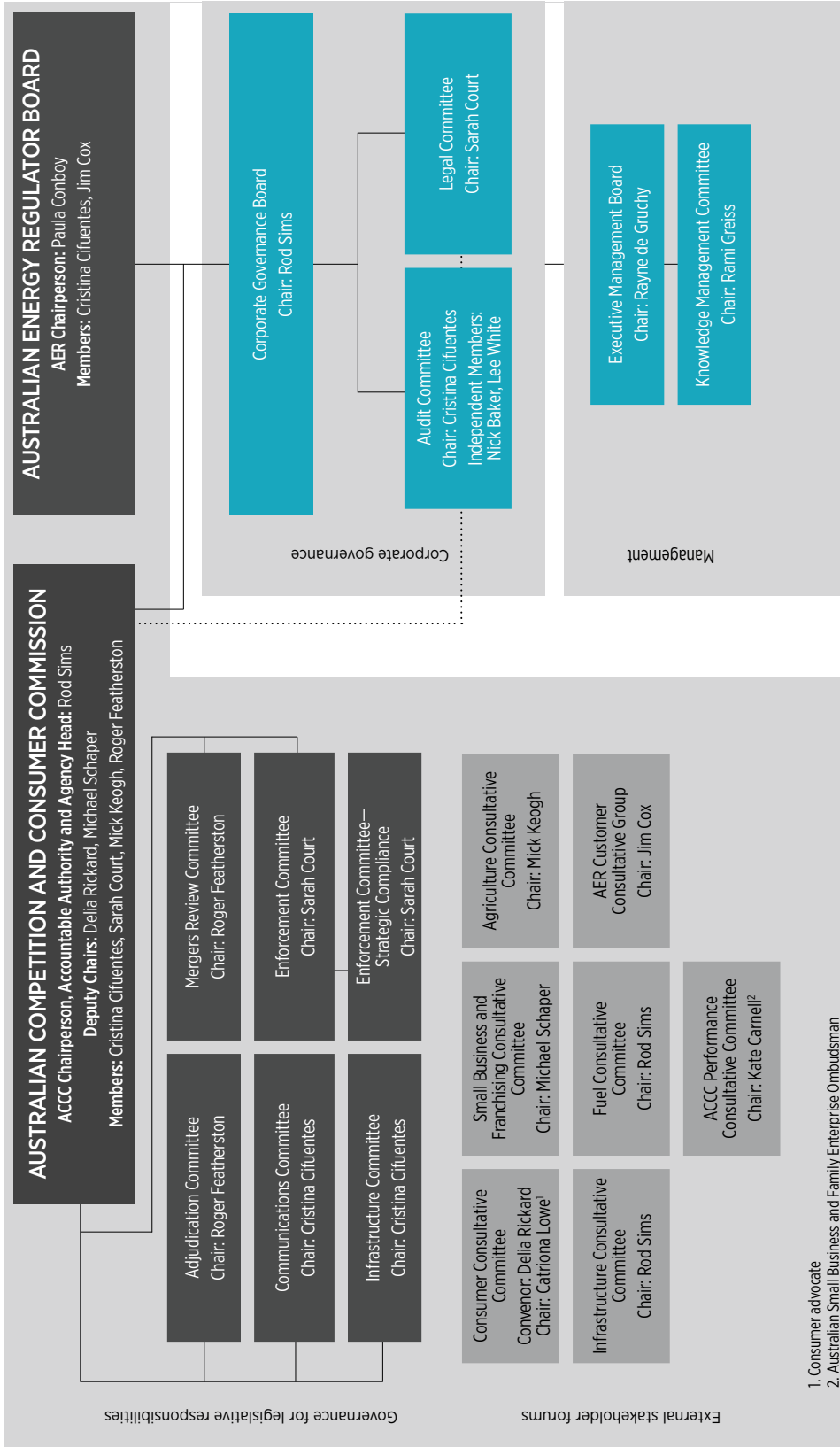
Jim has held positions with the Reserve Bank of Australia, the Department of the Prime Minister and Cabinet and the Social Welfare Policy Secretariat of the Department of Social Security. He was a principal economist at the Office of EPAC between 1986 and 1989, and between 1989 and 1992 was a consultant to the New South Wales Cabinet Office. Jim was Principal Adviser to the government Pricing Tribunal of New South Wales from 1992 and was a member of the Independent Pricing and Regulatory Tribunal (IPART) from January 1996 to September 2013. He was Acting Chairman of IPART during 2004, 2009-10 and 2011 and a visiting fellow at Monash University during 1985.

Jim assisted the New Zealand Government with social policy changes during the early part of 1991 and has written extensively on economic and social policy issues. This work has been published by, among others, the New Zealand Business Roundtable and the Centre for Independent Studies.

He was awarded the Public Service Medal in the Australia Day honours list in 2011 for outstanding public service to IPART.

The ACCC and AERs governance structure is shown in figure 4.1.

Figure 4.1: ACCC and AER governance structure



1. Consumer advocate

2. Australian Small Business and Family Enterprise Ombudsman

Managing the ACCC

Committees

The ACCC makes statutory decisions through the Commission, aided by specialist subject matter committees (see table 4.3) composed of sub-groups of Commissioners. The AER makes its decisions through its board. The agencies are governed and their administration overseen by corporate governance committees.

Table 4.3: Subject matter committees of the ACCC—roles and membership

Adjudication Committee	Roger Featherston (chair)*, Sarah Court, Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—considers authorisation applications, notifications and certification trade marks and refers recommendations to the Commission for decision; meets weekly. The Adjudication Committee sits as a Division of the Commission under s. 19 of the CCA in respect of matters under Part VII of the CCA, other than merger clearance or merger authorisations. * Commissioner Jill Walker acted as chair of this committee until 31 December 2015.
Communications Committee	Cristina Cifuentes (chair), Roger Featherston, Delia Rickard, Rod Sims, Mick Keogh (for agriculture issues)—considers telecommunications industry regulatory issues and refers recommendations to the full Commission for decision; meets fortnightly.
Enforcement Committee	Sarah Court (chair), Roger Featherston, Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—oversees ACCC actions to ensure compliance with and enforcement of the <i>Competition and Consumer Act 2010</i> (the Act) and refers recommendations to the Commission for decision; meets weekly.
Enforcement Committee—Strategic Compliance	Sarah Court (chair), Delia Rickard, Michael Schaper, Rod Sims, Mick Keogh (for agriculture issues)—considers emerging compliance issues and the ACCC's response including engagement with industry stakeholders and media communication; meets fortnightly.
Infrastructure Committee	Cristina Cifuentes (chair), Sarah Court, Jim Cox, Mick Keogh (for agriculture issues), Michael Schaper, Rod Sims—oversees access, price monitoring, transport and water regulatory issues; meets fortnightly.
Mergers Review Committee	Roger Featherston (chair)*, Sarah Court, Rod Sims, Mick Keogh (focused on agriculture issues)—considers merger reviews and refers certain recommendations to the Commission for decision; meets weekly. * Commissioner Jill Walker acted as chair of this committee until 31 December 2015.

Corporate governance

The corporate governance of the ACCC and AER provided oversight of the agency's planning, performance, financial management, resource management and accountability in 2015-16.

Two years after updating our corporate governance we reviewed this framework in 2015-16, finding that overall the agency's corporate governance framework is operating well, but identifying some areas for further improvement. We adjusted the corporate governance framework structure, revised some documentation to reduce repetition and removed overlap between some of the governance groups to further clarify the role between corporate governance and management.

The ACCC's corporate governance framework consists of two types of committees:

- corporate governance committees
- management committees.

Corporate governance committees

Corporate Governance Board

The Corporate Governance Board meets monthly and sits at the apex of the governance structure. ACCC Commissioners and AER Board members are part of the Corporate Governance Board. The Audit Committee and Legal Committee support its work. The Corporate Governance Board, aided by these committees and senior management committees, is well equipped to oversee our strong corporate and financial performance.

Responsibilities include:

- strategy setting and corporate planning
- internal budgets and resource management
- performance monitoring and reporting
- capability development
- agency accountability.

Members: Rod Sims (Chair), ACCC deputy chairs, Commissioners, AER chair and board members.

Audit Committee

The Audit Committee meets quarterly and acts as an independent source of assurance and advice to the Accountable Authority (the Chairman) through the Corporate Governance Board on the financial and risk management of the ACCC and AER. Its responsibilities are to review, report to and provide advice on:

- accounting policies, procedures and external financial disclosure
- internal financial controls and reporting
- internal budget process, aligning budget allocations with the external budget
- internal and external audit functions
- compliance with applicable laws, regulations and guidelines
- effective identification and management of risk, including an appropriate fraud and corruption prevention and detection control plan
- the adequacy of the agency's governance arrangements.

Members: Cristina Cifuentes (Chair), Nick Baker (independent member), Lee White (independent member).

Legal Committee

The Legal Committee meets monthly and oversees the ACCC's and AER's processes and systems to:

- manage and forecast the pipeline of investigations and cases and the resulting legal and related expenditure
- monitor the use and procurement of external legal services
- assist and advise the Corporate Governance Board accordingly.

The committee reviews legal and enforcement resource implications and provides greater accountability around the tracking and forecasting of legal expenditure over the life of ACCC and AER investigations and court proceedings. This committee also reviews the agency's compliance with external obligations such as the Legal Services Directions 2005, and ACCC and AER input into policy processes affecting agency legal services.

Members: Sarah Court (Chair), Chief Operating Officer, senior managers.

People and Capability Committee

The People and Capability Committee's role was to focus on revising the agency's longer term strategic workforce plan and overseeing the development of our organisational strategies in areas such as effective leadership, corporate governance processes and effective agency culture.

Given the work of the committee and senior management in this area, the corporate governance review recommended that this committee be retired. The responsibilities of the committee now rest with senior management and the Executive Management Board.

This transition occurred in April 2016.

Management committees

Supporting the corporate governance committees, the ACCC has a number of management committees that operate to ensure the effective management of the organisation.

Executive Management Board

Arising out of the corporate governance review, the ACCC formalised its Executive Management Board. The board manages the organisation in line with the expectations and limitations set by the Accountable Authority (the Chairman) and the Corporate Governance Board.

Members: Chief Operating Officer (Chair), Chairman, Executive General Managers, Chief Information Officer, Chief Financial Officer, General Manager People and Culture, General Manager Strategic Communications.

Information and Knowledge Management Committee

Also arising out of the corporate governance review, the ACCC revised its governance regarding information management, knowledge management and information and communications technology (ICT).

As a result, the Executive Management Board approved the creation of an Information and Knowledge Management Committee (IKMC). The committee provides advice on information and knowledge management along with the enabling ICT to aid in decision-making that ensures the ACCC's alignment and compliance with the ACCC's strategic direction, government policies, Australian law and legal standards. The IKMC first met in June 2016.

Corporate and business plans

We have redeveloped our corporate plan in 2015–16 to meet the requirements of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) and our obligations under the Regulator Performance Framework. The ACCC and AER Corporate Plan 2015–16 is available on the ACCC website. We will continue to refine our corporate and business plans to best share our performance with parliament and the community. This annual report describes the outcomes against both the portfolio budget statements and the ACCC and AER Corporate Plan 2015–16.

Internal audit and assurance

The ACCC has an internal audit function to provide assurance that we are meeting our obligations. The internal audit function adds to the value and accountability of the management of our governance and operations.

The agency's internal audit plan was substantially revised in 2015, creating a forward program for the 2015–19 financial years. This plan is reviewed annually with the oversight of the Audit Committee and is approved by the Corporate Governance Board.

The following internal audits were conducted during 2015–16:

- Conflict of interest
- IT security—acceptable use
- Public registers—handling confidential information
- Product safety intelligence and market surveillance
- PGPA Act compliance.

Other assurance activities conducted in 2015–16 included:

- Business Continuity Plan and framework review
- Fraud Control Plan and framework review
- Risk Management Policy and framework review
- Australian National Audit Office (ANAO) audit Managing Compliance with Fair Trading Obligations
- ANAO audit Vocational Education and Training (VET FEE-HELP).

Risk management

Risk management is a key element of our strategic planning, decision making and business operations.

In accordance with the PGPA Act, Commonwealth Risk Management Policy and ANAO and Comcover better practice guides, the ACCC has a risk management framework to support the effective management of organisational risk.

This framework covers the agency's strategic risks, as well as agency-wide and operational risks that sit across and within the agency's business units.

The framework includes risk management policies and guidelines that communicate accountabilities, responsibilities and expectations of all employees in ensuring the management of risk across the organisation.

The ACCC and AER aim for best practice in controlling all risks by identifying priority exposures, addressing them through improvement strategies and contingency planning, and monitoring and reviewing ongoing risk.

The agency's risk management framework and associated policy was substantially reviewed in 2015.

Business continuity

Business continuity management strengthens business resilience, lessening the likelihood of incidents that may adversely affect the ACCC and AER operations and minimising the impact if such incidents occur.

During 2015–16 the agency began a substantial review of its business continuity framework and plan to ensure that it remains contemporary and able to support the ACCC's and AER's continued operations. This review will be completed in the coming year.

Fraud control

The ACCC and AER has a Fraud Control Plan for 2014–16 that directs the agency's approach to fraud prevention, detection, investigation, reporting and data collection procedures that meet our specific needs and comply with the PGPA Act and the Commonwealth Fraud Control Guidelines.

The ACCC and AER had no reported instances of fraud in 2015–16 and, as a consequence, no fraud investigations were conducted.

In 2016 we reviewed our current plan and finalised our new plan for the next few years.

Environmental performance

Mandatory environmental reporting

The ACCC is required to report annually on its environmental performance under the *Environment Protection and Biodiversity Conservation Act 1999*, and has nominated to report on the organisation's performance internally on a biannual basis.

The agency adheres to the Energy Efficiency in Government Operations Policy, the Australian Government ICT Sustainability Plan 2010–2015, and the National Packaging Covenant, using recommended key performance indicators (KPIs) to meet requirements.

Environmental performance

The ACCC remains committed to the development of best practice in environmental sustainability and performance. Our environmental policy includes strategies to improve sustainability and performance consistent with the Australian Government ICT Sustainability Plan 2010–2015 and better practices outlined by the ANAO.

We maintained our progress in environmental policy performance reporting in 2015–16 by achieving 11 of 17 KPIs, or 65 per cent, and improved data collection and recording methods increased accuracy and consistency in reporting. Our overall performance has improved by more than 47 per cent since the inception of the reporting program in 2011–12, when only three of 17 KPIs were met.

Ethical standards

Conflicts of interest

The ACCC and AER are proud of their ethical standards and ensure there is continued public confidence in their integrity and that of their staff. Given that we often investigate misrepresentation of information or unconscionable business conduct and determine charges that impact on cost of living, it is vital that we maintain the trust of the Australian people, government and businesses.

To maintain confidence in our integrity, the ACCC and AER have strict procedures to identify and properly manage any personal interests that may cause an actual or perceived conflict of interest.

As statutory office holders, Commissioners and board members are held to high standards of conduct. These standards arise from the high ethical standards we set ourselves and are backed by legislation, codes of conduct and the common law.

ACCC members must provide the Chairperson with an annual statement of material personal interests and do not participate in matters in which they, or a member of their direct family, may have a real or perceived conflict of interest. AER Board members are required to disclose conflicts of interest at a board meeting. Both Commissioners and AER members also provide ongoing disclosure.

Following an internal audit of the Conflict of Interest Policy and procedures, the ACCC and AER have made refinements which will be implemented during 2016–17.

As a general rule, ACCC Commissioners, AER Board members and staff cannot accept gifts and hospitality, because acceptance could compromise, or be seen to compromise, the organisation's integrity. In limited circumstances, employees are able to accept gifts such as chocolates or wine if they are related to their participation at a conference or received from a foreign delegation. To ensure transparency, a \$50 minimum threshold is in place for formal declarations. This allows us to display a high level of integrity and ethical behaviour in our day-to-day work.

Values and code of conduct

The ACCC and AER are committed to driving a respectful culture throughout the organisation and upholding and promoting the behaviours specified in the Australian Public Service (APS) Values and Code of Conduct.

Employees learn about the APS Values and Code of Conduct in corporate induction sessions and additional awareness training is incorporated into leadership programs.

Alleged misconduct by employees may be dealt with under the APS Code of Conduct. In 2015–16, the ACCC/AER did not investigate any potential breaches of the code.

External scrutiny

As an Australian Government agency, the ACCC and the AER are held to account for their activities by a variety of external bodies, including:

- courts
- tribunals
- parliament
- agencies with administrative oversight, including the Commonwealth Ombudsman.

These bodies have the power to review our decisions or work, investigate them and either uphold the decision of the ACCC or AER or order or recommend that the ACCC or AER make changes if necessary. Each year the ACCC reports on its interaction with these bodies to ensure transparency on external scrutiny.

Judicial decisions

There were no judicial decisions in respect of decisions made by the ACCC or AER in 2015–16.

Administrative Appeals Tribunal

There were no decisions by the Administrative Appeals Tribunal in respect of decisions made by the ACCC or AER in 2015–16.

Office of the Merit Protection Commissioner

One application for review was made to the Office of the Merit Protection Commissioner in 2015–16, which upheld the ACCC's decision.

Office of the Australian Information Commissioner

Two requests for freedom of information review concerning the ACCC were lodged with the Office of the Australian Information Commissioner (OAIC) in 2015–16. One request relates to a franchising complaint while the other request relates to a recruitment process. We are currently waiting on the OAIC's decision with regard to both matters.

The Privacy Commissioner did not investigate any complaints about the ACCC/AER in 2015–16.

Australian Competition Tribunal

There were five decisions of the Australian Competition Tribunal that reviewed decisions of the ACCC or AER in 2015–16. These decisions were made in respect of related energy decisions made by the AER.

In April and June 2015, the AER made five decisions which set the maximum amount of revenue that electricity and gas distribution businesses in New South Wales and the Australian Capital Territory could recover from consumers over a 5-year period (2015 revenue determinations). The five distribution businesses sought merits and judicial review of the 2015 revenue determinations in the Australian Competition Tribunal (the Tribunal) and the Federal Court respectively.

For the first time, a consumer advocate, the Public Interest Advocacy Centre, also applied to the Tribunal to review the AER's revenue determinations.

Eight electricity and gas businesses sought, and were granted, leave to intervene in the Tribunal proceedings and the Commonwealth Minister for Resources, Energy and Northern Australia also intervened. These matters are significant due to the quantum of revenue in dispute (approximately \$6.3 billion) and because it is the first time that new electricity and gas laws and rules have been tested in the Tribunal. On 26 February 2016 (for electricity) and 3 March 2016 (for gas) the Tribunal handed down its decisions to set aside the 2015 revenue determinations for the New South Wales and ACT electricity and gas businesses. The Tribunal remitted the decisions to the AER, directing it to remake its decisions in relation to the rate of return on debt that could be earned by the businesses, the value of imputation credits and the allowances made for operating expenditure. The judicial review proceedings brought by the businesses have been stayed and the AER has appealed the Tribunal's decision to the Full Federal Court.

Parliamentary scrutiny

The Review of Governance Arrangements for Australian Energy Markets was completed in October 2015 with the final report delivered to the Council of Australian Governments (COAG) Energy Council. The Energy Council responded to the review in December 2015.

In April 2016, the government responded to the Senate committee inquiry into the performance and management of electricity network companies.

The reviews made a number of recommendations about the structure of the AER, including membership of the AER Board, and ongoing reviews of the AER. COAG has yet to enact any changes to the AER's governance arrangements.

Freedom of information

Agencies operating under the *Freedom of Information Act 1982* must publish information for the public as part of the Information Publication Scheme. This requirement has replaced the former requirement to publish a statement in the annual report. Each agency's website must include a plan that shows the information it publishes in accordance with the scheme's requirements. See the ACCC's freedom of information website for our plan.

Service charter

The ACCC and AER each have service charters stating the standard of service you can expect to receive from us.

Our service charters also set out:

- what you should do if you wish to complain about a business or market issue
- what you should do if you wish to complain about your dealings with us
- what we ask of you.

The service charters are available from the ACCC and AER websites respectively.

Building organisational capability

Workforce planning

The ACCC/AER Strategic Workforce Plan 2015–2018 (SWP) was implemented from July 2015. The SWP looks at our future staffing requirements and potential skill gaps. It sets out our strategies to develop our people and includes the projects and initiatives which will assist us to deliver these strategies. The need for the SWP was identified in the ACCC/AER 2014–15 Operational Workforce Plan.

Intended outcomes of the SWP include:

- improved planning of our resources to reduce workload pressure
- improved employee morale through initiatives which support career development, diversity, reward and recognition, health and wellbeing and employee consultation
- attracting and retaining employees with the relevant knowledge, skills and experience
- improved leadership and professional capability.

We have made progress against the majority of projects and initiatives in the SWP, including implementing our Mental Health Strategy and continuing our focus on our Diversity Program, which includes our Gender Inclusion Framework. Our efforts in building organisational capability continued with the development and implementation of a three-year recruitment strategy and an employee rotation program

ACCC/AER 2016–18 Recruitment Strategy

Our Recruitment Strategy is designed to attract talented people to the ACCC and AER. It also facilitates the seamless movement of people within the ACCC and AER to develop skills and knowledge across diverse work areas and progress their careers.

The Recruitment Strategy takes advantage of the flexibility in the APS recruitment framework to use multiple recruitment methods simultaneously and identify appropriately skilled people for our commonly advertised roles. We will do this by:

- continuing to use better practice selection methods
- undertaking periodic and targeted large-scale recruitment
- actively managing and connecting with the quality candidates from our employment registers

- leveraging our networks with professional associations, tertiary institutions and other APS agencies to proactively identify and engage with people who have the attributes we require.

The strategy also includes initiatives to increase our workforce diversity, particularly increasing the representation of Aboriginal and Torres Strait Islander people and people with a disability, as well as women in senior leadership positions.

Employee Rotation Program

The Employee Rotation Program is a way to develop the breadth of knowledge and experience of employees by supporting people to rotate around different areas of the organisation. In 2016 we launched a pilot program for employees at the APS 6 level. Future programs will be open to other levels, pending a review of the pilot.

The program aims to:

- enable greater generalist and specialist skill development
- provide employees with experience in different roles while using their transferrable knowledge and skills
- provide employees with exposure to the broader ACCC/AER functions
- develop key employees across the organisation to cultivate a more flexible and agile workforce.

Placements commenced in May 2016 and will run for 12 months. Each employee is provided with development opportunities through a learning and development plan which includes training and mentoring relevant to their rotation.

Entry-level programs

Our entry-level programs continue to be an effective method of attracting and developing talented people. In 2015–16 we selected 14 university students to undertake a formal internship program. While completing their final year of study, the interns were assimilated into our teams, participated in formal seminars and made meaningful contributions to ACCC and AER work. Internships provide the opportunity for interns to develop their professional skills and understanding of our role, as well as help them decide whether the ACCC/AER is a good fit for their career.

During 2015–16 we inducted 32 graduates. This large cohort is a testament to the ongoing demand for talented people and the success of the program.

In 2015–16 we introduced the RecruitAbility scheme into our graduate recruiting program. The RecruitAbility scheme is an initiative of the Australian Public Service Commission that aims to attract and develop applicants with disability and also facilitate cultural change in selection panels and agency recruitment. Job applicants with disability who opt in to the scheme, and meet the minimum requirements of a vacancy advertised under the scheme, are advanced to a further stage in the selection process (in this case the Graduate Assessment Centre). Merit remains the basis for engagement and performance the basis for successful completion of the program. In total the ACCC/AER received 39 applications through the RecruitAbility scheme and offered four candidates a place in the Graduate Program.

We continue to evolve our Graduate Program and this year we committed to selecting a diverse group of graduates for our 2017 program. As well as participating in the RecruitAbility scheme for the first time, we have sought interest from more diverse tertiary disciplines including engineering, science and arts. Our Graduate Program is a significant component of our annual recruitment intake and these initiatives are intended to ensure we have a diverse workforce that is more reflective of the broader Australian community.

Supporting our people

Developing the skills and abilities of our workforce

We are committed to investing in the development of our people, running an extensive program of learning and development, both formal and on the job. This includes discipline specific knowledge, such as the continuous learning and education program for legal professionals, and more general skills in leadership, personal and professional development, rotational programs and more. We also provide studies assistance for staff to support higher learning. Highlights of the year are included below.

The opportunity to undertake challenging and meaningful work, combined with ongoing development, continues to generate strong returns. This was reflected by 60 per cent of all ongoing recruitment activity during 2015–16 coming from within the ACCC/AER.

Negotiation and stakeholder engagement

To improve interactions with stakeholders, the Negotiation and Stakeholder Engagement Program was offered to staff throughout the Commission. This program seeks to provide employees with practical skills and strategies for enhanced engagement with external stakeholders.

Writing skills training

The Writing Skills Training Program continued through 2015–16, ensuring that all staff had the opportunity to improve their skills. This, coupled with other enhancements such as new templates for papers, has resulted in greater consistency in producing clear, concise written material.

E-learning catalogue

The Learning and Development Unit continued to enhance the e-learning offerings available to staff. All internal seminars are now videotaped and turned into e-learning programs to allow greater opportunity for staff to access information on demand. In addition new programs about the organisation, security, fraud awareness and workplace health and safety have been created and are the foundation of the induction experience for new staff.

Learning and development summary

Training and development costs in 2015–16 were \$1 125 587.

Approximately 40 per cent of the budget was held centrally to support organisation-wide development programs. The remaining 60 per cent was developed for divisions to address specific needs relating to technical skills.

A key element of our learning program is support for our Studies Assistance Scheme. The scheme particularly encourages assistance for employees undertaking postgraduate studies. Most assistance is provided for economics, law and business study areas. Study assistance for employees can include leave and full or partial reimbursement of tuition fees for approved courses.

During the year 68 employees were supported to study. We reimbursed \$247 955 in fees for employees to attend lectures and tutorials.

Table 4.4: Attendance at courses, seminars and learning activities—2013-14, 2014-15, and 2015-16

Type	Number of attendees		
	2013-14	2014-15	2015-16
Operating skills and knowledge	1502	918	2055
Legal skills and knowledge	900	675	607
Applying the Act	99	60	139
Economics and regulatory	282	243	110
Leadership, supervision and management	631	589	335

Our staffing profile

Figure 4.2: Age profile of ACCC staff at 30 June 2016

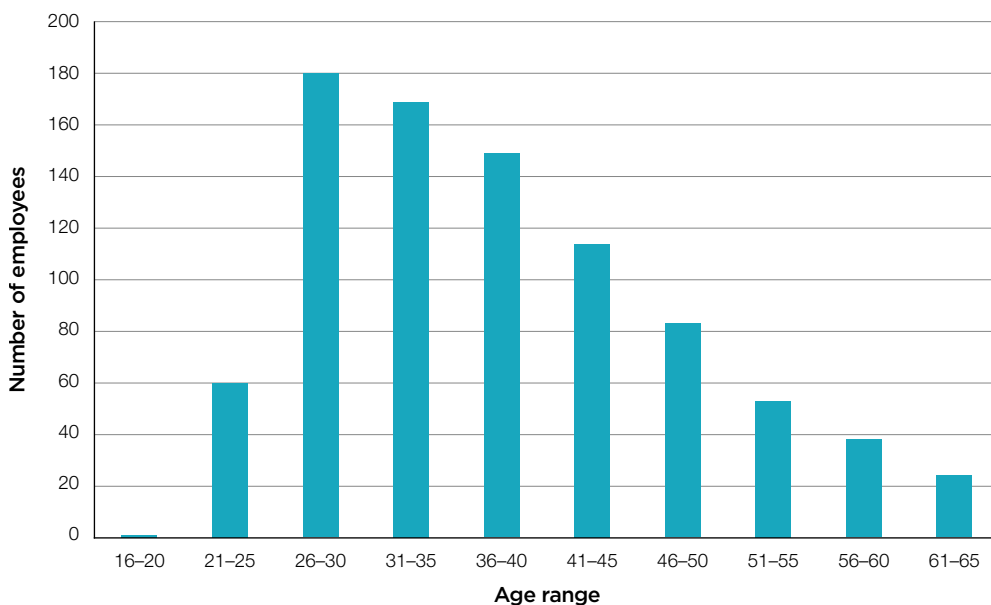


Figure 4.3: Gender profile of ACCC staff at 30 June 2016

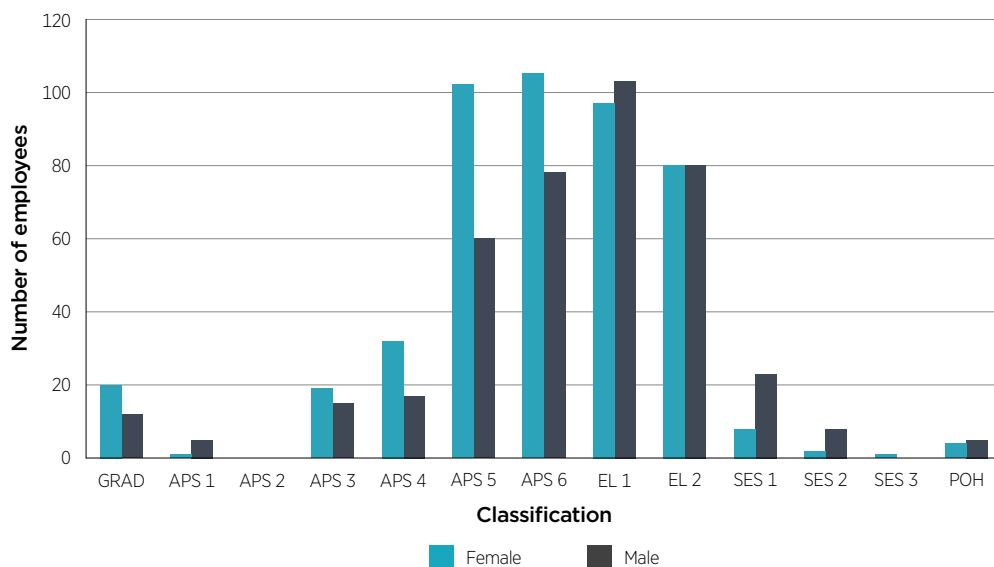


Table 4.5: Staff turnover according to separation type, 2015-16

Separation	Classification	Number of staff
External transfer or promotion	Non-SES	14
	SES	2
Retirement	Non-SES	1
	SES	1
Contract expired	Non-SES	37
Resignations	Non-SES	49
Redundancy	Non-SES	2
Other	Non-SES	3
Total		109

Improving the work environment

We focused this year on developing our Building Inclusion: Advancing Gender Balanced Leadership strategy. This strategy aims to use the capabilities and talents of all our staff to maximise our performance and productivity and to improve flexibility in our work practices. The strategy recognises that it is a business imperative to harness the diversity of experiences, backgrounds and perspectives of both women and men in our organisation and bring this to our decision making, investigations and other activities. Flexibility is fundamental to an inclusive, supportive work environment which enables all people to achieve personal and professional success, irrespective of age, gender, classification or location.

Our targets for the representation of women at Senior Executive Service levels are by 2020 to achieve 40 per cent representation of women, 40 per cent of men and 20 per cent of either. We have introduced an 'If not, why not?' policy approach to flexible working arrangements and will rollout unconscious bias training to more employees.

As a follow up to a key issue arising from the APS 2015 Census, we ran a short but targeted survey in some areas where bullying and harassment were highlighted by staff. The short survey provided a deeper understanding of workplace practices and the appropriate action for each area.

We updated our recruitment practices to include advertised vacancies explicitly stating that flexible working arrangements will be considered. In addition, candidate shortlists must include one credible person from each gender and interview panels must comprise at least as many women as men.

Looking after our people

We held a Health and Wellbeing Week in September 2015, focusing on both physical and mental wellbeing. It included:

- intranet articles on health and wellbeing topics, including personal stories from staff members
- a panel discussion involving the ACCC's Chairman, Chief Operating Officer and employees from around the country sharing tips and techniques they use to manage their work and time
- a presentation from Fitsense, a specialised provider of health and wellness programs, on nutrition and exercise as a follow-up to 10-minute health tests provided to employees in early 2015.

Mental health awareness

To support the Approach to Managing Mental Health in the Workplace Strategy, mental health awareness sessions were conducted in each division. These sessions were designed to increase understanding of anxiety and depression—the two most prevalent forms of mental health issues in the workplace.

Resilience

A half-day resilience program was offered to staff across the organisation and to Commissioners. This program involved the use of a pre-course diagnostic instrument, a workshop and a follow-up survey after three months to measure the effectiveness of the strategies from the workshop.

Rehabilitation management

In 2015–16 the ACCC underwent an audit of its Rehabilitation Management System and active compensation cases. We achieved a 76 per cent conformance rating for the audit, which was an excellent result given it was our first. We received positive feedback from Comcare, and the results demonstrate that the ACCC is very effective in looking after its people.

Consultative committees

The Workplace Relations Committee, consults on employment and other matters affecting the implementation of our enterprise agreement, including:

- productivity savings contemplated by, and costs arising from, the agreement
- workplace issues arising from the agreement
- work value standards
- the development and review of agency employment-related policies, procedures and guidelines.

The Health and Safety Committee is a joint management and staff committee established in accordance with the *Workplace Health and Safety Act 2011* to facilitate:

- consultation and cooperation between the agency and employees on work health and safety matters
- continuous improvement in managing these matters by the agency.

Appendix 3 details workplace health and safety programs and outcomes for the year.

Making the most of our diversity

We recognise the role that diversity plays within the organisation and in the broader Australian community. Through our diversity program, we are committed to continuing to share information on:

- the significance of reconciliation with Indigenous Australians
- how numerous cultures make up Australia
- strategies to improve our accessibility to employees with a disability
- how all employees should be embraced for who they are, regardless of their sexual orientation.

The ACCC/AER Diversity Reference Group (DRG) looks after all aspects of diversity in the agency, including multicultural; disability; Aboriginal and Torres Strait Islander and lesbian, gay, bisexual, transgender and intersex (LGBTI) issues. It has members who are designated as champions for each of these areas.

In 2015–16 we focused on improving Indigenous employment by participating in the Indigenous Australian Government Development Programme, which is an entry-level employment and development program for Aboriginal and Torres Strait Islander people interested in working in the APS. We also employed our first intern through CareerTrackers, which is a national non-profit organisation that creates internship opportunities for Indigenous university students.

Table 4.6: Workplace diversity profile at 30 June 2016

	Total number	Female	ATSI	CLDB	PWD
SES and ACCC/AER members	51	15	1	1	0
APS1	6	1	0	2	0
APS2	0	0	0	0	0
APS3	34	19	1	2	3
APS4	49	32	0	15	1
APS5	162	102	4	37	6
APS6	183	105	3	45	4
EL1	200	97	0	20	3
EL2	160	80	1	16	1
GRAD	32	20	0	6	1
Totals	(Headcount) 877 (ASL) 752	471	10	144	19
Proportion of the total (%)		53.7%	1.1%	16.4%	2.2%

ATSI = people from Aboriginal or Torres Strait Islander backgrounds; CLDB = self-identified people from culturally or linguistically diverse backgrounds; PWD = people with disabilities. A staff member could be classified under one, two or all three of these headings.

Disability reporting

Since 1994, Commonwealth non-corporate entities have reported on their performance as policy adviser, purchaser, employer, regulator and provider under the Commonwealth Disability Strategy. In 2007–08, reporting on the employer role was transferred to the Australian Public Service Commission's State of the Service Report and the APS Statistical Bulletin. These reports are available at www.apsc.gov.au. From 2010–11, entities have no longer been required to report on these functions.

The Commonwealth Disability Strategy has been overtaken by the National Disability Strategy 2010–2020, which sets out a 10-year national policy framework to improve the lives of people with disability, promote participation and create a more inclusive society. A high-level two-yearly report will track progress against each of the six outcome areas of the strategy and present a picture of how people with disability are faring. The first of these reports was published in late 2014, and can be found at www.dss.gov.au.

Enterprise agreement

The ACCC/AER has been negotiating a revised enterprise agreement since 2014 and went to vote in March 2016. The proposed agreement was voted down by employees and negotiations have recommenced.

Employment agreements

Senior executive remuneration

Remuneration for ACCC and AER members is determined by the Remuneration Tribunal in accordance with:

- the *Remuneration Tribunal Act 1973*
- Determination 2015/21, Remuneration and Allowances for Holders of Full-Time Public Office
- Determination 2015/20, Remuneration and Allowances for Holders of Part-Time Public Office.

Tables 4.7 and 4.8 set out the nature and amount of remuneration for ACCC and AER members.

Table 4.7: Remuneration of members of the ACCC at 30 June 2016

Full time	Position	Base salary	Total remuneration of office
	Chair	\$511 800	\$731 140
	Deputy Chair	\$383 860	\$548 360
	Member	\$329 020	\$470 020
Part time	Position	Base salary	Total remuneration of office
	Associate Member	\$251 600*	\$290 346

* Paid pro-rata from start date in February.

Associate members who are state or territory members of the AER and other Associate members who may serve on an ad-hoc basis are paid a daily fee if and when they attend Commission meetings.

Table 4.8: Remuneration of members of the AER at 30 June 2016

Full time	Position	Base salary	Total remuneration of office
	AER Chair	\$365 570	\$522 240
	AER Board Member	\$285 930	\$391 680

Determinations

SES employees are subject to individual determinations covering remuneration, leave and a range of other employment conditions. Determinations are made in accordance with the *Public Service Act 1999*.

Common law contracts and Australian Workplace Agreements

No employees are covered by common law contracts or Australian Workplace Agreements.

Table 4.9: Number of employees covered by each industrial instrument (at 30 June 2016)

	ACCC Enterprise Agreement 2011-2014	Individual Flexibility Agreements	Section 24 determinations
APS1	6	0	0
APS2	0	0	0
APS3	34	0	0
APS4	49	0	0
APS5	162	0	0
APS6	183	0	0
EL1	199	2	0
EL2	159	11	1
SES B1	0	0	31
SES B2	0	0	10
SES B3	0	0	1
GRAD	32	0	0

Table 4.10: Salary ranges for APS employees (at 30 June 2016)

	ACCC Enterprise Agreement 2011-2014	Section 24
APS1	\$44 830-\$49 550	-
APS2	\$50 733-\$56 257	-
APS3	\$57 783-\$62 370	-
APS4	\$64 408-\$69 930	-
APS5	\$71 837-\$79 600	-
APS6	\$79 517-\$92 553	-
EL1	\$98 797-\$121 408	-
EL2	\$114 539-\$161 076	\$154 509
SES 1	-	\$175 075-\$201 959
SES 2	-	\$233 539-\$292 465
SES 3	-	\$314 097
L1	\$98 797-\$122 901	-
L2	\$129 880-\$151 430	-
GRAD	\$59 288	-

Table 4.11: Performance pay

	SES B1	SES B2	SES B3*	ACCC*
Number who received bonus	32	9	1	42
Total bonus	\$394 960	\$188,154	-	\$583 113
Average bonus	\$12 342	\$20,906	-	\$14 222
Range	\$1 021-\$20 664	\$17 515-\$26 322	-	\$1 021-\$26 322

* As at 30 June 2016 the ACCC had only one Senior Executive Service Band 3 employee; therefore these details have been omitted to protect privacy.

Enhanced business systems

In July 2015, we implemented a workflow and case management solution for our core enforcement and legal processes. The new system improves the tracking of matters through their life cycle and provides at-a-glance reporting of the stock and flow of all matters on hand.

Throughout the year this solution has been developed to provide the capability for the product safety and recalls areas to complete their core triage, assessment, and recalls business processes from the receipt of a matter through to resolution. This new capability will be enabled in the first quarter of 2016-17.

Enhanced collaboration

During the year we introduced a new telephony solution. As well as ensuring our systems are kept up to date, this solution promotes workforce flexibility by allowing staff to make and take calls anywhere, as if they were in the office. This is an example of the types of technologies that will be important as we prepare for an update of our Melbourne accommodation facilities.

Online presence

We continued to update and standardise our online presence. In July 2015, we launched a new and improved Scamwatch website to help people identify and avoid scams. The site is fully mobile responsive, enabling people to recognise and report scams from any device.

We made enhancements to the AER's Energy Made Easy website to make it easier for consumers to compare electricity and gas offers.

Development occurred throughout the year to upgrade and consolidate www.productsafety.gov.au and www.recalls.gov.au into a single website. The new website will be used to engage with the general public, businesses, suppliers and other jurisdictions. It is scheduled to be available in the first quarter of 2016-17.

Knowledge management

We established a knowledge management strategy as an important step towards more effectively using and growing the expertise of the organisation. The development of a 'road

map' for implementing priority knowledge management initiatives is under way. Better knowledge management will support building legal, economic and other relevant expertise and lessen reliance on key individuals. Engaging experts in nurturing new talent supports the growth of emerging experts who desire to learn from more experienced employees. Leveraging the creative energy of new employees will bring fresh insights and ensure the organisation evolves in line with external industry and market trends.

An important foundation for a successful knowledge management strategy is effective information systems to manage and retrieve our wealth of information. To this end, the upgrade of our existing document management solution will be a priority for the coming financial year.

Supporting the National Competition Council

We entered into a memorandum of understanding (MOU) with the National Competition Council (NCC) in 2014. Under the MOU we provide secretariat services to the NCC, including advice and support in relation to NCC recommendations, decisions and reports, and administrative services.

The MOU is available on our website.

Improving specialist services

Legal and economic services

Our Legal and Economic Division provides specialist legal and economic services. The division comprises two groups: the Legal Group and the Economic Group.

The Legal Group consists of general and special counsel, and four core units that provide in-house legal services to specific business areas. It assists the ACCC and AER to make legally informed decisions and manage litigation, including by facilitating, as an informed purchaser, external litigation services. It also assists in managing the agency's corporate legal obligations.

The Economic Group consists of the Chief Economist, and two core units that provide in-house strategic economic advice and related services to specific business areas. It aims to facilitate the consistent use of economic principles in decision making, increase the quality of economic analysis and contribute to economics-related learning and development initiatives. It is committed to strengthening the quality of economic analysis in the organisation and to maximising the influence of economic ideas.

During 2015–16, there were a number of initiatives to improve the effectiveness of the Legal and Economic Division and enhance organisational capabilities. Activities included:

- developing and implementing an internal legal and economic training program to improve capability to investigate and litigate competition matters
- developing a network of quantitative data analysts and initiating training to improve analytical capabilities

- contributing to Commonwealth legal coordination initiatives, including through participation in the Commonwealth's General Counsel Working Group and the Australian Government Legal Network and through providing submissions to the Attorney-General's Department Secretary's Review of Commonwealth Legal Services
- implementing processes that focus on ensuring value for money from external legal services providers
- revised processes for evaluating internal and external legal work
- leading through early adoption of proposed changes to pleading processes in the Federal Court, and developing a strategy for enhancing the ACCC/AER's use of technology to review and analyse evidence in a strategic way that aligns with the courts' views of effective case management
- coordinating the 13th Annual Competition Law and Economics Workshop in conjunction with the University of South Australia School of Law
- organising the annual ACCC/AER Regulatory Conference, which more than 400 delegates attended
- organising the Utility Regulator's Forum, held twice-yearly, which involves all state and Commonwealth economic regulators, as well as the New Zealand Commerce Commission.

Legal services

The Legal Group consists of four core units:

- the Competition and Consumer Law Unit, which provides legal services to our Enforcement and Consumer, Small Business and Product Safety Divisions
- the Mergers and Authorisation Law Unit, which provides legal services to our Merger and Authorisation Review Division
- the Regulatory Law Unit, which provides legal services to our Infrastructure Regulation Division and the AER
- the Corporate Law Unit, which deals with corporate in-house issues, strategic development initiatives, legal technology services and freedom of information requests.

General and special counsel provide additional high-level independent strategic advice on complex major issues across all areas of the ACCC and AER.

The roles of in-house lawyers include providing legal advice, specialist drafting of legal documents and helping to prepare and manage litigation. Our in-house lawyers also manage external lawyers who are engaged where additional resources are needed, or as required under the Legal Services Directions. In-house lawyers are located in most ACCC offices to ensure that specialist legal services are available to staff at all times.

Legal technology services

The Legal Technology Services Unit within the Legal Group specialises in technological aspects of case management, including the electronic management and analysis of evidence and case material and its production to the court and third parties. The unit is also responsible for national coordination of the ACCC's evidence management, managing the Legal Document Management Services panel and coordination of web capture work undertaken by the Forensics Services panel.

Economic advice

The Economic Group comprises two units:

- the Regulatory Economic Unit, which provides economic services to our Infrastructure Regulation Division and the AER

- the Competition and Consumer Economic Unit, which provides economic services to the our Enforcement and Consumer Division, Small Business and Product Safety Division and Merger and Authorisation Review Division.

Economic Group specialists provide economic advice and research support on strategic projects, and develop and educate staff to improve understanding of the application of economic techniques to competition and regulatory issues.

The Chief Economist provides additional high-level independent strategic economic advice on complex major issues across all areas of the ACCC and AER.

Effective communication

In 2015-16 our media efforts resulted in 77 686 media reports mentioning the ACCC being published or broadcast. This included 35 757 radio reports and 25 748 TV reports. This coverage had a potential cumulative audience of over 1 billion. In addition our websites combined, had a combined total of 8 841 000 page views.

Our approach to engagement

The ACCC/AER is applying a strategic approach to tailoring messages and using communication channels to increase our connection with:

- consumers and groups representing various interests, including vulnerable and disadvantaged consumers
- small to medium businesses and the associations that represent them
- journalists who can help to spread compliance and consumer rights messages and publicise successful legal action that will deter illegal conduct
- infrastructure industries and regulated industries
- our state and territory counterparts and other relevant regulators
- legal and business support professionals
- international forums and groups.

Our aim is to inform and educate so that consumers and small businesses feel confident to exercise their rights and businesses have the knowledge and skills to comply with the law. We also give information to large businesses, their suppliers and consumers so they can understand the ACCC's and AER's roles in infrastructure and the measures we take to ensure competition and fair trading.

The channels the ACCC and AER use to engage the target groups include:

- the ACCC website, www.accc.gov.au, and associated websites dedicated to product safety, product recalls, scams, the Australian Energy Regulator, energy price comparison and freedom of information
- mainstream and social media
- the ACCC Infocentre telephone lines: a general enquiries and complaints line and specific numbers for:
 - Indigenous consumers
 - small businesses
 - unit pricing
 - energy price comparison
- education guides, DVDs, online learning modules, webinars and interactive apps
- information translated into languages other than English

- face-to-face education outreach for small businesses and compliance
- speeches by the Chairman and Commissioners/Board members
- guides and publications on a wide range of topics.

Communicating our messages

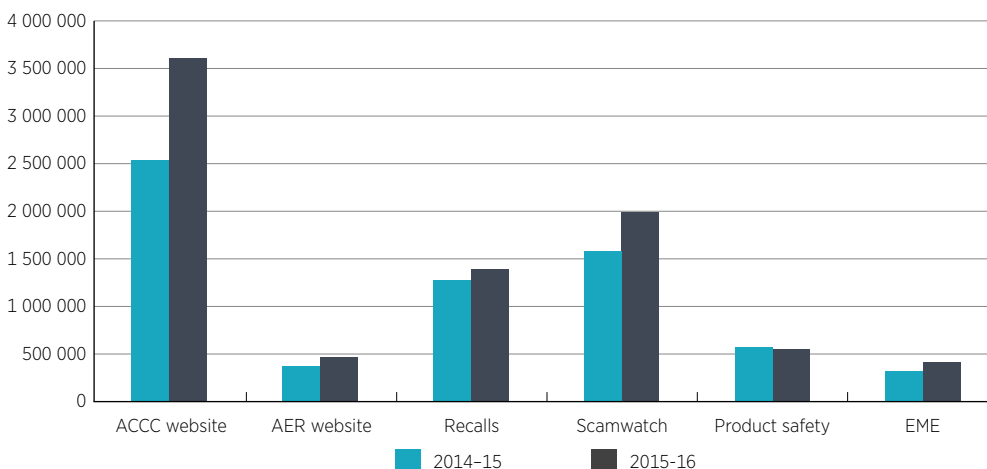
The Strategic Communications Branch develops strategies and works with the operational areas of the ACCC and AER to inform consumers, business, media and government about our role and work. As well as working daily on media issues, the branch liaises with business areas to ensure that our information is clear and easy to understand, targeted to audience needs and readily accessible.

The Strategic Communications Branch is leading the change to a ‘digital first’ approach to communication by using the ACCC and AER websites as the default channels.

Online communications

ACCC and AER websites

Figure 4.4: Website page view growth between 2014-15 and 2015-16



Note: The ACCC moved to a new web statistics package in 2015, therefore the data comparison between 2014-15 and 2015-16 is approximate.

Social media

The Strategic Communications Branch works with the operational areas of the ACCC and AER to provide social media governance and guidance. It also manages social media accounts on Facebook, YouTube, Twitter and LinkedIn.

Two of the largest referrers of traffic to the ACCC website are Facebook and Twitter. This demonstrates the effectiveness of our cross-platform communication strategies.

We have three Facebook pages:

- ACCC Consumer Rights—building awareness of consumer issues and responding to simple enquiries and comments. It had 36 872 ‘likes’, adding 10 881 in 2015-16. We posted to the page 152 times, potentially reaching 14 035 456 users.
- ACCC Product Safety—sharing product safety news, tips and recalls. It had 30 433 ‘likes’, adding 10 492 in 2015-16. There were 531 posts to the page, potentially reaching 4 742 252 users.

- ACCC—Your Rights Mob Tiwi Islands—delivering targeted consumer protection messages for Indigenous Australians in the Tiwi Islands. It had 4088 'likes', adding 912 in 2015–16. There were 113 posts to the page, potentially reaching 99 784 users.

We maintain three Twitter accounts:

- @acccgovau—promoting ACCC news, activities and tips and responding to queries. It had 10 160 followers, adding 3568 in 2015–16. We tweeted 503 times from the account, potentially reaching 4 475 688 users.
- @ACCCprodsafety—sharing recalls and product safety news and tips. It had 6480 followers, adding 998 in 2015–16. There were 681 tweets from the account, potentially reaching 6 543 892 users.
- @Scamwatch_gov—alerting social media users to new scams and providing tips on how to avoid being scammed. It had 11 212 followers, adding 2440 in 2015–16. We tweeted 238 times from the account, potentially reaching 11 773 498 users.

The ACCC and Product Safety YouTube channels host videos on a range of topics for use on other social media sites and the ACCC website. Videos on the ACCC channel have been viewed 173 626 times. Videos on the Product Safety channel have been viewed 228 940 times.

Our LinkedIn company page engages small businesses and other professionals on a range of consumer and competition issues, promotes campaigns, events and consultations, and positions us as an employer of choice. It has 5004 followers, adding 1529 in 2015–16. There were 79 posts to the account, potentially reaching 391 327 users.

News releases and speeches

In 2015–16 the ACCC issued 277 news releases and the AER issued 26.

The Chairman and Commissioners/Board members undertook more than 120 public speaking engagements. Through the speeches program, we engage with many stakeholder groups, from local communities, small business associations and industry and professional groups through to the boards of multinational corporations.

Reports and guides

The ACCC and AER are required to produce a number of reports to parliament and ministers. In addition, we prepare specific, more detailed guides for consumers, businesses and industries on a range of competition and consumer issues. We continue to favour digital production and distribution over hard copy for these reports and guides.

In 2015–16:

- our online publications received 273 532 page views, up from 192 798 in 2014–15. We moved to a new web statistics package in 2015, so the data comparison between 2014–15 and 2015–16 is approximate
- our *Little black book of scams*—a guide to detecting and avoiding scams—continued to be popular, especially with the elderly and vulnerable audiences. We distributed 199 986 copies of the publication during the period, many through police stations, aged care facilities, and consumer affairs and fair trading organisations.

Transforming corporate support

Finance and corporate services

The Finance Branch is responsible for all ACCC financial matters and asset management. Our Corporate Operations and Property Management teams maintain our offices and plan and coordinate moves and office fit-outs.

Assets management

Assets managed by the ACCC include:

- buildings, including fit-outs and leasehold improvements
- infrastructure, plant and equipment, including office equipment, furniture and fittings and computer equipment
- intangibles, including computer software.

A stocktake and an independent fair value assessment of our buildings, infrastructure, plant and equipment was undertaken to confirm the validity and value of our asset portfolio.

Purchasing

The ACCC supports small business participation in the Australian Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance's website. We support SMEs through:

- the Small Business Engagement Principles (outlined in the government's Industry Innovation and Competitiveness Agenda), such as communicating in clear, simple language and presenting information in an accessible format, and
- electronic systems or other processes used to facilitate on-time payment performance, including the use of payment cards.

We use Australian Government resources and spend public money in accordance with the requirements of the PGPA Act and the Commonwealth Procurement Rules.

Responsibility for procurement lies with the financial delegates in each business unit, who have support from a central procurement team. The team advises on risk management, probity, specification development and contract management. Low-risk procurements (valued at less than \$80 000) are managed by business units. Procurements of \$80 000 or more and whole-of-government and panel arrangements are managed by both the business unit and the central procurement team, ensuring that we comply with the Commonwealth Procurement Rules.

Tenders

We advertise all tender opportunities through the AusTender website, www.tenders.gov.au. All tenders undertaken in 2015-16 were carried out in accordance with the Commonwealth Procurement Rules. Information on contracts and consultancies awarded by us is also available on the AusTender website.

Information on procurements expected to be undertaken in the coming year are included in ACCC's annual procurement plan. This plan is updated as and when circumstances change.

Consultancy contracts

During 2015-16, the ACCC/AER entered into 56 new consultancy contracts involving actual expenditure of \$2.9 million. In addition, there were 13 ongoing consultancy contracts involving actual expenditure of \$1.2 million.

The ACCC and AER engage consultants where it lacks specialist expertise or when independent research, review or assessment is required. Consultants typically investigate or diagnose a defined issue or problem; carry out reviews or evaluations; or provide independent advice, information or creative solutions to assist ACCC or AER decision making.

Before engaging consultants, we take into account the skills and resources that are required for the task, the skills that are available internally and the cost-effectiveness of engaging external expertise.

The decision to engage a consultant is made in accordance with the PGPA Act and related regulations, including the Commonwealth Procurement Rules. In 2015–16, we engaged 56 consultants through open public tender and select or limited tender (including through panel arrangements).

Table 4.12: Consultancy trend data

	2013–14	2014–15	2015–16
Number of new consultancies	48	62	56
Expenditure on new consultancies	\$2.0 m	\$2.7 m	\$2.9 m
Number of ongoing consultancies	25	10	13
Expenditure on ongoing consultancies	\$1.2 m	\$2.5 m	\$1.2 m

Exempt contracts

The ACCC had no exempt contracts for the financial year.

Grant programs

Neither the ACCC nor the AER administers any grant programs.

Financial performance

Our financial statements, both administered and departmental, are in part 5 of this report. A financial reporting summary, including information about revenue and expenditure, an operating statement and a staffing summary, appears in part 1.

Our outcome summary in appendix 1 contains a resource summary.

Developments that have affected or may affect our operations or financial results

No developments since the end of the financial year have affected, or may affect, our operations or financial results.

Part 5

Financial statements



INDEPENDENT AUDITOR'S REPORT

To the Treasurer

I have audited the accompanying annual financial statements of the Australian Competition and Consumer Commission for the year ended 30 June 2016, which comprise:

- Statement by the Accountable Authority and Chief Financial Officer;
- Statement of Comprehensive Income;
- Statement of Financial Position;
- Statement of Changes in Equity;
- Cash Flow Statement;
- Administered Schedule of Comprehensive Income;
- Administered Schedule of Assets and Liabilities;
- Administered Reconciliation Schedule;
- Administered Cash Flow Statement; and
- Notes to the financial statements, comprising a significant accounting policies and other explanatory information.

Opinion

In my opinion, the financial statements of the Australian Competition and Consumer Commission:

- (a) comply with Australian Accounting Standards and the *Public Governance, Performance and Accountability (Financial Reporting) Rule 2015*; and
- (b) present fairly the financial position of the Australian Competition and Consumer Commission as at 30 June 2016 and its financial performance and cash flows for the year then ended.

Accountable Authority's Responsibility for the Financial Statements

The Chairman of the Australian Competition and Consumer Commission is responsible under the *Public Governance, Performance and Accountability Act 2013* for the preparation and fair presentation of annual financial statements that comply with Australian Accounting Standards and the rules made under that Act and is also responsible for such internal control as the Chairman of the Australian Competition and Consumer Commission determines is necessary to enable the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

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

Auditor's Responsibility

My responsibility is to express an opinion on the financial statements based on my audit. I have conducted my audit in accordance with the Australian National Audit Office Auditing Standards, which incorporate the Australian Auditing Standards. These auditing standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of the accounting policies used and the reasonableness of accounting estimates made by the Accountable Authority of the entity, as well as evaluating the overall presentation of the financial statements.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

Independence

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

Australian National Audit Office



Jocelyn Ashford
Executive Director

Delegate of the Auditor-General
Canberra

25 August 2016

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AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
STATEMENT BY THE ACCOUNTABLE AUTHORITY AND CHIEF FINANCIAL OFFICER

In our opinion, the attached financial statements for the year ended 30 June 2016 comply with subsection 42(2) of the Public Governance, Performance and Accountability Act 2013 (PGPA Act), and are based on properly maintained financial records as per subsection 41(2) of the PGPA Act.

In our opinion, at the date of this statement, there are reasonable grounds to believe that the non-corporate Commonwealth entity will be able to pay its debts as and when they fall due.



Rod Sims
Chairman and Accountable Authority

25 August 2016



Peter Maybury
Chief Financial Officer

25 August 2016

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Comprehensive Income

for the period ended 30 June 2016

	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Employee benefits	1.1A	103,731	97,372	98,165
Suppliers	1.1B	68,287	72,470	67,496
Depreciation and amortisation	3.2A	5,553	5,779	6,562
Finance costs	1.1C	59	88	-
Write-down and impairment of assets	1.1D	22	673	-
Other expenses	1.1E	4,296	150	-
Total expenses		181,948	176,532	172,223
Own-Source Income				
Own-source revenue				
Sale of goods and rendering of services	1.2A	1,145	1,167	2,764
Rental income	1.2B	1,003	22	-
Other revenue	1.2C	3,396	1,523	75
Total own-source revenue		5,544	2,712	2,839
Net (cost of) services		(176,404)	(173,820)	(169,384)
Revenue from Government	1.2D	165,346	167,446	162,822
Surplus/(Deficit) attributable to the Australian Government		(11,058)	(6,374)	(6,562)
OTHER COMPREHENSIVE INCOME				
Items not subject to subsequent reclassification to net cost of services				
Changes in asset revaluation surplus		(48)	247	-
Total other comprehensive income		(48)	247	-
Total comprehensive income/(loss) attributable to the Australian Government		(11,106)	(6,127)	-

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Financial Position

as at 30 June 2016

	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	3.1A	1,289	1,083	2,000
Trade and other receivables	3.1B	33,781	36,576	24,763
Total financial assets		35,070	37,659	26,763
Non-financial assets				
Leasehold improvements	3.2A	10,502	12,643	9,604
Plant and equipment	3.2A	4,017	5,020	4,574
Computer software	3.2A	3,403	3,839	3,174
Inventories		-	-	10
Other non-financial assets	3.2B	1,511	1,038	1,539
Total non-financial assets		19,433	22,540	18,901
Total assets		54,503	60,199	45,664
LIABILITIES				
Payables				
Suppliers	3.3A	7,340	8,644	6,268
Other payables	3.3B	11,783	16,389	11,138
Total payables		19,123	25,033	17,406
Provisions				
Employee provisions	6.1A	30,194	26,178	22,107
Other provisions	3.4A	9,917	5,906	6,236
Total provisions		40,111	32,084	28,343
Total liabilities		59,234	57,117	45,749
Net assets		(4,731)	3,082	(85)
EQUITY				
Contributed equity		71,624	68,331	71,624
Reserves		3,918	3,966	3,719
Retained surplus/(Accumulated deficit)		(80,273)	(69,215)	(75,428)
Total equity		(4,731)	3,082	(85)

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Changes in Equity

for the period ended 30 June 2016

Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
CONTRIBUTED EQUITY			
Opening balance			
Balance carried forward from previous period	68,331	63,618	68,331
Adjusted opening balance	68,331	63,618	68,331
Comprehensive income			
Other comprehensive income	-	-	-
Total comprehensive income	-	-	-
Transactions with owners			
Contributions by owners			
Equity injection - Appropriations	1,300	2,700	1,300
Departmental capital budget	1,993	2,013	1,993
Total transactions with owners	3,293	4,713	3,293
Closing balance as at 30 June	71,624	68,331	71,624
RETAINED EARNINGS			
Opening balance			
Balance carried forward from previous period	(69,215)	(62,841)	(68,866)
Adjusted opening balance	(69,215)	(62,841)	(68,866)
Comprehensive income			
Surplus/(Deficit) for the period	(11,058)	(6,374)	(6,562)
Other comprehensive income	-	-	-
Total comprehensive income	(11,058)	(6,374)	(6,562)
Closing balance as at 30 June	(80,273)	(69,215)	(75,428)
ASSET REVALUATION RESERVE			
Opening balance			
Balance carried forward from previous period	3,966	3,719	3,719
Adjusted opening balance	3,966	3,719	3,719
Comprehensive income			
Other comprehensive income	(48)	247	-
Total comprehensive income	(48)	247	-
Closing balance as at 30 June	3,918	3,966	3,719

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Statement of Changes in Equity

for the period ended 30 June 2016

<i>(cont)</i>	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
TOTAL EQUITY				
Opening balance				
Balance carried forward from previous period		3,082	4,496	3,184
Adjusted opening balance		3,082	4,496	3,184
Comprehensive income				
Surplus/(Deficit) for the period		(11,058)	(6,374)	(6,562)
Other comprehensive income		(48)	247	-
Total comprehensive income		(11,106)	(6,127)	(6,562)
Transactions with owners				
Contributions by owners				
Equity injection - Appropriations		1,300	2,700	1,300
Departmental capital budget		1,993	2,013	1,993
Total transactions with owners		3,293	4,713	3,293
Closing balance as at 30 June		(4,731)	3,082	(85)

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

Accounting Policy

Equity Injections

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) and Departmental Capital Budgets (DCBs) are recognised directly in contributed equity in that year.

Restructuring of Administrative Arrangements

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Cash Flow Statement

for the period ended 30 June 2016

	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
OPERATING ACTIVITIES				
Cash received				
Appropriations		173,988	165,238	167,435
Sale of goods and rendering of services		1,527	1,621	1,375
Net GST received		6,674	6,456	7,088
Other		2,727	3,804	-
Total cash received		184,916	177,119	175,898
Cash used				
Employees		102,536	94,685	100,126
Suppliers		76,964	77,515	76,272
Section 74 receipts transferred to OPA		4,718	5,458	-
Other		350	150	-
Total cash used		184,568	177,808	176,398
Net cash from/(used by) operating activities	5.4A	348	(689)	(500)
INVESTING ACTIVITIES				
Cash used				
Purchase of non-financial assets		2,135	3,178	2,793
Total cash used		2,135	3,178	2,793
Net cash from/(used by) investing activities		(2,135)	(3,178)	(2,793)
FINANCING ACTIVITIES				
Cash received				
Contributed equity		1,993	3,009	3,293
Total cash received		1,993	3,009	3,293
Net cash from/(used by) financing activities		1,993	3,009	3,293
Net increase/(decrease) in cash held		206	(858)	-
Cash and cash equivalents at the beginning of the reporting period		1,083	1,941	2,000
Cash and cash equivalents at the end of the reporting period	3.1A	1,289	1,083	2,000

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Comprehensive Income

for the period ended 30 June 2016

	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
NET COST OF SERVICES				
Expenses				
Impairment and repayment of fees and fines	2.1A	5,632	13,262	-
Total expenses		5,632	13,262	-
Income				
Revenue				
Non-taxation revenue				
Fees and fines	2.2A	83,861	34,050	39,980
Total non-taxation revenue		83,861	34,050	39,980
Total income		83,861	34,050	39,980
Net (cost of)/contribution by services		78,229	20,788	39,980
Surplus/(Deficit)		78,229	20,788	39,980
Total comprehensive income/(loss)		78,229	20,788	39,980

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Schedule of Assets and Liabilities

as at 30 June 2016

	Notes	2016 \$'000	2015 \$'000	Original Budget \$'000
ASSETS				
Financial assets				
Cash and cash equivalents	4.1A	1	-	9
Trade and other receivables	4.1B	7,683	5,252	4,315
Total financial assets		7,684	5,252	4,324
Total assets administered on behalf of Government		7,684	5,252	4,324
LIABILITIES				
Payables				
Other payables	4.2A	-	11,000	-
Total payables		-	11,000	-
Total liabilities administered on behalf of Government		-	11,000	-
Net assets/(liabilities)		7,684	(5,748)	4,324

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

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Reconciliation Schedule

for the period ended 30 June 2016

	Notes	2016 \$'000	2015 \$'000
Opening assets less liabilities as at 1 July		(5,748)	6,294
Adjusted opening assets less liabilities		(5,748)	6,294
Net (cost of)/contribution by services			
Income		83,861	34,050
Expenses		(5,632)	(13,262)
Transfers (to)/from the Australian Government			
Appropriation transfers to OPA			
Transfers to OPA		(64,798)	(32,830)
Closing assets less liabilities as at 30 June		7,684	(5,748)

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

Accounting Policy

Administered Cash Transfers to and from the Official Public Account

Revenue collected by the Commission for use by the Government rather than the Commission is administered revenue. Collections are transferred to the Official Public Account (OPA) maintained by the Department of Finance. Conversely, cash is drawn from the OPA to make payments under Parliamentary appropriation on behalf of Government. These transfers to and from the OPA are adjustments to the administered cash held by the Commission on behalf of the Government and reported as such in the schedule of administered cash flows and in the administered reconciliation schedule.

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Administered Cash Flow Statement

for the period ended 30 June 2016

	Notes	2016 \$'000	2015 \$'000
OPERATING ACTIVITIES			
Cash received			
Fines and costs		75,611	32,581
Other fees		233	240
Total cash received		75,844	32,821
Cash used			
Refund of fees and fines		11,045	-
Total cash used		11,045	-
Net cash from/(used by) operating activities	5.4B	64,799	32,821
Cash to Official Public Account			
Appropriations		(64,798)	(32,830)
Total cash to official public account		(64,798)	(32,830)
Cash and cash equivalents at the beginning of the reporting period		-	9
Cash and cash equivalents at the end of the reporting period	4.1A	1	-

This schedule should be read in conjunction with the accompanying notes.

OVERVIEW

Objectives of the Australian Competition and Consumer Commission (the Commission)

The Commission is an Australian Government controlled entity. It is a not-for-profit entity. The objectives of the Commission are to:

- maintain and promote competition and remedy market failure;
- protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business; and
- promote the economically efficient operation of, use of, and investment in monopoly infrastructure in the long term interests of end users.

The Commission's outcome is lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.

The continued existence of the Commission in its present form and with its present programmes is dependent on Government policy and on continuing funding by Parliament for the Commission's administration and programmes.

The Commission's activities contributing toward this outcome are classified as either departmental or administered. Departmental activities involve the use of assets, liabilities, income and expenses controlled or incurred by the Commission in its own right. Administered activities involve the management or oversight by the Commission, on behalf of the Government, of items controlled or incurred by the Government.

The Commission does not conduct administered activities, however, fines, penalties and court costs collected are returned to the Commonwealth as administered items. Where court costs are awarded against the Commission, these costs are recognised as a departmental item. As such, contingent gains are recognised as administered items, and contingent losses as departmental items - refer to note 7.1 of Managing uncertainties and Unquantifiable contingencies (below).

The Basis of Preparation

The financial statements are general purpose financial statements and are required by section 42 of the Public Governance, Performance and Accountability Act 2013.

The financial statements have been prepared in accordance with:

- a) Public Governance, Performance and Accountability (Financial Reporting) Rule 2015 (FRR) for reporting periods ending on or after 1 July 2015; and
- b) Australian Accounting Standards and Interpretations issued by the Australian Accounting Standards Board (AASB) that apply for the reporting period.

The financial statements have been prepared on an accrual basis and in accordance with the historical cost convention, except for certain assets and liabilities at fair value. Except where stated, no allowance is made for the effect of changing prices on the results or the financial position. The financial statements are presented in Australian dollars.

Significant Accounting Judgements and Estimates

In the process of applying the accounting policies listed in these statements the Commission has made assumptions or estimates in the following areas that have the most significant impact on the amounts recorded in the financial statements:

- the fair value of leasehold improvements and property, plant and equipment is assessed at market or depreciated replacement cost as determined by an independent valuer and is subject to ongoing assessment by the valuer and management between formal valuations.
- leave provisions involve assumptions based on the expected tenure of existing staff, patterns of leave claims and payout, future salary movements and future discount rates. The Commission has used the Australian Government shorthand method to estimate the present value of long service leave liabilities.

No accounting assumptions or estimates have been identified that have a significant risk of causing a material adjustment to carrying amounts of assets and liabilities within the next reporting period.

New Accounting Standards

Adoption of New Australian Accounting Standard Requirements

The Commission has early adopted AASB 2015-7: *Amendments to Australian Accounting Standards - Fair Value Disclosures of Not-for-Profit Public Sector Entities* which provides some relief for not-for-profit entities from certain AASB 13 disclosures applying to assets within the scope of AASB 116.

No new, revised or amending standards or interpretations were issued prior to the signing of the statements by the accountable authority and chief financial officer, that would apply to the current reporting period would have a material effect on the Commission's financial statements.

Future Australian Accounting Standard Requirements

The following new, revised and amending standards were issued by the Australian Accounting Standards Board prior to the signing of the statement by the accountable authority and chief financial officer, which are expected to have a material impact on the Commission's financial statements for future reporting period(s):

Standard/ Interpretation	Application date	Nature of impending change/s in accounting policy and likely impact on initial application
AASB 2015-6 <i>Amendments to Australian Accounting Standards – Extending Related Party Disclosures to Not-for-Profit Public Sector Entities [AASB 10, AASB 124 & AASB 1049]</i>	01-Jul-16	The amendments extend the scope of AASB 124 to include application by not-for-profit public sector entities. Implementation guidance is included to assist application of the Standard by not-for-profit public sector entities. This Standard also makes related amendments to AASB 10 Consolidated Financial Statements and AASB 1049 Whole of Government and General Government Sector Financial Reporting, and an editorial correction to AASB 124.
AASB 9 <i>Financial Instruments</i>	01-Jan-18	AASB 9 was reissued in December 2014 and now incorporates: <ul style="list-style-type: none"> - the classification and measurement requirements for financial assets (including limited amendments) and for financial liabilities, and the recognition and derecognition requirements for financial instruments (representing the first phase of the three phase project that replaces AASB 139); - requirements for impairment of financial assets (representing the second phase); and - hedge accounting (representing the third phase).
AASB 15 <i>Revenue from Contracts with Customers</i>	01-Jan-18	AASB 15 replaces the previous revenue Standards: AASB 118 Revenue and AASB 111 Construction Contracts. AASB 15 also replaces the related Interpretations on revenue recognition. With the exception of Interpretation 1042, which was developed to address a specific interpretative issue in Australia, each of the standards and interpretations being replaced by AASB 15 correspond to IASB standards and interpretations being replaced by IFRS 15. <p>Changes include:</p> <ul style="list-style-type: none"> - establishes principles for reporting information about the nature, amount, timing and uncertainty of revenue and cash flows arising from an entity's contracts with customers, with revenue recognised as 'performance obligations' are satisfied; and - will apply to contracts of not-for profit entities that are exchange transactions. AASB 1004 Contributions will continue to apply to non-exchange transactions until the income for not-for-profits project is completed.
AASB 16 <i>Leases</i>	01-Jan-19	AASB 16 brings all leases onto the balance sheet of lessees, thereby increasing the transparency surrounding such arrangements and making the lessee's balance sheet better reflect the economics of its transactions.

All other new, revised or amending standards or interpretations that were issued prior to the sign-off date and are applicable to future reporting period(s) are not expected to have a future material impact on the Commission's financial statements.

Taxation

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Comparatives and Disclosure Updates

The following 2014-15 comparatives have been updated in the notes to the 2015-16 financial statements to reflect classification adjustments made during the preparation of the 2015-16 Financial Statements.

Note 1.2A/B - The prior year comparative in note 1.2A has been updated to reflect reclassification of sublease income which is now separately disclosed in note 1.2B.

Note 1.2C - The account description has been updated to clarify the nature of 'Other revenue' as 'Project revenue'. Resources received free of charge for the remuneration of auditors has been reclassified as 'other revenue' in 2015-16 to align with guidance provided by the Department of Finance. In previous years and in the portfolio budget statements these amounts have been classified as gains.

Note 3.3B - Additional disclosure has been provided by separating superannuation payable out from salary and wages payable.

Note 5.1A - The appropriation note comparative disclosure has been updated to reflect the separate disclosure of the DCB component of the ordinary annual appropriation as required for 2015-16.

Note 6.1 - Employee provision current/non-current split comparative has been updated to be consistent with the methodology for apportionment in 2015-16.

Note 7.2 - Financial instruments disclosures have been reassessed. The reporting of 'other payables' in 2014-15 has been updated to reflect only 'unearned revenue' amounts.

Regulatory Charging

Annual carrier licence charges are imposed under the *Telecommunications (Carrier Licence Charges) Act 1997* on participating telecommunication carriers under cost recovery arrangements to recover the costs incurred by the Commission, the Australian Communications and Media Authority (ACMA) and the Australian Government in regulating the telecommunications industry. ACMA undertakes the regulatory charging activity, recovering the Commissions costs on behalf of the Commonwealth. The Commission does not receive any monies direct from external parties. The departmental costs incurred by the Commission are met out of appropriation funding. The Commissions costs being recovered by ACMA in 2015-16 total \$15,106,662 (2015: \$14,974,676) refer to *Telecommunications (Carrier Licence Charges) Act 1997 Determination under paragraph 15(1)(b) No. 1 of 2016*. This cost includes a component of depreciation expense \$619k (2015: \$609k) which is not appropriation funded.

The Cost Recovery Implementation Statement for the above activity is available at <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/cost-recovery-impact-statements-acma>.

Unquantifiable Contingencies

At 30 June 2016, the Commission has matters before the Courts alleging breaches of the *Competition and Consumer Act 2010*. These cases are at various stages of completion.

In the event of favourable judgement by the Courts, the Commission stands to gain by way of penalties or costs awarded. Where it is possible to estimate the amounts of eventual gains these have been reported as administered contingent assets in Note 7.1B.

In the event of an unfavourable judgement by the Courts, the Commission stands to be liable for court costs. Where it is possible to estimate the amounts of eventual payments these have been reported as departmental contingent liabilities in Note 7.1.

Due to the inherent uncertainty of litigation it was not possible to estimate the amounts for most cases. These cases were not included in Note 7 and are considered to be unquantifiable contingencies.

Reporting of Administered activities

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the administered schedules and related notes.

Except where otherwise stated, administered items are accounted for on the same basis and using the same policies as for departmental items, including the application of Australian Accounting Standards.

Events After the Reporting Period

Departmental

Nil

Administered

Nil

1.1 Expenses

	2016 \$'000	2015 \$'000
1.1A: Employee benefits		
Wages and salaries	76,825	73,466
Superannuation		
Defined contribution plans	7,231	6,674
Defined benefit plans	7,368	7,107
Leave and other entitlements	11,249	9,081
Separation and redundancies	352	449
Other employee benefits	706	595
Total employee benefits	103,731	97,372

Accounting Policy

Accounting policies for employee related expenses is contained in the People and relationships section.

1.1B: Suppliers		
Goods and services supplied or rendered		
Legal expenses	26,769	24,533
Consultants and contracted services	8,263	13,790
Information technology and communications	9,549	9,076
Property operating expenses	4,083	4,577
Travel expenses	3,418	3,099
Employee related expenses	1,136	1,720
Information management expenses	1,894	1,881
Other administration expenses	1,089	1,662
Total goods and services supplied or rendered	56,201	60,338
Goods supplied	1,568	1,649
Services rendered	54,632	58,689
Total goods and services supplied or rendered	56,201	60,338
Other suppliers		
Operating lease rentals in connection with		
Minimum lease payments	10,809	11,466
Workers compensation premiums	1,277	666
Total other suppliers	12,086	12,132
Total suppliers	68,287	72,470

Leasing commitments

The Commission in its capacity as lessee has operating lease commitments for office space and a small number of motor vehicles. Most lease payments for office space are subject to annual increases of between 3% and 5% per annum. Some leases are subject to minimum lease payment market reviews. The current terms of the office space leases will expire between 2017 and 2027 with many leases containing extension options. There are no purchase options available to the Commission.

	2016 \$'000	2015 \$'000
1.1B: Suppliers (cont)		
Commitments for minimum lease payments in relation to non-cancellable operating leases are payable as follows:		
Within 1 year	14,060	13,464
Between 1 to 5 years	39,908	45,025
More than 5 years	16,404	24,606
Total operating lease commitments	70,372	83,095

Accounting Policy

Operating lease payments are expensed on a straight-line basis which is representative of the pattern of benefits derived from the leased assets. The Commission has no finance leases.

1.1C: Finance costs		
Unwinding of discount	59	88
Total finance costs	59	88

Accounting Policy

All borrowing costs are expensed as incurred.

1.1D: Write-down and impairment of assets		
Impairment on financial instruments	4	-
Impairment of property, plant and equipment	18	663
Impairment of inventory	-	10
Total write-down and impairment of assets	22	673
1.1E: Other expenses		
Settlement of litigation	4,296	150
Total other expenses	4,296	150

1.2 Own-Source Revenue

	2016 \$'000	2015 \$'000
Own-Source Revenue		
1.2A: Sale of goods and rendering of services		
Rendering of services	1,145	1,167
Total sale of goods and rendering of services	1,145	1,167

Accounting Policy

Revenue from rendering of services is recognised by reference to the stage of completion of contracts at the reporting date. The revenue is recognised when:

- a) the amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- b) the probable economic benefits associated with the transaction will flow to the Commission.

The stage of completion of contracts at the reporting date is determined by reference to the proportion that costs incurred to date bear to the estimated total costs of the transaction.

Receivables for goods and services, which have 30 day terms, are recognised at the nominal amounts due less any impairment allowance account. Collectability of debts is reviewed at end of the reporting period. Allowances are made when collectability of the debt is no longer probable.

1.2B: Rental income

Operating lease		
Sublease Rent	1,003	22
Total rental income	1,003	22

Subleasing rental income commitments

The Commission in its capacity as lessor has two operating subleases for office space (2015:1). These subleases are effectively non-cancellable. Each lease has annual rental increases of between 3-4% and the lease terms will expire in four to six years.

Commitments for sublease rental income receivables are as follows:

Within 1 year	1,184	290
Between 1 to 5 years	5,127	1,280
More than 5 years	1,066	264
Total sublease rental income commitments	7,377	1,833

	2016 \$'000	2015 \$'000
1.2C: Other revenue		
Project revenue	3,302	1,432
Resources received free of charge		
Remuneration of auditors	94	91
Total other revenue	3,396	1,523

Accounting Policy

Resources Received Free of Charge

Resources received free of charge are recognised as revenue when, and only when, a fair value can be reliably determined and the services would have been purchased if they had not been donated. Use of those resources is recognised as an expense. Resources received free of charge are recorded as either revenue or gains depending on their nature.

Contributions of assets at no cost of acquisition or for nominal consideration are recognised as gains at their fair value when the asset qualifies for recognition.

1.2D: Revenue from Government		
Appropriations		
Departmental appropriations	165,346	167,446
Total revenue from Government	165,346	167,446

Accounting Policy

Revenue from Government

Amounts appropriated for departmental appropriations for the year (adjusted for any formal additions and reductions) are recognised as Revenue from Government when the Commission gains control of the appropriation, except for certain amounts that relate to activities that are reciprocal in nature, in which case revenue is recognised only when it has been earned. Appropriations receivable are recognised at their nominal amounts.

Income and Expenses Administered on Behalf of Government

This section analyses the activities that the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

2.1 Administered - Expenses

	2016 \$'000	2015 \$'000
2.1A: Impairment and repayment of fees and fines		
Refund of fees and fines	-	11,000
Impairment of receivables	5,632	2,262
Total impairment and repayment of fees and fines	5,632	13,262

Income and Expenses Administered on Behalf of Government

This section analyses the activities that the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

2.2 Administered - Income

	2016 \$'000	2015 \$'000
Revenue		
Non-Taxation Revenue		
2.2A: Fees and fines		
Fines and costs	83,629	33,811
Authorisation fees	132	149
Notifications	101	90
Arbitration fees	-	-
Total fees and fines	83,861	34,050

Accounting Policy

All administered revenues are revenues relating to ordinary activities performed by the Commission on behalf of the Australian Government. As such, administered appropriations are not revenues of the individual entity that oversees distribution or expenditure of the funds as directed.

Revenue is generated from fines and costs applied by the courts, or by agreement between the Commission and the defendant. It is recognised when awarded by the courts, or when agreement has been executed.

The court costs awarded against the Commission are recorded as a departmental expense.

Authorisation and notification fees and other revenue are applied when required under the relevant legislation, and are recognised upon payment.

Administered fee revenue is recognised at its nominal amount due less any allowance for bad or doubtful debts. Collectability of debts is reviewed at the end of the reporting period. Allowances are made when collection of the debt is judged to be less rather than more likely.

Financial Position

This section analyses the Commission's assets used to conduct its operations and the operating liabilities incurred as a result.

Employee related information is disclosed in the People and Relationships section.

3.1 Financial Assets

	2016 \$'000	2015 \$'000
3.1A: Cash and cash equivalents		
Cash on hand or on deposit	1,289	1,083
Total cash and cash equivalents	1,289	1,083

Accounting Policy

Cash is recognised at its nominal amount. Cash and cash equivalents includes:

- a) cash on hand; and
- b) deposits in bank accounts.

3.1B: Trade and other receivables		
Goods and services receivables		
Goods and services	398	377
Total goods and services receivables	398	377
Appropriations receivables		
Appropriation receivable	32,171	34,795
Total appropriations receivables	32,171	34,795
Other receivables		
Statutory receivables	1,212	1,404
Total other receivables	1,212	1,404
Total trade and other receivables (gross)	33,781	36,576
Less impairment allowance	-	-
Total trade and other receivables (net)	33,781	36,576
Trade and other receivables (net) expected to be recovered		
No more than 12 months	33,781	36,576
Total trade and other receivables (net)	33,781	36,576
Trade and other receivables (gross) aged as follows		
Not overdue	33,762	36,523
Overdue by		
0 to 30 days	19	18
31 to 60 days	-	23
61 to 90 days	-	12
Total trade and other receivables (net)	33,781	36,576

Accounting Policy

Loans and Receivables

Trade receivables, loans and other receivables that have fixed or determinable payments and that are not quoted in an active market are classified as 'loans and receivables'. Loans and receivables are measured at amortised cost using the effective interest method less impairment. Financial assets are assessed for impairment at the end of each reporting period.

3.2 Non-Financial Assets

3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles

Reconciliation of the opening and closing balances of property, plant and equipment for 2016

	Leasehold improvements \$'000	Plant and equipment \$'000	Computer software ¹ \$'000	Total \$'000
As at 1 July 2015				
Gross book value	12,643	5,020	12,850	30,513
Accumulated depreciation, amortisation and impairment	-	-	(9,011)	(9,011)
Total as at 1 July 2015	12,643	5,020	3,839	21,502
Additions				
Purchase	561	575	63	1,199
Internally developed	-	-	791	791
Depreciation and amortisation	(2,702)	(1,473)	(1,378)	(5,553)
Other movements	-	-	-	-
Transfer from PPE to Software	-	(88)	88	-
Disposals				
Other disposals/writedowns (gross book value)	-	(52)	(1,408)	(1,460)
Other disposals/writedowns (accumulated depreciation)	-	35	1,408	1,443
Total as at 30 June 2016	10,502	4,017	3,403	17,922
Total as at 30 June 2016 represented by				
Gross book value	13,204	5,456	11,211	29,871
Accumulated depreciation, amortisation and impairment	(2,702)	(1,439)	(7,808)	(11,949)
Total as at 30 June 2016	10,502	4,017	3,403	17,922

3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles (cont)

1. The carrying amount of computer software includes \$1.0m purchased software and \$2.4m internally generated software. No indicators of impairment were found for property, plant and equipment and intangibles. No property, plant and equipment and intangibles are expected to be sold or disposed of within the next 12 months. No property, plant and equipment are held under finance lease.

Revaluations of non-financial assets

All revaluations were conducted in accordance with the revaluation policy stated at Note 7.4. A full revaluation was undertaken at 30 June 2015. A materiality review has been conducted to assess whether materiality is evident between carrying amounts and fair value at 30 June 2016. No significant material differences between the carrying amounts and fair values were identified.

An impairment loss of \$0.02m (2015: \$0.6m) for property, plant and equipment was recognised in the Statement of Comprehensive Income.

Contractual commitments for the acquisition of property, plant, equipment and intangible assets

The Commission has contractual commitments for the acquisition of leasehold improvements of \$989k (2015: \$608k), property plant and equipment of \$9k (2015: \$440k) and intangible assets of \$289k (2015: \$540k).

3.2A: Reconciliation of the opening and closing balances of property, plant and equipment and intangibles (cont)

Reconciliation of the opening and closing balances of property, plant and equipment for 2015					
	Leasehold improvements	Plant and equipment	Computer software	Total	
	\$'000	\$'000	\$'000	\$'000	\$'000
As at 1 July 2014					
Gross book value	18,136	9,918	10,560		38,614
Accumulated depreciation, amortisation and impairment	(4,367)	(3,491)	(7,323)		(15,181)
Total as at 1 July 2014	13,769	6,427	3,237		23,433
Additions					
Purchase	494	1,097	2,290		3,881
Internally developed	-	-	-		-
Revaluations and impairments recognised in other comprehensive income	630	(607)	-		23
Revaluations recognised in net cost of services	-	-	-		-
Impairments recognised in net cost of services	-	-	-		-
Depreciation and amortisation	(2,250)	(1,841)	(1,688)		(5,779)
Disposals					
Other disposals/writedowns (gross book value)	(77)	(157)	-		(234)
Other disposals/writedowns (accumulated depreciation)	77	101	-		178
Total as at 30 June 2015	12,643	5,020	3,839		21,502
Total as at 30 June 2015 represented by					
Gross book value	12,643	5,020	12,850		30,513
Accumulated depreciation, amortisation and impairment	-	-	(9,011)		(9,011)
Total as at 30 June 2015	12,643	5,020	3,839		21,502

3.2 Non-Financial Assets

Accounting Policy

Assets are recorded at cost on acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. Financial assets are initially measured at their fair value plus transaction costs where appropriate.

Assets acquired at no cost, or for nominal consideration, are initially recognised as assets and income at their fair value at the date of acquisition, unless acquired as a consequence of restructuring of administrative arrangements. In the latter case, assets are initially recognised as contributions by owners at the amounts at which they were recognised in the transferor's accounts immediately prior to the restructuring.

Asset recognition threshold

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

The initial cost of an asset includes an estimate of the cost of dismantling and removing the item and restoring the site on which it is located. This is particularly relevant to 'make good' provisions in property leases taken up by the Commission where there exists an obligation to restore the property to its original condition. These costs are included in the value of the Commission's leasehold improvements with a corresponding provision for the 'make good' recognised.

Revaluations

Following initial recognition at cost, property, plant and equipment are carried at fair value less subsequent accumulated depreciation and accumulated impairment losses. Valuations are conducted with sufficient frequency to ensure that the carrying amounts of assets did not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depended upon the volatility of movements in market values for the relevant assets.

Revaluation adjustments are made on a class basis. Any revaluation increment is credited to equity under the heading of asset revaluation reserve except to the extent that it reversed a previous revaluation decrement of the same asset class that was previously recognised in the surplus/deficit. Revaluation decrements for a class of assets are recognised directly in the surplus/deficit except to the extent that they reversed a previous revaluation increment for that class.

Any accumulated depreciation as at the revaluation date is eliminated against the gross carrying amount of the asset

and the asset restated to the revalued amount.

Depreciation

Depreciable property, plant and equipment assets are written-off to their estimated residual values over their estimated useful lives to the Commission using, in all cases, the straight-line method of depreciation.

Depreciation rates (useful lives), residual values and methods are reviewed at each reporting date and necessary adjustments are recognised in the current, or current and future reporting periods, as appropriate.

Depreciation rates for each class of depreciable asset are based on the following useful lives:

<u>Asset class</u>	<u>2016 and 2015</u>
Leasehold improvements	Lesser of lease or 15 years
Furniture and fittings	10 years
Office equipment	5 years
Computer hardware	3 to 5 years
Computer software	3 to 7 years

Impairment

All assets were assessed for impairment at 30 June 2016. Where indications of impairment exist, the asset's recoverable amount is estimated and an impairment adjustment made if the asset's recoverable amount is less than its carrying amount.

The recoverable amount of an asset is the higher of its fair value less costs of disposal and its value in use. Value in use is the present value of the future cash flows expected to be derived from the asset. Where the future economic benefit of an asset is not primarily dependent on the asset's ability to generate future cash flows, and the asset would be replaced if the entity were deprived of the asset, its value in use is taken to be its depreciated replacement cost.

Derecognition

An item of property, plant and equipment is derecognised upon disposal or when no further future economic benefits are expected from its use.

Accounting Policy (cont)

Intangibles

The Commission's intangibles comprise purchased and internally developed software for internal use. These assets are carried at cost less accumulated amortisation and accumulated impairment losses. These assets are carried at cost above the capitalisation threshold of \$10,000. Below this amount they are expensed in the year of purchase.

Software is amortised on a straight-line basis over its anticipated useful life. The useful lives of the Commission's software are 3 to 7 years (2015: 3 to 7 years).

All software assets were assessed for indications of impairment as at 30 June 2016.

3.2 Non-Financial Assets

	2016 \$'000	2015 \$'000
3.2B: Other non-financial assets		
Prepayments	1,390	1,038
Leasehold rights	121	-
Total other non-financial assets	1,511	1,038
Other non-financial assets expected to be recovered		
No more than 12 months	1,378	1,027
More than 12 months	133	11
Total other non-financial assets	1,511	1,038

No indicators of impairment were found for other non-financial assets.

3.3 Payables

	2016 \$'000	2015 \$'000
3.3A: Suppliers		
Trade creditors and accruals	7,340	8,644
Total suppliers	7,340	8,644
Suppliers expected to be settled		
No more than 12 months	7,340	8,644
More than 12 months	-	-
Total suppliers	7,340	8,644
Settlement is usually made within 30 days.		
3.3B: Other payables		
Lease incentives	4,278	5,106
Superannuation	150	473
Operating lease payment increases	5,346	5,048
Wages and salaries	621	3,189
Unearned income	1,259	2,512
Salary sacrifice payable	129	61
Total other payables	11,783	16,389
Other payables to be settled		
No more than 12 months	3,311	7,146
More than 12 months	8,472	9,243
Total other payables	11,783	16,389

3.4 Other Provisions

3.4A: Other provisions

	Provision for litigation \$'000	Provision for onerous leases \$'000	Provision for restoration \$'000	Total \$'000
As at 1 July 2015	-	3,957	1,949	5,906
Additional provisions made	3,946	343	48	4,337
Amounts used	-	(385)	-	(385)
Unwinding or change of discount rate	-	-	59	59
Total as at 30 June 2016	3,946	3,915	2,056	9,917
			2016	2015
			\$'000	\$'000
Other provisions expected to be settled				
No more than 12 months			4,327	388
More than 12 months			5,590	5,518
Total other provisions			9,917	5,906

The Commission currently has 11 agreements (2015: 11) for the leasing of premises which have provisions requiring it to restore the premises to their original condition at the conclusion of the lease. The Commission has an onerous lease contract for premises (2015:1). Prior to 30 June 2016, two court judgements had been handed down requiring the Commission to pay court costs. The Commission has made a provisions to reflect the present value of these obligations.

Assets and Liabilities Administered on Behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred as a result the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.1 Administered - Financial Assets

	2016 \$'000	2015 \$'000
4.1A: Cash and cash equivalents		
Cash on hand or on deposit	1	-
Total cash and cash equivalents	1	-
4.1B: Trade and other receivables		
Other receivables		
Fines and costs	19,843	16,894
Total other receivables	19,843	16,894
Total trade and other receivables (gross)	19,843	16,894
Less impairment allowance	(12,160)	(11,642)
Total trade and other receivables (net)	7,683	5,252
Trade and other receivables (net) expected to be recovered		
No more than 12 months	5,682	5,252
More than 12 months	2,001	-
Total trade and other receivables (net)	7,683	5,252
Trade and other receivables (gross) aged as follows		
Not overdue	7,729	5,158
Overdue by		
0 to 30 days	4,265	-
31 to 60 days	-	131
61 to 90 days	46	20
More than 90 days	7,803	11,585
Total trade and other receivables (net)	19,843	16,894
Impairment allowance aged as follows		
Not overdue	(46)	-
Overdue by		
0 to 30 days	(4,265)	-
31 to 60 days	-	(131)
61 to 90 days	(46)	(20)
More than 90 days	(7,803)	(11,491)
Total impairment allowance	(12,160)	(11,642)

Credit terms for goods and services were within 30 days (2015: 30 days).

Assets and Liabilities Administered on Behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred as a result the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.1B: Trade and other receivables (cont)

Reconciliation of the Impairment Allowance

Movements in relation to 2016

	Goods and services \$'000	Other receivables \$'000	Total \$'000
As at 1 July 2015	-	11,642	11,642
Amounts written off	-	(5,063)	(5,063)
Amounts recovered and reversed	-	(51)	(51)
Increase/(Decrease) recognised in net cost of services	-	5,632	5,632
Total as at 30 June 2016	-	12,160	12,160

Movements in relation to 2015

	Goods and services \$'000	Other receivables \$'000	Total \$'000
As at 1 July 2014	-	10,208	10,208
Amounts written off	-	(827)	(827)
Amounts recovered and reversed	-	(46)	(46)
Increase/(Decrease) recognised in net cost of services	-	2,307	2,307
Total as at 30 June 2015	-	11,642	11,642

Accounting Policy

Loans and Receivables

Where loans and receivables are not subject to concessional treatment, they are carried at amortised cost using the effective interest method. Gains and losses due to impairment, derecognition and amortisation are recognised through profit or loss.

Assets and Liabilities Administered on Behalf of the Government

This section analyses assets used to conduct operations and the operating liabilities incurred as a result the Commission does not control but administers on behalf of the Government. Unless otherwise noted, the accounting policies adopted are consistent with those applied for departmental reporting.

4.2 Administered - Payables

	2016 \$'000	2015 \$'000
4.2A: Other payables		
Fees and fines	-	11,000
Total other payables	-	11,000
Other payables expected to be settled		
No more than 12 months	-	11,000
More than 12 months	-	-
Total other payables	-	11,000

Funding This section identifies the Commission's funding structure.

5.1 Appropriations

5.1A: Annual appropriations ('recoverable GST exclusive')

Annual Appropriations for 2016

	Appropriation Act		PGPA Act		Appropriation applied in 2016 (current and prior years)		Variance ² \$'000
	Annual Appropriation ¹ \$'000	Advance to the Finance Minister \$'000	Section 74 Receipts \$'000	Section 75 Transfers \$'000	Total \$'000	\$'000	
Departmental							
Ordinary annual services	165,346	-	4,718	-	170,064	178,019	(7,955)
Capital Budget ³	1,993	-	-	-	1,993	1,941	52
Other services							
Equity Injections	12,896	-	-	-	12,896	-	12,896
Total departmental	180,235	-	4,718	-	184,953	179,960	4,993

1. No portion of the 2015-16 annual appropriations have been withheld under section 51 of the PGPA Act and quarantined for administrative purposes.

2. The Commission applied the remaining *Appropriation Act (No. 1) 2014-15* funding that was unspent at 30 June 2015 in addition to current year ordinary annual services appropriations to meet the operational funding requirements of the Commission in 2015-16. The equity injection appropriation includes \$11,596k which relates to Litigation Contingency Funding to settle court costs awarded against the Commission. During 2015-16 only \$350k was required to settle court costs.

3. Departmental Capital Budgets are appropriated through Appropriation Acts (No. 1, 3, 5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

5.1A: Annual appropriations ('recoverable GST exclusive') (cont)

Annual Appropriations for 2015

	Appropriation Act		PGPA Act		Appropriation applied in 2015 (current and prior years) \$'000	Variance ² \$'000
	Annual Appropriation ¹ \$'000	Advance to the Finance Minister \$'000	Section 74 Receipts \$'000	Section 75 Transfers \$'000		
Departmental						
Ordinary annual services	167,470	-	5,458	-	172,928	173,534 (606)
Capital Budget ³	2,013	-	-	-	2,013	2,013 -
Other services						
Equity Injections	2,700	-	-	-	2,700	996 1,704
Total departmental	172,183	-	5,458	-	177,641	176,543 1,098

1. During 2014-15, an amount of \$24,000 was withheld under section 51 of the PGPA Act and quarantined for administrative purposes relating to Communications and Public Affairs Functions - targeted savings as per 2014-15 Budget Measures, Budget Paper No.2.

2. In 2014-15 there were no material variances.

3. Departmental Capital Budgets are appropriated through Appropriation Acts (No.1,3,5). They form part of ordinary annual services, and are not separately identified in the Appropriation Acts.

5.1B: Unspent annual appropriations ('recoverable GST exclusive')

	2016 \$'000	2015 \$'000
Departmental		
Appropriation Act (No. 4) 2013-14	11,596	11,596
Appropriation Act (No. 1) 2014-15	-	20,499
Appropriation Act (No. 2) 2014-15	2,700	2,700
Appropriation Act (No. 1) 2015-16	14,051	-
Appropriation Act (No. 2) 2015-16	1,300	-
Appropriation Act (No. 3) 2015-16	2,524	-
Appropriation Act (No. 4) 2015-16	11,596	-
Total departmental	43,767	34,795

On the 17 June 2016 the balance of *Appropriation Act (No.4) 2013-14* (\$11,595,539) was withheld by the Finance Minister in accordance with s51 of the *Public Governance Performance and Accountability Act 2013*. This appropriation has been included for repeal in the *Omnibus Repeal Day (Spring 2015) Bill 2015*. The appropriation remains legally available until the passing of this legislation. *Appropriation Act (No.4) 2015-16* re-appropriates these monies for Litigation Contingency Funding.

In addition to the unspent appropriations disclosed above, at 30 June 2016 the Commission had cash and cash equivalents of \$1,289k (2015: \$1,083k).

5.1C: Special appropriations ('recoverable GST exclusive')

Authority	Type	Purpose	Appropriation applied	
			2016 \$'000	2015 \$'000
PGPA Act, 2013 s.77, Administered	Refund	To provide an appropriation where an Act or other law requires or permits the repayment of an amount received by the Commonwealth and the Finance Minister is satisfied that, apart from this section, there is no specific appropriation for the repayment.	11,045	12
Total special appropriations applied			11,045	12

On 31 July 2015, judgement was handed down by the Full Federal Court in the matter of Flight Centre Limited v ACCC QUD of 2014. The judgement allows Flight Centre's appeal against the judgement of 28 March 2014 in which Flight Centre Limited (FCL) was ordered to pay a penalty of \$11,000,000 to the Commission. The penalty payment was refunded to FCL during 2015-16.

5.2 Special Accounts

Services for Other Entities and Trust Moneys¹

	2016 \$'000	2015 \$'000
Administered		
Balance brought forward from previous period	54	54
Total increases	-	-
Available for payments	54	54
Total decreases	-	-
Total balance carried to the next period	54	54

1. Appropriation: *Public Governance, Performance and Accountability Act 2013 section 78*

2. Establishing Instrument: Financial Management and Accountability (Establishment of Special Account for Australian Competition and Consumer Commission) Determination 2011/02

3. The purpose of the account is:

(a) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth;

(b) amounts received in the course of the performance of functions that relate to the purpose of the *Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account*;

(c) amounts received from any person for the purposes of the *Services for Other Entities and Trust Moneys - Australian Competition and Consumer Commission Special Account*; and

(d) amounts to be held on trust or otherwise for the benefit of a person other than the Commonwealth.

5.3 Net Cash Appropriation Arrangements

	2016 \$'000	2015 \$'000
Total comprehensive income (loss) less depreciation/amortisation expenses previously funded through revenue appropriations	(5,553)	(348)
Plus: depreciation/amortisation expenses previously funded through revenue appropriation	5,553	5,779
Total comprehensive income/(loss) - as per the Statement of Comprehensive Income	(11,106)	(6,127)

5.4 Cash Flow Reconciliation

5.4A: Cash flow reconciliation

	2016 \$'000	2015 \$'000
Reconciliation of cash and cash equivalents as per statement of financial position and cash flow statement		
Cash and cash equivalents as per		
Cash flow statement	1,289	1,083
Statement of financial position	1,289	1,083
Discrepancy	-	-
Reconciliation of net cost of services to net cash from/(used by) operating activities		
Net (cost of) services	(176,404)	(173,820)
Revenue from Government	165,346	167,446
Adjustments for non-cash items		
Depreciation/amortisation	5,553	5,779
Net write down of non-financial assets	18	673
Finance costs	59	79
Movement in assets and liabilities		
Assets		
(Increase)/decrease in appropriation receivable	3,924	(7,666)
(Increase)/decrease in GST receivable	386	(353)
(Increase)/decrease in other receivables	(23)	(191)
(Increase)/decrease in inventories	-	10
(Increase)/decrease in prepayments	(352)	501
(Increase)/decrease in other assets	(122)	-
Liabilities		
Increase/(decrease) in employee provisions	4,016	2,360
Increase/(decrease) in suppliers payables	(1,350)	1,610
Increase/(decrease) in other payables	(4,606)	2,280
Increase/(decrease) in other provisions	3,903	603
Net cash from/(used by) operating activities	348	(689)

5.4B: Administered - cash flow reconciliation

	2016 \$'000	2015 \$'000
Reconciliation of cash and cash equivalents as per statement of financial position and cash flow statement		
Cash and cash equivalents as per		
Administered cash flow statement	1	-
Administered schedule of assets and liabilities	1	-
Discrepancy	-	-
Reconciliation of net cost of services to net cash from/(used by) operating activities		
Net (cost of)/contribution by services	78,229	20,788
Movement in assets and liabilities		
Assets		
(Increase)/decrease in net receivables	(2,431)	1,033
Liabilities		
Increase/(decrease) in suppliers payables	(11,000)	11,000
Net cash from/(used by) operating activities	64,798	32,821

People and relationships

This section describes a range of employment and post employment benefits provided to our people and our relationships with other key people.

6.1 Employee Provisions

	2016 \$'000	2015 \$'000
6.1A: Employee provisions		
Leave	29,947	26,178
Separations and redundancies	247	-
Total employee provisions	30,194	26,178
Employee provisions expected to be settled		
No more than 12 months	20,925	17,812
More than 12 months	9,269	8,366
Total employee provisions	30,194	26,178

Accounting policy

Liabilities for 'short-term employee benefits and termination benefits expected within twelve months of the end of reporting period are measured at their nominal amounts.

Other long-term employee benefits are measured as net total of the present value of the defined benefit obligation at the end of the reporting period minus the fair value at the end of the reporting period of plan assets (if any) out of which the obligations are to be settled directly.

Leave

The liability for employee benefits includes provision for annual leave and long service leave.

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

The liability for long service leave has been calculated using the Australian Government short hand method. The estimate of the present value of the liability takes into account attrition rates and pay increases through promotion and inflation.

Separation and Redundancy

Provision is made for separation and redundancy benefit payments. The Commission recognises a provision for termination when it has committed to the terminations and having informed those employees affected that the terminations will be carried out.

Superannuation

The Commission's staff are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS), or the PSS accumulation plan (PSSap), or other superannuation funds held outside the Australian Government.

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap and other superannuation funds are defined contribution schemes.

The liability for defined benefits is recognised in the financial statements of the Australian Government and is settled by the Australian Government in due course. This liability is reported in the Department of Finance's administered schedules and notes.

The Commission makes employer contributions to the employees' defined benefit superannuation scheme at rates determined by an actuary to be sufficient to meet the current cost to the Government. The Commission accounts for the contributions as if they were contributions to defined contribution plans. The liability for superannuation recognised as at 30 June represents outstanding contributions.

6.2 Senior Management Personnel Remuneration

	2016 \$'000	2015 \$'000
Short-term employee benefits		
Salary (including annual leave taken)	12,251	12,409
Performance bonuses	621	594
Motor vehicle and other allowances	1,150	988
Total short-term employee benefits	14,022	13,991
Post-employment benefits		
Superannuation	2,207	2,438
Total post-employment benefits	2,207	2,438
Other long-term employee benefits		
Annual leave	976	911
Long-service leave	312	291
Total other long-term employee benefits	1,288	1,202
Termination benefits		
Severance payments	-	126
Total termination benefits	-	126
Total senior executive remuneration expenses	17,517	17,757

The total number of senior management personnel that are included in the above table are 54 (2015: 53).

Managing uncertainties

This section analyses how the Commission manages financial risks within its operating environment.

7.1 Contingent Assets and Liabilities

	Claims for damages or costs		Total	
	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000
Contingent liabilities				
Balance from previous period	5	-	5	-
New contingent liabilities recognised	100	5	100	5
Re-measurement	-	-	-	-
Liabilities realised	-	-	-	-
Obligations expired	(5)	-	(5)	-
Total contingent liabilities	100	5	100	5

Quantifiable Contingencies

The above table contains one contingent liability disclosed in respect of claims for damages or costs (2015: one). The amount represents an estimate of the Commission's liability based on legal advice and the precedents in such cases.

The Commission is in possession of a bank guarantee in the amount of \$99,504. This bank guarantee is a contingent asset which would be exercised in the event of a default by a subleasee. It is not expected that this bank guarantee will be exercised and it is due to expire 30 September 2021.

Accounting Policy

Contingent liabilities and contingent assets are not recognised in the statement of financial position but are reported in the notes. They may arise from uncertainty as to the existence of a liability or asset or represent an asset or liability in respect of which the amount cannot be reliably measured. Contingent assets are disclosed when settlement is probable but not virtually certain and contingent liabilities are disclosed when settlement is greater than remote.

7.1B: Administered - contingent assets and liabilities

	Claims for damages or costs		Total	
	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000
Contingent assets				
Balance from previous period	460	1,815	460	1,815
New contingent assets recognised	4,900	225	4,900	225
Re-measurement	-	(455)	-	(455)
Assets realised	(260)	(1,125)	(260)	(1,125)
Rights expired	-	-	-	-
Total contingent assets	5,100	460	5,100	460

Quantifiable Administered Contingencies

The above table contains three contingent assets in respect to claims for damages/costs (2015: four). The estimate is based on legal advice and the precedents in such cases.

7.2 Financial Instruments

	2016 \$'000	2015 \$'000
7.2A: Categories of financial instruments		
Financial Assets		
Loans and receivables		
Cash and cash equivalents	1,289	1,083
Trade and other receivables	398	377
Total loans and receivables	1,687	1,460
Total financial assets	1,687	1,460
Financial Liabilities		
Financial liabilities measured at amortised cost		
Trade creditors	7,340	8,644
Unearned income	1,259	2,512
Total financial liabilities measured at amortised cost	8,599	11,156
Total financial liabilities	8,599	11,156
7.2B: Net Gains or Losses on Financial Assets		
Loans and receivables		
Impairment	(4)	-
Net gains/(losses) on loans and receivables	(4)	-
Net gains/(losses) on financial assets	(4)	-

The fair values of the financial assets and liabilities approximate their carrying amounts. The Commission derived no interest income from financial assets in either the current or prior year.

7.2C: Liquidity risk

Liquidity risk is the risk that the Commission will not be able to meet its obligations as they fall due.

The Commission's financial liabilities were supplier and other payables. The exposure to liquidity risk was based on the notion that the Commission will encounter difficulty in meeting its obligations associated with financial liabilities. This was highly unlikely as the Commission is appropriated funding from the Australian Government and the Commission manages its budgeted funds to ensure it has adequate funds to meet payments as they fall due. In addition, the Commission has policies in place to ensure timely payments are made when they fall due.

7.2D: Market risk

The Commission held basic financial instruments that do not expose the Commission to certain market risks, such as 'currency risk' and 'other price risk'.

7.2E: Credit risk

The Commission is exposed to minimal credit risk with the maximum exposure arising from potential default of a debtor. This amount is equal to the total amount of trade receivables (2016: \$398k and 2015: \$377k).

The Commission has assessed the risk of the default on payment and has decided not to allocate an impairment allowance account. The Commission manages its credit risk by ensuring it has policies and procedures in relation to debt management.

The Commission held no collateral to mitigate against credit risk.

Credit quality of financial assets not past due or individually determined as impaired

	Not past due nor impaired	Not past due nor impaired	Past due or impaired	Past due or impaired
	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000
Cash and cash equivalents	1,289	1,083	-	-
Receivables for goods and services	379	324	19	53
Total	1,668	1,407	19	53

Ageing of financial assets that were past due but not impaired in 2016

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Receivables for goods and services	19	-	-	-	19
Total	19	-	-	-	19

Ageing of financial assets that were past due but not impaired in 2015

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Receivables for goods and services	18	23	12	-	53
Total	18	23	12	-	53

7.2: Financial Instruments (cont)

Accounting Policy

Financial assets

The Commission classifies its financial assets as loans and receivables.

The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. Financial assets are recognised and derecognised upon trade date.

Effective Interest Method

Income is recognised on an effective interest rate basis except for financial assets that are recognised at fair value through profit or loss.

Financial Assets at Fair Value Through Profit or Loss

Financial assets are classified as financial assets at fair value through profit or loss where the financial assets:

- a) have been acquired principally for the purpose of selling in the near future;
- b) are derivatives that are not designated and effective as a hedging instrument; or
- c) are parts of an identified portfolio of financial instruments that the entity manages together and has a recent actual pattern of short-term profit-taking.

Assets in this category are classified as current assets.

Financial assets at fair value through profit or loss are stated at fair value, with any resultant gain or loss recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest earned on the financial asset.

Impairment of Financial Assets

Financial assets are assessed for impairment at the end of each reporting period.

Financial assets held at amortised cost - if there is objective evidence that an impairment loss has been incurred for loans and receivables or held to maturity investments held at amortised cost, the amount of the loss is measured as the difference between the asset's carrying amount and the present value of estimated future cash flows discounted at the asset's original effective interest rate. The carrying amount is reduced by way of an allowance account. The loss is recognised in the Statement of Comprehensive Income.

Financial assets held at cost - if there is objective evidence that an impairment loss has been incurred, the amount of the impairment loss is the difference between the carrying amount of the asset and the present value of the estimated future cash flows

discounted at the current market rate for similar assets.

Financial liabilities

Financial liabilities are classified as either financial liabilities 'at fair value through profit or loss' or other financial liabilities. Financial liabilities are recognised and derecognised upon 'trade date'.

Financial Liabilities at Fair Value Through Profit or Loss

Financial liabilities at fair value through profit or loss are initially measured at fair value. Subsequent fair value adjustments are recognised in profit or loss. The net gain or loss recognised in profit or loss incorporates any interest paid on the financial liability.

Other Financial Liabilities

Other financial liabilities, including borrowings, are initially measured at fair value, net of transaction costs. These liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective interest basis.

Supplier and other payables are recognised at amortised cost. Liabilities are recognised to the extent that the goods or services have been received (and irrespective of having been invoiced).

7.3 Administered - Financial Instruments

	2016 \$'000	2015 \$'000
7.3A: Categories of financial instruments		
Financial assets		
Loans and receivables		
Cash on hand or on deposit	1	-
Fines and costs receivable	7,683	5,252
Total loans and receivables	7,684	5,252
Total financial assets	7,684	5,252
7.3B: Net gains or losses on financial assets		
Loans and receivables		
Impairment	(5,632)	(2,262)
Net gains/(losses) on loans and receivables	(5,632)	(2,262)
Net gains/(losses) on financial assets	(5,632)	(2,262)

The fair values of the administered financial assets and liabilities approximate their carrying amounts. The Commission derived no interest income from administered financial assets in either the current or prior year.

7.3C: Liquidity risk

The Commission had no administered financial liabilities that are payables. Accordingly, the Commission was not exposed to significant liquidity risk.

7.3D: Market risk

The Commission's administered activities were not exposed to 'other price risk'. Its administered activities were not traded on the Australian Stock Exchange. It did not hold any other financial instruments that would be exposed to price risk.

7.3E: Credit risk

The Commission is exposed to minimal credit risk with the maximum exposure arising from potential default of a debtor. This amount is equal to the total amount of trade receivables \$19,843k (2015: \$16,894k).

The Commission has assessed the risk of the default on payment and has allocated \$12,160k in 2016 (2015: \$11,642k) to an impairment allowance account.

The Commission holds no collateral to mitigate against credit risk.

Credit quality of financial assets not past due or individually determined as impaired

	Not past due nor impaired 2016 \$'000	Not past due nor impaired 2015 \$'000	Past due or impaired 2016 \$'000	Past due or impaired 2015 \$'000
Cash on hand or on deposit	1	-	-	-
Fines and costs receivable	7,683	5,158	-	94
Total	7,684	5,158	-	94

Ageing of financial assets that were past due but not impaired in 2016

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Fines and costs receivable	-	-	-	-	-
Total	-	-	-	-	-

Ageing of financial assets that were past due but not impaired in 2015

	0 to 30 days \$'000	31 to 60 days \$'000	61 to 90 days \$'000	90+ days \$'000	Total \$'000
Fines and costs receivable	-	-	-	94	94
Total	-	-	-	94	94

7.4 Fair Value Measurement

The following tables provide an analysis of assets and liabilities that are measured at fair value. The remaining assets and liabilities disclosed in the statement of financial position do not apply the fair value hierarchy.

The different levels of the fair value hierarchy are defined below.

- Level 1: Quoted prices (unadjusted) in active markets for identical assets or liabilities that the entity can access at measurement date.
- Level 2: Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3: Unobservable inputs for the asset or liability.

Accounting Policy

The ACCC engaged the service of Australian Valuation Solutions (AVS) to conduct a materiality review of all non-financial assets at 30 June 2016 and has relied upon those outcomes to establish carrying amounts. An annual assessment is undertaken to determine whether the carrying amount of the assets is materially different from the fair value. Comprehensive valuations are carried out at least once every three years. AVS has provided written assurance to the ACCC that the models developed are in compliance with AASB 13.

The methods utilised to determine and substantiate the unobservable inputs are derived and evaluated as follows:

Physical Depreciation and Obsolescence - Assets that do not transact with enough frequency or transparency to develop objective opinions of value from observable market evidence have been measured utilising the Depreciated Replacement Cost approach. Under the Depreciated Replacement Cost approach the estimated cost to replace the asset is calculated and then adjusted to take into physical depreciation and obsolescence. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the asset under consideration. For all Leasehold Improvement assets, the consumed economic benefit / asset obsolescence deduction is determined based on the term of the associated lease.

ACCC's policy is to recognise transfers into and transfers out of fair value hierarchy levels as at the end of the reporting period.

7.4A: Fair value measurement

	Fair value measurements at the end of the reporting period		Category	Valuation Technique(s) and Inputs Used
	2016 \$'000	2015 (Level 1, 2 or 3) ^{3,4} \$'000		
Non-financial assets²				
Leasehold improvements ¹	10,502	12,643	Level 3	Depreciated Replacement Cost: The amount a market participant would be prepared to pay to acquire or construct a substitute asset of comparable utility, adjusted for physical depreciation and obsolescence. Inputs: Current costs per square metre of floor area relevant to the location of the asset. Physical depreciation and obsolescence has been determined based on the term of the associated lease.
Plant and equipment ¹	1,098	2,289	Level 2	Market Approach: This approach seeks to estimate the fair value of an asset with reference to recent market transactions involving identical or comparable assets. Inputs: Prices and other relevant information generated by market transactions involving plant and equipment assets were considered.
Plant and equipment ¹	1,238	1,645	Level 3	Depreciated Replacement Cost: The amount a market participant would be prepared to pay to acquire or construct a substitute asset of comparable utility, adjusted for physical depreciation and obsolescence. Inputs: Current prices for substitute assets. Physical depreciation and obsolescence has been determined based on professional judgement regarding physical, economic and external obsolescence factors relevant to the assets under consideration.
Plant and equipment ¹	1,681	1,086	Level 3	Market Approach: This approach seeks to estimate the fair value of an asset with reference to recent market transactions involving identical or comparable assets. Inputs: Prices and other relevant information generated by market transactions involving plant and equipment assets were considered.

1. No non-financial assets were measured at fair value on a non-recurring basis as at 30 June 2016 (2015: Nil)
2. ACCC's assets are held for operational purposes and not held for the purposes of deriving a profit. The current use of all non-financial assets is considered their highest and best use.
3. There were no transfers between levels 1 and 2 for recurring fair value measurements during the year.
4. The remaining assets and liabilities reported by the Commission are not measured at fair value in the Statement of Financial Position.

7.4B: Reconciliation for recurring level 3 fair value measurements

	Non-financial assets					
	Leasehold improvements		Plant and equipment		Total	
	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000
As at 1 July	12,643	13,769	2,731	-	15,374	13,769
Total gains/(losses) recognised in other comprehensive income ¹	(2,702)	(2,250)	(927)	-	(3,629)	(2,250)
Purchases	561	494	1,126	-	1,687	494
Disposals	-	-	(11)	-	(11)	-
Issues	-	-	-	-	-	-
Revaluation	-	630	-	-	-	630
Transfers into Level 3 ²	-	-	-	2,731	-	2,731
Transfers out of Level 3 ²	-	-	-	-	-	-
Total as at 30 June	10,502	12,643	2,919	2,731	13,421	15,374

1. These gains/(losses) are presented in the Statement of Comprehensive Income.

2. There have been no transfers into or out of level 3 during the year.

8.1 Reporting of Outcomes

The Commission has one outcome. All income and expenses are attributable to achieving that outcome.

	Outcome 1 ¹		Total	
	2016 \$'000	2015 \$'000	2016 \$'000	2015 \$'000
Expenses				
Expenses	181,948	176,532	181,948	176,532
Total expenses	181,948	176,532	181,948	176,532
Own-source income				
Own-source income	5,544	2,712	5,544	2,712
Total own-source income	5,544	2,712	5,544	2,712
Expenses				
Expenses	5,632	13,262	5,632	13,262
Total expenses	5,632	13,262	5,632	13,262
Income				
Own-source income	83,861	34,050	83,861	34,050
Total income	83,861	34,050	83,861	34,050
Net cost of outcome delivery	98,175	153,032	98,175	153,032

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

8.2 Budgetary Reporting

Departmental

Budget Variances Commentary - Statement of Comprehensive Income

Depreciation and amortisation - The variance has arisen due to several reasons. The write-off of \$0.6m plant and equipment assets from the 2014-15 asset revaluation exercise occurred after the PBS 2015-16 was established. There have been underspends in capital purchases in 2014-15 and 2015-16 due to delays in internal system rollouts.

Other Expenses - The \$4.3m in Other Expenses represents court costs accrued and/or paid by the ACCC to respondents for reimbursement of their legal proceedings where the Federal Court of Australia has found in their favour.

Own-Source Revenue - After the 2015-16 Portfolio Budget Statements (PBS) were completed the ACCC had entered into arrangements which generated new sources of external revenue. New tenants were engaged to sublet vacant office space in Canberra and Sydney which generated \$1m rental income for the year. The ACCC also entered into a MoU with the Department of Industry, Innovation and Science to hold an inquiry into the east coast wholesale gas market.

Revenue from Government - The increase in appropriation revenue is mainly due to new funding for agriculture enforcement and engagement work connected with the Agriculture White Paper "Stronger Farmers, Stronger Economy". This occurred after the PBS 2015-16 was established and is reported in ACCC's 2015-16 Portfolio Additional Estimates (PAES).

Budget Variances Commentary - Statement of Financial Position

Cash and cash equivalents - The cash at bank float assumptions for the budget exceeded actual working capital requirements.

Trade and Other Receivables - The \$9m variance has occurred largely due to the following reasons which did not result in cash drawdowns at year-end:

- Higher accruals for suppliers and other provisions at year-end than anticipated, particularly for the court costs accrued for the reimbursement of legal proceedings where the Federal Court of Australia has found in favour of respondents.
- Capital purchases over 2015-16 funded through equity injections were re-phased, with capital expenditure expected to be higher in 2016-17 for the fitout of the Melbourne accommodation.

Suppliers Payables - The 2015-16 supplier payables profile changed during the year with more work being performed in June 2016 thereby increasing the supplier payables balance.

Plant and Equipment - The actuals are less than budgeted primarily as a result of the plant and equipment asset write-down of \$0.6m following the asset revaluation exercise in 2014-15. This took place after the PBS 2015-16 was finalised.

Employee Provisions - The budget was formed using a lower staff number assumption. In addition, the reduction in the 10 year bond rate and increase in the salary growth assumptions have combined with a review of long service leave entitlements resulting in actual employee provisions being significantly higher than budgeted.

Other Provisions - The \$3.7m over budget is largely due to the need to provide for court costs yet to be paid by the ACCC to respondents for reimbursement of their legal proceedings where the Federal Court of Australia has found in their favour. This is not considered routine ACCC operational activity.

Departmental

Budget Variances Commentary - Cash Flow Statement

Section 74 receipts transferred to OPA - The budget did not account for movements in cash for Section 74 transfers to the OPA.

Contributed Equity - The budget assumes that all contributed equity will be spent within the financial year. The unspent funding relates to the restoration of ACCC's balance sheet provisions and slight delays in the finalisation of capital project work.

Budget Variances Commentary - Statement of Changes in Equity

Surplus/(Deficit) for the period - The deficit variance has largely been generated from the unforeseen expenditure on the reimbursement of court costs to respondents where the Federal Court of Australia has found in their favour.

Administered

Budget Variances Commentary - Administered Schedule of Comprehensive Income

Impairment and Repayment of Fees and Fines - The budget did not anticipate impairments for overdue debtor balances.

Fees and Fines - The timing and size of fees and fines under the *Competition and Consumer Act 2010 (CCA)* are influenced by a number of factors such as the duration and complexity of legal matters, extent of the breach, and penalty amounts vary according to company circumstances. Competition cases in particular can often lead to variable statutory income results due to the size of the companies involved, larger potential breaches, and timing of final court decisions due to the possibility of appeals. As a cost effective estimate, the budget profile is an approximation of the historical average of the fees and fines recognised by the ACCC over the last four financial years. The variance has arisen due to two significant competition and cartel cases that were finalised in court that resulted in penalties issued for price and supply fixing of laundry detergents (\$27m) and anti-competitive flyash agreements (\$17.1m).

Budget Variances Commentary - Administered Schedule of Assets and Liabilities

Trade and Other Receivables - Receivables are difficult to estimate as a debtor's ability to pay is mostly influenced by the financial solvency of the business, while penalties collected from larger companies with greater financial reserves have quicker turnaround times in collections.

Part 6

Appendixes

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Appendix 1: Agency and outcome resource statements

Table A1.1: Agency resource statement, 2015–16

		Actual available appropriations for 2015–16 \$'000	Payments made in 2015–16 \$'000	Balance Remaining \$'000
		(a)	(b)	(a–b)
Ordinary annual services¹				
Departmental appropriation		192 556	175 981	16 575
Total ordinary annual services	A	192 556	175 981	16 575
Other services²				
Departmental non-operating				
Equity injections		27 192	-	27 192
Total other services	B	27 192	-	27 192
Special accounts				
Opening balance		54		54
Non-appropriation receipts to special accounts				
Total special account	C	54		54
Total net resourcing and payments for ACCC (A+B+C)		219 802	175 981	43 821

1 *Appropriation Act (No. 1) 2015–16 and Appropriation Act (No. 3) 2015–16*, prior year departmental appropriation and s. 74 retained revenue receipts.

2 *Appropriation Act (No. 2) 2015–16 and Appropriation Act (No. 2) 2014–15 and Appropriation Act (No. 4) 2015–16 and Appropriation Act (No. 4) 2013–14*.

Table A1.2: Budget expenses and resources for Outcome 1 2015–16

Outcome 1: Lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation, including enforcement, education, price monitoring and determining the terms of access to infrastructure services.	Budget expenses 2015–16 \$'000	Actual expenses 2015–16 \$'000	Variation 2015–16 \$'000
	(a)	(b)	(a–b)
Program 1.1: Australian Competition and Consumer Commission			
Departmental expenses			
Departmental appropriation ¹	137 219	139 336	(2 117)
Expenses not requiring appropriation in the Budget year	6 276	5 553	723
Total for Program 1.1	143 495	144 889	(1 394)
Program 1.2: Australian Energy Regulator (AER)			
Departmental expenses			
Departmental appropriation ¹	33 567	37 059	(3 492)
Total for Program 1.2	33 567	37 059	(3 492)
Outcome 1 Total by appropriation type			
Departmental expenses			
Departmental appropriation ¹	170 786	176 395	(5 609)
Expenses not requiring appropriation in the Budget year	6 276	5 553	723
Total expenses for Outcome 1	177 062	181 948	(4 886)
1 Departmental Appropriation combines Ordinary annual services (Appropriation Acts Nos. 1, 3 and 5) and Retained Revenue Receipts under s. 74 of the <i>PGPA Act 2013</i> .			

Table A1.3: Average staffing level

	2014–15	2015–16
Averaging staffing level (number)	735	739

Appendix 2: Staffing

Staffing

Table A2.1 and table A2.2 provide details of the ACCC/AER staffing complement in 2015–16.

Table A2.1: APS staff employed by classification and location (at 30 June 2016)

Actual Classification	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
POH	1		3			2		3		9
SESB3			1							1
SESB2			5			4		2		11
SESB1		4	9			18	2	3		36
EL2	10	4	47	2		78	3	24		168
EL1	12	15	69		1	98	4	18	2	219
APS6	9	7	53	2	1	74	8	21	1	176
APS5	7	9	48	1	3	46	4	22	1	141
APS4		4	26	1		16	1	6	1	55
APS3	1	2	17			1		2		23
APS2										
APS1			1			5				6
GRAD	2	1	6			17	1	5		32
Total	42	46	285	6	5	359	23	106	5	877

Table A2.2: APS staff employed by gender and location (at 30 June 2016)

	Adelaide	Brisbane	Canberra	Darwin	Hobart	Melbourne	Perth	Sydney	Townsville	Total
Ongoing										
Female full-time	14	20	95	4	1	133	10	47	3	327
Male full-time	20	12	111	2	2	160	12	34	1	354
Female part-time	4	10	43		2	38	1	13	1	112
Male part-time	2	2	3			12		3		22
Non-ongoing										
Female full-time	1	1	13			3		3		21
Male full-time		1	11			4		2		18
Female part-time			5			2				7
Male part-time			1			5		1		7
Public Office Holder										
Female full-time	1		1			1		1		4
Male full-time			2			1		1		4
Male part-time								1		1
Total	42	46	285	6	5	359	23	106	5	877

Appendix 3: Work health and safety

Work health and safety management

The ACCC/AER has continued to enhance HR policies, guidelines and practices to meet the requirements of the *Work Health and Safety Act 2011* (Cth) and the Work Health and Safety Regulations 2011 (Cth).

In 2015–16, this included the implementation of a new approach to managing mental health in the workplace. As part of this approach, information sessions were conducted for all staff to increase awareness and understanding of common mental issues and appropriate response and support strategies.

Health and safety activities

The ACCC is committed to the health and wellbeing of its workers. This commitment is reflected in a variety of actions taken during 2015–16:

- Influenza Vaccination: this program provides all employees with access to fully funded vaccinations at the workplace or offsite as arranged by the employee. In 2015–16 approximately 45 per cent of staff participated in the program.
- The implementation of enhanced measures to eliminate the incidence of bullying, harassment or discrimination.
- The continuation of the Employee Assistance Program which provides employees and their immediate families with access to a free counselling service, through a renowned corporate counselling organisation.
- Healthy Lifestyle Reimbursement: the healthy lifestyle reimbursement scheme entered its 5th year, promoting healthy lifestyle choices among staff. In 2015–16, approximately 85 per cent of employees made a claim up to the limit of just under \$300.
- ACCC and AER Ally Network: the ACCC Ally Network continues to promote a discrimination-free and diverse workplace for staff regardless of their sexual orientation.

Health and safety outcomes

Comcare premiums

The ACCC's Comcare premium for 2015–16 was set at 1.13 per cent of payroll (ex GST). This rate compares favourably to the all agencies combined rate (ex GST) of 1.85 per cent.

Compensation claims

There were three new compensation claims accepted by Comcare from the ACCC during 2015–16. The ACCC had seven open compensation claims at the end of the 2015–16 financial year.

Non-compensable cases

The ACCC supports employees suffering from non-compensable physical and psychological injuries or illnesses to maintain or resume attendance at work. During 2015–16, this assistance was provided to eight employees.

Incident statistics

There were 24 reports of incidents of an injury or a 'near miss' involving employees in 2015–16. This figure included one notifiable incident which did not require any further action from the ACCC.

Investigations, directions and notices

The ACCC received no notices under the *Work Health and Safety Act 2011*, and did not conduct any investigations during 2015–16.

Appendix 4: Advertising and market research

Under s. 311A of the *Commonwealth Electoral Act 1918*, the ACCC must report annually on its use of advertising agencies, market research organisations, polling organisations, direct mail organisations and media advertising agencies.

The reporting requirement seeks information on payments of more than \$12 700 GST inclusive, that the ACCC made to such agencies in 2015–16. Payments over this threshold are listed in table A4.1 below.

Table A4.1: Advertising and market research of more than \$12 700 in 2015–16

Date	Description of advertising and market research services	Advertising and market research firm	Amount \$
September to October 2015	Digital advertising for the food and grocery campaign	Dentsu Mitchell Media Australia	33 175
October 2015 to June 2016	Digital advertising for the business to business unfair contract terms education campaign	Dentsu Mitchell Media Australia	23 784
November to December 2015	Digital advertising for the consumer rights campaign	Dentsu Mitchell Media Australia	22 000
March 2016	Digital advertising for the business to business contract terms webinar	Dentsu Mitchell Media Australia	18 313
June to July 2015	Digital advertising for the consumer rights campaign	Dentsu Mitchell Media Australia	56 000

Appendix 5: Ecologically sustainable development

How the ACCC's activities and administration of legislation accord with principles of ecologically sustainable development

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services. At all times, the ACCC pursues its outcomes and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the least impact on resources and the environment.

How the ACCC's outcome contributes to ecologically sustainable development

In achieving its outcome, the ACCC employs decision-making which, in line with s. 3A of the *Environment Protection and Biodiversity Conservation Act 1999*, factors in the economic, environmental, social and equitable considerations over both the short and long term.

ACCC activities that affect the environment

To ensure the ACCC is able to effectively administer legislation and regulated national infrastructure markets and services, it has established offices at nine locations around Australia. The ACCC's work aims to foster competitiveness and fairness, leading to more efficient and sustainable markets. The ACCC operates in line with the Energy Efficiency in Government Operations Policy (EEGO) and ICT Sustainability Plan 2010–15, ensuring it remains committed to environmental sustainability and performance.

Measures taken to minimise the effect of activities on the environment

The ACCC is committed to reducing the environmental impact of its activities in a range of areas.

Property

- optimising environmental opportunities through refurbishment and new building projects
- reducing fitout size and using sustainable materials where possible, and reusing or recycling office furniture
- replacing halogen and fluorescent lighting with efficient, low energy LED lighting when opportunities arise
- reprogramming operating duration of supplementary air conditioning to reduce energy and water consumption
- installing programmable and efficient office lighting including motion sensors in new fitouts.

Information technology

- retaining main servers on offsite location, reducing onsite energy consumption
- using power-saving modes for ICT equipment when not in use
- using LCD computer screens
- reducing PC numbers and programming automatic shut down after hours
- increasing use of ISO 14001 accredited printers for external printing services where appropriate
- reducing printer numbers and improving printing efficiency in accordance with government requirements
- using duplex printing and photocopying as a default setting on all printers and multi-function devices.

Travel

- using information and communication technology as an alternative to business travel
- servicing vehicles in accordance with manufacturers' specifications
- using E10 fuels for lease vehicles where possible.

Workplace efficiencies

- placing emphasis on electronic records and electronic working arrangements, including reviewing lengthy reports and papers online rather than printing on paper
- promoting access to ACCC publications electronically rather than in print.

Purchasing and procurement

- purchasing 100 per cent recycled content copy paper
- recycling all fluorescent tubes
- procuring office equipment with low energy consumption and 65 per cent recycled content packaging
- procuring environmentally friendly toilet consumables and cleaning products.

Waste management

- improving its waste segregation practices including paper, co-mingled recycling, general waste, e-waste and in some offices organic waste
- recycling paper and cardboard products, including pulping classified waste and providing use-again office envelopes
- disposing of toner cartridges through a recycling outlet
- disposing of mobile phones and batteries through a recycling outlet.

Information and education

- establishing an environmental inbox for staff to submit ideas and encouraging staff to help identify/contribute to organisational environmental and sustainable initiatives, and formation of a champions network to help drive and promote initiatives
- providing staff with biannual environmental reports highlighting targets achieved
- collaborating regularly with building management to identify initiatives and participate in environmental activities such as Earth Hour.

Mechanisms for reviewing and increasing the effectiveness of measures

The ACCC environmental policy puts in place strategies towards better environmental and sustainable practices. The ACCC utilises a process of informal, continuous review of the various measures it employs to reduce the environmental impact of its activities.

Where further efficiencies are identified in the course of business, the ACCC endeavours to put in place the measures required to realise these efficiencies. All of the above is done in accordance with both the applicable funding and environmental guidelines available to the ACCC.

Appendix 6: Competition and Consumer Act 2010 and other legislation

Competition and Consumer Act and key legislation

Airports Act 1996 (Cth)

Australian Postal Corporation Act 1989 (Cth)

Competition and Consumer Act 2010 (Cth)

National Electricity Law and Rules

National Gas Law and Rules

National Energy Retail Law and Rules

Telecommunications Act 1997 (Cth)

Water Act 2007 (Cth)

Lawful competition and informed markets

Table A6.1: Parts of the *Competition and Consumer Act 2010* dealing with competition

IV	Cartel conduct: price fixing; output restrictions; bid rigging; allocating customers, suppliers or territories Other anti-competitive conduct: boycotts; agreements substantially lessening competition; anti-competitive disclosure of pricing and other information; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
VI	Enforcement and remedies for anti-competitive conduct
VII	Authorisations and notifications
XIA	The Competition Code

Enforcement

The ACCC investigates cartel and other types of anti-competitive conduct—which are illegal for all businesses in Australia.

Court cases

The ACCC takes court action where, after considering all aspects of a matter, we see it as the best way to achieve our enforcement and compliance objectives. We are more likely to litigate where we see the conduct as particularly bad, where we are concerned about likely future behaviour or where the party involved fails to resolve the matter satisfactorily.

The ACCC may refer matters involving criminal cartel offences to the Commonwealth Director of Public Prosecutions for possible criminal prosecution.

For individuals, the cartel offence is punishable by imprisonment of up to 10 years and/or fines up to \$360 000 per contravention. Corporations found guilty of a cartel offence may be fined up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater).

In relation to civil cartel prohibitions and other forms of anti-competitive conduct, the ACCC may initiate court action for contraventions of the *Competition and Consumer Act 2010*.

To enforce the civil provisions of the *Competition and Consumer Act 2010* relating to anti-competitive conduct, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation
- community service orders
- probation orders
- divestiture orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$10 million, three times the value of the illegal benefit or, where the benefit cannot be calculated, 10 per cent of the corporate group's annual turnover (whichever is the greater) for companies; and \$500 000 for individuals.

Enforceable undertakings

The ACCC often resolves alleged breaches of the Act by accepting court enforceable undertakings from the business involved. In these undertakings, which we record on a public register, the business usually agrees to:

- make good the harm they have caused
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

If the business later breaches the undertaking, we seek to have it enforced in the Federal Court of Australia.

We may also use court enforceable undertakings where we have competition concerns with a proposed merger or acquisition. In an enforceable undertaking a merger party may agree to action that addresses concerns about a substantial lessening of competition, allowing the merger or acquisition to go ahead.

The ACCC maintains a public register of enforceable undertakings.

Administrative resolution

In some cases—for example, where we assess the potential risk of harm to competition or consumer detriment from particular conduct as low—we may accept an administrative resolution. Administrative resolutions generally involve the business agreeing to stop the conduct, compensate those who suffered, and take other measures needed to prevent future recurrences.

Education and advice

We believe that preventing a breach of the Act is better than acting after a breach has occurred. Therefore, the ACCC runs regular educational campaigns to inform and advise consumers and businesses about their rights and obligations under the Act and to encourage compliance. Our campaigns aim to educate both big and small businesses.

The ACCC publishes targeted and general information, including tips and tools, to encourage businesses to comply with the Act. We use a wide range of channels to disseminate this information. We also liaise extensively with business, consumer and government agencies about the Act and our role in its administration.

Mergers

Section 50 of the Act prohibits mergers and acquisitions that substantially lessen competition in any market in Australia or are likely to do so.

To assist business, the ACCC has an informal clearance process that enables parties that are planning a merger to seek the ACCC's view on whether a proposed acquisition is likely to have the effect of substantially lessening competition. Businesses may also apply to the ACCC for formal clearance of acquisitions which, if granted, provides statutory exemption from s. 50.

There is no legislation underpinning the informal process; rather, it has developed over time so that merger parties can seek the ACCC's view before they complete a merger.

The ACCC assesses mergers that come to our attention where they potentially raise concerns under s. 50. These mergers are generally notified by the merger parties via a request for informal clearance. Alternatively, the ACCC may become aware of a proposed or a completed acquisition by monitoring media reports, from complaints or through referrals from Australian and overseas regulators.

We use the information available to us to determine whether a public review is required. Where we are satisfied that there is a low risk of a substantial lessening of competition based on an initial assessment, we may decide that a public review of the merger is unnecessary. These mergers are described as being 'pre-assessed'. A significant proportion of the mergers we assess are pre-assessed. Clearing mergers by pre-assessment enables the ACCC to respond quickly where there are no substantive competition concerns.

Both public and confidential mergers can be pre-assessed, without conducting a public review, on the basis of the information from the parties, other information before us and in some cases information from targeted inquiries (in the case of non-confidential mergers).

Where pre-assessment is not considered suitable or possible, the ACCC conducts a public review for non-confidential mergers.

Authorisations and notifications

The Act primarily aims to prevent conduct that damages or is likely to damage competition. However, if markets are not working efficiently and they are failing to maximise welfare, some restrictions on competition may be allowed in the public interest.

Authorisation provides businesses with statutory immunity from legal action to engage in potentially anti-competitive arrangements. Where businesses consider proposed conduct is likely to result in a public benefit, they can apply to the ACCC for an authorisation. If the ACCC is satisfied that the public benefit will outweigh the public detriment, it can authorise the proposed arrangement or conduct.

The ACCC can authorise:

- anti-competitive arrangements, including cartel provisions (such as price fixing, controlling output, sharing markets or collective bargaining) and exclusionary provisions (such as an agreement to limit or restrict the supply or acquisition of goods or services to particular people)
- disclosures of pricing and other information in the banking sector
- a secondary boycott, where two or more parties prevent a third party such as a potential customer or supplier from doing business with a target
- exclusive dealing (where a person trading with another imposes restrictions on the other's freedom to choose with whom, in what or where they deal)
- resale price maintenance (where the supplier specifies a minimum price below which goods or services may not be resold)
- dual-listed company arrangements that affect competition.

Notification is an alternative to authorisation for certain arrangements. Like authorisation, the notification process provides protection from legal action under the Act if the conduct is in the public interest.

However, notification can be a more streamlined procedure than authorisation. It can only be used for:

- collective bargaining (where two or more competitors get together with a supplier or a customer to negotiate terms, conditions and prices)
- exclusive dealing
- private price disclosures to competitors outside the ordinary course of business.

Both the notification and authorisation processes are public. The ACCC publishes the applications, public submissions and ACCC decisions on the public register on our website.

Fair trading and consumer protection

Table A6.2: Parts of the *Competition and Consumer Act 2010* (including the Australian Consumer Law) dealing with fair trading and consumer protection

<i>Competition and Consumer Act 2010</i>	
IVB	Industry codes of conduct—the franchising, horticulture, oil and unit pricing codes are mandatory codes prescribed under Part IVB
<i>Australian Consumer Law—Schedule 2 to the <i>Competition and Consumer Act 2010</i></i>	
Chapter 2	General protections: misleading or deceptive conduct; unconscionable conduct; unfair contract terms
Chapter 3	Specific protections: unfair practices: unsolicited supplies; pyramid selling; pricing; consumer guarantees; unsolicited consumer agreements; lay-by agreements; product safety and information
Chapter 4	Criminal conduct relating to fair trading and consumer protection
Chapter 5	Enforcement and remedies for contraventions of the Australian Consumer Law

Enforcement

To enforce the civil provisions of the *Competition and Consumer Act 2010* (including the Australian Consumer Law) relating to fair trading and consumer protection, the ACCC can seek:

- declarations of contraventions
- findings of facts
- injunctions
- damages and compensation, including for non-party consumers
- community service orders
- probation orders
- disqualification of a person from managing corporations
- adverse publicity orders
- corrective advertising, public notices and disclosure
- penalties of up to \$1.1 million for companies and \$220 000 for individuals, per contravention.

Court enforceable undertakings

To protect consumers and resolve matters under investigation, we can accept enforceable undertakings where a breach, or a potential breach, might otherwise justify litigation.

Under an enforceable undertaking, a company or an individual will generally agree to:

- remedy the harm caused by the conduct
- accept responsibility for their actions
- establish or review and improve their compliance programs and culture.

The ACCC may seek:

- corrective advertising in the print and electronic media
- refunds to affected customers
- community service remedies
- industry-wide education programs funded by the company providing the undertaking.

Infringement notices

Where we believe that a breach of the Act requires a more formal sanction than an administrative resolution but we consider that a resolution is possible without going to court, we can issue an infringement notice.

Administrative resolutions

In some cases—for example, where we assess the potential risk as low—we may accept an administrative resolution.

Depending on the circumstances, administrative resolutions can range from a commitment by a trader in writing to a signed agreement between the ACCC and a trader setting out detailed conditions.

Administrative resolutions generally involve the trader agreeing to stop the offending conduct, compensate those adversely affected and take other measures necessary to ensure that the conduct does not recur. If a trader re-offends after they have accepted an administrative resolution, we are likely to resolve the new matter differently.

Infrastructure services and markets where competition is limited

Table A6.3: Parts of the *Competition and Consumer Act 2010* dealing with regulated industries and prices surveillance

IIIA	Access to the services of essential national infrastructure facilities such as rail tracks and grain port terminals
VIIA	Price monitoring and surveillance in relation to industries or businesses as directed by the Australian Government
X	Limited exemptions for anti-competitive conduct in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

Regulation

The ACCC or AER have regulatory responsibilities in relation to a number of key infrastructure services in the economy, including energy, telecommunications, rail, water, fuel, wheat, postal services, ports and airports. As the infrastructure in each of these sectors is generally provided by one or a small number of suppliers, regulation by the ACCC/AER will promote the economically efficient operation, use and investment in Australia's key infrastructure. The effect of competition and investment will therefore enhance community welfare and promote the long-term interest of Australian consumers.

The ACCC/AER regulates access to monopoly infrastructure services and the price for that access.

The AER regulates the electricity and gas industries. The AER sets the amount of revenue that network businesses can recover from customers for using networks (electricity poles and wires and gas pipelines) that transport energy. The AER regulates the costs of electricity network services in eastern and southern Australia, and from 1 July 2015 commenced regulation of electricity networks in the Northern Territory. The AER regulates access prices for covered pipelines in jurisdictions other than Western Australia. The AER also monitors the wholesale electricity and gas markets to ensure suppliers comply with the National Electricity Law and Rules and the National Gas Law and Rules.

The AER also has monitoring and enforcement roles and functions under the National Energy Retail Law and the National Energy Retail Rules in the ACT, Tasmania, South Australia, New South Wales and from 1 July 2015, Queensland. These functions include authorising retailers to sell energy and administering the national retailer of last resort scheme aimed at protecting customers and the market in the event of a retail business failure.

Legislative amendments in 2015–16

Amendments to the Competition and Consumer Act 2010

Competition and Consumer Act 2010—Declaration No. 94—Made 5 May 2016.

- This instrument re-declares Kingsford Smith Airport for the purpose of s. 95X of the *Competition and Consumer Act 2010*.

Competition and Consumer Amendment (Payment Surcharges) Act 2016—Commenced 25 February 2016.

- Schedule 1 of this Act amends the CCA to establish a legislative and regulatory framework to ban surcharges imposed in respect of particular payment methods that exceed the cost of acceptance for those payment methods. The amendments will apply to excessive surcharges in respect of payments covered by a Reserve Bank standard or by regulations made for this purpose. Surcharges will be excessive where they exceed the permitted amount specified in the Reserve Bank standards or in the regulations.
- The amendments also ensure that the ACCC is the primary enforcement agency for the ban and that it has appropriate powers of enforcement.

Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015—Schedule 1 commencing on 12 November 2016.

- The Act extends the consumer unfair contract terms provisions in the ACL to cover small business standard form contracts. The protections will come into effect following a 12-month transition period, and the ACCC will be engaging with industry and producing guidance materials to assist compliance with the new laws.

Telecommunications Legislation Amendment (Deregulation) Act 2015—Commenced 1 July 2015.

- This Act removes from the CCA the ACCC's monitoring and reporting obligations in relation to the adequacy of universal service providers. It also abolishes the Telecommunications Universal Service Management Agency.

Amendments to Competition and Consumer Regulations 2010

Treasury Laws Amendment (2016 Measures No. 2) Regulation 2016—Commenced 10 May 2016.

- Amends the CC Regulations to provide for the conferral of functions on the Australian Energy Regulator (AER) under the *National Electricity (Victoria) Act 2005* (Vic).

Competition and Consumer Amendment (National Energy Laws) Regulation 2015—Commenced 1 July 2015.

- Amends the CC Regulations to support the implementation of the National Electricity Law in the Northern Territory and the National Energy Retail Law in Queensland, as part of the reforms to their respective energy sectors.
- The Northern Territory seeks to apply the National Electricity Law in part from 1 July 2016, and in full from 1 July 2019. Transitional arrangements commenced on 1 July 2015. Queensland seeks to apply the National Energy Retail Law from 1 July 2015.

Telecommunications legislation

Amendments to the Telecommunications Regulations 2001

Telecommunications Amendment (NextGeneration Broadband Interference Management) Regulation 2015—Commenced 31 October 2015.

- Inserts Regulation 4.2 into the Telecommunications Regulations to create a head of power to enable industry to develop a code or the ACMA to develop a standard to manage interference between next-generation systems (and between those systems and legacy systems) as they are rolled out.

Telecommunications Amendment (Designated Overhead Lines) Regulation 2015—Commenced 21 August 2015.

- The regulation enables the Minister to specify overhead lines with an external cross section not exceeding 48 mm as 'low-impact facilities' in the Telecommunications (Low-impact Facilities) Determination 1997.

Determinations made under the *Telecommunications Act 1997*

Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 3 of 2015)—Commenced 21 August 2015.

- Determination under subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* and subsection 33(3) of the *Acts Interpretation Act 1901*.
- Amends the Telecommunications (Low-impact Facilities) Determination 1997 to support the rollout of the multi-technology mix (MTM) National Broadband Network (NBN) and other next-generation broadband networks.

Telecommunications (Low-impact Facilities) Determination 1997 (Amendment No. 2 of 2015)—Commenced 8 July 2015.

- Determination under subclause 6(3) of Schedule 3 to the *Telecommunications Act 1997* and subsection 33(3) of the *Acts Interpretation Act 1901*.
- Amends the Telecommunications (Low-impact Facilities) Determination 1997 to add two new regions to the definition of HFC Trial Region at section 1.3, thereby enabling carriers to install a range of specified facilities in these additional regions during the remaining Designated Installation Period (which lapses in April 2016).

Amendments to Record Keeping Rules

- The *NBN Services in Operation Record Keeping Rules 2014* were extended in accordance with rule 12 to capture NBN Co's Fibre-to-the-Node network access services—20 October 2015.
- The *NBN Services in Operation Record Keeping Rules 2014* were amended to include NBN Co's satellite network and hybrid fibre coaxial network access services—4 July 2016.
- Revised Australia Post Record Keeping Rules issued to remove certain reporting obligations on Australia Post while maintaining ability for ACCC to request regulatory accounts. The revised rules were issued 29 June 2016 and took effect 1 July 2016. They replaced the previous version issued by the ACCC in March 2005.

Water legislation

Amendments to the *Water Act 2007*

Water Amendment (Review Implementation and Other Measures) Act 2016—Commenced 5 May 2016.

- The Act makes the legislative amendments required to implement the government's response to the Report of the Independent Review of the *Water Act 2007*.
- Specifically, the Act includes provisions for the review and reporting of the Murray-Darling Basin Plan 2012, accreditation of first generation state water resource plans with further accreditations linked to the Basin Plan review outcomes, incorporation of Indigenous expertise and knowledge in the governance of the basin's water resources, trading by the Commonwealth Environmental Water Holder, the redundancy of the Murray-Darling Basin Water Rights Information Service and other technical and consequential amendments.
- The amendments also allow the water charge rules to provide that the ACCC can extend the period of effect of a determination or approval of regulated water charges.

Water Amendment Act 2015—Commenced 13 April 2016.

- Amends the Water Act to provide for a 1500 gigalitre limit on Commonwealth purchases of surface water across the Murray-Darling Basin. It also amends the Murray-Darling Basin Plan 2012 to provide increased flexibility in the recovery of 450 gigalitres of water through efficiency measures funded under the Water for the Environment Special Account.

Water Amendment (Murray-Darling Basin Agreement) Regulation 2015 (No. 1)—Commenced 16 December 2015.

- Amends the Water Act to provide greater consistency between Schedule D of the Murray-Darling Basin Agreement and the water market and trading objectives under Schedule 3 of the *Water Act 2007* and the Murray-Darling Basin Plan water trading rules.

Water Determinations under the Water Charge (Infrastructure) Rules 2010

- WaterNSW: annual review of regulated charges 2016–17—Final decision on 19 May 2016.
 - This is the ACCC's second and final annual review of WaterNSW charges. From 1 June 2016, the NSW Independent Pricing and Regulatory Tribunal (IPART) will become the accredited regulator of WaterNSW's charges under the Commonwealth Water Charge (Infrastructure) Rules 2010.

Wheat legislation

Amendments to the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014 (Cth)

Nil.

National Electricity Law and National Gas Law

Amendments to National Electricity Law and National Gas Law Rules

National Electricity Rules

- Extension of the Reliability and Emergency Reserve Trader—commenced 23 June 2016.
- Energy Adequacy Assessment Projection timeframes—commenced 23 June 2016.
- Registration of proponents of new types of generation—commenced 23 June 2016.

- Meter Replacement Processes—commenced 10 March 2016.
- Compensation arrangements following application of an administered price cap and administered floor price—commenced 4 February 2016.
- Review frequency for the Template for Generator Compliance Programs—commenced 17 December 2015.
- Embedded Networks—commenced 17 December 2015.
- Expanding competition in metering and related services—commenced 26 November 2015.
- Common definitions of distribution reliability measures—commenced 5 November 2015.
- AEMO access to demand forecasting information—commenced 22 October 2015.
- Demand management incentive scheme—commenced 20 August 2015.
- Inter-regional Transmission Charging—commenced 1 July 2015.
- System Restart Ancillary Services—commenced 1 July 2015.

Minor Changes—commenced 1 July 2015; 5 November 2015.

National Gas Rules

- DWGM-AMDQ allocation—commenced 24 March 2016.
- Contingency Gas Evidentiary Changes—commenced 5 November 2015.

DWGM operating schedules—commenced 5 November 2015.

National Energy Retail Rules

- Meter read and billing frequency—commenced 23 June 2016.
- Customer access to information about their energy consumption—commenced 1 March 2016.
- Expanding competition in metering and related services—commenced 26 November 2015.

Customer access to information about their energy consumption—commenced 1 September 2015.

New standard

Country of Origin Food Labelling Information Standard 2016—Commenced 1 July 2016.

- The Information Standard changes Australia's country of origin food labelling laws and applies to all food sold or offered for retail sale in Australia. The Information Standard has a two year transition period, during which businesses can continue to comply with existing country of origin food labelling requirements or can adopt labelling in accordance with the Information Standard. The Information Standard requirements will become mandatory on 1 July 2018.

Under the Information Standard, most foods that are produced, grown, made or packed in Australia will need to display a label with the kangaroo in a triangle symbol (only if they were produced, grown or made in Australia), a statement indicating that the food was grown, produced, made or packed in Australia and the minimum proportion, by ingoing weight, of Australian ingredients, indicated by a percentage amount and shown in a bar chart. The ACCC will educate business on the application of the Information Standard and how to comply with it, take enforcement action where appropriate and conduct market surveillance.

Amendments to standards

Consumer Goods (Bean Bags) Safety Standard Amendment 2015; Consumer Protection Notice No.4 of 2015—Commenced 14 July 2015.

- The instrument makes minor and machinery changes to the Consumer Goods (Bean Bags) Safety Standard 2014 to permit goods complying with that standard to be sold from the date this instrument is registered and allow goods complying with the superseded standard to be sold up to 1 July 2016.

Australian Consumer Law Safety Standard (Protective Helmets for Motor Cyclists) Revocation Notice 2015—made 20 November 2016.

This Notice revokes *Trade Practices Act 1974*—Consumer Protection Notice No. 9 of 1990—Consumer Product Safety Standard: Protective Helmets for Motor Cyclists.

New ban order

Australian Consumer Law Imposition of Interim Ban on Hoverboards that do not meet Specific Safety Requirements—Consumer Protection Notice No. 3 of 2016—Commenced on 19 March 2016.

- This instrument prohibits the supply of hoverboards that do not meet certain specific safety requirements set out in International Electrotechnical Commission (IEC) standards, IEC 62133 and IEC 60335-1 or Underwriters Laboratories Inc (UL) standard, UL 2272.
- Consumer Protection Notice No. 1 of 2016—Safety warning notice (Hoverboards)—made 12 January 2016.
- Consumer Protection Notice No. 2 of 2016—Hoverboards s. 132J Notice (Certification)—made 18 March 2016.
- Consumer Protection Notice No. 4 of 2016—Hoverboards interim ban conference notice—made 18 March 2016.
- Consumer Protection Notice No. 5 of 2016—Extends the interim ban on hoverboards that do not meet specific safety requirements by 30 days—made 5 May 2016.
- Consumer Protection Notice No. 6 of 2016—Extends the interim ban on hoverboards that do not meet specific safety requirements by 30 days—made 13 June 2016.

Appendix 7: Information required under the Competition and Consumer Act 2010

Section 171(2) reporting requirements

Section 51(1) of the *Competition and Consumer Act 2010* provides that conduct that would normally contravene the law may be permitted if it is specifically authorised under other Australian, state or territory legislation. Section 171(2) of the law requires this report to list all such laws.

Exceptions under Australian, state and territory legislation

Below is a list of the legislation that allows such conduct or provides for regulations to be made authorising particular conduct. The list includes legislation which the ACCC has been notified of or has otherwise become aware of.

Commonwealth

Australian Postal Corporation Act 1989

Banking Act 1959

Competition and Consumer Act 2010 (ss. 173 and 151DA)

Customs Act 1901

Financial Sector (Business Transfer and Group Restructure) Act 1999

Insurance Act 1973

Life Insurance Act 1995

Liquid Fuel Emergency Act 1984

Payment Systems (Regulation) Act 1998

Road Safety Remuneration Act 2012

Social Security (Administration) Act 1999

Stronger Futures in the Northern Territory Act 2012

Telecommunications Act 1997

Australian Capital Territory

Cemeteries and Crematoria Act 2003

Competition Policy Reform Act 1996

Financial Management Act 1996

Government Procurement Act 2001

Health Act 1993

Insurance Authority Act 2005

Racing Act 1999

Road Transport (Public Passenger Services) Act 2001

Territory Records Act 2002

New South Wales

Australian Jockey and Sydney Turf Clubs Merger Act 2010
Betting and Racing Act 1999
Casino Control Regulation 2009
Coal Industry Act 2001
Competition Policy Reform (New South Wales) Act 1995
Electricity Generator Assets (Authorised Transactions) Act 2012
Gaming Machines Act 2001
Health Services Act 1997
Hunter Water Act 1991
Industrial Relations (Ethical Clothing Trades) Act 2001
Industrial Relations Act 1996
James Hardie Former Subsidiaries (Winding up and Administration) Act 2005
Liquor Act 2007
Major Events Act 2009
NSW Self Insurance Corporation Act 2004
Passenger Transport Act 2014
Point to Point Transport (Taxis and Hire Vehicles) Act 2016
Protection of the Environment Operations Act 1997
Rice Marketing Act 1983
Thoroughbred Racing Act 1996
Totalizator Act 1997

Northern Territory

Competition Policy Reform (Northern Territory) Act 1996
Consumer Affairs and Fair Trading Act 1990
Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations 1996
Electricity Reform Act 2000
Environmental Protection (Beverage Containers and Plastic Bags) Act 2011
Liquor Act 1978
Water Supply and Sewerage Services Act 2000

Queensland

Competition Policy Reform (Queensland) Act 1996
Gladstone Power Station Agreement Act 1993
Racing Act 2002
Sugar Industry Act 1999
Sugar Industry (Real Choice in Marketing) Amendment Act 2015
Transport Operations (Passenger Transport) Act 1994

South Australia

Authorised Betting Operations Act 2000
Authorised Betting Operations Regulations 2001
Competition Policy Reform (South Australia) Act 1996
Cooper Basin (Ratification) Act 1975
Industries Development Act 1941
Roxby Downs (Indenture Ratification) Act 1982

Tasmania

Competition Policy Reform (Tasmania) Act 1996
Electricity Reform Act 2012
Electricity Supply Industry Act 1995
Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995
Gaming Control Act 1993
Rail Company Act 2009
TOTE Tasmania (Sale) Act 2009
Water and Sewerage Corporation Act 2012

Victoria

Access to Medicinal Cannabis Act 2016
Gambling and Liquor Legislation Amendment (Modernisation) Act 2014
Gambling Regulation Act 2003
Gas Industry (Residual Provisions) Act 1994
Health Services Act 1988
Legal Profession Uniform Law Application Act 2014
Liquor Control Reform Act 1998
Outworkers (Improved Protection) Act 2003
Owner Drivers and Forestry Contractors Act 2005

Western Australia

Competition Policy Reform (Western Australia) Act 1996
Electricity Corporations Act 2005
Electricity Industry (Wholesale Electricity Market) Regulations 2004
Electricity Industry Act 2004
Energy Coordination Act 1994
North West Gas Development (Woodside) Agreement Act 1979
Owners-Drivers (Contracts and Disputes) Act 2007

Section 171(3) reporting requirements

Time taken to make final determinations and decisions

Final determinations on access disputes under section 44V

The ACCC made no determinations on access disputes under s. 44V in 2015–16.

Decisions on access undertaking applications and access code applications

Rail

On 23 December 2015, the Australian Rail Track Corporation (ARTC) submitted a proposed Hunter Valley Access Undertaking to the ACCC for assessment under Part IIIA (the proposed 2016 HVAU). The ACCC consulted with stakeholders in January 2016, receiving a number of submissions. Prior to release of a draft decision, ARTC withdrew its proposed undertaking from the ACCC's consideration on 14 June 2016.

On 20 May 2016, the ARTC applied to the ACCC to vary its 2011 Hunter Valley Access Undertaking to extend the term of the undertaking by six months to 31 December 2016. Following stakeholder consultation, and submission of a revised variation application by ARTC, the ACCC consented to ARTC's revised variation application on 22 June 2016.

The time taken to make decisions on applications under subsection 44PA(1)

No decisions were made on applications under ss. 44PA(1).

Notices under ss. 155 and 155A

General description of matters for which notices were given

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, industry codes and consumer and small business protection provisions of the *Competition and Consumer Act 2010* and/or *Trade Practices Act 1974*.

Types of notices issued

- 191 notices under s. 155(1)(a) and (b) (requiring the addressee to furnish information in writing and to produce documents)
- 15 notices under s. 155(1)(a) (requiring the addressee to furnish information)
- 36 notices under s. 155(1)(b) (requiring the addressee to produce documents)
- 61 notices under s. 155(1)(c) (requiring the addressee to appear in person and give evidence).

Challenges to the validity of notices

There were nil challenges to the validity of notices.

Search warrants issued or signed

Nil search warrants were issued by a judge under s. 135Z or signed by a judge under s. 136.

Four search warrants were issued by a magistrate under s. 154X (Part XIX). No search warrants were signed by a magistrate under s. 154Y.

There were nil challenges to the validity of search warrants.

General description of matters for which warrants were issued

Warrants were issued in the course of investigations into conduct potentially in contravention of Part IV of the *Competition and Consumer Act 2010* and/or *Trade Practices Act 1974*.

Entry to premises

There were 1487 entries onto premises under s. 133B or 133C, Division 6 of Part XI. There was no entry to premises under Part XIX.

Complaints received by the Commission

Details on the number of complaints received by the ACCC in 2015–16, a summary of the kinds of complaints received and how they were dealt with and a general description of the major matters investigated are on pages 137 to 140—Responding to enquiries and complaints.

Substantiation notices issued

Five substantiation notices were issued pursuant to subsection 219(2)(a) and (c) of the *Competition and Consumer Act 2010* requiring each of the addressees provide a written signed statement or produce documents substantiating or supporting their claims about electronic cigarette products.

Audit notices issued

Fourteen notices under s. 51ADD (requiring the addressee to give information or produce documents) were issued to franchisors in 2015–16 to check their level of compliance with the Franchising Code of Conduct.

Intervention in proceedings

The ACCC intervened in nil matters in 2015–16.

Appendix 8: Undertakings accepted and infringement notices paid in 2015–16

Undertakings accepted by the ACCC are available in full on the undertakings public register on the ACCC website.

Strategy 1 Maintain and promote competition

Competition and Consumer Act 2010 section 87B undertakings

Competition and Consumer Act 2010

To promote vigorous lawful competition and informed markets

Merger Remedy

Nordic Capital Fund VII proposed acquisition of Max-Inf Holdings Limited

s. 87B Undertaking dated 17 December 2015

The ACCC did not oppose Nordic Capital Fund VII's proposed acquisition of a 60 per cent interest in Max Inf Holdings Limited after accepting an undertaking. Max Inf Holdings Limited supplied child car restraint systems to Infa-Secure, a competitor of Nordic Capital Fund VII's subsidiary, Britax. The undertaking placed obligations on Max Inf Holdings Limited to comply with a transitional supply agreement with Infa-Secure while Infa-Secure established alternative supply arrangements.

Merger Remedy

Coles proposed acquisition of a supermarket lease in Lakelands Western Australia

s. 87B Undertaking dated 1 July 2015

The ACCC did not oppose Coles Supermarkets Australia's proposed acquisition of a supermarket lease in Lakelands, Western Australia, after accepting an undertaking requiring Coles to divest its interest in a nearby development site, at which Coles planned to establish a supermarket.

Resale price maintenance

Withdrawal of undertaking due to business cessation

Peter McInnes Pty Ltd

s. 87B undertaking dated 20 October 2015

On 15 April 2014 the ACCC accepted an undertaking from Peter McInnes Pty Ltd ACN 000 445 269. The undertaking was given by Peter McInnes in relation to the ACCC's concerns that Peter McInnes had engaged in conduct that constituted or was likely to constitute resale price maintenance, on four occasions, by inducing or attempting to induce retailers not to sell KitchenAid stand mixers supplied to them by Peter McInnes at a price less than the recommended retail price specified by Peter McInnes.

The undertaking required Peter McInnes to:

- refrain from engaging in resale price maintenance for two years
- write to all of its KitchenAid stand mixer customers informing them that they are free to set their own minimum prices for products supplied to them by Peter McInnes
- issue directions to its employees that they should refrain from expressing to those customers any hostility or criticism about the customers discounting below the recommended retail price, and
- implement and maintain a compliance program.

On 4 August 2015 Peter McInnes Pty Ltd advised that it had sold its business and is no longer operating. Peter McInnes Pty Ltd subsequently sought withdrawal of its undertaking. As Peter McInnes Pty Ltd was no longer operating, the ACCC has provided its consent to withdraw the undertaking.

Anti-competitive agreements and practices

Eureka Operations Pty Ltd trading as Coles Express

s. 87B undertaking dated 15 December 2015

On 19 August 2014, the ACCC instituted proceedings in the Federal Court against Informed Sources and five petrol retailers (BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd and Coles Express).

The ACCC alleged that the information sharing arrangements between Informed Sources and the petrol retailers, through a service provided by Informed Sources, has the effect or likely effect of substantially lessening competition in markets for the sale of petrol in Melbourne in contravention of s. 45(2) of the CCA.

On 15 December 2015, the ACCC accepted an undertaking from Coles Express:

- not to enter into any price information sharing service agreement that is similar to the one operated by Informed Sources (Australia) Pty Ltd, and
- not to give effect to any such arrangement at the expiration of the current term of its agreement with Informed Sources in April 2016.

The Federal Court also ordered, by consent, that the proceedings against Coles Express be discontinued and it noted the undertaking.

BP Australia Pty Ltd, Caltex Australia Petroleum Pty Ltd, Woolworths Ltd, 7-Eleven Stores Pty Ltd, Informed Sources (Australia) Pty Ltd

s. 87B undertaking dated 22 December 2015

On 19 August 2014, the ACCC instituted proceedings in the Federal Court against Informed Sources and five petrol retailers (BP, Caltex, Woolworths, 7-Eleven and Eureka Operations Pty Ltd trading as Coles Express).

On 15 December 2015, as outlined above, the ACCC accepted a court enforceable undertaking from Eureka Operations Pty Ltd t/a Coles Express in which Coles Express agreed to terminate its agreement with Informed Sources at the expiration of its current contract and to not enter into a similar petrol price information exchange service for the next five years. As a result, the ACCC consented to orders by the Federal Court that the proceedings be discontinued against it.

On 22 December 2015 the ACCC accepted an undertaking from:

- BP Australia Pty Ltd (BP)
- Caltex Australia Petroleum Pty Ltd (Caltex)
- Woolworths Ltd (Woolworths)
- 7-Eleven Stores Pty Ltd (7-Eleven), and
- Informed Sources (Australia) Pty Ltd (Informed Sources).

The undertakings require that Informed Sources will not supply a petrol price information exchange service unless it makes available at the same time the retail petrol price information that it provides to petrol retailers to:

- Australian consumers and
- third party information service providers, consumer organisations, motorist organisations, research organisations and regulatory agencies carrying on business or operating in Australia, on reasonable commercial terms.

The undertakings for BP, Caltex, Woolworths and 7-Eleven require that they will not enter into or give effect to any price information exchange service unless the petrol price information each receives is made available to consumers and third party organisations at the same time.

The Federal Court also ordered, by consent, that the proceedings against BP, Caltex, Woolworths, 7-Eleven and Informed Sources be discontinued.

Merger Remedy

GPC Asia Pacific Pty Ltd proposed acquisition of Covs Parts from Automotive Holdings Group Limited

s. 87B Undertaking dated 18 February 2016

The ACCC did not oppose GPC Asia Pacific Pty Ltd's revised proposal to acquire Covs Parts from Automotive Holdings Group Limited after accepting an undertaking requiring GPC to maintain and operate retained stores in substantially the same manner as they were operated at the time the undertaking was accepted. This included retaining current staff and ensuring similar levels of stock are maintained for a period of two years.

Merger Remedy

Iron Mountain Incorporated proposed acquisition of Recall Holdings Limited

s. 87B Undertaking dated 30 March 2016

The ACCC did not oppose Iron Mountain Incorporated's proposed acquisition of Recall Holdings Limited after accepting an undertaking that Iron Mountain would divest its Australian businesses other than its local records management customers in the Northern Territory and its data protection business.

Merger Remedy

Primary Health Care Limited acquisition of pathology assets previously operated by Healthscope in Queensland

s. 87B Undertaking dated 15 June 2016

The ACCC decided not to commence proceedings against both Primary and Healthscope after accepting an undertaking that requires Primary to divest the pathology assets that it acquired from Healthscope. The acquisition by Primary was not notified to the ACCC before completion.

Strategy 2: Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

Competition and Consumer Act 2010 s. 87B undertakings accepted

Australian Consumer Law

'To encourage fair trading, protection of consumers and product safety'

Misleading representations

P&M Quality Smallgoods Pty Ltd t/a Primo Smallgoods

s.87B undertaking dated 24 July 2015

The ACCC has accepted an undertaking from P&M Quality Smallgoods Pty Ltd trading as Primo Smallgoods following an investigation relating to breaches of the ACL.

Primo is a supplier of smallgoods. It produces a range of products including sliced meats, deli meats, salami, ham, bacon, continental sausages, frankfurts and cold cuts. Its products are sold under various labels including Mayfair, Hans and Primo Smallgoods. Its products are supplied to retailers around Australia including Coles, Woolworths and independent supermarkets. Primo exports to 52 countries. Between December 2009 and at least the date of this undertaking Primo products were sold by retailers in packaging displaying the words 'free range'.

The relevant pork products were sourced by Primo from producers in Denmark and were produced in accordance with the Friland Code of Conduct however the ACCC considered that this conduct contravened the ACL.

Primo has undertaken, for a period of three years, to among other things:

- cease making the Free Range Claim in relation to pork products unless the pigs used in the production of those products have been born and raised, for the duration of their lives, in an environment where the pigs are able to move about freely in an outdoor paddock on most ordinary days
- implement a CCA compliance program, and
- publish a corrective notice on its website.

Country of origin

Conroys Pty Ltd

s.87B undertaking dated 19 August 2015

The ACCC has accepted an undertaking from Conroys Pty Ltd following an investigation relating to breaches of the ACL. Conroys has also paid a penalty of \$10 200 following the issue of an Infringement Notice by the ACCC.

In February 2015, Conroys supplied its 'Breakfast Bacon—1kg' (the Bacon Product) labelled as a 'Product of Australia' when in fact it was produced using pig meat imported from Denmark. The ACCC considered that, by doing so, Conroys' was likely to have contravened the ACL.

Conroys has undertaken that for a period of three years it will not represent that any product is the produce of Australia, unless:

- Australia was the country of origin of each significant ingredient or significant component of the product, and
- all, or virtually all, processes involved in its production or manufacture happened in Australia.

Conroys also undertook to publish a corrective notice on its website and establish a CCA compliance program.

Misleading representations

Danoz Direct Pty Ltd

s. 87B undertaking dated 2 September 2015

The ACCC has accepted an undertaking from Danoz Direct Pty Ltd in relation to claims it made about the alleged weight loss and fitness benefits of the Abtronic X2 fitness device, which the ACCC considered were likely to contravene the ACL.

Danoz Direct has undertaken to:

- prevent Danoz Direct from making unsubstantiated claims in relation to the Abtronic X2's weight loss and fitness benefits in the future
 - establish and implement a CCA compliance program
 - ensure that all current and future advertising for the Abtronic X2 is reviewed personally by Danoz Direct's CEO and the Compliance Officer before publication or broadcast, and
 - publish on the Danoz Direct website a corrective notice.
-

George Weston Foods Pty Ltd t/a KR Castlemaine

s. 87B undertaking dated 2 September 2015

The ACCC has accepted an undertaking from George Weston Foods Pty Ltd t/a KR Castlemaine following an investigation relating to breaches of the ACL. George Weston is a food manufacturer whose range of products includes packaged smallgoods and ham products marketed under the KR Castlemaine brand. It supplies KR Castlemaine products to Woolworths, Coles and independent supermarkets in Australia.

From 2008 some KR Castlemaine pork products included the prominent statement 'bred free range' on its packaging, labelling, and website when this was not the case. The ACCC considered KR Castlemaine's use of the phrase 'bred free range', in the context of its farming practices, to be inconsistent with consumers' understanding of those words and may therefore be false or misleading or deceptive in contravention of the ACL.

George Weston has undertaken, for a period of three years, to:

- not make any representation to the effect that pigs used for the production of any pork product supplied by George Weston are born and raised, for the duration of their lives, in an environment where the pigs are able to move about freely in an outdoor paddock on most ordinary days, in circumstances when this is not the case
- implement a CCA compliance program for persons involved in George Weston's business, and
- publish a corrective notice on its website.

Pastoral Pork Company Pty Ltd t/a Otway Pork

s. 87B undertaking dated 2 September 2015

The ACCC has accepted an undertaking from Pastoral Pork Company Pty Ltd t/a Otway Pork. Pastoral Pork is a pig production company whose range of products includes packaged cuts of fresh meat and ham under the Otway Pork brand. It supplies Otway Pork products to Coles, independent supermarkets and butchers in Australia.

Between July 2000 and December 2014 Otway Pork products included the headline statement 'bred free range' on its packaging, labelling, and point of sale material. The headline statement was also made on its website.

The ACCC considers that the reference to 'bred free range' in the promotion of Otway Pork products is likely to give customers the overall impression that the pigs are farmed according to free range methods, when this is not the case.

Pastoral Pork has undertaken, for a period of three years, to among other things:

- not make any representation to the effect that pigs used for the production of any pork product supplied by Pastoral Pork Company are born and raised, for the duration of their lives, in an environment where the pigs are able to move about freely in an outdoor paddock on most ordinary days, in circumstances when this is not the case

- implement a CCA compliance program for the directors, employees or other persons involved in Pastoral Pork Company's business, and
- publish a corrective notice on its website.

Misleading representations

Airbnb Ireland (Ireland Company Registration Number 511825)

s. 87B undertaking dated 12 October 2015

The ACCC has accepted an undertaking from Airbnb Ireland (Ireland Company Registration Number 511825) in relation to price representations made on its Australian online platforms likely to contravene the ACL.

The ACCC considered that since about November 2012 Airbnb Ireland engaged in misleading and deceptive conduct and made misleading representations in certain instances by failing to adequately disclose mandatory service fees and/or cleaning fees on search results pages and/or individual accommodation listing pages on one or more of its Australian online booking platforms. Whether or not Airbnb Ireland provided adequate disclosure of these fees in many cases depended on whether the consumer had already selected their preferred accommodation dates.

Airbnb Ireland has undertaken to establish and implement a compliance program for a period of three years and that it will not represent a headline price without:

- including when it is quantifiable, mandatory fees, including the Service Fee and any applicable Cleaning Fee, when consumers search for accommodation listings on all websites, mobile sites and application software operated by Airbnb Ireland for the purposes of allowing Australian consumers to book accommodation, and
- disclosing, when it is not quantifiable, the existence of the mandatory fees, including the Service Fee and any applicable Cleaning Fee, when consumers search for accommodation listings on all websites, mobile sites and application software operated by Airbnb Ireland for the purposes of allowing Australian consumers to book accommodation.

Vacaciones eDreams, SL (sociedad unipersonal con CIF B-~~21965778~~)

s. 87B undertaking dated 12 October 2015

The ACCC has accepted an undertaking from Vacaciones eDreams, SL (sociedad unipersonal con CIF B-~~21965778~~) in relation to claims made on the eDreams Website, Mobile Site and Application (collectively referred to as the eDreams platforms).

The ACCC alleged that from at least January 2014 until about December 2014, eDreams on its Website made part price representations by displaying a headline price which did not include the applicable Service Fee or Payment Fee. Further, on the eDreams Mobile Site and App, eDreams did not adequately disclose the existence or amount of the Service Fee and Payment Fee.

eDreams has undertaken for a period of three years (unless otherwise stated) to:

- ensure that prices displayed on the eDreams platforms can be booked by paying with at least one fee free payment method in Australia (or any similar payment method available in Australia) and no other mandatory fee will be added during the booking process when a fee free payment method is used
 - ensure that prices displayed on the eDreams platforms will be accompanied by clear information about the conditions of availability of such prices
 - display on its platforms, in a visible manner, a feature enabling consumers to update the headline price by selecting or modifying the payment method used
 - appoint a director or senior manager of the business as the Compliance Officer
 - ensure that the Compliance Officer attends practical training, administered by a suitably qualified compliance professional or legal practitioner with expertise in competition and consumer law, and
 - all employees of eDreams whose duties could result in them being concerned with conduct that may contravene ss. 18, 29(1)(i) and 48 of the ACL to receive regular (at least once a year) training, administered by the Compliance Officer.
-

Arnott's Biscuits Ltd

s. 87B undertaking dated 20 November 2015

The ACCC has accepted an undertaking from Arnott's Biscuits Ltd in relation to representations about its Shapes Light & Crispy biscuits.

Between 5 October 2014 and 13 July 2015 Arnott's published the prominent statement '75% less saturated fat' on the packaging of Shapes Light & Crispy, along with other prominent statements including 'New', 'Oven Baked Not Fried', and the 'Shapes' stylised logo. In doing so, the ACCC considers that Arnott's made a false or misleading representation that Shapes Light & Crispy contained 75 per cent less saturated fat than Arnott's original Shapes biscuits. Shapes Light & Crispy in fact contained approximately 60 per cent less saturated fat than the original Shapes biscuits.

Arnott's has provided an undertaking that it will:

- for a period of three years, not make a claim comparing its product with a third party product without:
 - clearly identifying the products that are the subject of the comparison in a sufficiently prominent manner, and
 - ensuring the comparison is appropriate having regard to all facts and circumstances
- publish a Corrective Notice on its website and in the nationally published industry magazine Foodmagazine, and
- establish and implement a supplementary compliance program designed to minimise Arnott's risk of future breaches of the provisions of the ACL.

WFI Insurance Limited t/a Lumley Retail Warranty

s. 87B undertaking dated 7 December 2015

The ACCC has accepted an undertaking from WFI Insurance Limited t/a Lumley Retail Warranty following an investigation into potentially false or misleading representations about consumers' rights under the ACL made in extended warranty brochures (known as customer care plans).

The ACCC was concerned that the brochures did not sufficiently identify the degree of overlap between the remedies available under the extended warranty customer care plans purchased by consumers and those already available to consumers under the consumer guarantees contained in the ACL. As a result, the ACCC considered that the brochures had the potential to mislead consumers.

Lumley has undertaken for a period of two years to:

- revise the customer care plan brochures to include information necessary to facilitate a comparison of the features of the plan against the remedies available under the ACL
- provide compliance training to Lumley and retailer staff, and
- design and work with retailers to implement a program for monitoring and if necessary improving retailers' practices of selling customer care plans.

Optus Internet Pty Limited

s. 87B undertaking dated 16 December 2015

The ACCC has accepted an undertaking from Optus Internet Pty Limited for allegedly making misrepresentations about the data transfer rates (speeds) offered on its broadband cable service and particular plans. Optus Internet has also paid a penalty of \$51 000 following the issue of five Infringement Notices by the ACCC.

Between January 2015 and August 2015 Optus Internet used the words 'NBN-like speeds' and words to similar effect (NBN-like speeds representations), through a variety of mediums including websites, billboards, posters, catalogues and flyers, in the promotion of its broadband cable service and particular broadband cable plans.

Optus Internet has provided an undertaking that it will:

- for a period of five years not use NBN-like speeds representations in the promotion of its cable broadband internet service, in circumstances where it does not offer upload and download speeds which are comparable to the upload and download speeds available on the NBN
- write to its customers who acquired its cable broadband internet service between 1 January 2015 and 23 August 2015 (the Customers) advising them of the manner in which Optus Internet's use of the term 'NBN-like speeds' was misleading
- allow the Customers to cancel their cable broadband internet service at no cost and refund to them any start-up fee they paid to acquire the service, and
- arrange for an independent third party to review its trade practices compliance program and implement any changes recommended by that party.

Hertz Australia Pty Ltd

s. 87B undertaking dated 4 April 2016

The ACCC has accepted an undertaking from Hertz Australia Pty Ltd in relation to Hertz incorrectly invoicing and charging customers for pre-existing vehicle damage and failing to pass on spare parts discounts to customers.

From at least November 2013 to August 2015, Hertz incorrectly made representations to some of its customers that the vehicle the customer hired from Hertz had sustained damage during the customers' rental period when, in fact, the damage was pre-existing and not caused during the customer's rental period, and charging the customer for the pre-existing damage. In addition Hertz invoiced and charged the customer for repair costs for damage sustained during the customer's rental period without passing on spare parts discounts to the customer.

Hertz has undertaken to:

- contact and refund customers who were charged for pre-existing damage or overcharged for vehicle repairs due to errors in Hertz's repair charging processes
- conduct damage reviews prior to charging customers for suspected new vehicle damage to confirm that the damage is not pre-existing damage or existing 'fair wear and tear'
- make improvements to its damage recording procedures to minimise the risk of pre-existing damage charging and overcharging for vehicle repairs, and
- engage an independent external auditor to monitor Hertz's compliance with the undertaking.

Unconscionable conduct

Multimedia International Services Pty Ltd

s. 87B undertaking dated 27 April 2016

On 30 November 2015, the ACCC instituted proceedings in the Federal Court against Multimedia International Services Pty Ltd t/a The Community Network for allegedly engaging in unconscionable conduct, misleading or deceptive conduct, making false or misleading representations and wrongly accepting payments from small businesses.

Multimedia sells digital advertising services to small businesses throughout Australia. The advertising is presented on branded LCD screens at various sites such as fitness centres, newsagencies and shopping centres.

The ACCC has accepted a court enforceable undertaking from Multimedia to resolve certain aspects of the Federal Court proceedings.

Multimedia has undertaken that it will not for a period of five years:

- enter into any contract with a potential advertiser for the provision of advertising services by Multimedia which contains a term that it will renew by way of automatic rollover, unless:
 - Multimedia draws the roll-over clause to the attention of the potential advertiser, and
 - for contracts entered into after 60 days from the commencement of this undertaking, Multimedia will offer the potential advertiser, at the time of entering into the contract, an option (without additional penalty) not to have the contract renew by way of automatic rollover, and
 - the contract permits the advertiser to terminate the contract by giving written notice up to two months prior to the commencement of the initial renewal period, and
 - following renewal, the contract permits the advertiser to terminate the contract without penalty by giving written notice up to two months prior to the end of the renewal period.
- enforce a roll-over provision of an advertising contract existing at the commencement of this undertaking, in circumstances where the advertiser has provided two months written notice to Multimedia that it does not wish to continue with the contract at the end of the contractual period (whether that is the initial contract period or a roll-over period).

- change the nominated site prior to the display of the advertiser's advertisement, where it has entered or enters into a contract with an advertiser which nominates a particular site at which it is proposed that the advertiser's advertisement be displayed (the nominated site), unless Multimedia:
 - has first informed the advertiser in writing of the proposed change of site, and
 - has provided the advertiser in writing with the option of immediately terminating the contract at no further cost to the advertiser, and
 - keeps a written record of the advertiser's response to the matters in the preceding subparagraphs.
- take any further steps, directly or indirectly, to pursue further payments from the small businesses named in the Federal Court proceedings.

Unconscionable conduct

Careers Australia Group Limited

s. 87B undertaking dated 16 May 2016

The ACCC has accepted a court enforceable undertaking from Careers Australia Group Limited following an investigation into its marketing practices and enrolment of consumers to its VET FEE-HELP courses.

The ACCC was concerned and Careers Australia has admitted that during the period from 1 August 2013 to 31 March 2015, through the conduct of some of its agents engaging in door-to-door marketing and telemarketing across Australia, it made false or misleading representations and engaged in unconscionable conduct, in breach of the ACL.

Pursuant to the undertaking, Careers Australia has undertaken to:

- automatically cancel the enrolments of students who have not completed a unit of study, and repay the Commonwealth any amounts received as a result of those enrolments
 - inform students on its website and at its 15 campuses across Australia about the potential availability of having their enrolment and debt cancelled, and
 - establish and implement an ACL Compliance Program, including training for staff and regular reviews.
-

Infringement notices paid

	Trader	Date paid and amount
False or misleading representations	Citymove Pty Ltd	27 July 2015 three notices totalling \$30 600
Country of origin claim	Conroys Pty Ltd	19 Aug 2015 one notice totalling \$10 200
Misleading representations	Arnott's Biscuits Ltd	16 November 2015 five notices totalling \$51 000
Misleading representations	Epharmacy Group Pty Ltd	17 November 2015 three notices totalling \$32 400
Misleading representations	Cereal Partners Australia Pty Ltd	23 November 2015 three notices totalling \$32 400
Misleading representations	Kailis Bros Pty Ltd	4 December 2015 one notice totalling \$10 800
Misleading representations	Optus Internet Pty Ltd	16 December 2015 five notices totalling \$51 000
Misleading representations	Athena Solutions Pty Ltd	14 December 2015 one notice totalling \$10 800
False or misleading representations	D Burnz Investments Pty Ltd	4 January 2016 two notices totalling \$20 400
False or misleading representations	Kogan.Com Pty Ltd	12 January 2016 three notices totalling \$32 400
False or misleading representations	Voiteck Pty Ltd	13 January 2016 one notice of \$10 200
False or misleading representations	Clews Holdings Pty Ltd	8 February 2016 two notices totalling \$20 400
Product safety	Sun Yee International Pty Ltd	16 March 2016 one notice totalling \$10 200
Product safety	Smartchannel Pty Ltd trading as Outbax Camping	5 April 2016 one notice totalling \$10 200
Product safety	Autoplus Pty Ltd	12 April 2016 one notice totalling \$10 200
False or misleading representations	Momentum Energy Pty Ltd	18 April 2016 five notices totalling \$54 000
Country of origin claim	Kingdom Groups International Pty Ltd	2 May 2016 one notice totalling \$10 800
Product safety	Update Technology Pty Ltd	9 May 2016 one notice totalling \$10 200

	Trader	Date paid and amount
False or misleading representations	APG & Co Pty Ltd trading as Sportscraft	8 June 2016 two notices totalling \$21 600
Misleading representations	Unilever Australia Limited	23 June 2016 one notice totalling \$10 800

Section 288 National Energy Retail Law undertakings

Explicit informed consent	<p>Red Energy Pty Limited</p> <p>s. 288 undertaking dated 16 March 2016</p> <p>The AER has accepted an undertaking from Red Energy relating to rule 48(2) of the National Energy Retail Rules.</p> <p>The undertaking provides for Red Energy to not place customers whose retail contracts have expired on to a new market contract without complying with the relevant provisions of the Retail Law, and to review and amend its compliance program.</p>
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Infringement notices paid under National Energy Retail Law and Rules

Trader	Date paid and amount
Endeavour Energy	29 July 2015 one notice totalling \$20 000
AusGrid	31 July 2015 one notice totalling \$20 000
TasNetworks	3 August 2015 one notice totalling \$20 000
AusGrid	31 August 2015 one notice totalling \$20 000
TasNetworks	21 October 2015 one notice totalling \$20 000
Simply Energy	29 October 2015 four notices totalling \$80 000
Essential Energy	16 November 2015 one notice totalling \$20 000
Ergon Energy	13 November 2015 two notices totalling \$40 000
AusGrid	17 November 2015 one notice totalling \$20 000
Energex	11 December 2015 three notices totalling \$60 000
ActewAGL Distribution	4 January 2016 one notice totalling \$20 000
SA Power Networks	19 January 2016 four notices totalling \$80 000
Red Energy	4 March 2016 two notices totalling \$40 000
Energex	9 June 2016 one notice totalling \$20 000
SA Power Networks	21 June 2016 two notices totalling \$40 000

Strategy 3: Promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure

Water Act 2007 section 163 undertakings

No undertakings were accepted under s. 163 of the *Water Act 2007*.

Water Act 2007 section 156 infringement notices

No infringement notices were issued under s. 156 of the *Water Act 2007*.

Australian Energy Regulator

Section 59A National Electricity Law undertakings

National Electricity Law

Compliance with dispatch instructions

Obligation to ensure that scheduled generation units were at all times able to comply with latest generation dispatch offer

CS Energy Limited

s. 59A undertaking dated 29 June 2016

The AER has accepted an undertaking from CS Energy relating to rules 4.9.8(a) and 4.9.8(b) of the National Electricity Rules.

The undertaking provides for CS Energy to implement revised compliance processes, systems and procedures relating to its Gladstone and Wivenhoe power stations.

CS energy must also conduct an independent review of its guidelines and procedures, provide regular compliance training and employ an officer to oversee compliance with the undertaking.

National Electricity Law and National Gas Law

Pricing in NSW and the ACT from 1 July 2016–30 June 2017

As a result of the Australian Competition Tribunal's decision in Public Interest Advocacy Centre Limited and Ausgrid [2016] ACompT 1, it was not clear what network charges would apply from 1 July 2016 or how the ACT and NSW service providers should meet their 2016–17 pricing compliance obligations.

Ausgrid, Endeavour Energy and ActewAGL

These businesses must keep network charges constant in real terms. In effect existing network charges will be increased by actual CPI (1.5 per cent).

Essential Energy

Essential Energy must apply the AER's 2015 revenue determination and the price path set out in that determination. Under this undertaking, Essential Energy also submitted a 2016–17 pricing proposal.

Jemena Gas Networks (JGN)

JGN must keep network tariffs constant in nominal terms. (This means that existing network tariffs are not subject to a CPI adjustment).

All five distribution network services business also gave undertakings which provide for all non-price components of the distribution determinations and access arrangement (e.g. connections policies, classification of services, provision of alternative control services and reference service agreements) to be maintained.

Infringement notices paid under National Electricity Law and Rules

Trader	Date paid and amount
Origin Energy	26 February 2016 one notice totalling \$20 000
ERM Power	9 May 2016 two notices totalling \$40 000
CS Energy	27 June 2016 four notices totalling \$80 000

Appendix 9: Litigation matters, review proceedings and tribunal proceedings in 2015–16

ACCC

Strategy 1 Maintain and promote competition

Litigation concluded in 2015–16

Anti-competitive agreements and practices	Australia and New Zealand Banking Group Ltd (appeal)
	commenced 9 December 2013
	concluded 31 July 2015
	jurisdiction Federal Court Brisbane
	outcome ACCC appeal dismissed.
Cartel	AECL & Zelko Lendich
	commenced 28 May 2014
	concluded 29 April 2016
	jurisdiction Federal Court Adelaide
	outcome In respect of Mr Lendich declarations, pecuniary penalties of \$120 000, compliance program, ACCC costs of \$10 000. Matter continues in relation to other parties. See Australian Egg Corporation Limited & Ors.
Cartel	Colgate-Palmolive Pty Ltd & Ors
	commenced 12 December 2013
	concluded 28 April 2016 (Colgate Palmolive)
	concluded 3 June (Woolworths)
	jurisdiction Federal Court Sydney
	outcome In respect of Colgate-Palmolive pecuniary penalties totalling \$18 million, declarations, compliance program, costs \$450 000. In respect of Mr Ansell 7-year disqualification order and payment of ACCC costs \$75 000. In respect of Woolworths pecuniary penalties totalling \$9 million, declarations, compliance program, costs \$250 000. Matter continues in relation to Cussons.
Highly concentrated sectors	Informed Sources (Australia) Pty Ltd & five fuel retailers
	commenced 19 August 2014
	concluded 21 December 2015
	jurisdiction Federal Court Melbourne
	outcome Section 87B undertaking for 5-year period.

Exclusionary conduct	Little Company of Mary Health Care Limited
	commenced 10 December 2014
	concluded 26 October 2015
	jurisdiction Federal Court Sydney
	outcome Declaration and payment of ACCC costs \$100 000.
Anti-competitive agreements and practices	Omniblend Australia Pty Ltd
	commenced 14 August 2014
	concluded 17 August 2015
	jurisdiction Federal Court Melbourne
	outcome Pecuniary penalty \$17 500, injunction for five years, declaration, CCA training for employees and contribution of \$10 000 to ACCC costs.
Misuse of market power	Visa (Inc) & Ors
	commenced 4 February 2013
	concluded 4 September 2015
	jurisdiction Federal Court Sydney
	outcome Pecuniary penalty of \$18 million, declaration, costs of \$2 million.

Litigation continuing at the end of 2015–16

Cartels	Air New Zealand Ltd
	commenced 17 May 2010
	jurisdiction Federal Court Sydney
Cartels	Australian Egg Corporation Limited & Ors (appeal)
	commenced 26 May 2014
	jurisdiction Federal Court Adelaide
Cartels	Cascade Coal Pty Ltd & Ors
	commenced 25 May 2015
	jurisdiction Federal Court Sydney
Anti-competitive agreements and practices	Cement Australia Pty Ltd & Ors (Appeal)
	commenced 12 September 2008
	jurisdiction Federal Court Brisbane
Cartels	Colgate-Palmolive Pty Ltd & Ors
	commenced 12 December 2013
	jurisdiction Federal Court Sydney
	Matter continues regarding Cussons as at 30 June. Matter is listed twice.
Secondary boycotts	Construction Forestry Mining and Energy Union (CFMEU)
	commenced 20 November 2014
	jurisdiction Federal Court Melbourne
Anti-competitive agreements and practices	Flight Centre Ltd (HC appeal)
	commenced 9 March 2012
	jurisdiction Federal Court Brisbane

Cartels	OLEX Australia Pty Ltd & Ors
	commenced 4 December 2014 jurisdiction Federal Court Melbourne
Misuse of market power and exclusive dealing	Pfizer Australia Pty Ltd (appeal)
	commenced 13 February 2014 jurisdiction Federal Court Sydney
Cartels	Prysmian Cavi e Sistemi
	commenced 23 September 2009 jurisdiction Federal Court Adelaide
Cartels	P.T. Garuda Indonesia Ltd (appeal)
	commenced 2 September 2009 jurisdiction Federal Court Sydney
Cartels	Yazaki Corporation & Australian Arrow Pty Ltd
	commenced 13 December 2012 jurisdiction Federal Court Adelaide

Litigation commenced in 2015–16

Cartels	Oakmoore Pty Ltd, Palram Inc, Ampelite Pty Ltd & Ors
	commenced 23 June 2016 jurisdiction Federal Court Brisbane

Strategy 2: Protect the interests and safety of consumers and support fair trading in markets affecting consumers and small business

Litigation concluded in 2015–16

Indigenous consumers (unsolicited consumer agreements)	Adata Pty Ltd
	commenced 19 June 2014 concluded 22 April 2016 jurisdiction Federal Court Darwin outcome ACCC case dismissed.
Fake testimonials	A Whistle (1979) Pty Ltd t/a Electrodry Carpet Cleaning
	commenced 1 July 2014 concluded 18 December 2015 jurisdiction Federal Court Sydney outcome Declarations, injunctions, pecuniary penalty of \$215 000, corrective notice and \$10 000 towards ACCC costs.

Non-compliance with court order	Australian Medical Institute Pty Ltd & Ors commenced 20 August 2015 concluded 17 December 2015 jurisdiction Federal Court Melbourne outcome AMI companies were found guilty of contempt of Court for breaching one of the injunctions made by the Federal Court. A penalty hearing is yet to be scheduled.
Consumer Guarantees	Bunavit Pty Ltd (trading as Harvey Norman AV/IT Superstore Bundall) commenced 12 June 2013 concluded 12 January 2016 jurisdiction Federal Court Brisbane outcome Pecuniary penalty of \$52 000.
Indigenous consumers (unfair contract terms)	Chrisco Hampers Australia Ltd commenced 19 December 2014 concluded 4 March 2016 jurisdiction Federal Court Brisbane outcome Pecuniary penalty \$200 000 and declaration.
False or misleading representations	CLA Trading Pty Ltd trading as Europcar commenced 10 November 2014 concluded 19 April 2016 jurisdiction Federal Court Perth outcome Declarations, pecuniary penalty of \$100 000, corrective advertising and payment of ACCC costs of \$65 000.
Vulnerable and disadvantaged consumers	Clinica Internationale Pty Ltd & Anor (appeal) commenced 15 May 2015 jurisdiction Federal Court Melbourne outcome Pecuniary penalty \$700 000 against Clinica and \$325 000 against Mr Laski, disqualification order for five years, declarations, injunction and orders for Clinica and Laski to discontinue all current court proceedings and not commence new ones against clients. Matter has been appealed by Mr Laski. Matter listed twice (concluded and ongoing).
Product safety	Dateline Imports Pty Ltd (appeal) commenced 25 June 2012 concluded 22 September 2015 jurisdiction Federal Court Perth outcome Pecuniary penalties totalling \$85 000 and declaration. ACCC to pay Dateline's costs of appeal.

Credence claims	Derodi Pty Ltd and Holland Farms Pty Ltd
	commenced 5 December 2014
	concluded 14 April 2016
	jurisdiction Federal Court Sydney
	outcome Pecuniary penalty of \$300 000, declaration, corrective notices, compliance program and payment of ACCC costs of \$35 000.
Indigenous consumers (unconscionable conduct)	FDRA Pty Ltd (Angel Digital) & Anor
	commenced 23 December 2015
	concluded 6 May 2016
	jurisdiction Federal Court Darwin
	outcome Undertaking to the court not to enter any Indigenous community in Australia or the Royal Darwin Hospital and its associated hostels to sell any goods or services for a period of five years, and \$20 000 consumer redress.
False or misleading representations	Hillside (Australia New Media) Pty Ltd t/a Bet365
	commenced 12 August 2014
	concluded 10 June 2016
	jurisdiction Federal Court Melbourne
	outcome Pecuniary penalty of \$2.75 million declaration, corrective notice and ACCC costs as per court order.
False or misleading representations	Homeopathy Plus! Australia Pty Ltd & Ors
	commenced 19 February 2013
	concluded 15 October 2015
	jurisdiction Federal Court Sydney
	outcome Pecuniary penalties of \$115 000 for Homeopathy Plus! and \$23 000 for Frances Sheffield, injunction and ACCC costs.
Vulnerable and disadvantaged consumers	Lux Distributors Pty Ltd (appeal)
	commenced 10 May 2012
	concluded 21 August 2015
	jurisdiction High Court
	outcome High Court appeal dismissed. Pecuniary penalty of \$370 000, injunction and compliance training program for Lux employees and its agents.
Pyramid selling	Lyoness Australia Pty Ltd & Ors
	commenced 28 August 2014
	concluded 23 October 2015
	jurisdiction Federal Court Sydney
	outcome Case dismissed.

Small business (unconscionable conduct)	Multimedia International Services Pty Ltd t/a The Community Network												
	<table border="0"> <tr> <td>commenced</td> <td> </td> <td>30 November 2015</td> </tr> <tr> <td>concluded</td> <td> </td> <td>29 April 2016</td> </tr> <tr> <td>jurisdiction</td> <td> </td> <td>Federal Court Brisbane</td> </tr> <tr> <td>outcome</td> <td> </td> <td>Pecuniary penalty of \$230 000, declarations, ACL compliance program and \$35 000 ACCC costs.</td> </tr> </table>	commenced		30 November 2015	concluded		29 April 2016	jurisdiction		Federal Court Brisbane	outcome		Pecuniary penalty of \$230 000, declarations, ACL compliance program and \$35 000 ACCC costs.
commenced		30 November 2015											
concluded		29 April 2016											
jurisdiction		Federal Court Brisbane											
outcome		Pecuniary penalty of \$230 000, declarations, ACL compliance program and \$35 000 ACCC costs.											
Product safety	Online Dealz Pty Ltd & Janet Lucas												
	<table border="0"> <tr> <td>commenced</td> <td> </td> <td>30 March 2015</td> </tr> <tr> <td>concluded</td> <td> </td> <td>21 June 2016</td> </tr> <tr> <td>jurisdiction</td> <td> </td> <td>Federal Court Sydney</td> </tr> <tr> <td>outcome</td> <td> </td> <td>Pecuniary penalty of \$100 000 against Online Dealz and \$20 000 against Janet Lucas, declarations, injunction, corrective advertising, and payment of 70 per cent of ACCC costs.</td> </tr> </table>	commenced		30 March 2015	concluded		21 June 2016	jurisdiction		Federal Court Sydney	outcome		Pecuniary penalty of \$100 000 against Online Dealz and \$20 000 against Janet Lucas, declarations, injunction, corrective advertising, and payment of 70 per cent of ACCC costs.
commenced		30 March 2015											
concluded		21 June 2016											
jurisdiction		Federal Court Sydney											
outcome		Pecuniary penalty of \$100 000 against Online Dealz and \$20 000 against Janet Lucas, declarations, injunction, corrective advertising, and payment of 70 per cent of ACCC costs.											
False or misleading representations	Reckitt Benckiser (Australia) Pty Ltd (appeal)												
	<table border="0"> <tr> <td>commenced</td> <td> </td> <td>4 March 2015</td> </tr> <tr> <td>concluded</td> <td> </td> <td>29 April 2016</td> </tr> <tr> <td>jurisdiction</td> <td> </td> <td>Federal Court Sydney</td> </tr> <tr> <td>outcome</td> <td> </td> <td>Pecuniary penalty of \$1.7 million, remove product from retail shelves, publish corrective notices, implement consumer protection compliance program and pay ACCC costs.</td> </tr> </table> <p>Case has been appealed by the ACCC.</p>	commenced		4 March 2015	concluded		29 April 2016	jurisdiction		Federal Court Sydney	outcome		Pecuniary penalty of \$1.7 million, remove product from retail shelves, publish corrective notices, implement consumer protection compliance program and pay ACCC costs.
commenced		4 March 2015											
concluded		29 April 2016											
jurisdiction		Federal Court Sydney											
outcome		Pecuniary penalty of \$1.7 million, remove product from retail shelves, publish corrective notices, implement consumer protection compliance program and pay ACCC costs.											
Credence claims	RL Adams Pty Ltd (t/a Darling Downs Fresh Eggs)												
	<table border="0"> <tr> <td>commenced</td> <td> </td> <td>9 December 2014</td> </tr> <tr> <td>concluded</td> <td> </td> <td>11 September 2015</td> </tr> <tr> <td>jurisdiction</td> <td> </td> <td>Federal Court Brisbane</td> </tr> <tr> <td>outcome</td> <td> </td> <td>Pecuniary penalty of \$250 000, declarations, publication orders, compliance program and \$25 000 contribution to ACCC costs.</td> </tr> </table>	commenced		9 December 2014	concluded		11 September 2015	jurisdiction		Federal Court Brisbane	outcome		Pecuniary penalty of \$250 000, declarations, publication orders, compliance program and \$25 000 contribution to ACCC costs.
commenced		9 December 2014											
concluded		11 September 2015											
jurisdiction		Federal Court Brisbane											
outcome		Pecuniary penalty of \$250 000, declarations, publication orders, compliance program and \$25 000 contribution to ACCC costs.											
Small business (misleading representations)	Safety Compliance Pty Ltd												
	<table border="0"> <tr> <td>commenced</td> <td> </td> <td>16 April 2012</td> </tr> <tr> <td>concluded</td> <td> </td> <td>22 December 2015</td> </tr> <tr> <td>jurisdiction</td> <td> </td> <td>Federal Court Sydney</td> </tr> <tr> <td>outcome</td> <td> </td> <td>Declarations, injunctions, pecuniary penalty of \$515 000 for Safety Compliance, \$125 000 for King, \$30 000 for Black and \$10 000 for Schimmel. Disqualification orders, and \$315 000 towards ACCC costs.</td> </tr> </table>	commenced		16 April 2012	concluded		22 December 2015	jurisdiction		Federal Court Sydney	outcome		Declarations, injunctions, pecuniary penalty of \$515 000 for Safety Compliance, \$125 000 for King, \$30 000 for Black and \$10 000 for Schimmel. Disqualification orders, and \$315 000 towards ACCC costs.
commenced		16 April 2012											
concluded		22 December 2015											
jurisdiction		Federal Court Sydney											
outcome		Declarations, injunctions, pecuniary penalty of \$515 000 for Safety Compliance, \$125 000 for King, \$30 000 for Black and \$10 000 for Schimmel. Disqualification orders, and \$315 000 towards ACCC costs.											

Scam	Sensaslim Australia Pty Ltd & Ors
	commenced 15 July 2011
	concluded 11 May 2016
	jurisdiction Federal Court Sydney
	outcome Injunctions, pecuniary penalty of \$3.55 million against Sensaslim, \$660 000 against Peter Foster and permanently disqualified from managing corporation, Michael Boyle penalty of \$75 000 and 3-year disqualification, Peter O'Brien penalty of \$55 000 and 10-year disqualification. Foster and O'Brien to pay ACCC costs.

Case has been appealed by Mr Foster.

Product safety	Woolworths Ltd
	commenced 17 September 2014
	concluded 5 February 2016
	jurisdiction Federal Court Sydney
	outcome Pecuniary penalties of \$3.057 million, implement compliance program, publish on its websites a link to product safety requirement information, publish details of recalled products on the Woolworths supermarket smartphone application, and contribution of \$50 000 to ACCC costs.

Litigation continuing at the end of 2015–16

Unconscionable conduct and unfair contract terms	Advanced Medical Institute Pty Ltd & Ors (appeal)
	commenced 21 December 2010
	jurisdiction Federal Court Melbourne
Unconscionable conduct	Clinica Internazionale Pty Ltd & Anor (appeal)
	commenced 15 May 2015
	jurisdiction Federal Court Melbourne
	Case has been appealed by Mr Laski.
Credence claims	DuluxGroup (Australia) Pty Ltd
	commenced 5 December 2012
	jurisdiction Federal Court Perth
Drip pricing	Jetstar Airways Pty Ltd
	commenced 19 June 2014
	jurisdiction Federal Court Sydney
False or misleading representations	Reckitt Benckiser (Australia) Pty Ltd
	commenced 4 March 2015
	jurisdiction Federal Court Sydney
Scam	Sensaslim Australia Pty Ltd & Ors
	commenced 15 July 2011
	jurisdiction Federal Court Sydney
	Case has been appealed by Mr Foster.

Credence claims	Snowdale Holdings Pty Ltd
	commenced 9 December 2013 jurisdiction Federal Court Perth
False or misleading representations	Taxsmart Group Pty Ltd
	commenced 20 June 2013 jurisdiction Federal Court Melbourne
Consumer guarantees	Valve Corporation Pty Ltd
	commenced 28 August 2014 jurisdiction Federal Court Sydney
Drip pricing	Virgin Australia Airlines Pty Ltd
	commenced 19 June 2014 jurisdiction Federal Court Sydney
False or misleading representations	We Buy Houses Pty Ltd and Rick Otton
	commenced 2 March 2015 jurisdiction Federal Court Sydney
Litigation commenced in 2015–16	
Unconscionable conduct	ACM Group Ltd
	commenced 2 June 2016 jurisdiction Federal Court Sydney
Unconscionable conduct	Acquire Learning & Careers Pty Ltd
	commenced 17 December 2015 jurisdiction Federal Court Melbourne
Unconscionable conduct	Australian Institute of Professional Education Pty Ltd
	commenced 31 March 2016 jurisdiction Federal Court Sydney
Vulnerable and disadvantaged consumers	Cornerstone Investment Australia Pty Ltd t/a Empower Institute
	commenced 9 December 2015 jurisdiction Federal Court Sydney
False or misleading representations	Elusion New Zealand Limited
	commenced 20 June 2016 jurisdiction Federal Court Perth
Unconscionable conduct	Harrison Telecommunication Companies & James Harrison
	commenced 4 April 2016 jurisdiction Federal Court Melbourne
False or misleading representations	H.J. Heinz Company Australia Ltd
	commenced 21 June 2016 jurisdiction Federal Court Adelaide
Consumer guarantees	LG Electronics Australia Pty Ltd
	commenced 15 December 2015 jurisdiction Federal Court Melbourne

Non-compliance with court order	Lawrence Glynn Hann
	commenced 15 December 2015
	jurisdiction Federal Court Melbourne
Indigenous consumers (unconscionable conduct)	Lifestyle Photographers t/a Expression Sessions
	commenced 18 September 2015
	jurisdiction Federal Court Sydney
Unconscionable conduct	Medibank Private Ltd
	commenced 15 June 2016
	jurisdiction Federal Court Melbourne
Product safety	Ozsale Pty Ltd t/a BuyInvite
	commenced 8 December 2015
	jurisdiction Federal Court Sydney
Vulnerable and disadvantaged consumers	Phoenix Institute of Australia Pty Ltd & Anor
	commenced 24 November 2015
	jurisdiction Federal Court Sydney
False or misleading representations	Social-Lites Pty Ltd
	commenced 20 June 2016
	jurisdiction Federal Court Brisbane
Vulnerable and disadvantaged consumers	Unique International College Pty Ltd
	commenced 27 October 2015
	jurisdiction Federal Court Sydney
Unconscionable conduct	Woolworths Ltd
	commenced 10 December 2015
	jurisdiction Federal Court Sydney

Other proceedings

Non-compliance with statutory notice	Michael Anthony Boyle
	commenced 16 September 2014
	concluded 10 September 2015
	jurisdiction Federal Court Brisbane
	outcome Conviction and fine of \$3500.
Non-compliance with statutory notice	Robert Paul Davies
	commenced 2 October 2014
	concluded 20 November 2015
	jurisdiction Federal Court Brisbane
	outcome 200 hours of community service.

Public warning notices

There was one public warning notice issued in 2015–16 in relation to:

Australian Business Funding Centre Pty Ltd (also known as Australian Business Finance Centre or ABFC).

Disqualification orders

There were four disqualification orders issued during 2015–16 in respect of:

Peter Foster

In 2011 ACCC brought proceedings alleging that Sensaslim Australia Pty Ltd (Administrator Appointed) and several of its officers have engaged in misleading and deceptive conduct and made false representations in breach of the TPA and the ACL in relation to the identity of Sensaslim officers, the Sensaslim Spray and the business opportunities offered by Sensaslim.	commenced		15 July 2011
	jurisdiction		Federal Court Sydney
	outcome		Permanently disqualified from managing a corporation.

Michael Anthony Boyle

As above in relation to Sensaslim Australia Pty Ltd	commenced		15 July 2011
	jurisdiction		Federal Court Sydney
	outcome		Disqualified from managing a corporation for a period of three years.

Peter Leslie O'Brien

As above in relation to Sensaslim Australia Pty Ltd	commenced		15 July 2011
	jurisdiction		Federal Court Sydney
	outcome		Disqualified from managing a corporation for a period of 10 years.

Radovan Montague Laski

ACCC allege that Clinica Internationale Pty Ltd made false or misleading representations and engaged in misleading conduct and unconscionable conduct in relation to a program offering migrants training and employment that it represented would lead to permanent residency in Australia.	commenced		15 May 2015
	jurisdiction		Federal Court Melbourne
	outcome		Disqualified from managing a corporation for a period of five years.

Administrative resolutions 2015–16

Consumer guarantees	Fiat Chrysler Australia Pty Ltd	11 September 2015
Disclosure issues	Calvary Health Care ACT Ltd	15 December 2015
Unfair contract terms	Exetel Pty	18 January 2016
Disclosure issues	Vaya Pty Ltd	8 March 2016
Disclosure issues	True Value Solar Pty Ltd	11 April 2016
Consumer guarantees	Yale Prima Pty Ltd	14 June 2016
Disclosure issues	JustFab Inc trading as Fabletics	22 June 2016
Disclosure issues	Asia Deal Group Pty Ltd trading as ScootPrice	22 June 2016

Strategy 3: Promote the economically efficient operation of, use of, and investment in infrastructure; and identify market failure

Litigation continuing at the end of 2015–16

Communications	Telstra Corporation Limited ACN 051 775 556 v Australian Competition and Consumer Commission & Ors
	commenced 5 November 2015
	concluded Litigation continuing
	jurisdiction Federal Court
	outcome Awaiting judgment.

AER

Litigation concluded in 2015–16

Judicial review of preliminary determination	Ergon Energy Corporation Limited
	commenced 29 May 2015
	concluded 4 November 2015
	jurisdiction Federal Court Queensland
	Ergon Energy discontinued proceedings.

Litigation continuing at the end of 2015–16

<p>Judicial review of Australian Competition Tribunal decision in relation to AER electricity distribution determinations and gas distribution access arrangement</p>	<p>AusGrid Endeavour Energy Essential Energy ActewAGL Distribution Jemena Gas Networks (NSW)</p> <p>commenced 24 March 2016 jurisdiction Full Federal Court</p> <p>A directions hearing was held on 2 June 2016, with the substantive hearing to commence on 17 October 2016.</p>
<p>Judicial review of AER gas distribution access arrangement</p>	<p>Jemena Gas Networks (NSW)</p> <p>commenced 1 July 2015 jurisdiction Federal Court</p> <p>Judicial review of this decision was sought in addition to an application for merits review.</p> <p>The matter have been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decision.</p>
<p>Judicial review of AER electricity distribution determinations</p>	<p>AusGrid Endeavour Energy Essential Energy ActewAGL Distribution</p> <p>commenced 28 May 2016 jurisdiction Federal Court</p> <p>Judicial review of these decisions was sought in addition to applications for merits review.</p> <p>These matters have been stayed pending completion of the Full Federal Court's decision in relation to the AER's application for judicial review of the Australian Competition Tribunal decisions.</p>
<p>Judicial review of AER electricity distribution determination</p>	<p>SA Power Networks</p> <p>commenced 22 July 2016 jurisdiction Federal Court</p>
<p>Judicial review of AER electricity distribution determinations</p>	<p>CitiPower Powercor United Energy Jemena AusNet Services</p> <p>commenced 22 June 2016 jurisdiction Federal Court</p> <p>Judicial review of these decisions was sought in addition to applications for merits review.</p>

Judicial review of AER gas distribution **ActewAGL Distribution**

access arrangement

commenced | 22 June 2016

jurisdiction | Federal Court

Judicial review of this decision was sought in addition to an application for merits review.

Australian Competition Tribunal matters

Tribunal decision on AER electricity distribution determinations in relation to AusGrid, Endeavour Energy, Essential Energy and ActewAGL Distribution. The merits review hearings concluded on 9 October 2015 and the Tribunal handed down its decisions on 26 February 2016.

Tribunal decision on AER gas distribution access arrangement in relation to Jemena Gas Networks (NSW). The merits review hearings concluded on 9 October 2015. The Tribunal handed down its decision on 26 February 2016 and delivered its reasons on 3 March 2016.

Applications for leave and review of AER electricity distribution determination in relation to SA Power Networks. Leave to appeal was granted 4 May 2016, with hearings to occur in August 2016. A consumer consultation was held on 1 June 2016.

Applications for leave and review of AER electricity distribution determinations in relation to CitiPower, Powercor, United Energy, Jemena and AusNet Services were lodged on 17 June 2016. A directions hearing will be held in August 2016.

An application for leave and review of the AER gas distribution access arrangement in relation to ActewAGL Distribution was lodged on 17 June 2016. A directions hearing will be held in August 2016.

Appendix 10: Draft and final decisions in relation to regulated industries in 2015–16

AER

Electricity transmission decisions

- Final decision: Cost thresholds review for the regulatory investment test, November 2015
- Decision: Approved a cost pass through for TransGrid related to network support for 2014–15, November 2015
- Decision: Approved a cost pass through for ElectraNet related to network support for 2014–15, November 2015
- Decision: Approved a cost pass through for AusNet Services related to easement land tax for 2016, March 2016

Electricity distribution decisions

- Decision: Approved the cost allocation method for Energex for 2014, July 2015
- Decision: Victoria F-factor amount determinations for 2014, September 2015
- Decision: Approved AusNet Services' negative cost pass through application related to reduced taxation costs, October 2015
- Final decision: SA Power Networks determination 2015–2020, October 2015
- Final decision: Energex determination for 2015–2020, October 2015
- Final decision: Ergon Energy determination for 2015–2020, October 2015
- Preliminary decision: United Energy distribution determination for 2016–20, October 2015
- Preliminary decision: Powercor distribution determination for 2016–20, October 2015
- Preliminary decision: AusNet distribution determination for 2016–20, October 2015
- Preliminary decision: CitiPower distribution determination for 2016–20, October 2015
- Preliminary decision: Jemena distribution determination for 2016–20, October 2015
- Final decision: Cost thresholds review for the regulatory investment test, November 2015
- Decision: Approved a cost pass through for Ausgrid related to the April 2015 storms, December 2015
- Decision: Approved a cost pass through for Energex related to feed-in tariffs for 2014–15, December 2015
- Decision: Approved a cost pass through for Ergon Energy related to feed-in tariffs for 2014–15, December 2015
- Decision: Approved annual tariffs for 2016 for Victorian businesses, December 2015
- Decision: Ergon Energy—Ring fencing waiver 2015, February 2016
- Decision: Energex—Ring fencing waiver 2015, March 2016
- Decision: Ergon Energy—Determination on whether a scheme is a jurisdictional scheme, April 2016

- Decision: Energex—Determination on whether a scheme is a jurisdictional scheme, April 2016
- Decision: Approved a cost pass through for AusGrid related to an extension of the time limit to submit its 2016 application, April 2016
- Decision: Approved a cost pass through for Essential Energy related to an extension of the time limit to submit its 2016 application, April 2016
- Decision: Approved a cost pass through for Endeavour Energy related to an extension of the time limit to submit its 2016 application, April 2016
- Decision: Approved demand management incentive scheme expenditure for 2014, 2013–14 and 2014–15, April 2016
- Final decision: United Energy distribution determination for 2016–20, May 2016
- Final decision: Powercor distribution determination for 2016–20, May 2016
- Final decision: AusNet distribution determination for 2016–20, May 2016
- Final decision: CitiPower distribution determination for 2016–20, May 2016
- Final decision: Jemena distribution determination for 2016–20, May 2016
- Decision: Approved annual tariffs for 2016–17 for New South Wales, ACT and Northern Territory businesses, May 2016
- Decision: Approved annual tariffs for 2016–17 for Queensland and Tasmanian businesses, June 2016

Gas transmission and distribution decisions

- Decision: Approved a cost pass through for Multinet related to gas mains replacement, September 2015
- Final decision: Amadeus Gas Pipeline access arrangement for 2016–21, May 2016
- Final decision: ActewAGL (ACT, Queanbeyan and Palerang) access arrangement for 2016–21, May 2016
- Final decision: Australian Gas Networks (SA) access arrangement for 2016–21, May 2016
- Decision: Approved annual tariffs for 2016 for Victorian businesses, December 2015
- Decision: Approved annual tariffs for 2016–17 for New South Wales and Queensland businesses, May 2016

Retail energy market decisions

- Granted Savant Energy Power Networks Pty Limited an electricity retailer authorisation, 3 July 2015
- Granted Cell Energy an individual exemption for the sale of electricity, July 2015
- Granted GPT Funds Management 2 Pty Ltd an individual exemption for the sale of electricity, July 2015
- Granted Standard Solar Pty Ltd an individual exemption for the sale of electricity, July 2015
- Granted Puma Energy (Australia) Pty Ltd (Qld) an individual exemption for the sale of electricity, July 2015
- Appointed a default Retailer of Last Resort for electricity customers in Queensland and New South Wales on the Ergon Energy network, July 2015
- Granted 1st Energy Pty Ltd an electricity retailer authorisation, 14 August 2015
- Granted Urth Energy Pty Ltd an electricity retailer authorisation, 21 August 2015
- Granted Mojo Power Pty Ltd an electricity retailer authorisation, 25 September 2015

- Granted Global Clean Energy Finance an individual exemption for the sale of electricity, September 2015
- Granted Scenery an individual exemption for the sale of electricity, September 2015
- Granted GoZERO Asset Management Pty Ltd an individual exemption for the sale of electricity, September 2015
- Granted Solar Cloud an individual exemption for the sale of electricity, September 2015
- Granted Aeronergy Pty Ltd an individual exemption for the sale of electricity, September 2015
- Granted Atonray Pty Ltd an individual exemption for the sale of electricity, September 2015
- Granted Habitat Energy Systems Pty Ltd an individual exemption for the sale of electricity, September 2015
- Granted P.T. Limited (Westfield Chatswood) an individual exemption for the sale of electricity, October 2015
- Granted P.T. Limited (Westfield Tuggerah) an individual exemption for the sale of electricity, October 2015
- Granted Scentre Custodian Pty Limited (Westfield Kotara) an individual exemption for the sale of electricity, October 2015
- Granted Scentre Management Limited (Westfield Bondi) an individual exemption for the sale of electricity, October 2015
- Granted Scentre Management Limited (Westfield Hurstville) an individual exemption for the sale of electricity, October 2015
- Granted Lend Lease Recycled Water (Barangaroo South) Pty Ltd an individual exemption for the sale of electricity, October 2015
- Granted TVS Energy an individual exemption for the sale of electricity, October 2015
- Granted Agri Energy Pty Ltd an individual exemption for the sale of electricity, October 2015
- Granted Global Clean Energy Finance an individual exemption for the sale of electricity, October 2015
- Granted Intelligent Energy Solutions Pty Ltd an individual exemption for the sale of electricity, October 2015
- Granted Quantum Power Pty Ltd an individual exemption for the sale of electricity, October 2015
- Granted ElectrAg Pty Ltd an electricity retailer authorisation, 19 November 2015
- Granted Stockland Property Management Pty Ltd (Bathurst) an individual exemption for the sale of electricity, November 2015
- Appointed default Retailers of Last Resort for South Australia (electricity and gas), December 2015
- Appointed default Retailers of Last Resort for customers directly connected to transmission networks in South Australia, New South Wales, Queensland and Tasmania, December 2015
- Granted Enova Energy Pty Ltd an electricity retailer authorisation, 14 January 2016
- Granted Power Savings Australia Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted Energus Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted Simple Solar Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted Belmay Pty Ltd an individual exemption for the sale of electricity, January 2016

- Granted Eurosolar an individual exemption for the sale of electricity, January 2016
- Granted Lighting and Energy Conservation Australia an individual exemption for the sale of electricity, January 2016
- Granted Think Energy an individual exemption for the sale of electricity, January 2016
- Granted Nu-tility an individual exemption for the sale of electricity, January 2016
- Granted 5B Energy Services Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted The Trustee for Citisolar NSW Unit Trust an individual exemption for the sale of electricity, January 2016
- Granted The Trustee for Citisolar Unit Trust an individual exemption for the sale of electricity, January 2016
- Granted The Trustee for Citisolar South Australia Unit Trust an individual exemption for the sale of electricity, January 2016
- Granted The Trustee for Citisolar Townsville Unit Trust an individual exemption for the sale of electricity, January 2016
- Granted Sanctus One Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted Excel Solar Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted Thomas Wolf Energy Pty Ltd an individual exemption for the sale of electricity, January 2016
- Granted SparQ Pty Ltd (Sumo Power) an electricity retailer authorisation, 24 February 2016
- Granted Click Energy a gas retailer authorisation, 24 March 2016
- Granted Simply Energy Solutions Pty Ltd an individual exemption for the sale of electricity, March 2016
- Granted Urth Solar Pty Ltd an individual exemption for the sale of electricity, March 2016
- Granted Arc Energy Group Pty Ltd (NSW) an individual exemption for the sale of electricity, April 2016
- Appointed a default Retailer of Last Resort for gas customers in New South Wales on the Jemena Gas Networks (NSW) network, April 2016
- Appointed an additional Retailer of Last Resort to acquire small customers in New South Wales following the Go Energy Ltd Retailer of Last Resort event, April 2016
- Granted Scentre Shopping Centre Management Pty Ltd (Westfield Warringah Mall) an individual exemption for the sale of electricity, May 2016
- Granted Scentre Shopping Centre Management Pty Ltd (Westfield Burwood) an individual exemption for the sale of electricity, May 2016
- Granted Scentre Shopping Centre Management Pty Ltd (Westfield Paramatta) an individual exemption for the sale of electricity, May 2016
- Granted Scentre Shopping Centre Management Pty Ltd (Westfield Liverpool) an individual exemption for the sale of electricity, May 2016
- Granted Scentre Shopping Centre Management Pty Ltd (Westfield Penrith) an individual exemption for the sale of electricity, May 2016
- Granted Stockland Property Management Pty Ltd (Shellharbour) an individual exemption for the sale of electricity, May 2016
- Granted Stockland Property Management Pty Ltd (Merrylands) an individual exemption for the sale of electricity, May 2016

- Granted Stockland Trust Management Ltd (Wetherill Park) an individual exemption for the sale of electricity, June 2016
- Granted RTA Weipa Pty Ltd (QLD) an individual exemption for the sale of electricity, June 2016

Telecommunications

- Final decision for the primary price and non-price terms for the mobile terminating access (MTAS) final access determination (FAD), 24 August 2015
- Draft decision on the domestic transmission capacity service (DTCS) FAD, 4 September 2015
- Decision to extend the inquiry period for making the Local Bitstream Access Service (LBAS) FAD until 7 April 2016, 23 September 2015
- Final decision on fixed line services FAD, 9 October 2015
- Draft decision on the superfast broadband access service (SBAS) declaration inquiry, 6 November 2015
- Decision granting exemptions for Optus and Vodafone Hutchison Australia from further reporting requirements under the Regulatory Accounting Framework Record Keeping Rules (RAF RKR), 16 December 2015
- Decision to extend the inquiry period for making the Local Bitstream Access Service (LBAS) FAD until 7 October 2016, 24 February 2016
- Draft determination on NBN Co's revenue controls for 2014-15 financial year, 15 March 2016
- Final decision to issue a disclosure direction to NBN Co to enable the ACCC to publish a market indicators report for NBN access services, 21 March 2016
- Final decision on the DTCS FAD, 21 April 2016
- Final determination on NBN Co's revenue controls for 2014-15 financial year, 3 June 2016

Transport

Rail

- Draft determination on ARTC's Hunter Valley access undertaking Annual Compliance for the 2013 calendar year, 30 October 2015
- Final determination on ARTC's Hunter Valley access undertaking Annual Compliance for the 2013 calendar year, 6 June 2016
- Final decision to approve ARTC's revised application to extend its Hunter Valley access undertaking, 16 June 2016

Wheat export port terminal services

- Draft decision to not approve Viterra Operations Ltd's application to introduce long term agreements to allocate port capacity at its six bulk wheat ports in South Australia, 16 July 2015
- Draft decisions that GrainCorp and Quattro Ports are exempt service providers at their respective bulk wheat port terminals at Port Kembla, 30 July 2015
- Final determinations that Newcastle Agri Terminal Pty Ltd and Qube Holdings Limited are exempt service providers at their respective bulk wheat port terminal facilities at the Port of Newcastle, 30 July 2015

- Draft determinations that GrainCorp and Queensland Bulk Terminals Pty Ltd are exempt service providers at their respective bulk wheat port terminals at the Port of Brisbane, 27 August 2015
- Draft determination that WA Chip & Pulp Company Pty Ltd is an exempt service provider at its Bunbury bulk wheat port terminal, 2 September 2015
- Final determination that WA Chip & Pulp Company Pty Ltd is an exempt service provider at its Bunbury bulk wheat port terminal, 24 September 2015
- Final determinations that GrainCorp and Queensland Bulk Terminals Pty Ltd are exempt service providers at their respective bulk wheat port terminals at the Port of Brisbane, 24 September 2015
- Final decision to approve Viterra Operations Ltd's application to introduce long term agreements to allocate port capacity at its six bulk wheat ports in South Australia, 3 December 2015
- Draft determination that Patrick Stevedoring Pty Ltd is an exempt service provider at its Port Adelaide bulk wheat port terminal facility, 25 February 2016
- Final determination that Patrick Stevedoring Pty Ltd is an exempt service provider at its Port Adelaide bulk wheat port terminal facility, 1 April 2016
- Final determinations that GrainCorp and Quattro Ports are exempt service providers at their respective bulk wheat port terminals at Port Kembla, 1 April 2016

Australia Post

- Final decision not to object to Australia Post's 2016 letter pricing notification, 9 December 2015

Water

- Decision to accredit the Independent Pricing and Regulatory Tribunal of New South Wales (IPART) as the regulator of WaterNSW's infrastructure charges in the Murray-Darling Basin (MDB), 23 September 2015
- Draft advice on changes to the water charge rules for consultation, 24 November 2015
- Draft decision on WaterNSW's 2016-17 charges in the Murray-Darling Basin, 13 April 2016
- Final decision on WaterNSW's 2016-17 charges in the Murray-Darling Basin, 19 May 2016

Appendix 11: Major regulatory reports and reviews in 2015–16

AER

Reports

- Electricity industry RoLR exercise report, July 2015
- AER Annual Report 2014–15, September 2015
- ACCC and AER Annual Report 2014–15, October 2015
- Roll forward model (transmission) amendment, October 2015
- Compliance Check—entering into retail contracts and explicit informed consent, November 2015
- AER annual report on the performance of the retail energy market 2014–15, November 2015
- AER National Energy Retail Law annual compliance report 2014–15, November 2015
- Prices above \$5000/MWh—23 September 2015 (NSW), November 2015
- Transmission and distribution network service providers 2015 benchmarking report, November 2015
- State of the Energy Market 2015, December 2015
- Prices above \$5000/MWh—11, 12 and 25 October 2015 (SA), December 2015
- Gas industry RoLR exercise report, July 2015
- FCAS prices above \$5000/MWh—1 November 2015 (SA), February 2016
- Overview of gas network annual compliance reports 2014–15, February 2015
- Prices above \$5000/MWh—13 January 2016 (SA/Vic), March 2016
- Prices above \$5000/MWh—14 January 2016 (NSW), March 2016
- Victorian electricity distribution businesses' public fire start reports 2015, April 2016
- Significant price variation report—13 and 23 January 2016 (Sydney STTM), May 2016
- FCAS prices above \$5000/MWh—26 March 2016 (SA), May 2016
- Transmission service standards compliance reports 2015, TasNetworks, Powerlink, AusNet Services, Murraylink, May 2016
- AER statement of intent 2016–17, June 2016
- Quarterly compliance report: national electricity and gas laws, August 2015, November 2015, February 2016, May 2016
- Economic Benchmarking RIN information and Category Analysis RIN information, August 2015, November 2015, December 2015, May 2016
- Electricity reports, weekly
- Gas reports, weekly

Guidelines and other consultation

- Retailer of Last Resort plan (version 4), July 2015
- Retail Pricing Information Guidelines (version 4) and Notice of Final Instrument, August 2015
- Service Target Performance Incentive Scheme (version 5), September 2015
- Retail Exempt Selling Guideline (version 4), March

Telecommunications

Reports

- Telstra's Structural Separation Undertaking annual compliance report 2014–15, 15 April 2016
- Price changes for telecommunications services in Australia for 2014–15, 19 April 2016
- Competition in the Australian telecommunications sector for 2014–15, 19 April 2016

Guidelines and other consultation

- Proposed NBN wholesale market indicators report, 31 July 2015
- Telecommunications competition notice guidelines, 8 September 2015
- Draft amendments to the telecommunications competition notice guidelines, 24 August 2016
- Draft guidelines for the Part XIC declaration provisions for telecommunications services, 1 June 2016

Fuel

Reports

- Report on the Australian petroleum market—June quarter 2015, 10 August 2015
- Report on the Darwin petrol market, 23 November 2015
- Report on the Australian petroleum market—September quarter 2015, 15 December 2016
- Report on the Australian petroleum market—December quarter 2015, 15 February 2016
- Report on the Australian petroleum market—March quarter 2016, 6 June 2016

Guidelines and other consultation

- Market study on petrol prices in Armidale, 3 August 2015

Transport

Reports

- Container stevedoring monitoring report no. 17, 6 November 2015
- Airport monitoring report 2014–15, 23 March 2016

Guidelines and other consultation

- Consultation paper on ARTC's proposed Hunter Valley access undertaking 2016, 8 January 2016

Postal services

Reports

- Assessing cross-subsidy in Australia Post 2014–15, 1 April 2016

Water

Reports

- Water monitoring report 2014-15, 6 June 2016

Guidelines and other consultations

- Draft advice on water charge rules review, 24 November 2015

Other

Reports

- Inquiry into the east coast gas market, 22 April 2016

Guidelines and other consultation

- Draft Part IIIA access undertaking guidelines, 9 May 2016

Appendix 12: Mergers in 2015–16—major assessments

All public merger decisions for 2015–16 were published on the ACCC website at www.accc.gov.au/mergers.

Public merger reviews resolved by court enforceable undertakings

During 2015–16, the ACCC accepted undertakings in the following reviews:

- Coles Group Property Developments Ltd and Coles Supermarkets Australia Pty Ltd—proposed acquisition of a supermarket lease in Lakelands, Western Australia
- GPC Asia Pacific Pty Ltd—proposed acquisition of Cova Parts from Automotive Holdings Group Limited
- Nordic Capital Fund VII—proposed acquisition of Max-Inf Holdings Limited
- Iron Mountain Incorporated—proposed acquisition of Recall Holdings Limited
- Primary Health Care Limited—acquisition of pathology assets previously operated by Healthscope Limited in Queensland

Notable merger reviews—not opposed

- Foxtel Management Pty Ltd—proposed acquisition arrangements with Ten Network Holdings Ltd
- Royal Dutch Shell plc—proposed acquisition of BG Group plc
- Staples Inc—proposed acquisition of Office Depot Inc (trading as OfficeMax)
- Anheuser-Busch InBev—proposed acquisition of SABMiller plc
- FedEx Corporation through its wholly-owned subsidiary FedEx Acquisition B.V.,—proposed acquisition of TNT Express N.V

Appendix 13: Significant authorisation and notification decisions in 2015–16

Authorisations

In 2015–16, the ACCC issued 33 final authorisation decisions (excluding minor variations). Copies of all authorisation decisions for 2015–16 were published on the ACCC website at www.accc.gov.au/publicregister.

Notable authorisations granted

- NBN Co Limited—Revocation and Substitution—A91479–A91481
- Qantas Airways Limited & China Eastern Airlines Corporation Limited—Authorisations—A91470 and A91471
- Australian Retail Credit Association Limited—Authorisation—A91482
- ihail Pty Ltd—Authorisation—A91501.

Collective bargaining notifications

In 2015–16, the ACCC granted authorisation for 14 collective bargaining arrangements.

In 2015–16, five collective bargaining notifications were also allowed to stand.

Copies of all collective bargaining authorisations and notifications are available from the ACCC's website at www.accc.gov.au/publicregister.

Notable collective bargaining decisions:

- Manning Valley Dairy Farmers—Collective Bargaining Notification—CB00326 and CB00327
- Tasmanian Chicken Growers Association—Collective Bargaining Notification—CB00323
- Screen Producers—Authorisation—A91484
- Liquor Stax Australia Pty Ltd—Revocation and Substitution—A91488
- Western Australian Broiler Grower Association (Inc)—Revocation and Substitution—A91527
- Victorian Farmers Federation—Authorisation—A91534.

Exclusive dealing notifications

In 2015–16, the ACCC assessed 766 exclusive dealing notifications involving 495 separate matters. Copies of all notifications are available from the ACCC's website at www.accc.gov.au/publicregister. Notable examples are listed below.

- Equestrian Australia Limited—Notification—N98410
- Gerard Lighting Pty Ltd & CMP Controls Pty Ltd—Notifications—N98399 and N98400.

Appendix 14: Correction of material errors in previous annual reports

Some information concerning market research and consumer surveys was omitted from Appendix 4, Advertising and market research in the printed version of the 2014-15 ACCC AER Annual Report. The online version was correct. This information is shown in the table below.

Date	Description of advertising and market research services	Advertising and market research firm	Amount \$
November 2014 to June 2015	ACCC Consumer and Small Business survey	ORC Australia Pty Ltd	186 190
March to May 2015	Consumer survey in relation to private health insurance	Colmar Brunton	50 000
April to June 2015	Online advertising promoting the ACCC's Small Business Information Network (free email update service)	Mitchells Adcorp Alliance	38 500
June 2015	Online and radio advertising for the Infinity cable recall education campaign	Mitchells Adcorp Alliance	103 051

Glossary and abbreviations

AAT	Administrative Appeals Tribunal
ABA	Australian Bulk Alliance
ACCC	Australian Competition and Consumer Commission
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
AGS	Australian Government Solicitor
APS	Australian Public Service
ARFF	aviation rescue, fire fighting
ARTC	Australian Rail Track Corporation
ASIC	Australian Securities and Investments Commission
ASL	Average Staffing Level
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWG	Australian Writers' Guild Limited
BBM	building block model
CA	Communications Alliance
CCA	<i>Competition and Consumer Act 2010</i>
CCEU	Competition and Consumer Economic Unit
CCG	Customer Consultative Group
CEO	chief executive officer
COAG	Council of Australian Governments
cpl	cents per litre
CPM	carbon price mechanism
DBCDE	Department of Broadband, Communications and the Digital Economy
DEHP	diethylhexyl phthalate
DNSP	distribution network service providers
DSP	demand side participation
DTCS	Domestic Transmission Capacity Service
EDRMS	Electronic Document Record Management System
EL	executive level
ESCV	Essential Services Commission of Victoria
ESV	Energy Safe Victoria
FADs	final access determinations
FCC	Franchising Consultative Committee

FIT	feed-in tariff
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FOI	Freedom of Information
FTTH	fibre-to-the-home
HFC	hybrid fibre coaxial
HVAU	Hunter Valley Access Undertaking
ICPHSO	International Consumer Product Health and Safety Organization
ICPEN	International Consumer Protection and Enforcement Network
IMTS	Information Management and Technology Services Branch
IPS	Information Publication Scheme
IPTV	internet protocol television
LBAS	local bitstream access service
LCS	local carriage service
LPG	liquefied petroleum gas
LSS	line sharing service
LTPA	long-term pricing agreement
MDB	Murray-Darling Basin
MDBA	Murray-Darling Basin Authority
MIP	market impact parameter
Mogas	motor gasoline
MPS	mobile premium services
MTAS	mobile terminating access service
NBN	National Broadband Network
NBN Co	NBN Co Limited
NEM	National Electricity Market
NER	National Electricity Rules
NGR	National Gas Rules
NPP	new policy proposal
NSP	Network Service Plan
OECD	Organisation for Economic Co-operation and Development
OSP	Operational Separation Plan
PBS	portfolio budget statements
PPD	paraphenylene diamine
POH	Public Office Holder
PGPA Act	<i>Public Governance and Accountability Act 2013</i>
PSCC	Product Safety Consultative Committee
PSM	People Services and Management Branch

PSTN	public switched telephone network
PSTN	OA public switched telephone network originating access
PSTN	TA public switched telephone network terminating access
RBP	Roma to Brisbane transmission pipeline
RDB	Regulatory Development Branch
RFI	request for information
RoLR	retailer of last resort
RTC	reconnecting the customer
SAU	special access undertaking
Section 87B	court enforceable undertaking made under s. 87B of the <i>Competition and Consumer Act 2010</i>
SES	Senior Executive Service
SSU	structural separation undertaking
STPIS	service target performance incentive scheme
STTM	short term trading market
TCP	telecommunications consumer protection
TGP	terminal gate price
TIO	Telecommunications Industry Ombudsman
TN	terminal navigation
TNSP	transmission network service providers
TPA	<i>Trade Practices Act 1974</i>
TSLRIC+	total service long-run incremental cost plus an allocation of indirect overhead costs
ULLS	unconditioned local loop service
VOIP	voice over internet protocol
WACC	weighted average cost of capital
WCIR	Water Charge (Infrastructure) Rules 2010
WCPMIR	Water Charge (Planning and Management Information) Rules 2010
WCTFR	Water Charge (Termination Fees) Rules 2009
WLR	wholesale line rental
WMR	Water Market Rules 2009

Compliance index

List of requirements

This schedule provides, for the purposes of paragraph 17AJ(d), the list of requirements to be included in a non-corporate Commonwealth entity's annual report for a reporting period. The schedule is prepared for subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013*.

PGPA Rule Reference	Part of Report	Description	Requirement	Page number
17AD(g)	Letter of transmittal			
17AI		A copy of the letter of transmittal signed and dated by accountable authority on date final text approved, with statement that the report has been prepared in accordance with s. 46 of the Act and any enabling legislation that specifies additional requirements in relation to the annual report	Mandatory	iii
17AD(h)	Aids to access			
17AJ(a)		Table of contents	Mandatory	v
17AJ(b)		Alphabetical index	Mandatory	374
17AJ(c)		Glossary of abbreviations and acronyms	Mandatory	364
17AJ(d)		List of requirements	Mandatory	367-373
17AJ(e)		Details of contact officer	Mandatory	ii, 19
17AJ(f)		Entity's website address	Mandatory	ii
17AJ(g)		Electronic address of report	Mandatory	ii
17AD(a)	Review by accountable authority			
17AD(a)		A review by the accountable authority of the entity	Mandatory	2-8
17AD(b)	Overview of the entity			
17AE(1)(a)(i)		A description of the role and functions of the entity	Mandatory	14
17AE(1)(a)(ii)		A description of the organisational structure of the entity	Mandatory	17-18
17AE(1)(a)(iii)		A description of the outcomes and programs administered by the entity	Mandatory	17, 22-24
17AE(1)(a)(iv)		A description of the purposes of the entity as included in corporate plan	Mandatory	22-24

17AE(1)(b)	An outline of the structure of the portfolio of the entity	Portfolio departments—	Not applicable mandatory
17AE(2)	Where the outcomes and programmes administered by the entity differ from any Portfolio Budget Statement, Portfolio Additional Estimates Statement or other portfolio estimates statement that was prepared for the entity for the period, include details of variation and reasons for change	If applicable, Mandatory	Not applicable
17AD(c)	Report on the performance of the entity		
	Annual performance statements		
17AD(c)(i); 16F	Annual performance statement in accordance with paragraph 39(1)(b) of the Act and section 16F of the Rule	Mandatory	22–195
17AD(c)(ii)	Report on financial performance		
17AF(1)(a)	A discussion and analysis of the entity's financial performance	Mandatory	9–12
17AF(1)(b)	A table summarising the total resources and total payments of the entity	Mandatory	9–12
17AF(2)	If there may be significant changes in the financial results during or after the previous or current reporting period, information on those changes, including: the cause of any operating loss of the entity; how the entity has responded to the loss and the actions that have been taken in relation to the loss; and any matter or circumstances that it can reasonably be anticipated will have a significant impact on the entity's future operation or financial results	If applicable, Mandatory.	Not applicable
17AD(d)	Management and accountability		
	Corporate governance		
17AG(2)(a)	Information on compliance with s. 10 (fraud systems)	Mandatory	iii, 211
17AG(2)(b)(i)	A certification by accountable authority that fraud risk assessments and fraud control plans have been prepared	Mandatory	iii, 211
17AG(2)(b)(ii)	A certification by accountable authority that appropriate mechanisms for preventing, detecting incidents of, investigating or otherwise dealing with, and recording or reporting fraud that meet the specific needs of the entity are in place	Mandatory	iii, 211

17AG(2)(b)(iii)	A certification by accountable authority that all reasonable measures have been taken to deal appropriately with fraud relating to the entity	Mandatory	iii, 211
17AG(2)(c)	An outline of structures and processes in place for the entity to implement principles and objectives of corporate governance	Mandatory	206-215
17AG(2)(d)-(e)	A statement of significant issues reported to Minister under paragraph 19(1)(e) of the Act that relates to non-compliance with Finance law and action taken to remedy non-compliance	If applicable, Mandatory	Not applicable
External scrutiny			
17AG(3)	Information on the most significant developments in external scrutiny and the entity's response to the scrutiny	Mandatory	213-214
17AG(3)(a)	Information on judicial decisions and decisions of administrative tribunals and by the Australian Information Commissioner that may have a significant effect on the operations of the entity	If applicable, Mandatory	213-214
17AG(3)(b)	Information on any reports on operations of the entity by the Auditor-General (other than report under s. 43 of the Act), a Parliamentary Committee, or the Commonwealth Ombudsman	If applicable, Mandatory	213-214
17AG(3)(c)	Information on any capability reviews on the entity that were released during the period	If applicable, Mandatory	213-214
Management of human resources			
17AG(4)(a)	An assessment of the entity's effectiveness in managing and developing employees to achieve entity objectives	Mandatory	215-228
17AG(4)(b)	Statistics on the entity's APS employees on an ongoing and non-ongoing basis; including the following: <ul style="list-style-type: none"> • Statistics on staffing classification level • Statistics on full-time employees • Statistics on part-time employees • Statistics on gender • Statistics on staff location • Statistics on employees who identify as Indigenous 	Mandatory	215-218, 298-299
17AG(4)(c)	Information on any enterprise agreements, individual flexibility arrangements, Australian workplace agreements, common law contracts and determinations under subsection 24(1) of the <i>Public Service Act 1999</i>	Mandatory	223-225

17AG(4)(c)(i)	Information on the number of SES and non-SES employees covered by agreements, etc., identified in paragraph 17AD(4)(c)	Mandatory	223-225
17AG(4)(c)(ii)	The salary ranges available for APS employees by classification level	Mandatory	223-225
17AG(4)(c)(iii)	A description of non-salary benefits provided to employees	Mandatory	225
17AG(4)(d)(i)	Information on the number of employees at each classification level who received performance pay	If applicable, Mandatory	225
17AG(4)(d)(ii)	Information on aggregate amounts of performance pay at each classification level	If applicable, Mandatory	225
17AG(4)(d)(iii)	Information on the average amount of performance payment, and range of such payments, at each classification level	If applicable, Mandatory	225
17AG(4)(d)(iv)	Information on aggregate amount of performance payments	If applicable, Mandatory	225

Assets management

17AG(5)	An assessment of effectiveness of assets management where asset management is a significant part of the entity's activities	If applicable, mandatory	215-218, 231-232
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Purchasing

17AG(6)	An assessment of entity performance against the Commonwealth Procurement Rules	Mandatory	231-232
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Consultants

17AG(7)(a)	A summary statement detailing the number of new contracts engaging consultants entered into during the period; the total actual expenditure on all new consultancy contracts entered into during the period (inclusive of GST); the number of ongoing consultancy contracts that were entered into during a previous reporting period; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST)	Mandatory	231-232
17AG(7)(b)	A statement that "During [reporting period], [specified number] new consultancy contracts were entered into involving total actual expenditure of \$[specified million]. In addition, [specified number] ongoing consultancy contracts were active during the period, involving total actual expenditure of \$[specified million]"	Mandatory	231-232

17AG(7)(c)	A summary of the policies and procedures for selecting and engaging consultants and the main categories of purposes for which consultants were selected and engaged	Mandatory	231–232
17AG(7)(d)	A statement that “Annual reports contain information about actual expenditure on contracts for consultancies. Information on the value of contracts and consultancies is available on the AusTender website.”	Mandatory	231–232

Australian National Audit Office access clauses

17AG(8)	If an entity entered into a contract with a value of more than \$100 000 (inclusive of GST) and the contract did not provide the Auditor-General with access to the contractor’s premises, the report must include the name of the contractor, purpose and value of the contract, and the reason why a clause allowing access was not included in the contract	If applicable, Mandatory	231–232
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Exempt contracts

17AG(9)	If an entity entered into a contract or there is a standing offer with a value greater than \$10 000 (inclusive of GST) which has been exempted from being published in AusTender because it would disclose exempt matters under the FOI Act, the annual report must include a statement that the contract or standing offer has been exempted, and the value of the contract or standing offer, to the extent that doing so does not disclose the exempt matters	If applicable, Mandatory	231–232
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Small business

17AG(10)(a)	A statement that “[Name of entity] supports small business participation in the Commonwealth Government procurement market. Small and Medium Enterprises (SME) and Small Enterprise participation statistics are available on the Department of Finance’s website.”	Mandatory	231
17AG(10)(b)	An outline of the ways in which the procurement practices of the entity support small and medium enterprises	Mandatory	231
17AG(10)(c)	If the entity is considered by the Department administered by the Finance Minister as material in nature—a statement that “[Name of entity] recognises the importance of ensuring that small businesses are paid on time. The results of the Survey of Australian Government Payments to Small Business are available on the Treasury’s website.”	If applicable, Mandatory	Not applicable

Financial statements

17AD(e)	Inclusion of the annual financial statements in accordance with subsection 43(4) of the Act	Mandatory	233-292
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17AD(f) Other mandatory information

17AH(1)(a)(i)	If the entity conducted advertising campaigns, a statement that "During [reporting period], the [name of entity] conducted the following advertising campaigns: [name of advertising campaigns undertaken]. Further information on those advertising campaigns is available at [address of entity's website] and in the reports on Australian Government advertising prepared by the Department of Finance. Those reports are available on the Department of Finance's website."	If applicable, Mandatory	302
17AH(1)(a)(ii)	If the entity did not conduct advertising campaigns, a statement to that effect	If applicable, Mandatory	Not applicable
17AH(1)(b)	A statement that "Information on grants awarded to [name of entity] during [reporting period] is available at [address of entity's website]."	If applicable, Mandatory	232
17AH(1)(c)	Outline of mechanisms of disability reporting, including reference to website for further information	Mandatory	232
17AH(1)(d)	Website reference to where the entity's Information Publication Scheme statement pursuant to Part II of FOI Act can be found	Mandatory	214
17AH(1)(e)	Correction of material errors in previous annual report	If applicable, mandatory	363
17AH(2)	Information required by other legislation	Mandatory	373

Competition and Consumer Act requirements

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Cumulative list of all Commonwealth, state and territory laws that the Commission knows about that authorise things for the purposes of ss. 51(1) of this Act or ss. 51(1) of the Competition Code (as defined in s. 150A).	317-319
The time taken to make final determinations under s. 44V in relation to access disputes	320
The time taken to make decisions on access undertaking applications or access code applications (within the meaning of s. 44B)	320
The time taken to make decisions on applications under ss. 44PA(1)	320
The number of notices given by the Commission under s. 155	320
The number of notices given by the Commission under s. 155A	320
A general description of the nature of the matters in respect of which the notices were given	320
The number of proceedings brought to challenge the validity of the notices	320
The number of search warrants issued by a judge under s. 135Z or signed by a judge under s. 136	320
The number of search warrants issued by a magistrate under s. 154X or signed by a magistrate under s. 154Y	320
A general description of the nature of the matters in respect of which the search warrants referred to in paragraph (ca) or (d) were issued or signed	321
The number of proceedings brought to challenge the validity of the search warrants referred to in paragraph (ca) or (d)	320
The number of entries onto premises under s. 133B or 133C, Division 6 of Part XI or Part XID	321
The number of complaints received by the Commission	137-140
A general summary of the kinds of complaints received by the Commission and how it dealt with them	137-140
A general description of the major matters investigated by the Commission	138-140
The number of times the Commission has intervened in proceedings and a general description of the reasons for doing so	321

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