



Australian  
Competition &  
Consumer  
Commission



AUSTRALIAN  
ENERGY  
REGULATOR

# Annual report 2009–10

Australian Competition and Consumer Commission  
and the Australian Energy Regulator

FOSTERING COMPETITIVE, EFFICIENT, FAIR AND INFORMED MARKETS





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27 August 2010

The Honourable Dr Craig Emerson MP  
Minister for Competition Policy and Consumer Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Minister

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 subsection 63(1) of the *Public Service Act 1999*.

This report, covering the operations for the year ended 30 June 2010, is in accordance with subsections 44AAJ and 171(1) of the *Trade Practices Act 1974*.

We certify that the ACCC and the AER has prepared fraud risk assessments and fraud control plans and has 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.

  
Graeme Samuel  
Chairman, ACCC

  
Andrew Reeves  
Chairman, AER



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Part one  
Year in review





## Chairman's review

The 2009–10 financial year marked important milestones for the Australian Consumer and Competition Commission (ACCC) and Australian Energy Regulator (AER), with the enactment of significant legislation in both competition and consumer law, and the expansion of the AER's roles in electricity and gas distribution and regulation and gas market monitoring and enforcement.

## Legislative reforms

With the passage of the Australian Consumer Law (ACL), consumers will have the same protections and expectations of business conduct wherever they are in Australia. Similarly, businesses will have the same rights and responsibilities wherever they operate.

Criminalisation of cartel conduct became law on 24 July 2009. This means that all subsequent cartel conduct will in the first instance be investigated on the basis of criminal prosecution, which brings Australia into line with the toughest approaches in the world. Domestically, it means that serious cartel conduct may attract harsh penalties, including imprisonment.

Together these legislative amendments amount to the most significant changes to competition and consumer law since the enactment of the *Trade Practices Act 1974*.

## Australian Consumer Law

The ACL provides the ACCC with a suite of new enforcement tools and remedies that provide a modern, flexible and genuinely national regulatory system. The main changes include:

- > an enhanced penalty regime
- > new powers to issue infringement and substantiation notices
- > a national law on unfair contract terms
- > the ability to seek banning orders disqualifying people who have broken the law from managing corporations
- > the ability to issue public warnings and rapidly respond to emerging market developments in, for example, product safety
- > greater capacity to seek redress orders from the courts for consumers who are not party to a particular legal action
- > a single-law/multi-regulator regime for administering product safety laws, which means a consistent national approach to product safety standards, bans and recalls
- > a new notification requirement for serious product safety incidents.

## Cartels

With the stronger cartel laws now in place, the ACCC is taking a tougher approach on penalties and making full use of the civil and criminal regimes available under the Trade Practices Act. Australian companies need to think seriously about the risks of engaging in anti-competitive conduct—not only might they lose their executives involved in cartel conduct to jail for a number of years, but they might also have to pay up to three times the benefit gained from any anti-competitive conduct.

## Franchising

Changes to the Franchising Code of Conduct which come into effect from July 2010 mean that prospective franchisees will have relevant information to help them make informed decisions before entering into an agreement. The dispute resolution procedures under the code have also been strengthened, and franchisors are required to make clear what obligations the franchisee has in terms of future capital expenditure and whether there are any requirements to pay a franchisor's legal costs. The ACCC has funded a free online education program administered by Griffith University which aims to help prospective franchisees make an informed decision about buying a franchise.

## Regulated markets

The government has recognised the need for a streamlined access regime to provide timely access to regulated services. An effective regulatory regime promotes competition and investment by offering industry participants certainty and timely, efficient access to services.

Regulated access has been integral to the development of competition in the telecommunications sector. The government has announced that the ACCC has a substantial regulatory role in the transition to the National Broadband Network (NBN). Changes to the existing regime are currently before parliament. The ACCC recognises the need to be a responsive regulator in a changing environment.

The AER is now responsible for the economic regulation of all network businesses within the national gas and electricity markets. There is also now a single market operator (the Australian Energy Market Operator) across gas and electricity. While the transition to national energy market regulation has taken some time, the benefits of coherence are starting to be apparent. There is ample evidence that the new regulatory framework has been delivering the substantial investment programs that are needed in some networks.

The Water Charge (Termination Fees) Rules 2009 and Water Market Rules 2009 for the Murray-Darling Basin took effect from June 2009. Their application has resulted in changes to the business practices of irrigation infrastructure operators. These changes are designed to facilitate the efficient functioning of water markets and promote the economically efficient use of water resources and infrastructure assets. The ACCC has been actively involved in the implementation of these rules with a range of stakeholders. In general, market participants have adjusted well. The ACCC is in the process of establishing its monitoring framework, which will provide data on compliance with both sets of rules.

## Agency's performance

In 2009–10 the ACCC took on additional responsibilities as a result of legislative changes or references from parliament, and continued to achieve successful outcomes for Australia's 22 million consumers.

The principles of confidentiality, timeliness, consistency, fairness and transparency are deeply embedded in the ACCC's culture.

## Membership changes

On 22 May 2010 the term of the AER's inaugural chairman and board member, Mr Steve Edwell, concluded. The AER and ACCC acknowledge the significant contribution and leadership provided by Mr Edwell, and are grateful for the solid foundation he built

over five years. Mr Andrew Reeves was appointed AER chairman on 19 July 2010 for a three-year period.

In August 2009 Dr Jill Walker began a five-year appointment as a commissioner of the ACCC. Dr Walker is the chair of the ACCC's Mergers Review Committee and a member of the Enforcement Committee and the Adjudication Committee. She brings to the ACCC a wealth of experience in the fields of trade practices and antitrust economics.

## International activities

The ACCC has increased its engagement with international competition and consumer protection agencies. As the world's economies continue to interact in ever more complex ways, the need for international cooperation escalates. In 2009–10 the ACCC held the chair of the International Consumer Protection Enforcement Network and staged two global conferences of regulators and other agencies addressing cross-border issues relevant to many millions of consumers around the world.

The ACCC also continued to participate actively in the International Competition Network, looking at the development and enhancement of coherent approaches to competition law around the world—particularly in the areas of cartels and mergers.

The dividends from this level of cooperation are already clear. A number of cases run in Australian courts in 2009–10 were strengthened as a result of international cooperation. One of these involved an international cartel between four multinationals for the supply of marine hose—piping used in oil and gas operations. Penalties in Australia in this case totalled over \$8 million, which contributed to a total penalty figure for cartels in 2009–10 of over \$10 million.

## Outreach and communication

In 2009–10 the ACCC was very active in directly addressing consumer and business needs through:

- > outreach activities in each state
- > the Infocentre, which receives well over 100 000 contacts each year
- > ongoing media activity
- > Web 2.0 techniques—judicious use of Twitter, blog posts and YouTube material—which are now a small but important aspect of ACCC communications.

## Product safety

The product safety role of the ACCC is now one of national leadership and coordination, with the completion of the Council of Australian Governments (COAG) reform project to establish a consistent national approach to product safety. This process included rationalising 177 different product standards and bans into a set of 57 regulations, significantly simplifying the product safety system nationally.

## Enforcement

The ACCC is always sensitive to the implications of its processes and determinations, and adapts its approach to strike a good balance between the imperatives of business, the welfare of consumers (the agency's fundamental mandate) and rigorous enforcement of the law as entrusted to it by parliament.

The ACCC continues to take a strategic approach to enforcement of the Trade Practices Act, focusing on activities which will deliver the widest possible benefit to Australian consumers, and which address particularly egregious breaches.

In addition to the case load, in 2009–10 the ACCC took a sectoral approach and secured important court enforceable undertakings in two areas of national consumer significance:

- > improving advertising of telecommunications products like mobile phone and internet contracts
- > reducing impediments in shopping centre leasing to encourage greater competition in grocery retailing.

### *Scams*

The ACCC's activities to disrupt and prosecute the proponents of scams increased in 2009–10, and its leadership of the Australasian Consumer Fraud Taskforce brought law enforcement and consumer agencies together in more coordinated efforts. Scams continue to proliferate, however, especially through online channels. The ACCC provides a constant flow of information on scams to make Australians aware of emerging tactics both in Australia and overseas. The ACCC has developed and maintains the SCAMwatch website, which has over 36 000 'hits' a month.

### *Consumer information*

The ACCC conducted communication campaigns through the media and industry bodies on new laws requiring retailers and suppliers to provide better consumer information to improve comparison and decision making.

Under the mandatory unit pricing code, supermarkets and grocers are required to show prices by unit, allowing consumers to more easily compare prices.

Under the new component pricing laws, companies selling goods and services must now prominently display one total price. The ACCC used its new powers under the ACL for the first time issuing infringement notices to a number of cafés which had failed to comply with the code.

### *Unconscionable conduct*

In 2009–10 the ACCC took a number of successful actions against businesses dealing unconscionably with other businesses or with consumers. These cases are important in combating particularly oppressive business practices which go beyond the bounds of robust competition.

## **Mergers**

In 2009–10 the ACCC considered a number of particularly complex mergers with national and international relevance. These included:

- > the merger of pharmaceutical majors Pfizer and Wyeth
- > the proposed sale of Mobil's retail assets to Caltex Australia, which the ACCC opposed
- > the sale of Cargill's edible oils business to Goodman Fielder, which the ACCC opposed
- > the proposed acquisition of AXA APH by NAB, which the ACCC opposed
- > the proposed acquisition of AXA APH by AMP, which the ACCC did not oppose.

## Authorisations

Through its authorisation role, the ACCC ensures that competition law does not prevent businesses from entering into cooperative arrangements that are in the public interest. This is an extremely diverse area of the ACCC's work, with decisions relating to liquor accords, aviation alliances, collective bargaining by primary producers and payment systems, to name a few.

In 2009–10 the ACCC played a central part in efforts to reduce bottlenecks in Australia's infrastructure and logistics by authorising a number of arrangements for improving ship queue management and access to port terminals.

## AER

The economic regulation of gas and electricity transmission and distribution networks is a key function of the AER, which made numerous determinations in 2009–10, including:

- > decisions for the two electricity distribution network businesses in Queensland and the one in South Australia
- > draft decisions for the five electricity distribution network businesses in Victoria
- > three access arrangement decisions for gas distribution networks in New South Wales and the Australian Capital Territory.

The AER actively monitored and enforced market rules—which are essential for the efficient and secure operation of the markets—and investigated alleged non-compliance with the rules by gas and electricity market participants. This included targeted reviews of the rules and reviews of energy market participants' compliance systems. The outcomes of these investigations and other enforcement activities were published in detailed reports.

In July 2009, the AER instituted Federal Court proceedings against Stanwell Corporation Limited for alleged contraventions of the National Electricity Rules. The AER has alleged that Stanwell did not make several of its offers to generate electricity on 22 and 23 February 2008 'in good faith', contrary to clause 3.8.22A of the National Electricity Rules. Federal Court proceedings ended in July 2010 and parties are awaiting the judgment.

To promote greater understanding of energy market operations, the AER continued publishing weekly electricity and gas market analysis reports, and published the *State of the energy market report 2009*.

Throughout the year the AER continued to work with the Ministerial Council on Energy and the other energy market institutions, the Australian Energy Market Commission (AEMC) and the AEMO, to help achieve energy market objectives. It provided submissions, information and advice on market conditions and the operation of the regulatory frameworks.

The AER also worked closely with gas market stakeholders in preparation for new roles (scheduled to commence later in 2010) in monitoring the gas short-term trading markets. In preparation for taking on new roles in retail market regulation, it established the AER Consumer Consultative Committee and began preliminary consultation on the guidelines that will be required under the proposed National Energy Retail Law.

The AER's review of the rates of return that should apply to energy network businesses has delivered assurance for the sector in a time of global financial uncertainty. The regulatory process has approved substantial investment in the electricity networks, and the onus is now on the networks to deliver. Every dollar of capital and operating expenditure is paid for by energy customers, and it is part of the regulator's role to ensure they receive value for money.



## Fuel

The second formal monitoring report on prices, costs and profits in the petrol industry was submitted to the government in December 2009. The report concluded that the most important influences on domestic retail prices were movements in the international price of refined petroleum and the exchange rate of the Australian dollar against the US dollar. In terms of profitability in the downstream sector, the ACCC estimated that net profit on petrol averaged 3.1 cents per litre in the seven years to 2008–09. In May 2010 the government directed the ACCC to undertake formal monitoring for a further 12 months, to 2010–11.

## Summary of major achievements

### Consumer protection

- > unit pricing—campaign alerting consumers to the price comparison benefits
- > telecommunications advertising—focused on poor advertising practice in mobile premium services, phone cards, internet speeds and service bundling
- > component pricing—education campaign for business on their obligation to provide a clear total price of goods and services, followed by compliance activities and legal action
- > scams—released the inaugural scams report and met new challenges in proliferation; conducted successful cross-border enforcement cases
- > consumer warranties and refunds—reinvigorated the campaign to ensure business and consumers know their rights and responsibilities
- > product safety—oversaw harmonisation of 177 product safety standards and bans into 57 regulations; launched the Product Safety Australia and Recalls websites; established a national emerging hazard identification clearing house
- > recalls—undertook a major review of the effectiveness of the consumer product safety recall system and identified reforms
- > communication—started using Twitter, YouTube and blogging.

### Competition and fair trading

- > grocery covenants—secured undertakings from a number of supermarket operators that they would not enforce restrictive covenants contained in retail lease agreements
- > took legal action under the Franchising Code of Conduct
- > secured Federal Court findings that Allphones and Seal-a-Fridge had engaged in unconscionable conduct against franchisees—with \$3 million to be distributed among Allphones franchisees by way of compensation
- > made decisions on a wide range of authorisations, including the Medicines Australia Code of Conduct (improving transparency in dealings between medical practitioners and pharmaceutical companies) and arrangements addressing ship queues at Port Waratah
- > undertook international cartel investigations and cases in marine hose, military training systems and air freight.

## Regulation

### AER

- > made revenue price determinations for three electricity distribution businesses and access arrangement decisions for three gas distribution businesses
- > applied national incentive schemes for electricity distribution businesses in respect of demand management, service standards and efficiency benefit sharing.

### Telecommunications

- > issued guidance on price-related terms of access
- > Australian Competition Tribunal upheld the ACCC decision in relation to the pricing of the unconditioned local loop.

### Water

- > delivered water rules on time (major reform for efficiency and competition in the Murray–Darling Basin)
- > commenced enforcement into breaches of the Water Market Rules 2009 and the Water Charge (Termination Fees) Rules 2009.

### Other

- > post—considered two Australia Post applications to increase prices for monopoly letter services
- > wheat export arrangements—unlocked constraints at ports to enhance export and trade.

## Outlook and challenges for 2010–11

### Outlook

The next financial year will be one of consolidation, with the implementation of the ACL, the growing prospect of criminal prosecution for cartel conduct, and the expansion of the AER's functions.

The ACL will be implemented through the single-law/multi-regulator model as agreed by COAG, including the use of new penalty provisions, national leadership in product safety, the identification of unfair terms in standard form contracts, and a greater emphasis on consumer guarantees.

Activity under competition law is inherently reactive in responding to the market. The ACCC will continue to:

- > apply consistency and rigour in negotiation and enforcement of compliance with merger undertakings
- > actively investigate anti-competitive conduct, including criminal cartel conduct and misuse of market power.

The next 12 months will require the ACCC to:

- > develop a regulatory regime for the NBN and bed down a streamlined access regime if the legislation is passed by parliament

- > take a more holistic approach to the regulation of rail infrastructure and other logistics-related infrastructure
- > monitor and advise government and the public on fuel prices and market conditions
- > prepare for the National Energy Customer Framework, including methods to communicate with end consumers of energy and other utility services.

The ACCC will continue to balance the imperatives of business, the needs of consumers and its duty to enforce the law without fear or favour knowing that it affects 22 million Australians in almost every aspect of their daily activities.

## Challenges

The ACCC expects 2010–11 to be a challenging year as legislative reforms are implemented and the agency takes on new responsibilities. It has identified a number of specific challenges relating to enhancing organisational capacity; refining communication and engagement with stakeholders; and using the full range of tools now at its disposal to better promote competition and protect consumers in changing market environments.

### Capacity building in an expanding organisation

- > development, retention and coordination of staff expertise, and provision of flexible staffing structures
- > high levels of communication within and between branches
- > delivery of high-quality, responsive legal advice from both internal and external lawyers within an integrated national framework
- > business analysis tools, infrastructure upgrades and governance of information management
- > enhanced support for leadership and performance management
- > comprehensive strategic review of agency communications
- > financial positioning to meet expanded agency roles and responsibilities
- > bedding down a new document management system which will better support the ACCC's investigation and litigation processes, as well as the data-intensive monitoring involved in the ACCC's and AER's regulatory functions.

### Communicating with business and consumers

- > consultation with industry bodies and community associations on the new elements of the ACL, the cartel provisions, and industry codes of conduct
- > strengthening relationships with state and territory agencies and ASIC to effectively implement the full scope of the ACL single-law/multi-regulator model
- > work with the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Department of Broadband, Communications and the Digital Economy and industry on emerging telecommunications issues affecting consumers
- > better engagement with consumers and business through the use of a broader range of communication channels, including Web 2.0.

## Fostering competition and consumer protection

- > increasing penalties for anti-competitive conduct
- > continuing to use a broad array of enforcement tools for more proportionate and timely responses to redress harm to consumers, including in relation to online transactions and complex consumer contracts
- > learning lessons from overseas counterparts on the application of criminal laws.

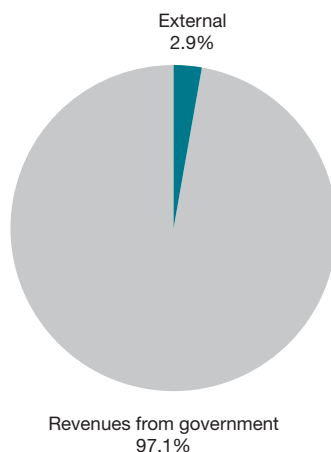
## Finance and staffing snapshot

### Financial reporting summary

#### Revenue

The main source of revenue for the ACCC is government appropriation with a small proportion of departmental revenue. In 2009–10 the ACCC had total revenue of \$147.1 million, with \$142.9 million being appropriation funding and the remaining \$4.2 million being external funds (refer to figure 1 below). This is higher than the previous year's external revenue of \$2.0 million. The increase is largely due to the reversal of the provision for litigation settlements (\$3.1 million).

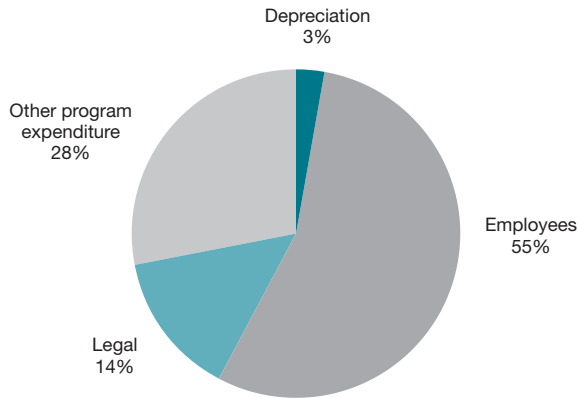
**Figure 1.1: ACCC revenue, 2009–10**



#### Expenditure

The ACCC is a knowledge-based organisation and as such spends approximately 55 per cent of total expenditure on employee costs. There was no increase in this expenditure from the 2008–09 financial year. Legal expenditure is subject to volatility depending on the timing and outcome of litigation proceedings. This resulted in an increase in legal expenditure of 1 per cent in 2009–10 (to 15 per cent in comparison to 14 per cent in 2008–09). Expenditure on other other programs remained unchanged, at 28 per cent in 2009–10. Depreciation expenditure increased slightly in 2009–10 to 3 per cent from 2 per cent in 2008–09.

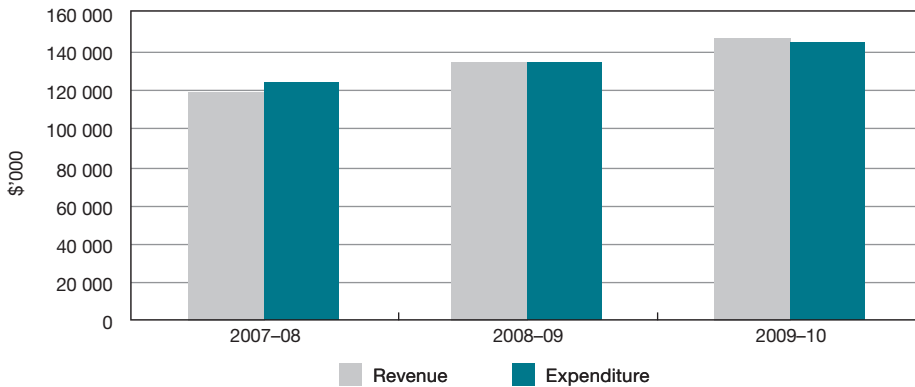
**Figure 1.2: ACCC expenditure, 2009–10**



## Operating statement

The ACCC recorded a surplus operating result for 2009–10 of \$1.432 million.

**Figure 1.3: ACCC revenue and expenditure**



## Balance sheet

The ACCC’s net assets as at 30 June 2010 were \$45.1 million (up from \$43.6 million in 2009).

### Assets

Total assets increased by \$3.1 million to \$80.0 million. The increase was largely driven by an increase in leasehold improvements.

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

## Liabilities

Total liabilities increased from \$33.4 million in 2008–09 to \$34.9 million in 2009–10. The increase was largely due to an increase in the employee provisions, which was partially offset by a decrease in other provisions.

## Administered revenue

Revenues administered on behalf of the government during 2009–10 amounted to \$41.6 million, which is a decrease of \$3.6 million from last year (2008–09: \$45.2 million). This amount includes court-imposed fines and costs.

## Administered expenditure

Expenses administered on behalf of the government were \$1.7 million (2008–09: \$0.2 million). The increase in expenditure is largely due to an increase in bad and doubtful debt expense.

## Staffing summary

**Table 1.1: Average staffing level**

	Budgeted	Actual
2008–09	695	702
2009–10	756	732
2010–11	778	



Part two  
ACCC and AER  
overview







## About the ACCC and the AER

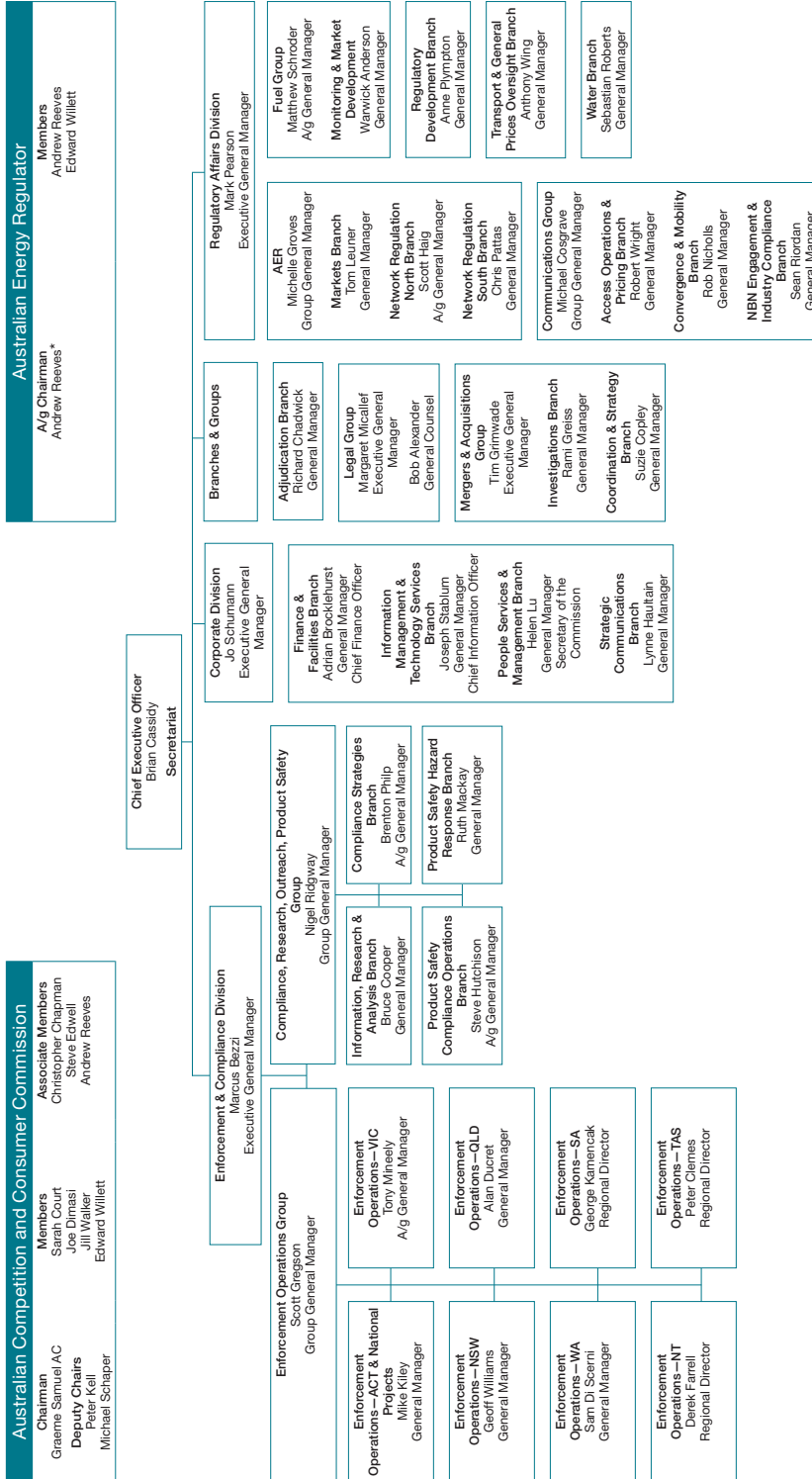
The ACCC is an independent statutory authority formed in 1995 to administer the *Trade Practices Act 1974* and other Acts. The commission comprises seven members, including the chair and two deputy chairs. Members of the ACCC are appointed by the Governor-General for terms of up to five years. Appointments are made after the majority of state and territory jurisdictions support the selection.

The AER, also an independent statutory authority and part of the ACCC, regulates the national energy market. The AER has one Commonwealth member and two state/territory members, one of whom is appointed as the chair.

The responsible minister is the Hon. Dr Craig Emerson MP, Minister for Competition Policy and Consumer Affairs. Both agencies are within the Treasury portfolio.

# Organisational structure

Figure 2.1: Organisational structure of the ACCC/AER (as at 30 June 2010)



\* On 19 July 2010 Mr Andrew Reeves was appointed chair.

**Table 2.1: Subject matter committees of the ACCC**

Adjudication Committee	Peter Kell (chair), Sarah Court, Michael Schaper, Jill Walker Edward Willett—oversees and considers adjudication issues; meets weekly.
Communications Committee	Edward Willett (chair), Joe Dimasi, Peter Kell, Graeme Samuel—oversees telecommunications issues; meets fortnightly.
Enforcement Committee	Sarah Court (chair), Peter Kell, Graeme Samuel, Michael Schaper, Jill Walker—oversees enforcement program and refers recommendations to the full commission for decision; meets weekly.
Mergers Committee	Jill Walker (chair), Sarah Court, Joe Dimasi, Graeme Samuel—considers and makes decisions on most of the mergers reviewed and reports to the full commission; meets weekly.
Regulated Access and Price Monitoring Committee	Joe Dimasi (chair), Michael Schaper, Edward Willett—oversees access, price monitoring, transport and water issues; meets fortnightly.

## Outcome and program structure

As a consequence of the Operation Sunlight review (conducted to improve the openness and transparency of public sector budgetary and financial management and to promote good governance practices) the ACCC revised its outcome statement. The revised outcome, first published in the 2009–10 portfolio budget statements, is:

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.

The ACCC has one program—Australian Competition and Consumer Commission—the object of which is to administer the Trade Practices Act and associated legislation to bring greater competitiveness, fair trading, consumer protection and product safety to the Australian economy, working on the fundamental principle that this benefits consumers, business and the wider community.

## Role and functions

### Background

Australia has promoted lawful competition as a means of securing a fair and competitive trading environment for consumers and businesses since the first anti-monopoly laws in 1906. The Trade Practices Act brought in new competition and consumer protection laws and created the ACCC's predecessor, the Trade Practices Commission. Following reforms agreed to by the Council of Australian Governments (COAG), the ACCC was established on 6 November 1995.

In 1997, telecommunications markets were opened to full competition and the ACCC became responsible for the competitiveness and economic regulation of communications markets. Further reforms by COAG resulted in the establishment under the Trade Practices Act of the AER on 1 July 2005.

## Purpose

The ACCC's purpose is 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.

## Values

The ACCC takes pride in its people and the way it performs its role. It adheres to the Australian Public Service Values and Code of Conduct. The ACCC produces results in the public interest by being accessible, transparent, independent and fair in its dealings with the community—including consumers, business and governments. The commission performs its functions in a timely, effective, efficient and consistent manner that respects the confidentiality of information provided to assist it.

## Business model

### Role prescribed by legislation

The Trade Practices Act and other legislation requires the ACCC to protect consumers, encourage competition and regulate certain industries.

The ACCC is a government organisation which enforces the Trade Practices Act and other legislation, but as an independent statutory authority it acts independently of government.

The ACCC applies the law without fear or favour, to achieve universal compliance.

As well as enforcing the law, it provides information and education to businesses and consumers about the laws it administers.

### Investigating breaches of the law

Possible breaches of competition and consumer law come to the ACCC's attention through complaints and information from members of the public, the media, ACCC staff and other agencies.

The Infocentre provides the initial response for all inquiries and complaints to the ACCC on competition and consumer issues.

If the matter is sufficiently serious, the case is investigated and may ultimately lead to the ACCC accepting a court enforceable undertaking from the company involved, or the ACCC instigating civil or criminal court action.

### Making decisions in the public interest

ACCC decisions are made through formal meetings of ACCC commissioners. Only the commission can decide to start court action to approve or oppose a major merger proposal or to authorise anti-competitive behaviour in the public interest.

Staff present submissions to the commission at its formal meetings. The commissioners can either accept these recommendations or ask for further work to be done—or decide on a different course of action.

AER decisions are made through formal meetings of AER members.

## Promoting a culture of compliance

The ACCC fosters a culture of compliance through its integrated approach to the administration and enforcement of the law.

Depending on the circumstances, the ACCC chooses from a range of compliance strategies—court action; court enforceable and administrative settlements; education and liaison programs; media communications; and working with business (both big and small) on specific programs to change conduct.

The ACCC contributes to the development of federal and state policies and procedures that promote compliance with competition, fair trading and consumer protection laws. It provides guidance to industry about trade practices compliance initiatives, particularly voluntary industry codes of conduct.

## Objectives

### Promote vigorous, lawful competition and informed markets

- > Detect, pursue and stop anti-competitive conduct—including cartels—and misuse of market power.
- > Promptly deliver authorisation and notification decisions, particularly on small business collective bargaining arrangements.
- > Assess mergers promptly and efficiently across all industries, taking effective action to address substantial competition concerns arising from mergers.

### Encourage fair trading, protection of consumers and product safety

- > Identify and focus effectively on national and cross-border (including international) consumer protection issues.
- > Pursue and achieve appropriate remedies for false and deceptive conduct, particularly conduct resulting in widespread detriment.
- > Ensure that trading conditions between big and small firms are fair.
- > Promote product safety through identification and regulation of emerging hazards, active engagement in recalls, and enforcement of standards and bans.

### Regulate national infrastructure services and other markets where there is limited competition

- > Support and protect competition in markets that rely on networks with natural monopoly characteristics.
- > Provide consistent and independent regulation of the energy sector, encouraging competition within and between the gas and electricity markets to benefit industry and consumers.

- > Regulate and advise on industries where market structures are changing, including where the market structure impedes effective competition (for example, water, transport and communications).
- > Monitor prices to assess and advise on the effect of market conditions (including deregulation) on the price levels of specified goods and services, including groceries, petrol, and a range of airport prices including car parking.

## Legislative framework

In addition to administering the Trade Practices Act, the ACCC has responsibilities under other legislation, including the:

*Airports Act 1996*

*Australian Postal Corporation Act 1989*

*Broadcasting Services Act 1992*

*Copyright Act 1968*

*Radiocommunications Act 1992*

*Telecommunications Act 1997*

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

*Trade Marks Act 1995*

*Water Act 2007*

Water Market Rules 2009

Water Charge (Termination Fees) Rules 2009

*Wheat Export Marketing Act 2008.*

The AER has responsibilities under the:

National Electricity Law 2005

National Electricity Rules

Nations Gas Law 2008

National Gas Rules.

## Offices and contact details

### ACCC national office

<b>Address</b>	23 Marcus Clarke Street, Canberra ACT 2601 GPO Box 3131 Canberra ACT 2601  telephone: 02 6243 1111 facsimile: 02 6243 1199
<b>ACCC Infocentre</b>	business and consumer inquiries 1300 302 502
<b>ACCC website</b>	<a href="http://www.accc.gov.au">www.accc.gov.au</a>

Callers who are deaf or have a hearing or speech impairment can contact the ACCC through the National Relay Service, telephone 13 36 77 or visit the website [www.nationalrelayservice.com.au](http://www.nationalrelayservice.com.au).

### AER

<b>Address</b>	Level 35, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne VIC 3001  telephone: 03 9290 1444 facsimile: 03 9290 1457
<b>AER email</b>	<a href="mailto:AERinquiry@aer.gov.au">AERinquiry@aer.gov.au</a>
<b>AER website</b>	<a href="http://www.aer.gov.au">www.aer.gov.au</a>



## ACCC regional offices (Enforcement and Compliance Division)

		Address	Telephone / Facsimile
<b>New South Wales</b>	Geoff Williams General Manager	Level 7, Angel Place 123 Pitt Street Sydney NSW 2000  GPO Box 3648 Sydney NSW 2001	telephone: 02 9230 9133  facsimile: 02 9223 1092
<b>Australian Capital Territory</b>	Michael Kiley General Manager	23 Marcus Clarke Street Canberra ACT 2601  GPO Box 3131 Canberra ACT 2601	telephone: 02 6243 1111  facsimile: 02 6243 1047
<b>Victoria</b>	Paul Zawa General Manager	Level 35, The Tower, 360 Elizabeth Street Melbourne Central, Melbourne VIC 3001  GPO Box 520 Melbourne VIC 3001	telephone: 03 9290 1800  facsimile: 03 9663 3699
<b>Queensland</b>	Alan Ducret General Manager	Brisbane Level 24 400 George Street Brisbane QLD 4003  PO Box 12241 George Street Post Shop Brisbane QLD 4000	telephone: 07 3835 4666  facsimile: 07 3835 4653
	Kim McBey Director	Townsville Level 6, Central Plaza 370 Flinders Mall Townsville QLD 4810  PO Box 2016 Townsville QLD 4810	telephone: 07 4729 2666  facsimile: 07 4721 1538
<b>Western Australia</b>	Sam Di Scerni General Manager	Third floor East Point Plaza 233 Adelaide Terrace Perth WA 6000  PO Box 6381 East Perth WA 6892	telephone: 08 9325 0600  facsimile: 08 9325 5976
<b>South Australia</b>	George Kamencak Regional Director	Level 2, ANZ House 19 Grenfell Street Adelaide SA 5000  GPO Box 922 Adelaide SA 5001	telephone: 08 8213 3444  facsimile: 08 8410 4155

		Address	Telephone / Facsimile
<b>Northern Territory</b>	Derek Farrell Regional Director	Level 8 National Mutual Centre 9–11 Cavenagh Street Darwin NT 0800  GPO Box 3056 Darwin NT 0800	telephone: 08 8946 9666 facsimile: 08 8946 9600
<b>Tasmania</b>	Peter Clemes Regional Director	Third floor, AMP Building 86 Collins Street Hobart TAS 7000  GPO Box 1210 Hobart TAS 7001	telephone: 03 6215 9333 facsimile: 03 6234 7796



Part three  
Report on performance





This part reports on the ACCC's and the AER's performance for 2009–10, based on the performance reporting framework provided in the 2009–10 Treasury portfolio budget statements (PBS). The ACCC and the AER jointly report against one program and one outcome, as set out in Figure 3.1.

**Figure 3.1: Performance reporting framework**

Drivers	<i>Trade Practices Act 1974</i> Portfolio budget statements ACCC and AER business plans
Program	Australian Competition and Consumer Commission
Strategies	<ul style="list-style-type: none"> <li>&gt; promote vigorous, lawful competition and informed markets</li> <li>&gt; encourage fair trading, protection of consumers and product safety</li> <li>&gt; regulate national infrastructure services (such as communications, bulk water, energy, rail, airports, post and wheat exports) and other markets where there is limited competition</li> </ul>
Outcome	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

## Outcome 1

In 2009–10 the ACCC revised its outcome statement:

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.

The underpinning program objective, deliverables and performance indicators were changed to reflect the new reporting arrangement. Figure 3.2 shows the relationship between Outcome 1 and its program and legislative objectives.

**Figure 3.2: Outcome and program structure**

Outcome 1	
Program 1 – Australian Competition and Consumer Commission	
Promoting vigorous, lawful competition and informed markets (TPA parts IV, VII, XIA) and encouraging fair trading, protection of consumers and product safety (TPA parts IVA, IVB, V, VA, VC, <i>Trade Marks Act 1995</i> and <i>Copyright Act 1968</i> )	Regulating national infrastructure services and other markets where there is limited competition (TPA parts IIIA, VIIA, X, XIB, XIC; National Gas Law 2008; National Gas Rules; National Electricity Law 2005; National Electricity Rules, <i>Airports Act 1996</i> ; <i>Broadcasting Services Act 1992</i> ; <i>Radiocommunications Act 1992</i> ; <i>Telecommunications Act 1997</i> ; <i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> ; <i>Water Act 2007</i> ; <i>Wheat Export Marketing Act 2008</i> ) <sup>1</sup>

In order to achieve Outcome 1, in 2009–10 the ACCC continued to promote compliance with competition, fair trading and consumer protection laws through the use of effective compliance strategies and appropriate enforcement action.

The ACCC and AER also continued to support competition in national infrastructure services and markets where competition is less effective, through efficient and effective regulation and, in certain markets, price monitoring.

## Consultation and assistance

In achieving its outcome, the ACCC consults with stakeholders and provides assistance to parliamentary committees considering legislation or other matters which relate to the ACCC's responsibilities.

### Stakeholder consultation

The ACCC and the AER continue to engage with stakeholders through regular meetings of their consultative committees. Key developments in 2009–10 were the creation of the AER Customer Consultative Group and the Fuel Consultative Committee.

#### *Small Business Consultative Committee*

The Small Business Consultative Committee met in October 2009 and June 2010 to discuss a range of key small business trade practices concerns, including the ACCC's enforcement and compliance activities, the Australian Consumer Law and amendments to the *Trade Practices Act 1974* such as those relating to clarity in pricing and the criminalisation of cartel conduct.

#### *Franchising Consultative Committee*

The Franchising Consultative Committee met in October 2009 and June 2010 to consider trade practices concerns relating to the franchising sector, as well as other franchising issues. In particular, the committee discussed the ACCC's franchising-related enforcement

<sup>1</sup> The ACCC also has regulatory responsibilities under the Water Market Rules 2009, Water Charge (Termination Fees) Rules 2009, *Australian Postal Corporation Act 1989* and *Copyright Act 1968*.

and education actions, exclusive dealing notifications, and a conflict resolution survey conducted by Griffith University.

### *Consumer Consultative Committee*

The Consumer Consultative Committee held meetings in July 2009, December 2009 and March 2010. Issues discussed included unit pricing, the Australian Consumer Law, mobile premium services and social media.

### *Health Sector Consultative Committee*

The Health Sector Consultative Committee met in August 2009 and considered a number of issues including ACCC enforcement action, complaint statistics and the credentialling of medical professionals.

### *Infrastructure Consultative Committee*

In November 2009 and April 2010 the Infrastructure Consultative Committee met and discussed issues relating to the practice of regulation across different infrastructure sectors, as well as proposed regulatory reforms announced by government. Specific topics discussed included critical issues facing members' industries, current regulatory reform in telecommunications, the development of a national port strategy and a new project concerning the state of the market for corporate debt. During 2009–10, Infrastructure Australia became a member of the committee.

### *Fuel Consultative Committee*

The Fuel Consultative Committee, which held its first meeting in April 2010, was established to provide an opportunity for dialogue between the ACCC, the fuel industry and motoring organisations. The committee was also formed to improve the ACCC's understanding of key issues in the fuel industry. At the first meeting, issues discussed included developments in relation to biofuels (in particular, ethanol-blended petrol), historical pricing trends and the findings of the ACCC's 2009 *Monitoring of the Australian petroleum industry* report.

### *AER Customer Consultative Group*

The inaugural meeting of the AER Customer Consultative Group was held in February 2010, and the group met again in June 2010. Among the issues discussed at these meetings were the AER's retail work program, retail pricing guidelines and the draft National Energy Customer Framework.

## **Assistance to parliamentary committee inquiries**

In 2009–10 the ACCC and the AER made submissions, responded to requests for comment or gave evidence to parliamentary inquiries as follows.

### *House of Representatives Standing Committee on Communications*

#### *Inquiry into cyber crime*

The ACCC provided a submission to the committee in July 2009 and appeared before the committee in November 2009.

### *Joint Standing Committee on the National Capital and External Territories*

#### *Inquiry into the changing economic environment in the Indian Ocean Territories*

The committee sought clarification from the ACCC on issues raised in submissions and during public hearings. The ACCC provided a response in November 2009.



## *Senate Community Affairs References Committee*

### *Inquiry into gene patents*

The committee sought comment from the ACCC on specific questions. The ACCC provided a response in October 2009.

## *Senate Economics Legislation Committee*

### *Food Standards Amendment (Truth in Labelling Laws) Bill 2009*

The ACCC appeared before the committee in October 2009.

### *Trade Practices Amendment (Australian Consumer Law) Bill (No. 2) 2010*

The ACCC appeared before the committee in April 2010.

### *Trade Practices Amendment (Guaranteed Lowest Prices—Blacktown Amendment) Bill 2009*

The ACCC appeared before the committee in October 2009.

### *Trade Practices Amendment (Infrastructure Access) Bill 2009*

The ACCC appeared before the committee in February 2010.

### *Trade Practices Amendment (Material Lessening of Competition—Richmond Amendment) Bill 2009*

The ACCC appeared before the committee in April 2010.

## *Senate Economics References Committee*

### *Inquiry into competition and pricing in the Australian dairy industry*

The ACCC appeared before the committee in January 2010.

### *Inquiry into the GROCERYchoice website*

The ACCC appeared before the committee in September 2009 and October 2009.

## *Senate Select Committee on Agricultural and Related Industries*

### *Inquiry into food production in Australia*

The ACCC provided a briefing to the committee in June 2010.

## *Senate Select Committee on Fuel and Energy*

The AER appeared before the committee in September 2009. The committee also sought comment from the AER on specific questions, to which the AER provided a response in May 2010.

## *Senate Select Committee on the National Broadband Network*

The ACCC appeared before the committee in July 2009, April 2010 and June 2010.

## Service charter

The ACCC has a service charter stating the values that guide its service, the standard of service individuals and businesses can expect and the steps they may take if these standards are not met. The service charter is available from the ACCC website and each ACCC office.

## Customer service standards

The ACCC is committed to:

- > providing courteous, professional, quality service
- > responding to the needs of all people regardless of their personal attributes or circumstances
- > being objective and adhering to guidelines on conflict of interest
- > answering questions promptly and explaining its decisions.

The ACCC undertakes to follow up telephone messages within two business days and to respond within 28 days to correspondence requiring a response. The Chief Executive Officer undertakes to respond within 14 days to written complaints about the standard of the ACCC's service.

The infocentre received two unsubstantiated complaints against the service charter. The Chief Executive Officer responded to both complaints within 28 days of receipt and each complaint was resolved effectively.

## Factors, events or trends influencing performance

There are no factors, events or trends influencing the ACCC's performance this financial year.

## Program 1—Australian Competition and Consumer Commission

The objective of the ACCC program is to administer the Trade Practices Act and associated legislation to bring greater competitiveness, fair trading, consumer protection and product safety to the Australian economy, working on the fundamental principle that this benefits consumers, business and the wider community.

The ACCC promotes compliance with federal competition, fair trading, consumer protection and product safety laws.

The ACCC and the AER regulate markets where competition is limited—for example, communications (ACCC), transport (ACCC) and energy markets (AER and ACCC).

### Strategies

To achieve its outcome, the ACCC:

- > promotes vigorous, lawful competition and informed markets
- > encourages fair trading, protection of consumers and product safety
- > regulates national infrastructure services (such as communications, bulk water, energy, rail, airports, post and wheat exports) and other markets where there is limited competition.

### Results and target groups

The intended results and target groups of the ACCC program are:

- > detect, pursue and stop anti-competitive conduct, including cartels and misuse of market power
- > prompt delivery of authorisation and notification decisions, particularly in the field of small business collective bargaining arrangements
- > assess mergers promptly and efficiently, taking effective action to prevent substantial competition concerns arising from mergers across all industries
- > identify and focus effectively on national and cross-border (including international) consumer protection issues
- > pursue and achieve appropriate remedies for false and deceptive conduct, particularly if widespread detriment results
- > ensure that trading conditions between big and small firms are fair
- > promote product safety through identification and regulation of emerging hazards, active engagement in recalls, and the enforcement of standards and bans
- > support and protect competition in markets that rely on networks with natural monopoly characteristics
- > provide consistent and independent regulation of the energy sector, encouraging competition within and between the gas and electricity markets to benefit industry and consumers

- > regulate and advise on industries where market structures are changing, including where the market structure impedes effective competition (for example, water, transport and communications)
- > monitor prices to assess and advise on the effect of market conditions (including deregulation) on the price levels of specified goods and services, including groceries, petrol, stevedores, and a range of airport prices, including car parking.

## Promotion of compliance and enforcement

Promoting vigorous, lawful competition and informed markets and encouraging fair trading, protection of consumers and product safety.

A number of the ACCC's functions under the Trade Practices Act and other legislation relate to promoting vigorous, lawful competition and informed markets and encouraging fair trading, protection of consumers and product safety.

### Deliverables

In performing its functions, the ACCC has the deliverables described in Table 3.1. These are taken from the 2009–10 portfolio budget statements (PBS).

**Table 3.1: Promoting compliance—deliverables and results**

Deliverable	Result
Unlawful conduct pursued	See details under 'Investigations and litigation' (pp. 39–46).
Effective and appropriate remedies achieved	See details under 'Investigations and litigation' (pp. 39–46).
Outcomes from an expected 20 court cases (for competition, fair trading and consumer protection)	30 first-instance litigation matters were concluded during the year.
Outcomes from an expected 40 court enforceable undertakings (predominately for consumer protection conduct that has or is likely to breach the TPA)	The ACCC accepted 56 section 87B undertakings during the year, of which 45 were for Part V consumer protection matters. This figure does not include merger matters.
Mergers assessed within statutory and organisational timelines, and in accordance with published guidelines	No formal merger clearance applications subject to statutory timelines were received in 2009–10.  All mergers assessed in 2009–10 were assessed within organisational timelines and in accordance with the merger review process guidelines published in 2006 (for further information, see <a href="http://www.accc.gov.au/mergers">www.accc.gov.au/mergers</a> ).
All public merger decisions published on the ACCC website	All public merger decisions for 2009–10 were published on the ACCC website at <a href="http://www.accc.gov.au/mergersregister">www.accc.gov.au/mergersregister</a> .

Deliverable	Result
Authorisation and notification decisions are made within statutory and organisational timeframes (assessment of validity within 5 days, authorisation within 6 months, majority of notifications within 4 weeks); timely communication of decisions	<p>100% of applications for authorisation were assessed for validity within organisational timeframes.</p> <p>100% of authorisations were assessed within statutory timeframes.</p> <p>All authorisation decisions were published on the ACCC website and communicated to applicants and interested parties in a timely manner.</p> <p>99% of notifications were assessed for validity within organisational timeframes.</p> <p>87% of notifications were assessed within 4 weeks.</p>
Collective bargaining notification processes are within statutory timeframes (assessment of validity within 5 days, initial assessment within 14) and timely communication of decisions	<p>100% of collective bargaining notifications were assessed for validity within 5 days.</p> <p>100% of initial assessments of collective bargaining notifications were completed within 14 days.</p> <p>All collective bargaining notification decisions were published on the ACCC website and communicated to applicants and interested parties in a timely manner.</p>
Reach and timeliness of publicity, liaison and education activities undertaken— 1.1 million publications; 250 media releases	<p>Published 88 new publications in print, electronic and multimedia formats (compared to 98 in 2008–09).</p> <p>Distributed over 996 000 print items (compared with 640 000 in 2008–09).</p> <p>Issued 298 ACCC news releases and 18 news releases for the AER.</p> <p>The chair, commissioners and senior staff undertook more than 103 speaking engagements and extensive briefings, both private and public.</p>
Mandatory codes of conduct enforced; consumers and the grocery industry educated on the mandatory unit pricing code of conduct for 'non-fresh' grocery items	See details under 'Mandatory codes of conduct' (p. 46).

Deliverable	Result
Parliamentary inquiries and government agencies assisted to develop policies and processes	<p>As outlined under 'Consultation and assistance' (pp. 30–32), the ACCC continues to provide assistance to parliamentary inquiries. In addition, the ACCC provided the Senate with its 11<sup>th</sup> report on anti-competitive and other practices by health funds and providers in relation to private health insurance.</p> <p>The ACCC continued to work with Treasury and a number of other government departments and agencies to assist with the development of policy relating to promoting competition and consumer protection.</p> <p>In addition, during 2009–10 the ACCC:</p> <ul style="list-style-type: none"> <li>&gt; regularly advised government on the harmonisation of specific product safety standards and bans</li> <li>&gt; continued to be involved in the Ministerial Council on Consumer Affairs and the Standing Committee of Officials of Consumer Affairs</li> <li>&gt; provided a submission and supplementary submission to the Productivity Commission's inquiry into Australia's anti-dumping and countervailing system</li> <li>&gt; assisted the Australian Prudential Regulation Authority, the Australian Securities and Investments Commission (ASIC), the Attorney-General's Department and National Alternative Dispute Resolution Advisory Council, and the Australian Customs and Border Protection Service in relation to mergers and acquisitions.</li> </ul>

Deliverable	Result
<p>Complaint and inquiry telephone calls, correspondence and emails responded to within organisational guidelines (serve an estimated 100 000 complaints/inquiries within 7–28 days (depending on the nature of the complaint or inquiry))</p>	<p>See details under ‘Education and outreach’ (pp. 49–55).</p> <p>The Infocentre received 105 438 telephone calls; of these, 82 556 queries were served by Infocentre staff, 19 252 were referred to the ACCC website or abandoned by the caller, and 2408 were unanswered due to congested incoming lines or telephone system breakdown.</p> <p>The Infocentre responded to 20 036 emails; of these, 14 698 were received via the SCAMwatch ‘report a scam’ online complaint form.</p> <p>80 656 matters were entered in the complaints and inquiries database, of which 53 157 were received via telephone (50% of calls served).</p> <p>62% of phone calls were answered within 20 seconds.</p> <p>89% of emails were responded to within 7 days.</p> <p>99% of letters were responded to within 28 days.</p> <p>An Infocentre customer service survey was undertaken in October 2009. This found a customer satisfaction rating of 84%.</p> <p>The level of complaints about Infocentre staff was less than 1 for every 1000 contacts.</p>
<p>Websites (www.accc.gov.au, www.recalls.gov.au, www.productsafety.gov.au and www.scamwatch.gov.au) accessible and a source of relevant and up-to-date information</p>	<p>See details under ‘Education and outreach’ (pp. 49–55).</p>
<p>Conduct targeted campaigns where the need is indicated</p>	<p>See details under ‘Education and outreach’ (pp. 49–55).</p>
<p>Government product safety reform agenda implemented (one-stop shop internet site; hazard based assessment scheme based on an information clearing house; review of recall effectiveness)</p>	<p>See details under ‘Product safety’ (pp. 46–48).</p>

## Key performance indicators

The ACCC's performance in promoting compliance with federal competition, fair trading, consumer protection and product safety laws is assessed against a number of key performance indicators.

A number of areas in the ACCC may contribute to each indicator. The ACCC's performance against each key performance indicator is described below.

### Investigations and litigation

In 2009–10, the ACCC took effective action to prevent and stop:

- > anti-competitive conduct
- > misleading, deceptive and unconscionable conduct
- > non-compliance with mandatory codes of conduct.

#### *Anti-competitive conduct*

Consumers are the ultimate beneficiaries of competition through lower prices, greater efficiencies and more choice. For this reason the ACCC focuses strongly on matters arising under the competition provisions of the Trade Practices Act, including price fixing and resale price maintenance, misuse of market power and agreements that lessen competition.

In 2009–10 the ACCC commenced litigation in 10 competition matters (all of which related to cartel conduct) and accepted 11 court enforceable undertakings, not including merger matters, concerning the competition provisions of the Trade Practices Act. Significant examples are in the areas of cartels and grocery leases.

#### Cartels

The ACCC continues to prioritise anti-cartel activities. A particular focus has been increasing detection and deterrence of cartels by raising awareness among government and business staff involved in procurement.

From 24 July 2009, cartel conduct became a criminal offence in Australia. The ACCC's work has been assisted by this significant change and the continued operation of the ACCC's immunity policy for cartel conduct.

In 2009–10 the ACCC instituted 10 proceedings for cartel conduct—seven relating to its extensive investigation into alleged cartel activity in the provision of air cargo services. The ACCC has obtained penalties of over \$41 million to date in air cargo cases alone.

Cartel matters finalised in 2009–10 include:

- > Marine hose—penalties exceeding \$8.24 million were imposed for cartel conduct through rigged bids to supply marine hose to customers in Australia. The ACCC's proceedings would not have been possible without extensive cooperation with counterparts in the United Kingdom and the United States.
- > Airconditioning—penalties of approximately \$9.27 million were imposed (the majority in previous financial years) for involvement in price fixing and bid rigging affecting contracts for airconditioning in schools, hospitals and shopping centres in Western Australia.





## International enforcement cooperation

The ACCC actively engages with its international counterpart agencies to facilitate enforcement activity and promote the further development of competition and consumer protection laws. Where appropriate, the ACCC communicates with these agencies in relation to particular investigations.

In 2009–10, the ACCC finalised court action against four marine hose businesses resulting in total penalties of over \$8 million for their involvement in a cartel. Marine hose is piping used to transfer fuels at offshore moorings.

In the course of its investigation, the ACCC had evidence of cartel activities relating to some bids for Australian work but required further information to progress its inquiries. The ACCC contacted the UK Office of Fair Trading (OFT), which agreed to release information vital to pursuing enforcement action. This was the first time the OFT had released information to an overseas regulator under information-sharing laws.

Cartels can be difficult to detect and investigate, particularly in an international context. However, through sharing information and taking similar approaches to leniency applications, agencies increase their ability to detect and respond to cross-border cartels in the interests of consumers and businesses alike.

- > Defence training systems—penalties of \$1 million were imposed for cartel conduct where competitors agreed that one would withdraw from a procurement process.
- > Fine paper trading—penalties totalling \$4 million were imposed for breaching price-fixing provisions in the supply of copy paper. Proceedings against other respondents continue.

At the end of the year, the ACCC had 13 cartel proceedings still before the courts—nine of them relating to the alleged air cargo cartel.

#### Grocery leases

In the 2008 *Report of the ACCC inquiry into the competitiveness of retail prices for standard groceries*, the ACCC identified that the use of restrictive provisions in lease agreements for supermarket space could restrict the ability of supermarket operators to establish supermarkets in shopping centres, and thereby limit competition.

Following extensive investigations, in September 2009 the ACCC accepted a court enforceable undertaking from Coles Group Ltd and Woolworths Ltd to phase out all restrictive provisions in supermarket leases. Both companies agreed that they would not include restrictive provisions in any new supermarket leases and, for existing supermarket leases, would not enforce restrictive provisions five years after commencement of trading. This phasing-out in the case of current leases takes account of commercial arrangements and rental contracts already in place.

The ACCC also entered discussions with the next tier of supermarket operators with a view to achieving an industry-wide resolution of this issue. In December 2009 the ACCC accepted court enforceable undertakings in similar terms from ALDI Foods, Franklins, SPAR Australia, Australian United Retailers (trading as Foodworks) and Metcash.

These court enforceable undertakings have the effect of reducing the barriers to entry for new and expanding players, and open the possibility of Australian consumers having greater choice in where to shop and potentially paying lower prices as a result. The ACCC remains committed to addressing any remaining concerns about restrictive provisions in leases and will do so on a case-by-case basis.

#### Misuse of market power

The ACCC continued litigation in a number of important cases that will provide for court determinations in this important area of the law. An example is its action against Cabcharge Australia Ltd for alleged misuse of market power relating to non-cash taxi fare payment processing services. The ACCC also continued action against Cement Australia in relation to its alleged misuse of market power to prevent entry and competitive conduct in the concrete-grade flyash market, and against Baxter Healthcare for allegedly misusing its market power and engaging in exclusive dealing in the supply of medical products to certain Australian state and territory health purchasing authorities.

#### Telecommunications, broadcasting and content

In 2009–10 the ACCC conducted seven major investigations into alleged anti-competitive conduct in contravention of Part XIB of the Trade Practices Act by the telecommunications industry. In six of the investigations the ACCC did not form the requisite 'reason to believe' that the carrier or carriage service provider had engaged or was engaging in anti-competitive conduct. One investigation is continuing.

In March 2009 the ACCC instituted proceedings against Telstra in the Federal Court for alleged contraventions of its standard access obligations under Part XIC of the Trade Practices Act and its facilities access obligations under the Telecommunications

Act, and for misleading and deceptive conduct in contravention of Part V of the Trade Practices Act. The allegations related to Telstra refusing access seeker requests for equipment interconnection at certain key metropolitan telephone exchanges on the basis that the exchanges were 'capped'. In particular, Telstra claimed that there was no capacity on the main distribution frames available for access seekers to interconnect their equipment to the copper wires running to customer homes. The ACCC alleged that there was capacity available, or that could have been made available, on Telstra's main distribution frames. Telstra admitted to the majority of the pleaded contraventions in July 2009, and a contested hearing regarding the appropriate sanctions for the conduct was held in April and May 2010. The ACCC is seeking a pecuniary penalty, declarations and injunctions.

#### *Water Market Rules and Water Charge (Termination Fees) Rules*

After these rules came into effect in June 2009, the ACCC received over 150 calls from irrigators and operators, generating a number of investigations of alleged breaches of the rules. In addition to following up these matters, the ACCC engaged in its own monitoring of operator compliance with the rules.

Under the *Water Act 2007* the ACCC is required to report regularly to the Minister for Climate Change, Energy Efficiency and Water on the level of compliance by irrigation infrastructure operators with water market rules and water charge rules created under the Act. The first formal monitoring report will be presented to the minister in March 2011.

#### *Misleading, deceptive and unconscionable conduct*

In 2009–10 the ACCC commenced litigation in 21 consumer protection and fair trading matters and accepted 45 undertakings concerning consumer protection and fair trading matters, which includes actions to ensure product safety compliance.

Where appropriate, the ACCC seeks consumer redress as part of court enforceable undertakings and court orders. For example WTH, trading as Avis Australia, agreed to refund over \$350 000 to consumers as part of court enforceable undertakings accepted by the ACCC in relation to pricing on its reservations website.

In 2009–10 the ACCC continued to adopt integrated approaches to draw together consumer education, industry guidance and, where necessary, enforcement action directed at obtaining redress and driving change through specific and general deterrence. The following are illustrative examples.

#### *Telecommunications, broadcasting and content*

The ACCC undertook projects that drew together compliance and enforcement activity to deliver further results in relation to consumer telecommunications issues, particularly clarity in advertising.

On 14 September 2009, Telstra, Optus and Vodafone Hutchison Australia (representing the Vodafone and 3 mobile brands) each signed a court enforceable undertaking recognising a range of potentially misleading practices occurring in the telecommunications sector and undertaking not to engage in those practices in future.

The ACCC continues to closely monitor complaints and industry trends to identify emerging important consumer issues that require intervention. It also continues to conduct reviews of the telecommunications market, focusing on the types of conduct dealt with in the court enforceable undertaking.

As a result of the continued monitoring, in June 2010 the ACCC instituted proceedings against Optus alleging misleading use of the word 'unlimited' in advertising and marketing.

In January 2010 the ACCC accepted a court enforceable undertaking from Vodafone Hutchison Australia in relation to alleged misrepresentations about statutory rights to remedies for faulty mobile phones. The company now offers an express repair warranty for almost all mobile handsets for the entire length of a consumer's service contract (Apple products excluded).

The ACCC also continued to pursue misleading conduct in the promotion of premium mobile services. It successfully obtained injunctions and declarations in the Federal Court following misleading and deceptive representations on scratch cards for mobile premium services. Declarations were also made against a number of phone card companies that made misleading representations about call times, charges and fees.

The Australian Communications and Media Authority (ACMA) sought the views of the ACCC as part of their review of the Mobile Premium Services Code, which sets out detailed rules covering a range of important matters including procedures to be followed for subscribing to premium SMS services. The ACCC strongly recommended a range of additional consumer protection provisions, including 'double opt-in' before sign-up. The revised code, now registered under the *Telecommunications Act 1997*, includes 'double opt-in', a ban on advertisements targeted at children under 15, rules about how advertisements and charges are displayed, and enhanced complaints-handling obligations for companies supplying services. The ACCC has been actively monitoring the effectiveness of the new code, and any findings will form part of its submission to future reviews of the code.

#### All-inclusive pricing

Following amendments to section 53C of the Trade Practices Act, a business that makes a representation to a consumer about a part of the price for a product or service must also prominently display the single total price of that product or service, provided it can be calculated.

In 2009–10 the ACCC continued its targeted education and compliance campaign in relation to the amendments, including publications, speeches, articles and meetings with relevant industry bodies. It also developed industry-specific guidance for the motor vehicle, tourism and hospitality sectors.

This outreach work was coupled with enforcement and survey work to monitor industries' compliance with the amendments and seek enforcement outcomes where appropriate. The ACCC accepted court enforceable undertakings from five companies in relation to breaches of section 53C. Approximately 90 administrative resolutions were achieved through direct engagement between traders and the ACCC. These resolutions include amending websites, print advertising and promotional materials so that prices are displayed inclusive of all taxes, duties, levies and surcharges.

Towards the end of 2009–10, over 12 months since all-inclusive pricing commenced, the ACCC used its new powers under the ACL for the first time issuing infringement notices to a number of traders operating in the hospitality industry in relation to their alleged failure to include their Sunday and/or public holiday surcharge in a single menu price.

The ACCC will continue its efforts to encourage and enforce industry compliance with section 53C in 2010–11.

#### Scams

The ACCC uses a multifaceted approach to disrupt scams, including education, intelligence and, where appropriate, enforcement.

In 2009–10 the ACCC continued its leadership role in scams awareness and prevention through chairing the Australasian Consumer Fraud Taskforce and participating in campaigns such as Fraud Awareness Week. These campaigns allow the ACCC to tailor awareness of scams to particular groups that may be targeted.

The ACCC released its first scams activity report, *Targeting scams: Report of the ACCC on scam activity 2009*, which provides a detailed examination of the scams scene in Australia during 2009.

The ACCC continued to disrupt scams either through direct action or working with other agencies to minimise potential harm. For example, following identification of a World Cup South Africa bogus ticketing scam, the ACCC worked with the International Federation of Association Football (FIFA) and Match Services to alert consumers and to have the website removed. The ACCC also worked with other consumer protection agencies and the police to disrupt scams disguised as sports investment opportunities.

The ACCC maintained strong liaison with its international counterpart agencies. For example, it continued to participate in the International Mass Marketing Fraud Working Group, which includes domestic and international law enforcement agencies committed to enhancing cooperation in enforcement actions against mass-marketed fraud.

The ACCC continued to issue online ‘SCAMwatch radar’ alerts in response to intelligence from a number of sources, including investigations, complaints data and liaison with other areas. The SCAMwatch website now attracts around 36 000 visitors per month.

#### Unconscionable conduct in franchising

In 2009–10 the ACCC continued to be active in enforcing the unconscionable conduct provisions of the Trade Practices Act, and achieved important outcomes in this area for franchisees.

The ACCC sought and obtained numerous Federal Court orders against Allphones and individuals who were involved in misleading and unconscionable conduct and contraventions of the Franchising Code of Conduct. The court ordered injunctions, declarations and costs, and that Allphones and its CEO, Matthew Donnellan, and chief operating officer, Tony Baker, pay \$3 million in damages to franchisees represented by the ACCC. This matter involved sustained and systemic unconscionable conduct.

The ACCC was also successful in its action against Seal-A-Fridge. The Federal Court found that the franchisor had engaged in unconscionable conduct by unilaterally imposing fee increases on its franchisees for use of the Seal-A-Fridge national phone number, which franchisees used to receive customer enquiries and work requests.



## Australian Consumer Law

In 2008 the Council of Australian Governments (COAG) agreed to a new consumer protection policy framework comprising a single national law. Two working groups were given responsibility for policy development for an Australian Consumer Law (ACL). The ACCC, along with representatives from Treasury and from state and territory fair trading agencies, was a member of both working groups: the COAG Agreed Reforms Working Group and the Best Practice Reforms Working Group.

The Agreed Reforms Working Group was charged with developing, as a first tranche of the ACL process, a set of reforms to the Trade Practices Act. These reforms included unfair contract terms provisions, civil pecuniary penalties, infringement notices, substantiation notices, disqualification orders, non-party consumer redress and public warning notices.

The Best Practice Reforms Working Group was responsible for developing a suite of reforms based on best practice provisions from existing state and territory consumer law for incorporation into the ACL.

The work of the Agreed Reforms Working group culminated in the passage of the *Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010* in March 2010. In June 2010, parliament passed a second ACL bill, which contains the best practice reforms. The main provisions of this bill, the *Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010*, are scheduled to commence on 1 January 2011, when it is expected that the states and territories will complete legislative processes to adopt the ACL in their own jurisdictions.

## Mandatory codes of conduct

### Industry codes

The ACCC is responsible for promoting compliance with three mandatory industry codes: the Franchising Code of Conduct, the Oilcode and the Horticulture Code. To achieve industry compliance in 2009–10, the ACCC liaised with industry stakeholders and conducted education campaigns to promote voluntary compliance.

For example, the ACCC continued to use research-based evidence to educate and better inform franchisors and franchisees about their rights and obligations. With Griffith University, it established a one-stop-shop free education program for people buying a franchise. The pre-entry education program will close the information gap for prospective franchisees and assist them in making more informed decisions. The program is administered by Griffith University and available to all prospective franchisees free of charge.

In 2009–10 it took successful action against Seal-A-Fridge for breaching the Franchising Code of Conduct by failing to provide adequate disclosure to a franchisee before the franchisee entered into a franchise agreement, and by failing to provide current disclosure documents to franchisees after receiving written requests.

### Mandatory unit pricing code

The ACCC developed a number of education tools to promote compliance with the mandatory unit pricing code by business and awareness of the benefits of the code to consumers. This included creation of the 'Unit Man' mascot and a video presentation on unit pricing to better inform consumers about the code. More than 13 000 copies of guidance materials were distributed during the year.

## Product safety

In 2009–10 the ACCC made significant progress towards building a better national product safety system.

### Communication

The ACCC made significant changes to its methods of communicating product safety messages to consumers and suppliers: it launched a designated product safety website, [www.productsafety.gov.au](http://www.productsafety.gov.au); and began to use social media platforms such as Twitter.

### Government's reform agenda

In 2006 the Productivity Commission handed down a number of recommendations for streamlining the product safety system. Most of the resulting reform initiatives have now been completed.

Under the ACL, from 2011 Australia will have a streamlined set of product safety regulations. In order to prepare for this, the ACCC worked with the state and territory consumer product safety agencies to rationalise 177 different standards and bans. A single set of 57 regulations is now in place which will provide a simpler regulatory environment from 1 January 2011.

The new national portal for product safety information, the Product Safety Australia website, was launched in April 2010. Developed by the ACCC in conjunction with state and territory product safety regulators, the website makes it easier for consumers to find information and allows them to register for updates on product categories relevant

to them. It also enables suppliers and manufacturers to access information on mandatory safety standards and product bans from a single location.

The ACCC implemented a clearing house to facilitate early identification of emerging product safety hazards and to allow for a range of information to be analysed in order to provide a rapid response to safety issues.

The ACCC continued to share information with state and territory product safety regulators, including by way of a designated extranet to which all product safety regulators have access.

A major review of the effectiveness of the Australian consumer protection recall system was undertaken. The research report, review and new draft guidelines were finalised in April 2010 and work has commenced on the implementation of initiatives to improve the effectiveness of the system.

### *Regulation and enforcement*

In 2009–10 the ACCC declared a total of five interim and permanent bans and introduced or reviewed four mandatory product safety or information standards. For example:

- > An interim ban on the supply of toy-like novelty cigarette lighters came into effect on 30 December 2009. Children mistaking these lighters for toys and playing with them are at risk of suffering serious burns.
- > An interim ban on children's plastic products with more than 1 per cent diethylhexyl phthalate (DEHP) came into effect on 2 March 2010 following recommendations by the National Chemicals Notification and Assessment Scheme.
- > A mandatory safety standard for children's toys containing magnets was introduced on 16 February 2010 and came into effect on 1 July 2010. It covers warning labels required for packaging, and instructions to prevent children swallowing hazardous magnets.
- > Mandatory safety standards for flotation and aquatic toys and swimming and flotation aids came into effect on 1 April 2010. These standards cover product labelling.

Details of product safety regulations are published on the Product Safety Australia website.

National product safety market surveillance activities continued to be a key component of enforcing product safety regulations. Major activities included coordinating the 2009 national toy survey with state and territory product safety regulators. The ACCC conducted a joint surveillance operation with the Australian Customs and Border Protection Service to inspect toys at the Port of Melbourne for lead levels. The audit targeted retailers, wholesalers and importers, surveyed more than 515 000 products and identified 253 non-compliant products. The most frequently encountered problem was choking hazards for children three years old and under. Nearly 180 products were removed from sale. Overall, from 500 tests conducted on 165 samples, a total of 4918 toys were seized and destroyed.

The ACCC oversaw consumer recalls of a range of products such as baby teething toys and rattles, baby bath aids, bunk beds, children's bicycles, children's nightwear, and children's toys containing lead and small parts.



## ACCC and Customs target unsafe toys

In the run-up to Christmas 2009, the ACCC and the Australian Customs and Border Protection Service tested targeted shipments of imported toys arriving at the Port of Melbourne, seizing and destroying thousands of hazardous toys.

The sweep, which involved more than 500 tests, discovered excessive lead levels in counterfeit figurines of Ben 10 cartoon characters, toy guns and boxing gloves. Lead can make children ill and result in developmental delays.

The joint operation was part of a national pre-Christmas toy audit involving authorities in every Australian state and territory.

The overall audit results suggest that the efforts of Australian authorities to keep children safe have been effective, with only 0.05 per cent of products assessed or tested by safety agencies failing to meet mandatory product safety standards.

## Education and outreach

### *Small business*

The ACCC plays a key role in educating businesses about their rights and obligations under the Trade Practices Act.

As small businesses are limited by time and financial constraints in learning about their rights and obligations, in 2009–10 the ACCC produced a number of publications specifically written for small businesses, and worked with industry associations and key bodies to disseminate information to members about the Trade Practices Act.

The valuable role industry associations play in informing small businesses of their rights and obligations was recognised with the development of a specific publication: *Industry associations and the Trade Practices Act*. Another publication, *Professions and the Trade Practices Act*, explains the application of the Trade Practices Act to the activities of professionals.

The ACCC also participated in a range of conferences and events organised by industry associations representing a broad range of sectors, including building, transport, franchising and accounting, to provide their members with information about relevant trade practices issues.

### *Liaison*

The ACCC continued its strategic liaison meetings with a number of key traders to further facilitate voluntary compliance with the Act and to discuss current and future trade practices issues.

### *Inquiries and complaints*

The ACCC Infocentre is a telephone, email and written information complaints and inquiries service for consumers and businesses. It is the initial response centre for all telephone, email and written inquiries and complaints to the ACCC on competition, consumer issues and fair trading in Australia.

Infocentre project officers are required to have a good working knowledge of all ACCC functions and current issues affecting the ACCC. Through many contacts each day, the Infocentre provides the general public with an increased awareness of the ACCC's roles and functions, and of their rights and responsibilities as businesses or consumers. The Infocentre is a significant education channel for consumers and businesses alike.

The information received from businesses and consumers is recorded in the ACCC complaints and inquiries database. Infocentre project officers create about 96 per cent of those entries. The information recorded in the database seeks to establish what, if any, breach of the Trade Practices Act may have occurred and what evidence is available to support the allegations.

Information recorded by the Infocentre is available to all staff for the purpose of analysing complaint trends and identifying possible areas of further inquiry and assisting in determining appropriate compliance initiatives and/or strategies. Investigators can also contact the Infocentre when they require specific information from callers pertaining to their investigation. Infocentre project officers are able to identify information of a valuable evidentiary nature for a number of investigations by asking targeted questions.

The overwhelming majority of people who contact the Infocentre do so as consumers seeking information or wishing to make a complaint. Where a caller has a complaint about circumstances for which the ACCC, or the Trade Practices Act, has no remedy, Infocentre staff find another agency or organisation that is able to help the caller.

#### ACCC contact details

ACCC Infocentre	1300 302 502
Small business helpline	1300 302 021
SCAMwatch complaint line	1300 795 995
SCAMwatch website	scamwatch.gov.au
ACCC website	acc.gov.au
AER website	aer.gov.au
Product Safety Australia website	productsafety.gov.au

In 2009–10 the ACCC Infocentre:

- > responded to 105 744 contacts
- > achieved an increase in client satisfaction levels of 3 per cent since the 2007 survey, with 84 per cent of over 500 clients independently surveyed being satisfied or very satisfied with their experience in contacting the Infocentre—respondents expressed a high level of satisfaction with the accessibility of service, quality of interpersonal communication, professionalism and quality of service
- > trained operators to ensure they were able to address issues arising from new functions, such as the AER and providing information about unfair contract terms and the national product safety regime relating to the *Trade Practices Amendment (Australian Consumer Law) Act (No.1) 2010*, and changes to various competition provisions of the Trade Practices Act as a result of the *Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*.

The contacts figure above does not include 10 555 emails received by the ACCC and entered into the national database where no response was required.

**Table 3.2: Complaints and inquiries, 2009–10**

Telephone calls	This year	Last year
Received	105 438	96 118
Served	82 556	80 281
Abandoned / advised to visit website	19 252	13 409
Engaged	2 408	2 008
Voicemail	1 222	420
Email contacts	This year	Last year
Number of emails received	31 645	30 008
Answered by telephone response	8 304	8 593
Answered by return email	11 732	13 688
Sent elsewhere for response	1 054	844
No response required	10 555	12 871

Written correspondence	This year	Last year
Number of letters received	2 098	2 272
Sent elsewhere for response	413	207
No response required	215	243
Business information complaints or inquiries	This year	Last year
About a small business	2 213	423
From a small business	4 063	2 072
About a franchise matter	765	949
About an online trader or e-commerce	6 352	3 545

**Table 3.3: Top 10 industries for complaints and inquiries**

	This year	Last year
Other auxiliary finance and investment services	22 109	15 513
Non-store retailing	4 853	3 130
Electrical, electronic and gas appliance retailing	2 932	2 699
Car retailing	1 929	1 520
Computer and computer peripheral retailing	1 652	1 720
Wired telecommunications network operation	1 620	1 674
Lottery operation	1 273	1 879
Automotive fuel retailing	1 202	3 664
Credit reporting and debt collection services	1 029	1 269
Supermarket and grocery stores	994	1 072

Note: The category 'Other auxiliary finance and investment services' captures the various types of scam-based activity reported to the ACCC.

**Table 3.4: Top 10 possible contraventions of the Trade Practices Act**

	This year	Last year
<b>Predominantly fair trading and consumer protection (Part V)</b>		
Misleading or deceptive conduct (unspecified)	40 233	32 733
Retail warranties	10 302	8 040
Accepting payment for non-supply	2 126	2 159
Product safety	1 476	672
Misrepresentation of price	1 271	1 621
Component pricing	1 021	702
Misrepresentation of warranty or guarantee	921	501
Harassment and coercion	915	929
Misrepresentation of performance characteristics, accessories, uses or benefits	857	888
Asserting right to payment for unsolicited goods	632	503
<b>Predominantly effective competition and informed markets (Part IV)</b>		
Misuse of market power	544	246
Exclusive dealing	499	451

**Table 3.5: Top 10 product safety publications sent to callers**

Product safety publications	This year	Last year
Blind and curtain cords, safety alert	38 359	21 788
Working under a vehicle, safety alert	16 100	11 230
Toys safety alert	13 113	17 038
Safe toys for kids	12 707	5 756
Keeping baby safe	12 099	14 716
Fire safety at home	10 932	8 713
Babies' dummies	9 845	12 687
Prams and strollers, safety alert	9 811	17 179
Cot safety alert	9 628	17 924
Household furniture hazards for kids (safety alert)	7 880	13 970

**Table 3.6: Top 10 non-product-safety publications sent to callers**

Non-product safety publications	This year	Last year
The little black book of scams	34 297	39 999
Warranties and refunds— a guide for consumers and business	5 929	16 185
Your consumer rights—refunds	2 469	1 023
Dealing with debt—your rights and responsibilities	2 067	1 619
Your consumer rights—warranties	1 949	1 120
The franchisee manual	1 671	2 960
Lotteries, sweepstakes and competition scams	1 661	349
Debt collection—guidelines for collectors and creditors	1 650	1 289
Know how to complain—stand up for your consumer rights	1 527	464
Buying jewellery—know your rights	1 500	1 325

**Table 3.7: Location of inquirers and complainants recorded in the national database**

	TPA Part IV		TPA Part V		TPA Part IVA/B		Other		Total	
	This year	Last year	This year	Last year	This year	Last year	This year	Last year	This year	Last year
New South Wales	866	826	20 257	17 777	244	186	3 834	4 957	25 201	23 746
Victoria	655	622	15 651	14 243	216	184	2 914	3 315	19 436	18 364
Queensland	543	499	15 165	13 493	256	178	2 460	3 140	18 424	17 310
Western Australia	225	222	5 738	4 928	102	74	927	998	6 992	6 222
South Australia	201	189	4 692	4 072	138	72	832	920	5 863	5 253
Australian Capital Territory	99	80	2 534	2 157	27	18	532	539	3 192	2 794
Tasmania	51	57	1 468	1 533	17	14	229	321	1 765	1 925
Northern Territory	27	17	610	529	17	14	117	160	771	720
Others	20	14	1 367	1 298	9	3	324	270	1 720	1 585
<b>Total</b>	<b>2 687</b>	<b>2 526</b>	<b>67 482</b>	<b>60 030</b>	<b>1 026</b>	<b>743</b>	<b>12 169</b>	<b>14 620</b>	<b>83 364</b>	<b>77 919</b>

Note: Figures include complaints where there is an allegation of more than one contravention. In cases where a complainant alleges more than one contravention, each contravention is counted separately.

## Campaigns

The ACCC continued to focus on strategic compliance and enforcement campaigns, including the following.

### Unfair contract terms

In March and April 2010, the ACCC conducted public consultation on the draft guide to the unfair contract terms law, which was developed by the ACCC in conjunction with ASIC and state and territory fair trading agencies. Over 40 submissions were received and these informed the guide in its final form, as released on 1 June 2010. The ACCC also held a number of information seminars for industry associations and peak bodies in relation to the new unfair contract terms provisions and the ACL more generally. Specific guidance was also developed to explain the unfair contract terms law to small business and consumer audiences.

### Consumer warranties and conditions

The ACCC conducted broad liaison and education with industry in an endeavour to better shape market behaviour. This included the dissemination of ACCC publications, liaising with small and large businesses regarding their warranty rights and obligations, providing assistance to CHOICE in producing its Fair Warranty Charter, and conducting a survey of traders' online warranty terms and conditions. The ACCC also took enforcement action against several traders on consumer warranty matters, including administrative resolutions, enforceable undertakings, and litigation.

### Product safety

Education is a key component of the ACCC's approach to promoting awareness of product safety issues and reducing the likelihood of product-related accidents or injuries. A number of product safety publications were produced, including product safety bulletins and suppliers' guides. Compliance strategies for a number of mandatory safety and information standards and bans were developed and implemented.

### Fuel

The fuel pages on the ACCC website ([www.accc.gov.au/fuel](http://www.accc.gov.au/fuel)) were regularly updated and accessible.

Seven new fuel-related publications developed by the ACCC were widely distributed to key stakeholders:

- > the *2009 Monitoring of the Australian petroleum industry* report and a separate summary of the report
- > five fuel fact sheets providing information about the issues most frequently raised by consumers with the ACCC.

During 2009–10, the ACCC responded to 1250 queries about fuel from the public. The issue of high fuel prices generated the largest number of fuel-related contacts.

### Water

Following the commencement of the Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009 on 23 June 2009, the ACCC initiated an education campaign to inform irrigators and operators of their rights and obligations. This campaign included:

- > placing advertisements in eight regional newspapers across the Murray-Darling Basin to announce the commencement of the rules

- > developing and releasing irrigator guides to explain the rules
- > providing 10 000 irrigator guides to operators and brokers to distribute to their customers
- > developing and disseminating operator guides
- > holding outreach education sessions with small operators to further explain elements of the rules.

## Competition

### *Mergers, acquisitions and asset sales*

The ACCC assessed the competition effects of mergers, acquisitions and asset sales under section 50 of the Trade Practices Act. This included:

- > assessing proposed mergers in a timely manner, having regard to commercial imperatives
- > monitoring and ensuring compliance with the section 87B undertakings accepted by the ACCC in merger reviews
- > educating the public, businesses and their advisers on the role of the ACCC and its merger review processes, and publicising the ACCC's merger decisions.

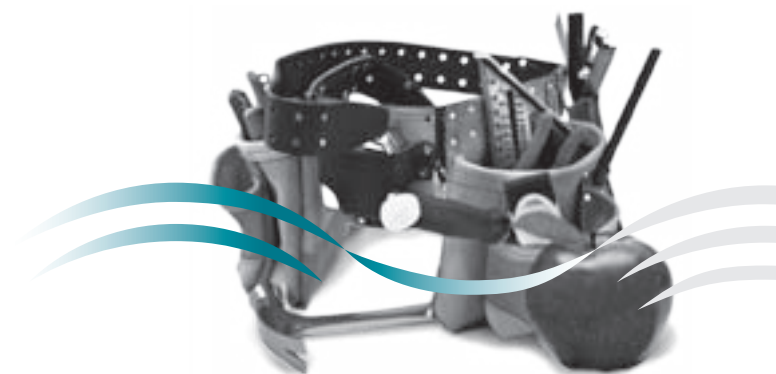
In 2009–10 the ACCC refined its reporting processes to distinguish between matters that do not require review because competition concerns are pre-assessed as being low, and matters that require review. Pre-assessed matters were often referred to the ACCC by other agencies, such as the Foreign Investment Review Board, or by the merger parties as a courtesy.

The ACCC considered 321 matters for compliance with section 50 of the Act. Of these, 168 underwent a public or confidential review. Of the 168 matters reviewed, eight were publicly opposed; confidential opposition or concerns were expressed in six; and four were allowed to proceed after the acceptance of undertakings to address competition concerns. Sixteen matters were withdrawn by the parties before a decision could be made, or were confidential matters where no view could be formed without market inquiries. Of the 168 matters reviewed, 46 were conducted confidentially and 122 were public reviews of mergers. The ACCC unconditionally cleared 78 per cent of all mergers reviewed. In eight matters the ACCC used its formal information-gathering powers.

The ACCC concluded 89 per cent of reviews in less than eight weeks, and 55 per cent of reviews in less than four weeks. The majority of the 153 matters assessed as not requiring review were dealt with in less than two weeks.

All mergers publicly reviewed and decided were published on the ACCC's website, as were 13 public competition assessments detailing the ACCC's decisions in relation to matters of public interest.





## Woolworths, Lowe's and Danks

Australian retailer Woolworths and Lowe's, a United States home improvement needs retailer, planned a joint venture to enter the Australian hardware sales sector by rolling out 'big-box', or large floor-space, home improvement stores. They proposed to buy Danks Holdings Ltd, which wholesales and distributes hardware products and services to independent retailers.

The ACCC began a review of this proposed acquisition on 3 September 2009, inviting submissions on the proposal and market dynamics from parties including Danks member stores, other retailers, wholesalers, manufacturers, buying groups and industry associations. On 16 October 2009 the ACCC released a statement of issues—a document which outlines the ACCC's preliminary views on a transaction, draws attention to any concerns and identifies further inquiries the ACCC plans to make.

The ACCC was concerned that the acquisition might reduce retail competition by reducing the number of wholesalers. The ACCC was also concerned that the acquisition might enable the joint venture to discriminate against some of its wholesale customers who were also its future retail competitors.

To address these concerns, Woolworths and Lowe's offered undertakings which imposed requirements to maintain retail competition by ensuring that hardware retailers can switch from Danks to alternative suppliers. The undertakings also alleviated concerns that Danks stores near joint venture stores would be treated less favourably than other stores.

On 11 November 2009 the ACCC accepted the undertakings and announced that it would not oppose the acquisition; its reasons were detailed in a public competition assessment released on 14 January 2010.

**Table 3.8: Merger matters assessed and reviewed in 2009–10**

	Confidential	Public	Total
Matters assessed—no review required	153	0	153
Total reviews undertaken	46	122	168
Of reviews undertaken:			
Not opposed	31	100	131
Finished—no decision (or withdrawn)	8	8	16
Opposed outright	0	8	8
Confidential review—ACCC concerns expressed	6	0	6
Resolved through undertakings	0	4	4
Variation to undertaking accepted	1	1	2
Variation to undertaking rejected	0	1	1

### *Collective bargaining notifications*

In 2009–10 the ACCC supported the capacity of small business to trade with larger firms in a fair, yet competitive environment.

The ACCC assessed 74 collective bargaining notifications and released public decision documents within statutory timeframes for nine collective bargaining groups.

The collective bargaining notification process provides immunity for activities that may otherwise breach the Trade Practices Act, if it can be demonstrated to be in the public interest to do so. After a collective bargaining notification is lodged, immunity for the collective bargaining group is automatic after 14 days unless the ACCC moves to revoke the notification.

The process is open and transparent, with notifications placed on a public register. When considering the revocation of a notification, the ACCC is required to consult with interested parties and to issue a draft decision document setting out the reasons why it is considering revocation.

Collective bargaining groups can also receive immunity through the authorisation process, which is discussed below.

### *Authorisations*

In 2009–10 the ACCC authorised certain anti-competitive practices in industries and professions when it assessed that the public benefits exceeded detriments.

The ACCC issued 37 authorisation determinations in 2009–10. These arrangements spanned a wide range of industries, including collective bargaining by vegetable growers in Tasmania, joint marketing of gas produced by the Gorgon gas project, a long-term solution to the capacity constraints in the Hunter Valley coal chain, a Virgin Blue – Delta Air Lines joint venture, and a liquor accord in the Northern Territory.

The authorisation process is open and transparent, involving public registers, consultation with interested parties and the publication of draft and final determinations.



## Caltex and Mobil

The Caltex and Mobil groups of companies produce and sell petrol, diesel and liquefied petroleum gas (LPG). On 27 May 2009, it was publicly announced that Caltex Australia Ltd proposed to buy from Mobil Oil Australia Pty Ltd 302 service station sites in metropolitan areas in South Australia, Queensland, New South Wales, Victoria and the Australian Capital Territory, subject to ACCC clearance. Caltex was also to obtain some fuel and storage services from Mobil-linked fuel terminals.

On 9 June 2009 the ACCC commenced its review of the proposed acquisition. It conducted extensive inquiries with market participants including Caltex's and Mobil's retail and wholesale competitors and independent retailers and distributors. The ACCC published a Statement of Issues on 2 September 2009 identifying a number of competition concerns.

On 2 December 2009 the ACCC announced that it would oppose the sale; its reasons were detailed in a public competition assessment released on 9 February 2010.

The ACCC had broad concerns about the consequences of the proposed acquisition for price coordination between Australia's major fuel retailers should the sale proceed. The ACCC also identified 53 Mobil sites where competition in local retail markets was likely to be lessened substantially if Caltex bought them.

The ACCC considered that either of the likely alternative buyers of some or all of the sites would be retailers who do not lead and instead tend to lag the price restorations.



## Virgin Blue and Delta Air Lines

Airline operators Virgin Blue and Delta Air Lines sought authorisation for a joint venture to coordinate flights between Australia and the USA. Under the joint venture, the airlines would take a coordinated approach to a range of issues, including pricing, revenue management, schedules, numbers of seats offered and routes flown.

The ACCC invited submissions from the public, including other airlines, freight businesses, travel agents, government departments, consumer groups and aviation and industry associations. On 10 December 2009 the ACCC issued a final determination granting authorisation until 1 July 2015.

The ACCC considered that the joint venture was likely to help Virgin and Delta compete more effectively against the routes' incumbents, Qantas and United Airlines. The ACCC also considered that the venture was likely to result in better connections, route coverage and schedules, and to generate more sustainable competition.

**Table 3.9: Authorisations in 2009–10**

	Opening balance	New applications	Applications withdrawn	Applications decided	Balance
Authorisation applications	12 (27)	20 (56)	0 (0)	24 (68)	8 (15)
Minor variation applications	0 (0)	3 (7)	0 (0)	2 (6)	1 (1)
Revoke and substitute authorisation applications	2 (4)	11 (27)	0 (0)	10 (27)	3 (4)
Revocations	0 (0)	1 (1)	0 (0)	1 (1)	0 (0)
<b>Total</b>	<b>14 (31)</b>	<b>35 (91)</b>	<b>0 (0)</b>	<b>37 (102)</b>	<b>12 (20)</b>

Note: Figures in brackets indicate total applications; figures without brackets indicate number of projects (i.e. some projects involve multiple applications).

## Regulating markets

### Regulating national infrastructure services and other markets where there is limited competition.

A number of the ACCC's functions under the Trade Practices Act, and the following Acts, laws and rules, relate to regulating national infrastructure services and other markets where competition is limited.

National Gas Law 2008

National Gas Rules

National Electricity Law 2005

National Electricity Rules

*Airports Act 1996*

*Australian Postal Corporation Act 1989*

*Broadcasting Services Act 1992*

*Copyright Act 1968*

*Radiocommunications Act 1992*

*Telecommunications Act 1997*

*Telecommunications (Consumer Protection and Service Standards) Act 1999*

*Water Act 2007*

Water Market Rules 2009

Water Charge (Termination Fees) Rules 2009

*Wheat Export Marketing Act 2008.*



## New South Wales state-owned electricity generators

In 2009 the New South Wales Government proposed a joint risk-management arrangement for state-owned electricity generators and future buyers—‘Gentraders’—of rights to sell a generator’s electricity.

Under the proposed co-insurance arrangement, if an outage at one of the generators caused electricity production to fall below a set level, the Gentraders would be required to compensate each other financially.

On 27 November 2009 the New South Wales Treasurer applied to the ACCC, on behalf of three state-owned generation businesses, for authorisation for the proposed conduct—that is, protection from action under the Trade Practices Act’s competition provisions on the basis that the conduct’s public benefits would outweigh its detriments.

The ACCC invited submissions from parties including other electricity industry participants, industry associations and government departments. On 25 March 2010 it released a draft determination proposing to deny authorisation. After further consultation, it confirmed this decision in a final determination issued on 20 May 2010.

The ACCC did not consider that there was a case for requiring the Gentraders to take part in a co-insurance arrangement they might not want or need. It concluded that there were a number of alternative risk-management options available to them that could effectively and efficiently manage the financial risk that the co-insurance arrangement sought to mitigate.

## Deliverables

In performing its regulatory functions, the ACCC has the deliverables described in Table 3.10. The deliverables are taken from the ACCC's 2009–10 PBS.

**Table 3.10: Regulating markets—deliverables and results**

Deliverable	Result
Complied with statutory reporting requirements—3 annual reports delivered to the Minister for Broadband, Communications and the Digital Economy; one 6-monthly report; 2 quarterly reports	Met, with the exception of the 6-monthly current cost accounting report, which was delayed. See 'Monitoring and advising' (pp. 80–82) for more information.
Implemented reasonable terms and conditions of access in arbitral determinations—estimated 38 disputes under the telecommunications access regime	18 final determinations were issued for communications matters, resolving 19 disputes. See 'Access terms, conditions and prices' (pp. 71–74) for more information.
Reviewed declarations of declared services within statutory timeframes—estimated 6 declarations reviewed under telecommunications access regime	See 'Competition' (pp. 67–71) for more information.
Assisted the Australian Competition Tribunal and courts in review of any appealed ACCC regulatory decisions—potentially 1 tribunal appeal and 38 judicable reviews under the telecommunications access regime	The ACCC assisted the tribunal in three sets of communications matters; 14 matters were considered under judicial review.

Deliverable	Result
Parliamentary inquiries and government agencies assisted to develop policies and processes	<p>As outlined under 'Consultation and assistance' (pp. 30–32), the ACCC continues to provide assistance to parliamentary inquiries.</p> <p>In addition, the ACCC provided to the government and published reports on the prices and market conditions for specific goods and services, including reports on:</p> <ul style="list-style-type: none"> <li>&gt; the prices, costs and profits of unleaded petrol</li> <li>&gt; price, financial performance and quality of service monitoring of aeronautical services and airport car parking</li> <li>&gt; the prices, costs and profits of container terminal operator companies.</li> </ul> <p>When requested, the ACCC also provides advice to government departments and agencies relating to the development of their policy and processes to promote competition and encourage new entrants into markets that rely on monopoly services.</p> <p>In particular, in 2009–10 the ACCC:</p> <ul style="list-style-type: none"> <li>&gt; supplied advice to the Murray-Darling Basin Authority on water trading rules being developed as part of the Basin Plan</li> <li>&gt; provided a submission to the Productivity Commission inquiry into wheat export marketing arrangements</li> <li>&gt; provided a submission to Infrastructure Australia to assist with the development of a national ports strategy.</li> </ul> <p>See 'Competition' (pp. 67–71), 'Regulatory processes' and 'Monitoring and advising' (pp. 80–82) below for more information.</p>
Effectiveness of access regimes evidenced by price levels and service delivery standards	See 'Access terms, conditions and prices' (pp. 71–74) and 'Incentives' (pp. 74–76) for more information.
Businesses using monopoly services pay prices that more closely reflect efficient costs	18 final determinations were issued for communications matters. See 'Access terms, conditions and prices' (pp. 71–74) for more information.
Regulatory reports, determinations, and issues papers are timely and accessible	See 'Access terms, conditions and prices' (pp. 71–74), 'Regulatory processes' (pp. 76–78), 'Monitoring and advising' (pp. 80–82) and 'Publicising outcomes' (pp. 82–84) for more information.



Deliverable	Result
Robustness and accuracy of methodology evidenced by industry acceptance	<p>AER—partially met. A number of AER determinations were appealed by businesses to the Australian Competition Tribunal. See ‘Access terms, conditions and prices’ (pp. 71–74) for more information.</p> <p>Others. See ‘Regulatory processes’ (pp. 76–78) and ‘Publicising outcomes’ (pp. 82–84) for more information.</p>
Websites ( <a href="http://www.accc.gov.au">www.accc.gov.au</a> and <a href="http://www.aer.gov.au">www.aer.gov.au</a> ) accessible and a source of relevant and up-to-date information	See ‘Monitoring and advising’ (pp. 80–82) and ‘Publicising outcomes’ (pp. 82–84) for more information.



## Ice Hockey Australia

The sports association Ice Hockey Australia notified the ACCC that it proposed to suspend or expel members who took part in hockey games or leagues in Australia or overseas if the association had not sanctioned them. The policy would apply to players and officials, including referees and coaches.

The Trade Practices Act prohibits exclusive dealing, which is the situation where one party imposes restrictions on another's freedom to choose with whom, in what or where it deals. Parties can gain protection from the relevant provisions of the Act if the conduct does not substantially lessen competition, and if the public benefits would not outweigh the detriments.

The ACCC invited submissions on Ice Hockey Australia's notification from the public, including state associations, rinks, sport and recreation bodies and government departments. A pre-decision conference was also held to discuss the issues. On 2 March 2010 the ACCC revoked the notification and the protection that it provided.

The ACCC was concerned that the conduct would substantially lessen competition by creating barriers to entry for new ice hockey leagues and by making it difficult for existing leagues to remain competitively viable. The ACCC considered that the conduct would also harm players and officials by limiting their ability to participate in ice hockey competitions of their choice.



## Energy market analysis reports

The AER issues weekly market analysis reports derived from its monitoring of activity in the gas and electricity wholesale markets.

These reports help participants, policy makers and others interested in the markets to stay informed of market outcomes. They also provide a way for the AER to identify possible non-compliance with the relevant rules and law.

The AER's electricity weekly market analysis reports include information on and analysis of wholesale market activity, including weekly average spot prices, financial year-to-date spot prices, and reasons for variations between forecast and actual prices.

The AER also undertakes detailed analysis where the spot price in a region exceeds \$250 per megawatt hour and is greater than three times the weekly average price for that region. If needed, the AER seeks further information from participants.

Activity in the contract markets, including contract prices and volumes traded, is also reported. This reflects the significant interaction between the spot and forward markets and the important role this plays in the National Electricity Market framework.

The gas weekly analysis reports include information on the National Gas Market Bulletin Board, including flow data, production data, gas for gas-powered generation usage and gas demand. As part of the AER's monitoring and compliance activities, the report also highlights where participants have failed to provide flow data to the bulletin board operator.

## Key performance indicators

The ACCC's and AER's performance in regulating markets where competition is limited—such as the communications, transport and energy markets—is assessed against a number of key performance indicators.

The ACCC and the AER, individually or in partnership, contribute to each indicator. Their performance against each key performance indicator is described below. For each performance indicator, the discussion is broken down into the relevant sectors.

## Competition

The ACCC and the AER continued to facilitate and encourage competition in markets that depend on access to monopoly services, so that the benefits of utility regulation are spread throughout the Australian economy.

### *Telecommunications, broadcasting and content*

#### *Fixed Services Review declaration inquiry*

In July 2009 the ACCC published its final decision to extend the declarations of six fixed-line services (the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR services). The declarations for these services were to expire on 31 July 2009. The ACCC decided to extend the declarations for a further five years until 31 July 2014. The extension of the declarations provides that standard access obligations remain in place for those services, thereby obliging an access provider to provide access to the service upon request. Access to these services allows companies to compete in providing both wholesale and retail telecommunication services.

#### *Domestic Transmission Capacity Service review*

In November 2009 the ACCC began a review of the Domestic Transmission Capacity Service (DTCS) declaration to clarify the service description by determining whether the current description should incorporate all transmission interface protocols commonly used over the Australian network. This will ensure that the service declaration describes the appropriate bottleneck facilities to which access seekers require access in order to provide services to end users.

#### *Review of 1997 access pricing principles*

In December 2009 the ACCC issued a discussion paper reviewing the 1997 access pricing principles for fixed-line telecommunications services.

In the paper the ACCC indicated that it was considering the adoption of a 'building block' approach (also known as a 'regulated asset base' approach), as commonly applied in regulating utilities in other industries. There was general support in submissions for the adoption of this approach. The Australian Competition Tribunal has also recently expressed support for 'a simpler and more appropriate pricing methodology' such as the building block approach (as stated in its 10 May 2010 decision affirming the ACCC's rejection of Telstra's undertaking for the unconditioned local loop service).

#### *Assistance to other agencies*

In 2009–10 the ACCC made submissions to:

- > the Department of Broadband, Communications and the Digital Economy's anti-siphoning scheme discussion paper

- > the ACMA's consultation process on a proposed premium SMS barring mechanism
- > the ACMA's consultation process on additional premium SMS consumer protection measures.

The ACCC also participated in the Fibre in Greenfields Stakeholder Reference Group, established by the Department of Broadband, Communications and the Digital Economy in August 2009.

### *Energy*

The national energy laws aim to encourage competition in upstream and downstream markets by ensuring access to monopoly infrastructure and by providing the frameworks for contestable and competitive energy markets. The AER contributed to facilitating competitiveness through energy policy by making submissions to:

- > the Australian Energy Market Commission on:
  - the scale efficient network extensions rule change proposal
  - the review of energy market frameworks in light of climate change policies
  - the review of national framework for electricity distribution network planning and expansion
  - the review of the use of total factor productivity in economic regulation
  - a request for advice on cost recovery for mandated smart metering infrastructure
- > the Ministerial Council on Energy on the second exposure draft National Energy Customer Framework
- > the Australian Energy Market Operator's consultation processes, including its development of the national transmission network development plan, the retailer of last resort framework, and the network support and control services review.

### *National ports strategy*

The ACCC made a submission in June 2010 to Infrastructure Australia for its draft report on a national ports strategy. The submission outlined the ACCC's role in relation to ports and land-side supply chains.

### *Prices oversight*

The ACCC appeared before the Senate Economics References Committee on 18 January 2010 in its inquiry into competition and pricing in the Australian dairy industry.

The ACCC appeared before the Senate Economics References Committee on 18 September 2009 and 28 October 2009 in its inquiry into the GROCERYchoice website.

### *Wheat export marketing arrangements*

The ACCC made a submission in May 2010 to the Productivity Commission for its draft report on wheat export marketing arrangements. The submission outlined the ACCC's role in relation to the wheat export industry.

### *Container stevedoring*

The ACCC is required to monitor the prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. Further detail is provided under other key performance indicators below.



## Airport monitoring report

The ACCC, under an Australian Government direction, monitors the prices, costs and profits relating to aeronautical services and car parking at Adelaide, Brisbane, Melbourne (Tullamarine), Perth and Sydney (Kingsford Smith) airports. Its *Airport monitoring report 2008–09* was released in March 2010.

The airports, except Sydney, reported higher revenues and operating margins from aeronautical services than the year before—due to higher passenger numbers and average prices. Although Sydney was the only airport to handle fewer passengers, it maintained the largest operating margin.

Brisbane remained the highest-ranked airport for service quality, followed by Adelaide, Perth and Melbourne airports, while Sydney was ranked last for the fourth consecutive year.

Airlines have consistently identified Sydney in their survey responses as the least responsive airport for service delivery and quality over a sustained period. Sydney's international terminal was rated below satisfactory on average by the airlines from 2002–03 to 2008–09. While Sydney Airport has announced proposed terminal improvements, there is a question as to whether these should have been carried out earlier.

Another concern is that the airports were found to be in a position to set higher car-parking prices because they are able to influence the costs of alternatives, including off-airport parking, taxis and buses. The ACCC found that this would result in the persistence of higher profits over time. Although the monitoring results are not definitive, they remain consistent with the ACCC's view that airport car-parking charges reflect some element of monopoly rents.

The ACCC's monitoring role does not extend to setting airport car-parking charges or otherwise intervening in the airports' price-setting decisions. In its monitoring role, the ACCC seeks to increase the transparency of the airports' performance to discourage airport operators from increasing prices excessively and providing unsatisfactory standards. To this end, in the *Airport monitoring report 2008–09* the ACCC examined the relationship between the airports and airlines in the provision of aeronautical services, and the airports' market power in car parking.

## *Airports*

To support competition, the ACCC monitors prices and quality of service for aeronautical services to airlines at major airports. Further information is provided under other key performance indicators below.

Sydney Airport is required to notify the ACCC of any proposals to increase the prices it charges to airlines providing regional air services. In May 2010 the Minister for Competition Policy and Consumer Affairs extended these arrangements for a further three years to 30 June 2013.

## *Airservices Australia*

The ACCC assesses Airservices Australia's price notifications under Part VIIA of the Trade Practices Act. The ACCC must assess a proposed price and decide whether to object. Further detail is provided under other key performance indicators below.

## *Shipping*

Part X of the Trade Practices Act deals with limited exemptions from certain provisions in Part IV of the Trade Practices Act for international liner cargo shipping conferences. The ACCC's role under Part X is to investigate complaints from parties adversely affected by shipping conference agreements and by the conduct of conference lines and non-conference lines with substantial market power. The ACCC can also initiate an investigation. During 2009–10 the ACCC responded to several inquiries regarding the conduct of shipping conference agreements. No formal investigations were undertaken.

## *Copyright licence fees*

The ACCC may join matters in the Copyright Tribunal relating to the price paid by businesses for intellectual property provided by copyright licensing societies. Further detail is provided under other key performance indicators below.

## *Post*

The ACCC assesses Australia Post's price notifications under Part VIIA of the Trade Practices Act, including prices for wholesale services provided to other businesses that provide mail services. The ACCC must assess a proposed price and decide whether to object. Further detail is provided under other key performance indicators below.

## *Water*

Under the Water Act, the Minister for Climate Change, Energy Efficiency and Water may make rules relating to water markets and water charges. The objective of any rules made by the minister is to contribute to achieving the (Murray-Darling) Basin water charging objectives and principles, including a specific requirement to facilitate the efficient functioning of water markets.

In making any rules, the minister is required to seek the advice of the ACCC and give weight to that advice. Similarly, the Act requires the Murray-Darling Basin Authority to give weight to advice from the ACCC in any water trading rules it makes.

### *Policy advice requests from the Minister for Climate Change, Energy Efficiency and Water*

In July 2009 the ACCC provided its final advice and draft Water Charge (Planning and Management Information) Rules.

During 2009–10 the ACCC received three requests from the minister for advice on water markets and water charges:

- > a follow-up request for advice on the proposed Water Charge (Infrastructure) Rules relating to the accreditation by the ACCC of state regulators—requested in September 2009 and provided to the minister in February 2010
- > a request for advice on possible amendments to the Water Market Rules 2009 and Water Charge (Termination Fees) Rules 2009—requested in September 2009 and provided to the minister in March 2010
- > a request for advice on possible amendments to the Water Charge (Termination Fees) Rules—requested in May 2010 and provided to the minister by the end of June 2010.

The ACCC provided each advice to the minister in the time requested.

The objective of the ACCC's advice was to promote efficient functioning of water markets. The Water Market Rules advice, which has been accepted by the minister, frees up the trade of water access rights by prohibiting irrigation infrastructure operators from impeding entitlement trade. Similarly, the advice on the Water Charge (Termination Fees) Rules aims to help irrigators enter and leave the sector by defining in what circumstances a termination fee can apply, capping termination charges and prohibiting exit fees.

#### *Policy advice request from the Murray-Darling Basin Authority*

The Water Act requires the Murray-Darling Basin Authority (MDBA) to develop a Basin Plan for the sustainable and integrated management of water resources in the Murray-Darling Basin. The Act requires the ACCC to prepare advice for the MDBA on the proposed water trading rules component of the Basin Plan.

In response to this requirement, the ACCC released an issues paper in March 2009, a position paper in September 2009, draft advice in December 2009 and final advice in March 2010. The final advice addressed some of the impediments to trade currently imposed by state trading regimes.

## **Access terms, conditions and prices**

The ACCC and the AER establish access terms, conditions and prices for infrastructure services that balance the interests of infrastructure owners and users and the broader public.

### *Telecommunications, broadcasting and content*

The ACCC maintained the effectiveness of the telecommunications access regime's pricing levels and service delivery standards by:

- > providing detailed guidance on the price-related terms of access by issuing pricing principles for ULLS, WLR, LCS, LSS and PSTN OTA, and commencing an inquiry to issue such guidance for the DTCS
- > assisting the Australian Competition Tribunal in its consideration of Telstra's appeal of the ACCC decision to reject the Telstra proposed ULLS undertaking which would have nearly doubled ULLS prices. The ACT affirmed the ACCC decision to reject Telstra's undertaking
- > issuing final determinations of access disputes for the ULLS and LSS, and progressing other access disputes towards final determination.

At the beginning of 2009–10, the ACCC was actively considering 39 access disputes. Over the course of the year, two MTAS, one WLR and three LSS access disputes were notified. Twelve access disputes were withdrawn.



The ACCC issued an interim determination in one WLR access dispute and extended interim determinations in one LSS and three ULLS access disputes. It issued final determinations in relation to 11 ULLS and eight LSS access disputes. At the end of the reporting period, 13 disputes were under active consideration.

The ACCC took action in the Federal Court to enforce Telstra's standard access obligation to provide interconnection with ULLS access seekers. Telstra admitted to the majority of the pleaded contraventions in July 2009, and a contested hearing regarding the appropriate sanctions for the conduct was held in April and May 2010.

The ACCC conducted pre-lodgement discussions with NBN Co—the operator of the National Broadband Network—regarding NBN Co's intention to provide a special access undertaking to the ACCC. If the special access undertaking is lodged with the ACCC it will then be subject to a period of public consultation. If accepted, the special access undertaking will establish a regulatory framework for NBN Co's provision of access to service providers.

## Energy

The AER makes electricity transmission and distribution determinations and gas access arrangements in accordance with the National Electricity Rules and National Gas Rules. The AER's determinations balance the interests of infrastructure owners, users and the broader public by promoting the national energy market objective set out in the National Electricity Law and National Gas Law—that is, to promote efficient investment in energy services for the interests of consumers with respect to price, quality, reliability, safety and security.

### Electricity transmission and distribution determinations

The AER made no electricity transmission determinations in 2009–10.

In 2009–10 the AER made three electricity distribution determinations:

- > ETSA Utilities 2010–15. This determination approved approximately \$1.8 billion of capital investment over the next five years, which represents an increase of more than 100 per cent from the current level.
- > Energex and Ergon Energy 2010–15. These determinations approved \$11.8 billion of capital investment over the next five years, which represents an increase of around 50 per cent from the current level. The AER made its determination for Energex and Ergon Energy six days later than required under the National Electricity Rules, to enable the determination to incorporate the latest available inflation data.
- > Draft determinations for the five Victorian distributors—Citipower, Powercor, Jemena, SP AusNet and United Energy—for the period 2011–15.

As part of responsibilities conferred on it by the Victorian Government, the AER assessed the costs associated with the transition to smart meters for Victorian electricity consumers over 2009 to 2011. It also published its final determination on Victorian metering charges for 2010 and 2011, including assessments of the initial budget applications of the Victorian distribution businesses.

During the reporting period, the Australian Competition Tribunal made orders to vary a number of the AER's electricity determinations:

- > Transmission determination for TransGrid and Transend's 2009–14 regulatory control period. The variations applied to the averaging period for 10-year bond rates used to decide the weighted average cost of capital for both businesses, and allowed

TransGrid an increase in the operating expenditure allowance that could be recovered from its customers.

- > Distribution determinations for New South Wales businesses Country Energy, EnergyAustralia and Integral Energy. The variation increased the weighted average cost of capital applying to all businesses, and increased EnergyAustralia's operating expenditure.

The AER revised its final decision and distribution determination for EnergyAustralia's alternative control (public lighting) services, in accordance with the directions of the Australian Competition Tribunal. The determination specifies the maximum prices that may be charged for street lighting services for the remainder of the 1 July 2009 to 30 June 2014 regulatory control period.

#### Gas transmission and distribution access arrangements

The AER released decisions in 2009–10 regarding gas distribution access arrangements for Jemena, Country Energy and ActewAGL's gas distribution networks for the period 1 July 2010 to 30 June 2015.

#### Dispute resolution

The AER's role under the National Gas Law and National Electricity Law includes resolving access and connection disputes.

In 2009–10 the AER terminated one access dispute, lodged by Origin Energy under the National Gas Law, as the dispute related to contractual matters.

#### *Annual energy pricing approval processes*

Under the National Electricity Rules and National Gas Rules, network businesses are required to submit their pricing proposals and tariff variations to the AER for approval.

#### Electricity pricing proposals

The AER approved the pricing proposals of seven electricity distribution businesses: ActewAGL, Country Energy, Energex, EnergyAustralia, Ergon Energy, ETSA Utilities and Integral Energy. The pricing proposals were assessed as compliant with the National Electricity Rules and the relevant distribution determination for each business.

#### Gas annual tariff variations

The AER approved 10 annual tariff variations: for Envestra gas distribution in South Australia; the Allgas and Envestra gas distribution Roma to Brisbane and Dawson Valley pipelines in Queensland; the Central Ranges gas transmission and distribution pipeline in New South Wales; Envestra Victoria; Envestra Albury; and SP AusNet, GasNet and Multinet in Victoria.

#### *Rail*

The ACCC provided guidance to the Australian Rail Track Corporation (ARTC), industry and stakeholders to assist in the ARTC's development of a proposed voluntary access undertaking for access to the Hunter Valley Rail Network.

In March 2010 the ACCC issued a draft decision indicating its preliminary view that the undertaking was not likely to be appropriate in its current form and providing extensive guidance on how the undertaking could be amended to be appropriate. The ACCC expects that an acceptable undertaking from the ARTC will promote economically efficient use of and investment in infrastructure and promote effective competition in upstream and downstream markets in accordance with the objectives of Part IIIA of the

Trade Practices Act. In April 2010 the ARTC withdrew the undertaking and advised that it would shortly lodge a revised undertaking.

The ACCC also continued to monitor and administer relevant provisions of the ARTC interstate undertaking accepted in 2008, which facilitates competition by providing access to services on the interstate rail network.

### *Wheat export marketing arrangements*

In September 2009 the ACCC accepted three wheat access undertakings covering wheat export terminals at 17 ports. The aim of these undertakings is to unlock constraints at grain ports and benefit the Australian economy by promoting the development of a wheat export marketing industry that is efficient and competitive and advances the needs of wheat growers. The undertakings provide robust prohibitions against port operators anti-competitively discriminating in favour of their own wheat trading businesses or hindering access to their port terminal services. They enable the ACCC to order independent audits of each port operator's compliance with the non-discrimination obligations.

### *Water*

In its final advice and draft Water Charge (Infrastructure) Rules provided to the Minister for Climate Change, Energy Efficiency and Water, the ACCC established a framework of access terms and conditions between infrastructure operators and their customers. These arrangements:

- > set price caps for large operators
- > provide increased information disclosure to customers about the activities of their operator
- > are consistent across the Murray-Darling Basin.

### **Incentives**

The ACCC and the AER provide incentives that stimulate efficient investment in and use of services with natural monopoly characteristics.

### *Telecommunications, broadcasting and content*

As noted above, in July 2009 the ACCC published its final decision to extend the declarations of six fixed-line services (the ULLS, LSS, PSTN OA, PSTN TA, LCS and WLR services) until 31 July 2014.

Following the extension of the declarations, the ACCC issued pricing principles and indicative prices for the services for the period from 1 August 2009 to 31 December 2010.

Extending the declarations and setting pricing principles and indicative prices for these key services provides certainty to industry and encourages continued investment in and use of bottleneck services to supply telecommunications services to end users.

### *Energy*

In applying revenue and price caps to electricity and gas transmission and distribution businesses, the AER implements the incentive regime specified in the National Electricity Law, the National Electricity Rules, the National Gas Law and the National Gas Rules. This regime includes specific incentives for increasing or maintaining service standards, seeking operating cost efficiencies and implementing demand management schemes.

The AER has developed national incentive schemes for electricity businesses in the national electricity market. These incentive schemes were developed in consultation with industry participants and are amended from time to time.

In addition to the determinations and access arrangements mentioned under 'Access terms, conditions and prices', the AER released the following reports in 2009–10:

- > amended service target performance incentive schemes for electricity transmission and distribution network service providers
- > applications for exclusion from financial incentives for supply reliability under the current Victorian scheme
- > Victorian gas distribution businesses comparative performance report for 2008—an overview of the operating environment of these distribution businesses and summary of their performance against the financial assumptions and service standards underlying their respective revenue determinations
- > electricity transmission businesses performance report for 2007–08—revenue, profit, expenditure and service standards information on each of the transmission businesses for 2007–08
- > quality of service reports of Victorian electricity distribution businesses—performance details covering reliability of supply, technical quality of supply and customer service.

### *Copyright*

The ACCC was a party to two matters decided by the Copyright Tribunal in 2009–10. In December 2009 the tribunal made a decision approving the commercial settlement reached by the Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society in relation to licence fees for digital downloads services. In May 2010 the tribunal handed down its decision in relation to the reference brought by the Phonographic Performance Company of Australia for fitness class tariffs. The ACCC's role as a party to each matter helped the tribunal make decisions reflecting efficient pricing principles.

### *Post*

In 2009–10 the ACCC assessed two proposals by Australia Post to increase prices for its monopoly postal services.

In December 2009 the ACCC objected to a draft pricing proposal lodged by Australia Post in July 2009. The ACCC had concerns that Australia Post's costs were not falling in response to declining volumes. Additionally, the ACCC identified a number of deficiencies in Australia Post's demand and cost forecasts which prevented an informed assessment of the appropriateness of the proposed price increases.

In May 2010 the ACCC announced its decision not to object to price increases proposed by Australia Post in April 2010. This decision was informed by an assessment of the extent to which Australia Post's proposed prices were forecast to recover the efficient costs of providing reserved letter services.

### *Rail*

The ACCC expressed its support for the ARTC utilising a loss-capitalisation model for its Hunter Valley rail network access undertaking that will facilitate its investment strategy in the Hunter Valley. The ARTC investment strategy aims to increase the throughput of the whole of the Hunter Valley coal chain by aligning investment in rail with investment in port and mining facilities.

The ARTC is expected to continue to use a loss-capitalisation model as it works with the ACCC, industry and stakeholders to develop an appropriate access undertaking under Part IIIA of the Trade Practices Act.

### *Airservices Australia*

The ACCC decided in January 2010 not to object to a proposed price by Airservices Australia for a terminal navigation service at Avalon Airport. Airlines using Avalon Airport pay terminal navigation service charges on a user-pays basis reflecting their use of air traffic control services.

### *Sydney Airport price notification*

The ACCC received a price notification from Sydney Airport Corporation Ltd on 24 June 2010 covering a proposal to increase prices to regional airlines at Sydney Airport by a maximum of 2.9 per cent. The ACCC released an issues paper in July 2010 seeking comment from interested parties.

### *Water*

In its final advice and draft Water Charge (Infrastructure) Rules provided to the Minister for Climate Change, Energy Efficiency and Water, the ACCC proposed a framework for regulating large water infrastructure operators. In relation to medium-sized and member-owned operators the ACCC assumes that reasonable, efficient pricing and investment incentives exist. The ACCC proposed that these operators provide details of their asset planning processes and their network service plans. This will increase transparency and help customers assess the relationships between investments, service standards and prices.

In relation to large non-member operations that are subject to price cap regulation, the ACCC proposed a framework that provides the necessary revenues for efficient investment and provides incentives for operators to continually reduce costs over time and offer cost-reflective prices.

## Regulatory processes

The ACCC and the AER help to ensure that regulatory processes that support efficient allocation of resources, including investment in the regulated businesses, are predictable and consistent.

In carrying out their regulatory processes, the ACCC and the AER work to five guiding principles—transparency, consistency, fairness, timeliness and confidentiality.

### *Telecommunications, broadcasting and content*

The ACCC liaised directly with key parties on individual matters, and used speeches and media releases to educate industry and consumers on telecommunications regulation. It consulted interested parties in the course of its decision-making processes, inviting them to provide submissions on discussion papers, draft decisions and final decisions.

Examples of the consultations conducted are:

- > review of the 1997 access pricing principles for fixed network telecommunications networks (six submissions were received)
- > draft decision on pricing principles and indicative prices for the ULLS, WLR, PSTN OTA, LCS and LSS (nine parties responded)
- > variation of the service description for the DTCS (six submissions were received).

## Energy

All of the AER's regulatory decisions are made through open and transparent consultation processes which facilitate participation by regulated businesses, energy consumers and interested parties.

In 2009–10 the AER hosted forums on Victorian wholesale gas market monitoring and reporting, its approach to compliance and enforcement in wholesale electricity and gas, and new energy retail functions.

The AER began preliminary consultation on the various guidelines that it will be required to develop after the passage of the proposed National Energy Retail Law. This included consultation on:

- > draft retailer authorisation guidelines
- > an issues paper on the proposed retail pricing information guidelines, which will make it easier for customers to compare energy retailer offers
- > an issues paper on how the AER will investigate, enforce and report on compliance by energy retail companies
- > draft national hardship indicators, which will be used to measure the performance and implementation of energy retailers' hardship policies
- > an issues paper on the AER's retailer performance monitoring functions
- > an issues paper and draft deemed exemptions in relation to energy retail exemptions whereby the on-seller of energy is exempt from the need to hold a retailer authorisation.

### Gas transmission and distribution compliance

The AER reviewed the 2008–09 annual compliance reports of 23 nominated service providers (submitted under the annual compliance regulatory information order made under section 48 of the National Gas Law) and found two breaches requiring detailed explanation and/or corrective action.

### Publication of final rebidding and Technical Parameters Guideline

Following the release of a draft report, the AER published the final Rebidding and Technical Parameters Guideline. This outlines the details that must be contained in a rebid reason submitted to the Australian Energy Market Operator, and covers several related areas associated with the bidding and rebidding of technical parameters.

### Compliance bulletin

The AER published a compliance bulletin dealing with the provision and updating of generator availability. The bulletin covers National Electricity Rules reporting requirements for short- and medium-term projected capacity assessments, and daily bid and pre dispatch processes.

### Draft regulatory investment test for transmission

Following the release of an issues paper in September 2009, in March 2010 the AER commenced consultation on its draft regulatory investment test for transmission. Under the National Electricity Rules, the AER must publish the regulatory investment test for transmission (to replace the existing regulatory test for electricity transmission investments) by 1 July 2010, to commence on 1 August 2010.

## Transport and general prices oversight

The ACCC assesses price notifications from declared firms under Part VIIA of the Trade Practices Act.

In 2009–10 the ACCC assessed three price notifications: one from Airservices Australia and two from Australia Post. (All are described under ‘Incentives’ above on p. 74.) In undertaking these assessments it followed the ‘Statement of regulatory approach to assessing price notifications’, which is available on the ACCC website.

## Water

### Advice

The Minister for Climate Change, Energy Efficiency and Water requested that the ACCC, in developing its advice, undertake the relevant consultancies with Basin state ministers, irrigation infrastructure operators and the public to satisfy the consultation requirements set out in regulations 4.05 and 4.18 of the Water Regulations 2008. In 2009–10 the ACCC satisfied these requirements by:

- > conducting a four-stage consultation process for its final advice on the proposed Water Charge (Planning and Management Information) Rules. This included inviting public submissions to the ACCC issues paper, position paper and draft advice (34 submissions were received) and meeting with stakeholders across all jurisdictions to seek comments
- > seeking public submissions for its responses to each of the minister’s three additional requests for advice on the Water Market Rules and water charge rules, and meeting with stakeholders to seek comments
- > undertaking extensive public consultation or its response to the MDBA’s request for advice on the water trading rules. This included seeking public submissions to a position paper and the draft advice (more than 56 submissions were received) and seeking direct advice in meetings with representatives from government, industry and other stakeholder groups in both urban and regional areas of each of the Basin states.

In preparing its advice the ACCC also sought third-party technical or legal assessment. The proposed water trading rules were subject to two consultant reviews.

### Enforcement guidelines

In August 2009 the ACCC released its enforcement guideline for irrigation infrastructure operators. The guideline explains the ACCC’s approach to policing the Water Market Rules and Water Charge (Termination Fees) Rules.

## Regulators forum

The ACCC, with state and territory regulatory agencies, convenes a utility regulators forum to exchange information, encourage consistent application of regulatory functions and review new ideas about regulatory practices. In 2009–10, forum meetings took place in Fremantle and Melbourne. The forum’s newsletter, *Network*, continued to be published quarterly.



## Fuel price monitoring

The ACCC analyses general fuel price movements to produce informed briefings for the public and government.

The major findings of the ACCC's general fuel price monitoring in 2009–10 were as follows:

### *Unleaded petrol*

- > Movements in domestic retail petrol prices were largely driven by movements in the international refined petrol price (measured by the spot price of Singapore Mogas 95 Unleaded).
- > Retail petrol prices (seven-day rolling average) in Australia's five largest cities were volatile during the year within a fairly narrow band—14 cents per litre (cpl). Prices ranged from a low of around 116 cpl in October 2009 to a high of around 130 cpl in March and May 2010.

### *Diesel*

- > Movements in retail diesel prices were largely driven by movements in the international refined diesel price (measured by the spot price of Singapore Gasoil 10 parts per million sulphur) and the Australian – United States dollar exchange rate.
- > Retail diesel prices (seven-day rolling average) in the five largest cities were broadly stable in the first half of 2009–10 and reached a low of around 118 cpl in October 2009. Retail prices generally increased in the first half of 2010, in line with increases in the international benchmark price for diesel.

### *LPG*

- > Increases in automotive LPG retail prices generally followed the increase in the Saudi international benchmark prices for propane and butane.
- > Automotive LPG prices (seven-day rolling average) in the five largest cities increased from a low of around 46 cpl in July 2009 to around 66 cpl in March 2010, an increase of 20 cpl. At the end of the year retail prices were around 60 cpl.



## Monitoring and advising

The ACCC and the AER monitor prices to assess the effect of market conditions on the price levels of specified goods and services and advise the government and the public on its findings.

This involves assessing a range of price, non-price and market conditions.

### *Telecommunications, broadcasting and content*

In 2009–10 the ACCC complied with its statutory requirements by:

- > continuing to collect pricing information for a number of telecommunications services. Together with usage data provided by major carriers and carriage service providers, this information was used to determine and report on the changes in price for telecommunications services in 2008–09. The report was provided to the minister in June 2010
- > publishing quarterly reports on imputation testing and non-price terms and conditions relating to the accounting separation of Telstra (June quarter 2009, September quarter 2009, December quarter 2009, March quarter 2010)
- > reporting on Telstra's compliance with the price control arrangements in 2008–09. The report was published in March 2010
- > as directed by the minister, holding a public inquiry into the retail price control arrangements that should apply to Telstra. The report was provided to the minister in March 2010
- > monitoring Telstra's compliance with the operational separation plan. The operational separation plan seeks greater equivalence and transparency in Telstra's supply of certain wholesale services, and ongoing assurance that Telstra is not favouring its own retail business units by implicitly supplying services to itself at unjustifiably lower prices or higher quality than those offered to downstream competitors
- > monitoring bundling of residential services using record keeping rules.

The ACCC did not fully comply with the requirement to publish the current cost accounting reports relating to Telstra's accounting separation regime within one month of receiving the data from Telstra. After a delay, these reports were published in June 2010.

### *Fuel*

The ACCC conducted general fuel price monitoring, including:

- > monitoring retail prices of unleaded petrol (including regular and premium unleaded petrol and E10 petrol), diesel and automotive LPG in all capital cities and 150 regional centres and country towns
- > monitoring movements in the international benchmark prices for these fuels; international crude oil prices; published wholesale prices; the price differential between E10 petrol and regular unleaded petrol; and the price differential between capital cities and regional centres and country towns.

These monitoring activities enabled the ACCC to keep abreast of developments in the market and provide briefings and advice to the government and the public.

The ACCC continued its formal monitoring of the petrol industry under a direction from the minister in 2007 to monitor the prices, costs and profits of unleaded petrol products for a period of three years.

The ACCC submitted its second formal monitoring report on the petrol industry to the minister in December 2009. The two monitoring reports are available on the ACCC website.

In May 2010 the minister directed the ACCC to undertake formal monitoring for a further 12 months.

### Energy

The AER continuously monitors activity in the gas and electricity wholesale markets and publishes the results in weekly gas and electricity market analysis reports. The reports are available on the AER website and are provided to the Ministerial Council on Energy.

The AER's weekly electricity market analysis reports provide information on and analysis of wholesale market activity, including weekly average spot prices, financial year-to-date spot prices, and reasons for variations between forecast and actual prices.

The weekly gas market analysis reports, which began in mid-2009, provide information on the Victorian declared wholesale market, including bids and market prices.

### Airports

Following a direction from the Australian Government under Part VIIA of the Trade Practices Act, the ACCC monitors prices, costs and profits relating to the supply of aeronautical services and car parking at Adelaide, Brisbane, Melbourne, Perth and Sydney airports. Under parts 7 and 8 of the Airports Act, the ACCC is also responsible for monitoring those airports' financial account reporting and quality of service.

The *Airport monitoring report 2008–09* was delivered to the minister on 4 March 2010. This complied with the requirement to provide the report as soon as practicable following the end of the financial year. The report was published on the ACCC website in March 2010. For a discussion of its findings, see p. 69.

### Container stevedoring

The ACCC is required to monitor the prices, costs and profits of container terminal operator companies at the ports of Adelaide, Brisbane, Burnie, Fremantle, Melbourne and Sydney. The ACCC delivered its *Container stevedoring: Monitoring report no. 11* for 2008–09 to the minister on 30 October 2009. This complied with the requirement to provide the report within four months of the end of each financial year. The report was published on the ACCC website in November 2009.

### Post

The ACCC analysed Australia Post's 2007–08 regulatory accounts as part of its fourth cross-subsidy report. It also undertook an assessment of costs and return on capital as part of its assessment of Australia Post's price notification in April 2010.

### Water

Under the Water Act, the ACCC is required to monitor a range of regulated water charges imposed across the Murray-Darling Basin as well as compliance with the water charge rules and water market rules.

The proposed Water Charge (Planning and Management Information) Rules will assist the ACCC in its monitoring by requiring state and territory water agencies to publish details of water planning and management charges imposed in their jurisdiction.

Under the proposed Water Charge (Infrastructure) Rules, specific types of infrastructure operators will be required to publish a schedule of their regulated water charges, and the ACCC will monitor these charges.

## Publicising outcomes

The ACCC and the AER publicise the outcomes of access arbitrations, arrangements and undertakings, and of monitoring activities and inquiry findings. This is achieved through news releases on major decisions on a range of reporting mechanisms as set out below.

### *Telecommunications, broadcasting and content*

The ACCC published:

- > quarterly price imputation and non-price terms and conditions reports relating to the accounting separation of Telstra
- > an annual report on Telstra's compliance with the price control arrangements for 2008–09 (published on 16 March 2010).

The ACCC's non-arbitral communications discussion papers, draft decisions and final decisions were placed on its website.

### *Fuel*

The ACCC continued to publicise the results of its fuel price monitoring activities.

- > Its second formal monitoring report on the petrol industry was made available on the ACCC website.
- > The results of its analyses of general fuel price movements were made accessible to the wider community (where appropriate) in a timely manner.

### *Energy*

The AER website was kept up to date and provided clear links to all of the AER's regulatory, monitoring, reporting and enforcement activities, including:

- > separate web pages for each electricity determination and gas arrangement, with access to all public information on these matters
- > quarterly compliance reports summarising the compliance and enforcement activities of the AER in the gas and electricity sectors
- > the *State of the energy market 2009* report.

The AER notifies regulated businesses, energy consumers and interested parties of significant events, including public forums and meetings; publication of decisions, determinations or reports; and opportunities to participate in regulatory processes. Notification is by email and, if required, by advertising in national newspapers. Over 100 notices were sent to energy market participants and interested parties in 2009–10.

The AER's website allows people to register to be notified promptly of updates to specific pages.

## *Airports*

The ACCC published its annual airports monitoring report for 2008–09 and an accompanying media release in March 2010. The report was made available on the ACCC website.

In January 2010 the ACCC announced its final decision on Airservices Australia's proposed pricing for air traffic control services at Avalon Airport and placed the text of the decision on its website, along with the public price notification.

## *Container stevedoring*

The ACCC maintains a waterfront and shipping page on its website, on which all of its container stevedoring monitoring reports are made publicly available.

## *Post*

In its consideration of Australia Post's 2009 and 2010 pricing proposals the ACCC released timely issues papers and decision documents that were made available to the public and stakeholders on the ACCC website and through emails, letters and media releases.

The ACCC maintains a postal services page on its website, which provides up-to-date information about its ongoing role in the regulation of postal services and about specific postal regulatory activities.

## *Rail*

The ACCC's position paper and draft decision paper on its assessment of the ARTC's 2009 Hunter Valley rail network access undertaking were made available to the public and stakeholders on the ACCC website, through email alerts to stakeholders and by media release.

The ACCC's ARTC Hunter Valley rail network undertaking web page keeps stakeholders and the wider public informed about the status and progress of developing an access undertaking for the Hunter Valley rail network. The ACCC uses the site to publish ARTC proposals, submissions from industry and stakeholders, and ACCC decisions in a timely manner.

## *Wheat export marketing arrangements*

In September 2009 the ACCC accepted grain port terminal access undertakings from bulk handling companies Co-operative Bulk Handling, AusBulk (now Viterro) and GrainCorp Operations. The decision to accept the three undertakings was publicised broadly through media release and email alerts. Following acceptance of the undertakings the ACCC delivered a comprehensive education campaign to inform access seekers about the new arrangements.

In the course of assessing the wheat access undertakings, the ACCC made its issues papers and draft and final decision papers available to the public and stakeholders on the ACCC website and through email alerts and media releases.

The wheat access undertakings page on the ACCC website is an important tool to ensure stakeholders are kept up to date on activities concerning the undertakings. The ACCC uses it to publish undertaking compliance investigation outcomes and to provide information about the ACCC's ongoing role and current activities relating to port access for wheat exporters.

## Water

In relation to all requests for policy advice from the Minister for Climate Change, Energy Efficiency and Water and other Australian Government agencies, the ACCC releases on its website all draft advice documents and public submissions received. The ACCC releases final advice documents on its website once the minister has provided notice of an intention to make rules.

In June 2009 the ACCC and the Minister for Climate Change, Energy Efficiency and Water finalised an agreement on monitoring industry compliance of the water market rules and the water charge rules. In August 2009 and February and May 2010 the ACCC released information disclosure requests to stakeholders to seek comment on the proposed monitoring regime. Both the information requests and the public submissions received by the ACCC were made public through the ACCC website.

As part of its Water Act enforcement role, the ACCC will publicise the outcome of all enforcement activities where appropriate.

Part four  
Management and  
accountability





## Corporate governance

This part reports on the ACCC's and the AER's governance, financial, people and information management, and other administrative activities.

The ACCC's corporate governance framework assists the organisation in achieving its strategic goals, complying with policies and legislation, and maintaining performance standards.

The ACCC aims for a high standard of governance and efficient management, including cost-effective use of resources in all its offices.

## Senior leadership

Senior leadership of the ACCC comprises members of the commission (appointed by the Governor-General), and Senior Executive Service (SES) employees. Senior leadership of the AER consists of the AER board, and SES employees of the ACCC. Details of the leadership structure are in Figure 2.1 (p. 18).

## Australian Competition and Consumer Commission

The ACCC has a chair, deputy chairs, full-time members and associate members.

The chair of the ACCC is Mr Graeme Samuel. There are two deputy chairs, four members and two associate members. Table 4.1 below gives terms of appointment for current members.

**Table 4.1: Terms of appointment—current ACCC members (as at 30 June 2010)**

Position	Name	Appointed until
Chair	Graeme Samuel	31 July 2011
Deputy chairs	Michael Schaper	29 May 2013
	Peter Kell	31 July 2013
Members	Sarah Court	30 April 2013
	Edward Willett	29 May 2013
	Joe Dimasi	27 November 2013
	Jill Walker	11 August 2014
Associate members	Christopher Chapman	27 February 2011
	Andrew Reeves	18 July 2013



## Chair

### *Mr Graeme Samuel AC*



Graeme Samuel was appointed as acting chairman of the ACCC on 1 July 2003 and then as chairman for a five-year term from 1 August 2003. He was appointed for a further three-year term on 1 August 2008. He is also an associate member of the Australian Communications and Media Authority.

Before Mr Samuel's appointment he was president of the National Competition Council, chairman of the Melbourne and Olympic Parks Trust, a commissioner of the Australian Football League, a member of the board of the Docklands Authority and a director of Thakral Holdings Limited. He relinquished all these offices to take up his position with the ACCC.

Mr Samuel is a past president of the Australian Chamber of Commerce and Industry, a past chairman of the Playbox Theatre Company and Opera Australia, a former trustee of the Melbourne Cricket Ground Trust and former chairman of the Inner and Eastern Health Care Network. Until the early 1990s he pursued a professional career in law and investment banking, from which he retired to assume a number of roles in public service and company directorships.

Mr Samuel holds a Bachelor of Laws (Melbourne) and Master of Laws (Monash). In 2010 he was appointed a Companion in the General Division of the Order of Australia.

## Deputy chairs

### *Dr Michael Schaper*



Michael Schaper was appointed as a deputy chair of the ACCC in May 2008 for a five-year term.

Before Dr Schaper's appointment to the ACCC he was the Australian Capital Territory Small Business Commissioner, Dean of Murdoch University Business School in Western Australia and President of the Small Enterprise Association of Australia and New Zealand. He has also been a member of the board of directors of the International Council for Small Business, served as head of the School of Business at Bond University and held the foundation professorial chair in entrepreneurship and small business at the University of Newcastle. Before that, he was a senior lecturer at Curtin University responsible for the university's entrepreneurship degree programs.

Between 2001 and 2003 Dr Schaper held two international posts as a visiting professor, while serving as an adjunct professor at both Curtin University and the University of Canberra.

In addition to his extensive academic career, Dr Schaper has worked as a professional small business adviser and owned a number of new business start-ups. The author or co-author of eight business management books, he has been a regular columnist in a number of national magazines, newspapers and journals on business issues. He has also worked as a policy adviser at both state and federal levels.

Dr Schaper holds a PhD and a Master of Commerce from Curtin University, as well as a Bachelor of Arts from the University of Western Australia.

### *Mr Peter Kell*



Peter Kell was appointed as a deputy chair of the ACCC for a five-year term commencing in August 2008.

Before joining the ACCC, Mr Kell was chief executive of CHOICE (the Australian Consumers Association) and a board member of the global consumer organisation Consumers International. He has extensive experience in advancing consumer and market reform issues in Australia and internationally.

Mr Kell previously worked at the Australian Securities and Investments Commission (ASIC), which he joined in 1998 when it took on a significantly expanded role in consumer and investor protection in financial services. He served as ASIC's Executive Director of Consumer Protection and as its New South Wales Regional Commissioner until 2004.

Earlier in his career Mr Kell was a policy adviser in the Commonwealth Department of Finance.

Mr Kell has a Bachelor of Arts (Hons) in Economics from the University of Sydney.

## Members

### *Ms Sarah Court*



Sarah Court was appointed to the ACCC in May 2008 for a five-year period.

Before joining the ACCC Ms Court was a senior executive lawyer and director at the Australian Government Solicitor. Her roles there included director of the Adelaide and Darwin AGS offices, director of AGS's national tax practice and national client service manager for the ACCC.

Ms Court holds a Bachelor of Arts (Jurisprudence), a Bachelor of Law from the University of Adelaide and a Graduate Diploma in Legal Practice from the Australian National University.

### *Mr Edward Willett*



Edward Willett was appointed to the ACCC in 2003, and began a further five-year term in May 2008.

Before Mr Willett's initial appointment to the ACCC he was the inaugural executive director of the National Competition Council for seven years.

Before that he was an assistant commissioner with the Industry Commission and helped develop the role of the Commonwealth Department of Industry, Science and Technology in business law and regulation. He spent three years as deputy head of the Office of Regulation Review and was involved in other Industry Commission inquiry work and research.

He also spent three years with the New Zealand Ministry of External Relations and Trade as an adviser on international economics and trade, and eight years as an economist with the Department of Defence.

Mr Willett has a Bachelor of Economics, a Bachelor of Laws and a Diploma of International Law with distinction, all from the Australian National University.

### *Mr Joe Dimasi*



Joe Dimasi was appointed to the ACCC in November 2008 for a period of five years.

Before his appointment Mr Dimasi was the executive general manager of the Regulatory Affairs Division of the ACCC, a position he had occupied since 1996. Before that, he was an assistant commissioner of the Industry Commission (now the Productivity Commission).

He has been a senior economist in a number of organisations, including the Victorian government departments of the Treasury, Premier and Cabinet and Business.

Mr Dimasi has a Bachelor of Economics and a Masters in Economics from Monash University.

## Dr Jill Walker



Jill Walker was appointed as a Commissioner of the ACCC in August 2009 for a five-year term.

Dr Walker is the chair of the ACCC's Mergers Review Committee as well as a member of the Enforcement Committee and Adjudication.

Dr Walker has extensive experience in the fields of trade practices and antitrust economics. Before joining the ACCC, she was a member of the Australian Competition Tribunal and worked as an economic consultant for LECG Ltd. Dr Walker has also worked for the Network Economics Consulting Group and CRA International. Dr Walker has also been a member of the South Australian Government's panel of expert assessors assisting the District Court in hearing appeals under the *Essential Services Commission Act 2002* and the *Gas Pipelines Access (South Australia) Act 1997*.

Dr Walker has previously been employed as an economic adviser by the ACCC and its predecessors, the Prices Surveillance Authority and the Trade Practices Commission. During this time Dr Walker provided advice on significant cases, investigations, and authorisations.

Dr Walker holds a Bachelor of Arts in Economics and a PhD in Land Economy from the University of Cambridge. She also holds a Master's degree in Economics from the University of Massachusetts.

## Associate members

### *Mr Andrew Reeves*

Andrew Reeves is the chair of the AER. (See the AER members' biographies, p. 94.)

### *Mr Christopher Chapman*

Christopher Chapman is the inaugural chair and chief executive officer of the Australian Communications and Media Authority. Mr Chapman was appointed an associate member of the ACCC in September 2007.

### *Mr Steve Edwell*

Steve Edwell was an associate member of the ACCC until completing his term as chair of the AER on 23 May 2010.

## Australian Energy Regulator

The Chair of the AER is Mr Andrew Reeves. The AER has two members. Table 4.2 below gives terms of appointment for current members.

**Table 4.2: Terms of appointment—current AER members (as at 30 June 2010)**

Position	Name	Appointed until
Chair	Mr Andrew Reeves	18 July 2013
Members	Mr Edward Willett	29 May 2013
	Mr Andrew Reeves	18 July 2013

1 As of 19 July 2010 Mr Andrew Reeves was appointed chair.

## Chair

### *Mr Andrew Reeves*



Andrew Reeves was appointed as the part-time state/territory member of the AER for a five-year term from 17 July 2008. Before his appointment, he was commissioner of the Tasmanian Government Prices Oversight Commission and regulator of the Tasmanian electricity supply industry, responsible for technical and economic regulation (including performance standards and prices for distribution services and retail tariffs). In this capacity he was an associate member of the ACCC.

Mr Reeves is a qualified engineer, with postgraduate qualifications in economics.

### *Mr Steve Edwell*



Steve Edwell was appointed by the Ministerial Council on Energy as inaugural chair of the AEER, a position he has held since 23 May 2005.

Mr Edwell has over 15 years experience in reform of utilities, in particular electricity and water, where he has driven a number of comprehensive reform projects, and has worked in both the public and private sectors.

From 1988 to 1998 he worked in Queensland Treasury, holding the position of Assistant Under-Treasurer Structural Reform. Subsequently he undertook various contracted positions in the utilities sector and acted as a consultant on a range of electricity and water matters, specialising in large-scale reform implementation.

Immediately before this appointment, Mr Edwell worked for the Western Australian Government, leading the implementation of comprehensive electricity reform in that state. He was also the chief executive officer of the Queensland Electricity Reform Unit, which implemented a range of electricity reforms culminating in Queensland joining the National Electricity Market. His other assignments included being commissioned by the Queensland Government to implement the Council of Australian Governments water reforms and heading the Queensland Office of Energy.

Mr Edwell has a commerce/economics degree from the University of New South Wales and an MBA from the University of Queensland.

## Members

### Mr Edward Willett



Edward Willett is a member of the ACCC. (See ACCC members' biographies (on pp. 88–92) for more information.)

Part IIIAA of the *Trade Practices Act 1974* provides that one of the members of the AER must also be a member of the ACCC.

## Committees

ACCC corporate governance activity is carried out through five committees:

- > Corporate Governance
- > Audit
- > Strategic Communications
- > Information Management and Technology Services
- > Health and Safety.

The ACCC also has an employer–employee consultative committee—the Workplace Relations Committee—comprising elected staff representatives, management representatives and representatives of employee organisations.

Table 4.3 below shows the roles and current membership of the function committees and the Workplace Relations Committee.

**Table 4.3: ACCC function committees—roles and membership**

Corporate Governance Committee	ACCC and AER chairs and deputy chairs, Commissioners, CEO, and senior staff who consider corporate governance issues; meets quarterly.
Audit Committee	CEO and senior staff responsible for overseeing internal audit activities, fraud control, risk management and corporate governance; meets quarterly.
Strategic Communications Committee	Senior staff involved in the ACCC's communication and outreach activities; meets quarterly.
Information Management and Technology Services Committee	Senior staff; meets quarterly.
Health and Safety Committee	Representatives of the employer and staff representing the workplace; meets three times a year.
Workplace Relations Committee	Representatives of the employer, employees and employee organisations; meets quarterly.



## Corporate and business plans

The ACCC corporate plan for 2010–11 focuses on the implementation of significant changes to the legislative framework for competition and consumer protection.

The adoption of the first tranche of the Australian Consumer Law (ACL), which came into effect on 1 July 2010, will enhance the ACCC's enforcement role by providing:

- > a single national consumer law, unifying legislation across all states and territories
  - protection for consumers from unfair contract terms
  - new remedies and powers for the ACCC.

In addition to the implementation of the ACL, the ACCC has identified four main challenges for 2010–11:

- > promotion of vigorous, lawful competition and informed markets
- > promotion of fair trading and consumer protection
- > regulation of national infrastructure services and other markets where there is limited competition
- > capacity building in an expanding organisation.

The full corporate plan is available on the ACCC website.

## Risk management and business continuity

The ACCC's annual business planning process identifies and categorises significant business risks. Risks rated as high or extreme are reviewed by management and monitored by business units during the year.

The ACCC's business continuity plan is tested annually. Using the business continuity plan, each business unit has identified its own critical processes and the actions necessary to ensure that the ACCC can meet its obligations in the event of an incident.

In December 2009 the ACCC launched an e-learning tool on basic risk management to increase employees' awareness of risk management.

## Fraud control

The ACCC complies with the federal government Fraud Control Guidelines.

It has prepared a fraud risk assessment and fraud control plan. During the year, the fraud control plan was reviewed and updated in accordance with federal government requirements.

The ACCC has in place appropriate fraud prevention, detection, investigation, reporting and data collection procedures and processes.

A fraud awareness training module has been developed, and training is provided to staff as required.

## Ethical standards

### Conflicts of interest

Public office holders are required to declare any actual or apparent conflicts of interest.

It is essential that the ACCC and AER uphold public confidence in their integrity. Therefore, they have an obligation to identify and properly manage any personal interests that may give rise to actual or perceived conflicts of interest.

ACCC members are required to provide the chair with an annual statement of personal interests. There is a specific protocol in place governing the participation of one ACCC/AER member in decision making, in recognition of his spouse's professional position.

As a general rule, gifts and hospitality may not be accepted, because they could compromise, or be perceived to compromise, the integrity of the ACCC/AER, its members and its employees. When accepted, gifts and hospitality must be declared using an online system.

Every employee is required to undertake an annual self-assessment of actual or potential conflicts of interest.

### APS Values and Code of Conduct

The ACCC is committed to a workplace culture that promotes and maintains the standard of behaviour specified in the APS Values and Code of Conduct. Human resources policies and guidelines are underpinned by these principles.

As part of their induction to the ACCC, employees are required to complete an e-learning module 'Our ethics and conduct'. Further information about the APS Values and Code of Conduct is provided during corporate induction sessions.

Misconduct is dealt with according to the 'Procedure for managing alleged breaches of the APS Code of Conduct'. In 2009–10, one allegation was investigated and one was concluded.

### Senior executive remuneration

Remuneration for full-time and part-time ACCC and AER members is determined by the Remuneration Tribunal, in accordance with the *Remuneration Tribunal Act 1973* and using Determination 2009/18 Remuneration and Allowances for Holders of Full-Time Public Office and Determination 2009/14 Remuneration and Allowances for Holders of Part-Time Public Office.

Tables 4.4 and 4.5 below detail the nature and amount of remuneration for ACCC and AER members.

**Table 4.4: Remuneration of current members of the ACCC (as at 30 June 2010)**

Full-time	Position	Base salary	Total remuneration of office
1	Chair	\$375 230	\$545 730
2	Deputy chair	\$263 180	\$354 730
4	Member	\$250 090	\$327 440
Part-time	Position	Fees	
0	Member	\$813 per day	

**Table 4.5: Remuneration of current members of the AER (as at 30 June 2010)**

Full-time	Position	Base salary	Total remuneration of office
1	Chair	\$249 790	\$333 210
0	Member	\$214 500	\$280 860
Part-time	Position	Fees	
0	Member	\$977 per day	

## External scrutiny

The ACCC/AER is accountable for its activities through the courts, tribunals, parliament and the Commonwealth Ombudsman.

## Parliamentary scrutiny

The ACCC's 2008–09 annual report was tabled in the Senate on 27 October 2009.

The annual report was examined by the Senate Economics Legislation Committee, which is responsible for the scrutiny of departments and agencies in the Treasury portfolio. The committee's findings were outlined in *Annual reports (No. 1 of 2010)*, a report tabled by the Senate Economics Legislation Committee on 3 February 2010.

## Administrative scrutiny

In 2009–10 the ACCC/AER was not the subject of a report by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman.

## Administrative Appeals Tribunal

There were 10 matters before the Administrative Appeals Tribunal (AAT) in the last financial year—all relating to Freedom of Information (FOI) requests and all made by the same applicant. As noted in Appendix 4 relating to FOI in this annual report, nine of those were carried over from 2008–09, of which eight were withdrawn by the applicant prior to hearing, and consent orders were agreed in September 2009 for the remaining matter. One new request was received from the same applicant during 2009–10 and this remains before the AAT.

## Commonwealth Ombudsman

In 2009–10 the ACCC was not the subject of a report to parliament or a finding of administrative deficiency by the Commonwealth Ombudsman.

## Privacy Commissioner

The ACCC has not been approached by the Office of the Federal Privacy Commissioner in relation to any complaints in 2009–10.

## Australian Human Rights Commission

The ACCC has not been approached by the Australian Human Rights Commission in relation to any complaints in 2009–10.

## Judicial decisions

There were four judicial review proceedings against the ACCC determined by Federal Court judges during the 2009–10 financial year. Each of the proceedings was resolved in favour of the ACCC. There was one application seeking judicial review against the AER, which was discontinued.

## Performance audits

The ACCC was not subject to a report by the ANAO.

## Support services

### Legal Group

The legal service requirements of the ACCC and AER are provided by the in-house Legal Group, a panel of law firms and counsel. The panel firms are AGS, Corrs Chambers Westgarth, DLA Phillips Fox and Thomson Playford.

The panel firms provide legal services in both the enforcement and non-enforcement areas of the operations of the ACCC and the AER. The current panel arrangements will remain in place until the end of 2011.

The in-house Legal Group consists of three units: the Trade Practices and Litigation Unit, which focuses on the provision of legal services to the enforcement, mergers and adjudication branches of the ACCC; the Regulatory Law Unit, which focuses on the provision of legal services to the ACCC and AER on regulatory matters; and the Corporate Law Unit, which focuses on corporate in-house issues and freedom of information requests.

### Corporate Division

In September 2009 a new Corporate Division, headed by an SES Band 2, was created. The Corporate Division encompasses four branches: Finance and Facilities, Information Management and Technology Services (IMTS), People Services and Management, and

Strategic Communications. The new division provides stewardship for governance and management issues across the ACCC.

The Corporate Division's strategic direction has three pillars: understanding the service delivery needs of its organisational clients; developing and delivering effective and efficient support services for the ACCC, AER and National Competition Council; and developing the capacity of corporate staff to deliver the range of services for which the division is responsible.

## Information management and information technology

In 2009–10 the goals of the IMTS Branch were:

- > building governance systems and structures
- > consolidating the ACCC's information management and technology platforms
- > implementing a central repository for business records.

The web team moved from the IMTS Branch to the Strategic Communications Branch. Its new position will ensure better synergy of communications functions within the Corporate Division.

The IMTS Branch focused on building capability and capacity in information management and pursuing business process improvement.

## Information Management and Technology Services Branch governance

With support from ACCC senior management, the IMTS Branch put in place a new governance model that will align it more efficiently with the strategic direction of the ACCC. The governance model has three tiers:

IMTS Steering Group—ensuring strategic alignment and appropriate program resourcing

Combined Program Steering Committee (CPSC)—making decisions on priorities and resourcing within the strategic and budgetary parameters set by the IMTS Steering Group

Project boards—ensuring that projects deliver the business outcomes required by the CPSC.

The IMTS Branch also committed resources to satisfying the governance requirements of central agencies, including the Australian Government Information Management Office.

## Information and communications technology infrastructure

Several significant information and communications technology infrastructure projects were pursued in 2009–10. The projects built on activity commenced in 2008–09 and, where possible, gave effect to the strategy of platform consolidation. These projects included:

- > provisioning additional office space in Brisbane and Melbourne
- > procuring upgraded wide area network links for all ACCC offices
- > preparing for the decommissioning of the Novell operating system
- > expanding and refining the storage area network infrastructure
- > implementing extensive server virtualisation
- > implementing a virtualised desktop for delivering business and office applications both within ACCC offices and through remote access

- > progressing the development of a comprehensive business continuity and disaster recovery platform.

## Business applications

During 2009–10 the ACCC business applications development team:

- > redeveloped the web content management system to streamline the publishing process
- > implemented an open-source content management system for future website development
- > progressed the integration of online complaints and inquiries via the SCAMwatch website with internal management systems to reduce processing overheads
- > progressed the redevelopment of the AER website
- > developed new datasets around the gas short-term trading market for the AER's electricity and gas support systems
- > refined and developed TrackIT, the ACCC's activity management tool
- > developed FetchIT to improve ACCC analysts' ability to work with TrackIT data
- > implemented an executive reporting module for the Enforcement and Compliance Division.

## Product Safety Australia website

The applications development team produced a new product safety website to support the ACCC's significantly enhanced role and responsibilities in this area.

The new website, at [www.productsafety.gov.au](http://www.productsafety.gov.au), went online in April 2010. To date it has received more than 15 000 visits.

## ACCC websites

Over the course of the year, the ACCC website had more than 2.7 million visits (approximately 2.6 million last year); the AER website, approximately 250 000 visits (approximately 209 000 last year); the Recalls website, approximately 997 000 visits (approximately 932 000 last year); and the SCAMwatch website, approximately 609 000 visits (approximately 505 000 last year).

## Information management repository

A major focus of activity for the IMTS Branch was the pursuit of a single central repository for all ACCC business records. In support of this strategic objective, the IMTS branch:

- > procured and implemented a replacement front end to its electronic document records management system, TRIM, which has become the single central document repository
- > migrated approximately 3.5 million business records from file shares to the TRIM system
- > decommissioned file shares for approximately 400 staff, ensuring their future business records are managed in the single central TRIM repository
- > rolled out the TRIM replacement front end to approximately 400 staff across six offices.

The roll-out of the replacement to TRIM and decommissioning of file shares will be completed over the next financial year.

## Library

The IMTS Branch maintains a library, facilitates access to electronic resources and provides document delivery and research services. Services are available to ACCC staff across Australia from the Canberra office.

During 2009–10, 1140 requests for information were received (594 were followed up with research activity), 1258 items were borrowed from the collection, 471 items were acquired on inter-library loan, 1020 journals were circulated to staff and 1226 new items were added to the collection.

## Public registers

The IMTS Branch oversees the maintenance of the ACCC's public registers. It maintains 27 statutory and voluntary public registers, including section 87B undertakings, authorisations, notifications, mergers and acquisitions, access to services, product safety conferences and communications (for example, competition notices, access undertakings and agreements and tariff information).

## Strategic communications

The Strategic Communications Branch was formed in 2009 to manage the development and implementation of communication strategies for the ACCC.

The branch is responsible for media liaison; preparing speeches and articles for external publications; and publishing ACCC information products, both online and in hard copy. It is also responsible for internal communications.

The Strategic Communications Branch:

- > engages with various target audiences about the role of the ACCC and outcomes of decisions
- > raises awareness of competitive and anti-competitive behaviour
- > improves communication within the ACCC
- > provides information to Australian consumers about product safety issues.

## Publications

During 2009–10 the internet was used more frequently to view publications. The number of new publications decreased.

Over the year, significant changes to the law affected ACCC publications. The Intergovernmental Agreement for the Australian Consumer Law, signed by the Council of Australian Governments on 2 July 2009, requires the ACCC and other regulators to publish common national guidance for businesses and consumers on the application, enforcement and administration of the new unfair contract terms provisions.

In response to this requirement, the ACCC released and distributed *A guide to the unfair contract terms law* and a supplementary guide on the provisions of the unfair contract terms law.

In 2009–10 the ACCC:

- > published 88 new publications in print, electronic and multimedia formats (compared to 98 in 2008–09)

- > distributed over 996 000 print items (compared to 640 000 in 2008–09)
- > recorded 770 512 visits to its online publications (compared to 560 000 in 2008–09).

The online *ACCC ejournal* was withdrawn in February 2010 following an internal review. Originally released in 1979 as the *TPC Bulletin*, it brought together developments in trade practices and consumer protection. This information is now available on the ACCC website, where users can subscribe to email alerts and RSS feeds to receive more timely information on ACCC activities.

## News releases and speeches

The ACCC issued 298 news releases in 2009–10, and 18 news releases for the AER.

The chair, commissioners and senior staff undertook more than 103 speaking engagements and extensive briefings, both private and public.

## Human resources

In March 2010 the ACCC established the People Services and Management Branch (PSM Branch) as part of the newly established Corporate Division.

The PSM Branch works closely with all areas of the ACCC to achieve its objectives in professional management and human resources development.

In 2009–10 the PSM Branch focused on:

- > developing leadership and managing performance
- > reviewing human resource policies and guidelines to ensure compliance with new legislation
- > improving workforce reporting
- > promoting employee wellbeing through seminars and the Employee Assistance Program.

## Workforce planning

The PSM Branch provides quarterly workforce reporting as well as ad hoc reports and staff budget modelling at the branch, group and divisional levels.

Staff budget modelling is used to estimate the full-time equivalent future employee and salary implications. Modelling is done before a change is made to a branch profile, and the projections help managers to make informed decisions about their workforce requirements while remaining within budget.

The number of staff at the ACCC increased in 2009–10 in response to an expansion of its functions and responsibilities. The ACCC's budgeted staff level for 2009–10 was 775.8 full-time equivalents. This included seven full-time ACCC members and one part-time AER member. The total number of full-time equivalent staff, including ACCC and AER members, employed as at 30 June 2010 was 774.01 (an increase of 45.11 on 2008–09).

The total actual number of staff employed (including ACCC and AER members, part-time employees and employees absent on leave and secondments) at 30 June 2010 was 813 (797 in June 2009). See Appendix 2 for an overview of employees by number, gender, classification and location.



## Attraction and retention of staff

The ACCC attracts and retains employees by providing engaging, rewarding and flexible working conditions, learning and development opportunities and competitive remuneration.

The ACCC conducted 124 individual recruitment processes. Vacant positions are advertised online and in the press. Most applicants found out about jobs through the *Public Service Gazette* (APS Jobs).

Average turnover of permanent staff during the year was 10.39 per cent (a reduction from 12.81 per cent in 2008–09).

The ACCC recruited 41 graduates in February 2009 and 37 remained with the ACCC after the program finished in November 2009. The ACCC recruited 23 graduates for the 2010 program. Over the 10 months of the program, graduates undertake three rotations and participate in comprehensive development opportunities including on-the-job learning and formal training.

## Staff consultation

An employee attitudes survey was conducted in 2010 by ClientWise, which ran a similar survey in 2008. The aim of the 2010 survey was to examine and benchmark organisational health issues within the ACCC and compare current employee attitudes to those obtained in the 2008 survey to see whether trends had emerged, and whether actions derived from previous recommendations had been effective.

Organisational health scores were high, with 86.6 per cent of participants providing positive scores above the mid-point of the scale for satisfaction. A score of 88.8 per cent was recorded for organisational commitment, and 89.3 per cent for organisational culture. Branch discussions were held after the survey so that staff had the opportunity to contribute to the branch and agency action plans arising from the survey findings.

The ACCC's formal employee consultative body is the Workplace Relations Committee (see Table 4.3 above). The Workplace Relations Committee met four times during the year.

The Health and Safety Committee (see Table 4.3 above) met during the year to facilitate consultation between the ACCC and employees and the AER and employees, to improve and maintain the occupational health and safety of employees and their welfare at work.

Other staff consultation occurs through branch and divisional planning events.

## Employment agreements

### Collective agreement

The ACCC Employee Collective Agreement 2009–10 (ECA) sets out classification structures, the performance management framework, remuneration, flexible working conditions, leave, cooperative working relationships, workplace adjustments and other working conditions and allowances.

Under the ECA, employees received a 4.7 per cent salary increase in December 2009. The ECA nominally expires on 30 November 2010.

Under the ECA, in accordance with the *Public Service Act 1999*, employees can request a review of employment actions or decisions that affect them. Two requests were received during 2009–10.

## Determinations

The employment arrangements of 41 SES employees are set out in individual determinations made under section 24 of the Public Service Act. The main features of section 24 determinations include remuneration; leave; benefits such as vehicles, car parking and class of air travel; performance pay; review of actions; and dispute resolution procedures.

## Common law contracts and Australian Workplace Agreements

No employee is covered by a common law contract or an Australian Workplace Agreement.

**Table 4.6: Number of employees covered by each industrial instrument (as at 30 June 2010)**

	ACCC Employee Collective Agreement 2009–10	Section 24 determinations
APS 1	8	0
APS 2	7	0
APS 3	40	0
APS 4	103	0
APS 5	114	0
APS 6	147	0
EL 1	156	0
EL 2	128	1
SES 1	9	29
SES 2	2	8
SES 3	0	1
L1	11	0
L2	18	0
GRAD	23	0

**Table 4.7: Salary ranges for APS employees (as at 30 June 2010)**

	ACCC Employee Collective Agreement 2009–10	Section 24 determinations
APS 1	\$40 320–\$44 565	Not applicable
APS 2	\$45 629–\$50 598	Not applicable
APS 3	\$51 971–\$56 095	Not applicable
APS 4	\$57 928–\$62 895	Not applicable
APS 5	\$64 610–\$68 509	Not applicable
APS 6	\$71 517–\$80 159	Not applicable
EL 1	\$88 858–\$98 339	Not applicable
EL 2	\$103 016–\$120 726	\$103 016–\$137 000
SES 1	Not applicable	\$143 000–\$160 000
SES 2	Not applicable	\$183 000–\$210 000
SES 3	Not applicable	\$220 000–\$290 000
L1	\$54 681–\$110 538	Not applicable
L2	\$116 815–\$123 815	Not applicable
GRAD	\$50 598–\$57 928	Not applicable

## Performance pay

SES employees receive performance pay. Non-SES employees are eligible instead for the special salary review scheme, the criteria for which are set out in the enterprise agreement. As at 30 June 2010, 40 employees received additional salary under this scheme. Performance pay was paid to SES Band 1 and Band 2 employees as set out in Table 4.8 below.

**Table 4.8: Performance pay**

	SES B1	SES B2	ACCC
Number who received bonus	24	6	
Total bonus	\$317 101.56	\$144 541.71	\$461 643.27
Average bonus	\$13 212.57	\$24 090.29	
Range	\$5 367.26–\$19 958.44	\$20 682.65–\$28 902.00	

## Staff development

Goals of this year's learning and development strategy were:

- > building and refining the core operational skills and knowledge of staff
- > building the management and leadership capability of the agency
- > supporting the implementation of organisational policies and practices concerning the management of staff and staff development.

To achieve these goals, the following training sessions were held:

- > Three new courses on economics and finance—Introduction to Microeconomics, Financial Principles and Price Setting, and Game Theory—were developed and delivered. Together with the existing Building Blocks and Advanced Microeconomics

courses, these new courses form part of a comprehensive set of educational tools. All courses are offered by senior staff of the Regulatory Development Branch. Delivery is assisted by videoconferencing to maximise staff access. Just under 300 staff attended these new courses.

- > As a result of further refinement of the Enforcement and Compliance Division training program, revisions were made to a number of courses, including Basic Investigation Skills, Applied Investigation and Litigation Skills, Interview Skills and Strategic Negotiation Skills. A number of training sessions were provided to Enforcement and Compliance Division employees on the management of electronic evidence and the provisions of the new Australian Consumer Law.
- > Three leadership development programs were held for executive level staff. A new program for EL1 staff was held twice during the year, and the fourth EL2 development program was held. A total of 52 staff attended these events.

Training and development costs in 2009–10 totalled \$3 073 617. This comprised salaries of staff on development activities \$1 130 636; salaries of Learning and Development Unit employees \$545 565; course and conference fees and study assistance \$941 581; costs of staff travel for training purposes \$396 704; and venue hire and various other costs \$59 129. These represent 3.9 per cent of the annual employee benefits.

**Table 4.9: Courses, seminars and learning events for 2008–09 and 2009–10**

Type	Number of attendances	
	2008–09	2009–10
Operational skills and knowledge	864	1491
Legal skills and knowledge	318	511
Applying the Act	207	330
Economics and regulatory	438	539
Leadership, supervision and management	175	225

Employees are eligible for study assistance in the form of study leave and full or partial reimbursement of tuition fees for approved courses of study.

The study leave policy and guideline emphasise postgraduate studies. In line with this principle, most assistance was provided for postgraduate studies in economics, law and business.

During the year, 75 employees participated in the study assistance scheme. The ACCC reimbursed \$196 676 in fees to ongoing employees and granted leave with pay for employees to attend lectures and tutorials totalling an equivalent of \$122 140 in paid time.

## Performance management

The performance management framework of the ACCC emphasises three elements: feedback, appraisal and development.

The framework consists of biannual professional development plans, a learning needs analysis tool, and performance appraisal criteria for specific appraisal events.

In 2009–10, new performance management and workplace policies sessions were developed and delivered, attended by over 700 staff. Twelve workshops for SES and EL2 staff were conducted on the subject of ‘having tough conversations’.

The PSM Branch assisted managers with 43 individual staff management cases.

## Occupational health and safety

The ACCC's health and safety management arrangements were made in consultation with employees. Designated work groups are established in each office, and a health and safety representative is assigned to each group. These representatives participate in the Health and Safety Committee. Refer to Appendix 3 for information relating to occupational health and safety for the year.

## Workplace diversity

The ACCC continues to support workplace diversity through its diversity plan. Employment terms and conditions provide for flexible hours of work, a flex-time scheme, part-time work, home-based work, maternity leave, maternal leave, supporting partner's leave and adoption leave.

In addition, leave with or without pay is available on application for specific events. For example, leave for ceremonial purposes can be granted to employees of Aboriginal or Torres Strait Islander descent; leave for enlistment, peacetime training and deployment can be granted to defence reservists; and leave can be granted to employees for participation in community services and to attend days of cultural or religious significance.

The ACCC participated in the Australian Public Service Commission Indigenous Graduate Program but was not successful in attracting an appropriate applicant.

The ACCC employs 14 staff who identify as having a disability, and one staff member who identifies as Indigenous or a Torres Strait Islander.

**Table 4.10: Workplace diversity profile (as at 30 June 2010)**

	Total staff	Female	ATSI	CLDB	PWD
Senior Executive Service and ACCC/AER members	57	14	0	3	1
EL 2	147	66	0	17	2
EL 1	167	75	0	19	2
APS 6	147	76	0	28	3
APS 5	114	70	1	24	3
APS 4	103	66	0	14	1
APS 3	40	29	0	8	1
APS 2	7	5	0	1	0
APS 1	8	3	0	1	0
GRAD	23	10	0	5	1
<b>Total</b>	<b>813</b>	<b>414</b>	<b>1</b>	<b>120</b>	<b>14</b>
Proportion of total		58%	0.12%	15%	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.

Information about the ACCC's actions in relation to the Commonwealth Disability Strategy is provided in Appendix 8.

## Assets management

The ACCC does not have any assets that are a significant aspect of its strategic business.

### Physical assets

The ACCC has refitted its Melbourne office, as a result of which temporary second offices in Melbourne are no longer required. The work was undertaken within the financial year and was the largest asset project undertaken by the ACCC.

The ACCC also moved into new accommodation in Brisbane. The new office—at 400 George Street in the CBD—is in a new building and therefore required a new fit-out. This was completed using the same template and theme as that used for the Melbourne office.

### Information assets

ACCC/AER continue to use innovative approaches and latest technology products and services to provide cost effective ICT support for its business operations.

## Purchasing

The ACCC adheres to the principles of the Commonwealth Procurement Guidelines derived from the *Financial Management and Accountability Act 1997*. Procurement activities undertaken by the ACCC achieve value-for-money outcomes by:

- > encouraging competition
- > making an efficient, effective and ethical use of resources
- > promoting accountability and transparency.

## Tenders

During the 2009–10 financial year the ACCC advertised seven open approaches to market. The requests for tender were published on AusTender, inviting all potential suppliers who satisfied the conditions for participation to submit tenders.

- > Expert (Economic, Financial and Technical) Consultancy Panel
- > User interface for TRIM
- > Provision of Blade Servers and Associated Periphery
- > Provision of Software for Virtualisation
- > Provision of Legal Document Management Services for the Ringtail Software
- > Transactional Banking Services and Purchasing Cards,
- > Provision of Cleaning Services.

## Policy and planning

In 2009–10 the ACCC developed an interactive procurement toolkit to help staff apply its procurement policy. The toolkit is a learning and development aid that doubles as an online reference tool for officers undertaking procurement activities. It includes

all policy and procedural information required to undertake both minor and major procurements. It contains easy-to-follow flow charts, links to key Commonwealth requirements, and templates for approval submissions, contracts, tender procedures and all associated documentation.

## Advice and training

The ACCC provides procurement training to staff as needed. During 2009–10 the ACCC’s procurement manager travelled to regional offices in Brisbane, Sydney, Adelaide and Melbourne to promote the procurement toolkit. Training sessions demonstrated the capability of the application and highlighted changes in policy. Face-to-face training sessions helped to ensure that new thresholds and quoting requirements were understood and used properly.

Staff involved in purchasing attended a course entitled ‘Planning a Tender’.

Forty-seven administrative assistants attended a conference that included sessions on the financial governance framework and travel policies and procedures.

## Environmental guidelines

As part of the 2002 World Summit on Sustainable Development, the Australian Government agreed to ‘promote public procurement policies that encourage development and diffusion of environmentally sound goods and services’.

The ACCC’s environment policy reflects the changing attitude of the community towards buying ‘green’. ACCC employees are strongly encouraged to consider good environmental performance when purchasing on behalf of the agency.

Environmentally friendly products can assist in the efficient and effective use of energy, water and materials, and therefore lower financial costs. The ACCC places significant emphasis on green products when determining value for money.

## Grant programs

Neither the ACCC nor the AER administers any grant programs.

## Consultants and contracts

### Consultancies

During 2009–10, 129 consultancy contracts were entered into involving total expenditure of \$8.6 million. Five ongoing consultancy contracts were active during the 2009–10 year, involving total expenditure of \$1.6 million. Full details of consultancy contracts let are available on the ACCC website. Consultancy contracts let with a value of \$10 000 or more are published on the AusTender government website.

The actual expenditure for consultancy contracts as at 30 June 2010 was \$8.1 million.

## Contracts

### Exempt contracts

The ACCC had no exempt contracts for the financial year.

## Financial performance

The ACCC's financial statements, both administered and departmental, are in part five of this report. A financial reporting summary, including information about revenue, expenditure, operating statement and a staffing summary is available in Part one of this report. The ACCC's outcome summary in Appendix 1 contains a resource summary.

## Developments that have affected or may affect the ACCC's operations or financial results

No developments since the end of the financial year have affected, or may affect, Outcome 1 operations or financial results.





Part five  
Financial statements







## INDEPENDENT AUDITOR'S REPORT

### To the Treasurer

#### Scope

I have audited the accompanying financial statements of the Australian Competition and Consumer Commission (the Commission) for the year ended 30 June 2010, which comprise: a Statement by the Chairman, Chief Executive Officer and Chief Finance Officer; Statement of Comprehensive Income; Balance Sheet; Statement of Changes in Equity; Cash Flow Statement; Schedule of Commitments; Schedule of Contingencies; Schedule of Asset Additions; Schedule of Administered Items and Notes to and Forming Part of the Financial Statements, including a Summary of Significant Accounting Policies.

#### *The Responsibility of the Chief Executive for the Financial Statements*

The Commission's Chief Executive is responsible for the preparation and fair presentation of the financial statements in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards (which include the Australian Accounting Interpretations). This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

#### *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 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 Commission'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

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expressing an opinion on the effectiveness of the Commission's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Commission's Chief Executive, 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 the audit, I have followed the independence requirements of the Australian National Audit Office, which incorporate the requirements of the Australian accounting profession.

**Auditor's Opinion**

In my opinion, the financial statements of the Commission:

- (a) have been prepared in accordance with the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, including the Australian Accounting Standards; and
- (b) give a true and fair view of the matters required by the Finance Minister's Orders including the Commission's financial position as at 30 June 2010 and its financial performance and cash flows for the year then ended.

Australian National Audit Office



John Jones  
Executive Director

Delegate of the Auditor-General

Canberra  
26 August 2010

AUSTRALIAN COMPETITION & CONSUMER COMMISSION

STATEMENT BY THE CHAIRMAN, CHIEF EXECUTIVE OFFICER AND CHIEF FINANCE OFFICER

In our opinion, the attached Financial Statements for the year ended 30 June 2010 are based on properly maintained financial records and give a true and fair view of the matters required by the Finance Minister's Orders made under the *Financial Management and Accountability Act 1997*, as amended.



Graeme Samuel  
Chairman

26 August 2010



Brian Cassidy  
Chief Executive Officer

26 August 2010



Adrian Brocklehurst  
Chief Finance Officer

26 August 2010

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**STATEMENT OF COMPREHENSIVE INCOME**  
*for the period ended 30 June 2010*

	Notes	2010 \$'000	2009 \$'000
<b>EXPENSES</b>			
Employee benefits	3A	79,009	72,338
Supplier expenses	3B	62,372	58,635
Depreciation and amortisation	3C	4,145	2,986
Finance costs	3D	92	-
Write-down and impairment of assets	3E	46	82
Losses from asset sales	3F	-	-
Other expenses	3G	-	572
<b>Total Expenses</b>		<b>145,664</b>	<b>134,613</b>
<b>LESS:</b>			
<b>OWN-SOURCE INCOME</b>			
<b>Own-source revenue</b>			
Sale of goods and rendering of services	4A	565	508
Other revenue	4B	293	802
<b>Total own-source revenue</b>		<b>858</b>	<b>1,310</b>
<b>Gains</b>			
Sale of assets	4C	-	6
Other gains	4D	3,346	755
<b>Total Gains</b>		<b>3,346</b>	<b>761</b>
<b>Total own-source income</b>		<b>4,204</b>	<b>2,071</b>
<b>Net cost of services</b>		<b>141,460</b>	<b>132,542</b>
Revenue from Government	4E	142,892	132,555
<b>Surplus (Deficit) on continuing operations</b>		<b>1,432</b>	<b>13</b>
<b>OTHER COMPREHENSIVE INCOME</b>			
Changes in asset revaluation reserves		-	2,217
<b>Total other comprehensive income</b>		<b>-</b>	<b>2,217</b>
<b>Total comprehensive income attributable to the Australian Government</b>		<b>1,432</b>	<b>2,230</b>

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

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
**BALANCE SHEET**  
*as at 30 June 2010*

	Notes	2010 \$'000	2009 \$'000
<b>ASSETS</b>			
<b>Financial assets</b>			
Cash and cash equivalents	5A	1,403	1,783
Trade and other receivables	5B	53,908	57,028
<b>Total financial assets</b>		<b>55,311</b>	<b>58,811</b>
<b>Non-financial assets</b>			
Leasehold improvements	6A,C	12,631	9,561
Property, plant and equipment	6B,C	7,722	6,075
Intangibles	6D	2,927	1,145
Inventories	6E	36	28
Other non-financial assets	6F	1,364	1,304
<b>Total non-financial assets</b>		<b>24,680</b>	<b>18,113</b>
<b>Total Assets</b>		<b>79,991</b>	<b>76,924</b>
<b>LIABILITIES</b>			
<b>Payables</b>			
Suppliers	7A	5,606	5,472
Other payables	7B	6,505	4,283
<b>Total payables</b>		<b>12,111</b>	<b>9,755</b>
<b>Provisions</b>			
Employee provisions	8A	21,464	18,526
Other provisions	8B	1,361	5,081
<b>Total provisions</b>		<b>22,825</b>	<b>23,607</b>
<b>Total Liabilities</b>		<b>34,936</b>	<b>33,362</b>
<b>Net Assets</b>		<b>45,055</b>	<b>43,562</b>
<b>EQUITY</b>			
<b>Parent Entity Interest</b>			
Contributed equity		40,102	40,041
Reserves		3,538	3,538
Retained Surplus (Accumulated deficit)		1,415	(17)
<b>Total Parent Equity Interest</b>		<b>45,055</b>	<b>43,562</b>
<b>Total Equity</b>		<b>45,055</b>	<b>43,562</b>

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



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**STATEMENT OF CHANGES IN EQUITY**  
*for the period ended 30 June 2010*

	Retained Earnings		Asset Revaluation Reserves		Contributed Equity/Capital		Total Equity	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
<b>Opening Balance</b>	(17)	919	3,538	1,321	40,041	34,098	43,562	36,338
Balance carried forward from previous period	-	-	-	-	-	-	-	-
Adjustment for errors	-	-	-	-	-	-	-	-
Adjustment for changes in accounting policies	-	-	-	-	-	-	-	-
<b>Adjusted Opening Balance</b>	(17)	919	3,538	1,321	40,041	34,098	43,562	36,338
<b>Comprehensive income</b>								
Other comprehensive income <sup>1</sup>	-	-	-	2,217	-	-	-	2,217
Surplus/(Deficit) for the period	1,432	13	-	-	-	-	1,432	13
<b>Total comprehensive income</b>	1,432	13	-	2,217	-	-	1,432	2,230
of which:								
Attributable to the Australian Government	1,432	13	-	2,217	-	-	1,432	2,230
<b>Transactions with Owners</b>								
<i>Distributions to owners</i>								
Appropriation return (FMA Act s32 transfer of appropriation)	-	(949)	-	-	-	-	-	(949)
<i>Contributions by Owners</i>								
Appropriation (equity injection)	-	-	-	-	61	5,943	61	5,943
<b>Sub-total Transactions with Owners</b>	-	(949)	-	-	61	5,943	61	4,994
<b>Closing Balance as at 30 June</b>	1,415	(17)	3,538	3,538	40,102	40,041	45,055	43,562
<b>Closing balance attributable to the Australian Government</b>	1,415	(17)	3,538	3,538	40,102	40,041	45,055	43,562

<sup>1</sup> 2008-09 figure includes increment of \$713,231 relating to the revaluation of Leasehold Improvement and Plant an Equipment assets and \$1,504,015 relating to the revaluation of Provision for Makegood Liabilities.

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

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
**CASH FLOW STATEMENT**  
*for the period ended 30 June 2010*

	Notes	2010 \$'000	2009 \$'000
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Goods and services		637	476
Appropriations		146,287	131,252
Net GST received		5,709	5,755
Other cash received		336	882
<b>Total cash received</b>		<b>152,969</b>	<b>138,365</b>
<b>Cash used</b>			
Employees		75,503	68,850
Suppliers		67,281	63,181
Other cash used		730	2,455
<b>Total cash used</b>		<b>143,514</b>	<b>134,486</b>
<b>Net cash from or (used by) operating activities</b>	9	<b>9,455</b>	<b>3,879</b>
<b>INVESTING ACTIVITIES</b>			
<b>Cash received</b>			
Proceeds from sales of property, plant and equipment		-	7
<b>Total cash received</b>		<b>-</b>	<b>7</b>
<b>Cash used</b>			
Purchase of property, plant and equipment		3,503	1,996
Purchase of leasehold improvements		5,486	1,609
Purchase of intangibles		2,923	357
<b>Total cash used</b>		<b>11,912</b>	<b>3,962</b>
<b>Net cash from or (used by) investing activities</b>		<b>(11,912)</b>	<b>(3,955)</b>
<b>FINANCING ACTIVITIES</b>			
<b>Cash received</b>			
Appropriations - contributed equity		2,077	691
<b>Total cash received</b>		<b>2,077</b>	<b>691</b>
<b>Cash used</b>			
Repayment of borrowings		-	-
Other		-	-
<b>Total cash used</b>		<b>-</b>	<b>-</b>
<b>Net cash from or (used by) financing activities</b>		<b>2,077</b>	<b>691</b>
<b>Net increase / (decrease) in cash held</b>		<b>(380)</b>	<b>615</b>
Cash and cash equivalents at the beginning of the reporting period		1,783	1,168
<b>Cash and cash equivalents at the end of the reporting period</b>	5A	<b>1,403</b>	<b>1,783</b>

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

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
 SCHEDULE OF COMMITMENTS  
 as at 30 June 2010

	2010 \$'000	2009 \$'000
<b>BY TYPE</b>		
<b>Commitments receivable</b>		
GST recoverable on commitments	8,390	8,275
<b>Total commitments receivable</b>	<b>8,390</b>	<b>8,275</b>
<b>Commitments payable</b>		
<b>Other Commitments</b>		
Operating leases <sup>1</sup>	84,651	80,021
Contract for IT services <sup>2</sup>	3,872	5,040
Other commitments <sup>3</sup>	3,766	5,957
<b>Total other commitments</b>	<b>92,289</b>	<b>91,018</b>
<b>Net commitments by type</b>	<b>83,899</b>	<b>82,743</b>
<b>BY MATURITY</b>		
<b>Commitments receivable</b>		
One year or less	1,332	1,476
From one to five years	3,926	3,411
Over five years	3,132	3,388
<b>Total commitments receivable</b>	<b>8,390</b>	<b>8,275</b>
<b>Commitments payable</b>		
<b>Operating lease commitments</b>		
One year or less	8,789	8,279
From one to five years	41,412	34,475
Over five years	34,450	37,267
<b>Total Operating lease commitments</b>	<b>84,651</b>	<b>80,021</b>
<b>Other commitments</b>		
One year or less	5,858	7,956
From one to five years	1,780	3,041
<b>Total other commitments by maturity</b>	<b>7,638</b>	<b>10,997</b>
<b>Net commitments by maturity</b>	<b>83,899</b>	<b>82,743</b>

NB: All commitments are GST inclusive where relevant.

<sup>1</sup> Operating leases included are effectively non-cancellable and comprise:

**Leases for office accommodation**

Lease payments are subject to annual increases of between 3% and 5% per annum. Lease terms are between two and fifteen years with the majority of leases containing an option to renew for a further term of up to ten years.

**Agreement for the provision of motor vehicles to senior executive officers**

No contingent rentals exist. There are no renewal or purchase options available to the Commission.

<sup>2</sup> Various contracts for Information Technology services

<sup>3</sup> Other commitments mainly include contracts for the provision of consultancy services

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

AUSTRALIAN COMPETITION & CONSUMER COMMISSION  
SCHEDULE OF CONTINGENCIES  
as at 30 June 2010

	2010 \$'000	2009 \$'000
<b>Contingent liabilities</b>		
Claims for damages or costs	45	313
<b>Total contingent liabilities</b>	<u>45</u>	<u>313</u>

Details of each class of contingent liabilities above are disclosed in Note 10: Contingent Liabilities, along with information on significant remote contingencies and contingencies that cannot be quantified. The Commission has no departmental contingent assets.

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ASSET ADDITIONS**  
*for the period ended 30 June 2010*

The following non-financial assets were added in 2009-10:

	Leasehold improvements	Property plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
By purchase - appropriation equity	-	-	-	-
By purchase - appropriation ordinary annual services	4,957	3,116	2,615	10,688
By purchase - donated funds	-	-	-	-
By purchase - other	-	-	-	-
By finance lease	-	-	-	-
Assets received as gifts/donations	-	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-	-
<b>Total additions</b>	<b>4,957</b>	<b>3,116</b>	<b>2,615</b>	<b>10,688</b>

The following non-financial assets were added in 2008-09

	Leasehold improvements	Property plant and equipment	Intangibles	Total
	\$'000	\$'000	\$'000	\$'000
By purchase - appropriation equity	-	-	-	-
By purchase - appropriation ordinary annual services	282	1,665	370	2,317
By purchase - donated funds	-	-	-	-
By purchase - other	-	-	-	-
By finance lease	-	-	-	-
Assets received as gifts/donations	-	-	-	-
From acquisition of entities or operations (including restructuring)	-	-	-	-
<b>Total additions</b>	<b>282</b>	<b>1,665</b>	<b>370</b>	<b>2,317</b>

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

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ADMINISTERED ITEMS**

	Notes	2010 \$'000	2009 \$'000
<b>Income Administered on Behalf of Government</b> <i>for the period ended 30 June 2010</i>			
<b>Revenue</b>			
<b>Non-taxation revenue</b>			
Fees and fines	14A	<u>41,564</u>	<u>44,520</u>
<b>Total revenues administered on behalf of Government</b>		<u><b>41,564</b></u>	<u><b>44,520</b></u>
<b>Gains</b>			
Reversal of previous asset write-downs and impairments	14B	<u>19</u>	<u>663</u>
<b>Total gains administered on behalf of Government</b>		<u><b>19</b></u>	<u><b>663</b></u>
<b>Total Income Administered on Behalf of Government</b>		<u><b>41,583</b></u>	<u><b>45,183</b></u>
<b>Expenses Administered on Behalf of Government</b> <i>for the period ended 30 June 2010</i>			
Write-down and impairment of assets	15	<u>1,745</u>	<u>229</u>
<b>Total Expenses Administered on Behalf of Government</b>		<u><b>1,745</b></u>	<u><b>229</b></u>
<b>Assets Administered on Behalf of Government</b> <i>as at 30 June 2010</i>			
<b>Financial Assets</b>			
Cash and cash equivalents	16A	<u>61</u>	<u>29</u>
Receivables	16B	<u>22,774</u>	<u>4,071</u>
<b>Total Assets Administered on Behalf of Government</b>		<u><b>22,835</b></u>	<u><b>4,100</b></u>
<b>Liabilities Administered on Behalf of Government</b> <i>as at 30 June 2010</i>			
<b>Payables</b>			
Suppliers	17	<u>-</u>	<u>-</u>
<b>Total Liabilities Administered on Behalf of Government</b>		<u><b>-</b></u>	<u><b>-</b></u>

This schedule should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ADMINISTERED ITEMS (continued)**

	Notes	2010 \$'000	2009 \$'000
<b>Administered Cash Flows</b>			
<i>for the year ended 30 June 2010</i>			
<b>OPERATING ACTIVITIES</b>			
<b>Cash received</b>			
Fines and costs		21,120	46,546
Other fees		15	323
<b>Total cash received</b>		<u>21,135</u>	<u>46,869</u>
<b>Net cash from or (used by) operating activities</b>		<u>21,135</u>	<u>46,869</u>
<b>Net increase (decrease) in cash held</b>			
Cash and cash equivalents at the beginning of the reporting period		<u>29</u>	151
Cash to Official Public Account for:			
- Appropriations		<u>(21,103)</u>	<u>(46,991)</u>
<b>Cash and cash equivalents at the end of the reporting period</b>	16A	<u><u>61</u></u>	<u><u>29</u></u>

This schedule should be read in conjunction with the accompanying notes.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**SCHEDULE OF ADMINISTERED ITEMS (continued)**

	<b>2010</b>	2009
	<b>\$'000</b>	\$'000
<b>Administered Contingencies</b>		
<i>as at 30 June 2010</i>		
<b>Administered contingent assets</b>		
Claims for damages or costs <sup>1</sup>	<u>1,224</u>	<u>16,711</u>
<b>Total administered contingent assets</b>	<b><u>1,224</u></b>	<b><u>16,711</u></b>

<sup>1</sup> Administered activities conducted by the Commission are limited to the collection of fines, costs and fees levied under the *Trade Practices Act*.

Details of each class of administered contingent liabilities and contingent assets above are disclosed in Note 19: Administered Contingent Assets, along with information on significant remote contingencies and contingencies that cannot be quantified. The Commission has no administered contingent liabilities.

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



**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**INDEX TO THE NOTES OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

**Note**

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- Note 2: Events after Reporting Date
- Note 3: Expenses
- Note 4: Income
- Note 5: Financial Assets
- Note 6: Non-Financial Assets
- Note 7: Payables
- Note 8: Provisions
- Note 9: Cash Flow Reconciliation
- Note 10: Contingent Liabilities and Assets
- Note 11: Senior Executive Remuneration
- Note 12: Remuneration of Auditors
- Note 13: Financial Instruments
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- Note 18: Administered Reconciliation Table
- Note 19: Administered Contingent Liabilities and Assets
- Note 20: Administered Financial Instruments
- Note 21: Appropriations
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**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

**Note 1: Summary of Significant Accounting Policies**

**1.1 Objectives of the Australian Competition and Consumer Commission (the Commission)**

The Commission is an Australian Government controlled entity. The objectives of the Commission are to:

- promote vigorous, lawful competition and informed markets;
- encourage fair trading, protection of consumers and product safety; and
- regulate national infrastructure services (such as communications, bulk water, energy, rail, airports, post and wheat exports) and other markets where there is limited competition.

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 programs is dependent on Government Policy and on continuing appropriations by Parliament for the Commission's administration and programs.

The Commission's activities contributing towards this outcome are classified as either Departmental or Administered. Departmental activities involve the use of assets, liabilities, revenues 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.

Departmental activities are identified under one program:

- Program 1: Australian Competition and Consumer Commission.

The Commission does not conduct administered activities however fines and penalties collected are returned to the Commonwealth as administered items. Contingent gains are recognised as Administered items, and contingent losses are recognised as Departmental items.

**1.2 Basis of Preparation of the Financial Statements**

The Financial Statements and notes are required by section 49 of the *Financial Management and Accountability Act 1997* and are General Purpose Financial Statements

The Financial Statements and notes have been prepared in accordance with:

- Finance Minister's Orders (or FMOs) for reporting periods ending on or after 1 July 2009; and
- 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 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 and values are rounded to the nearest thousand dollars unless otherwise specified.

Unless an alternative treatment is specifically required by an Australian Accounting Standard or the FMOs, assets and liabilities are recognised in the Balance Sheet when and only when it is probable that future economic benefits will flow to the Commission and the amounts of the assets or liabilities can be reliably measured. However, assets and liabilities arising under agreements equally proportionately unperformed are not recognised unless required by an Accounting Standard. Liabilities and assets that are unrealised are reported in the Schedule of Commitments and the Schedule of Contingencies (other than unquantifiable or remote contingencies, which are reported at Note 10).

Unless an alternative treatment is specifically required by an Accounting Standard, revenues and expenses are recognised in the Statement of Comprehensive Income when and only when the flow, consumption or loss of economic benefits has occurred and can be reliably measured.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

Administered revenues, expenses, assets and liabilities and cash flows reported in the Schedule of Administered Items and related notes are accounted for on the same basis and using the same policies as for Commission items, except where otherwise stated at Note 1.20.

### **1.3 Significant Accounting Judgements and Estimates**

In the process of applying the accounting policies listed in this note, the Commission has made the following judgements that have the most significant impact on the amounts recorded in the financial statements:

- The fair value of Leasehold Improvements has been taken to be the market value of similar properties as determined by an independent valuer.
- The Australian Government shorthand method has been used 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 accounting period.

### **1.4 Changes in Australian Accounting Standards**

#### **Adoption of new Australian Accounting Standard requirements**

No accounting standard has been adopted earlier than the application date as stated in the standard. The following new standards were issued prior to the signing of the statement by the chairman, chief executive officer, and chief finance officer, were applicable to the current reporting period and had a financial impact on the entity:

- AASB 1 - First-time Adoption of Australian Accounting Standards - May 2009 (Principal)
- AASB 7 - Financial Instruments: Disclosures - June 2009 (Compilation)
- AASB 101 - Presentation of Financial Statements - June 2009 (Compilation)
- AASB 102 - Inventories - June 2009 (Compilation)
- AASB 107 - Statement of Cash Flows - June 2009 (Compilation)
- AASB 108 - Accounting Policies, Changes in Accounting Estimates and Errors - July 2008 (Compilation)
- AASB 110 - Events after the Reporting Period - June 2009 (Compilation)
- AASB 116 - Property, Plant and Equipment - June 2009 (Compilation)
- AASB 117 - Leases - June 2009 (Compilation)
- AASB 118 - Revenue - August 2008 (Compilation).
- AASB 119 - Employee Benefits - June 2009 (Compilation)
- AASB 120 - Accounting for Government Grants and Disclosure of Government Assistance - July 2008 (Compilation)
- AASB 123 - Borrowing Costs - June 2009 (Compilation)
- AASB 132 - Financial Instruments: Presentation - June 2009 (Compilation)
- AASB 136 - Impairment of Assets - June 2009 (Compilation)
- AASB 137 - Provisions, Contingent Liabilities and Contingent Assets - June 2009 (Compilation)
- AASB 138 - Intangible Assets - June 2009 (Compilation)
- AASB 139 - Financial Instruments: Recognition and Measurement - October 2009 (Compilation)
- AASB 1031 - Materiality - December 2007 (Compilation)
- AASB 1048 - Interpretation of Standards - June 2010 (Principal)
- AASB 1049 - Whole of Government and General Government Sector Financial Reporting - September 2008 (Compilation)
- Interp. 1 - Changes in Existing Decommissioning, Restoration and Similar Liabilities - June 2009 (Compilation)
- Interp. 5 - Rights to Interests arising from Decommissioning, Restoration and Environmental Rehabilitation Funds - September 2007 (Compilation)
- Interp. 115 - Operating Leases – Incentives - June 2009 (Compilation)
- Interp. 121 - Income Taxes – Recovery of Revalued Non-Depreciable Assets - September 2007 (Compilation)
- Interp. 125 - Income Taxes – Changes in the Tax Status of an Entity or its Shareholders - June 2009 (Compilation)
- Interp. 127 - Evaluating the Substance of Transactions Involving the Legal Form of a Lease - June 2009 (Compilation)
- Interp. 129 - Service Concession Arrangements: Disclosures - June 2009 (Compilation)

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

Interp. 131 - Revenue – Barter Transactions Involving Advertising Services - September 2007 (Compilation)  
Interp. 132 - Intangible Assets – Web Site Costs - September 2007 (Compilation)  
Interp. 1019 - The Superannuation Contributions Surcharge - December 2007 (Compilation)  
Interp. 1031 - Accounting for the Goods and Services Tax (GST) - December 2007 (Compilation)  
(These changes have no material impact but will effect the disclosure presented in future financial reports).

Other new standards that were issued prior to the signing of the statement by the chairman, chief executive officer and chief finance officer, and are applicable to the future reporting period are not expected to have a future material impact on the entity.

**Future Australian Accounting Standard Requirements**

The following new standards were issued prior to the signing of the statement by the chairman, chief executive officer and chief finance officer, were applicable to the current reporting period and had a financial impact on the entity for future reporting periods.

AASB 2009-5 - Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project (AASB 5, AASB 8, AASB 101, AASB 107, AASB 117, AASB 118, AASB 136 & AASB 139)  
AASB 2009-9 - Amendments to Australian Accounting Standards - Additional Exemptions for First-time Adopters (AASB 1)  
AASB 2009-13 - Amendments to Australian Accounting Standards arising from Interpretation 19 (AASB 1)  
AASB 2010-1 - Amendments to Australian Accounting Standards - Limited Exemption from Comparative AASB 7 Disclosures for First-time Adopters  
AASB 2010-3 - Amendment to Australian Accounting Standards arising from the Annual Improvements Project  
AASB 2009-12 - Amendments to Australian Accounting Standards  
AASB 124 - Related Party Disclosures  
2010-4 - Further Amendments to Australian Accounting Standards arising from the Annual Improvements Project  
AASB 2009-11 - Amendments to Australian Accounting Standards arising from AASB 9  
AASB 9 - Financial Instruments  
AASB 2010-2 - Amendments to Australian Accounting Standards arising from Reduced Disclosure Requirements

Other new standards that were issued prior to the signing of the statement by the chairman, chief executive officer and chief finance officer, and are applicable to the future reporting period are not expected to have a future material impact on the entity.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

**1.5 Revenue**

**Revenue from Government**

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

\$3,962,000 has been recognised as appropriation revenue in 2009-10 that was advanced in the 2010-11 Portfolio Budget Statements to cover expenses incurred for previous years' outputs.

Appropriations receivable are recognised at their nominal amounts.

**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.

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, unless received from another Government Agency or Authority as a consequence of restructuring of administrative arrangements (refer to Note 1.6).

Resources received free of charge are recorded as either revenue or gains depending on their nature.

**Other types of Revenue**

Revenue from the sale of goods is recognised when:

- The risks and rewards of ownership have been transferred to the buyer;
- The seller retains no managerial involvement nor effective control over the goods;
- The revenue and transaction costs incurred can be reliably measured; and
- It is probable that the economic benefits associated with the transaction will flow to the Commission.

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:

- The amount of revenue, stage of completion and transaction costs incurred can be reliably measured; and
- The probable economic benefits 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 balance date. Allowances are made when collectability of the debt is no longer probable.

**AUSTRALIAN COMPETITION & CONSUMER COMMISSION**  
**NOTES TO AND FORMING PART OF THE FINANCIAL STATEMENTS**  
*for the year ended 30 June 2010*

**1.6 Gains**

**Other Resources Received Free of Charge**

Resources received free of charge are recognised as gains 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 i.e. Whether they have been generated in the course of the ordinary activities of the Commission.

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, unless received from another Government Agency or Authority as a consequence of a restructuring of administrative arrangements. (Refer to Note 1.7).

**Sale of assets**

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

**1.7 Transactions with the Government as Owner**

**Equity injections**

Amounts appropriated which are designated as 'equity injections' for a year (less any formal reductions) are recognised directly in Contributed Equity in that year.

**Restructuring of Administrative Arrangements**

Net assets received from or relinquished to another Australian Government Agency or Authority under a restructuring of administrative arrangements are adjusted at their book value directly against contributed equity.

**Other Distributions to Owners**

The FMOs require that distributions to owners be debited to contributed equity unless in the nature of a dividend. In 2009-10, the Commission made no such distributions.

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**1.8 Employee benefits**

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

Liabilities for 'short-term employee benefits' (as defined in AASB 119 *Employee Benefits*) and termination benefits due within twelve months of balance date are measured at their nominal amounts.

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

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. No provision has been made for sick leave as all sick leave is non-vesting and the average sick leave taken in future years by employees of the Commission is estimated to be less than the annual entitlement for sick leave.

The leave liabilities are calculated on the basis of employees' remuneration, including the 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 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 developed a detailed formal plan for the termination and has informed those employees affected that it will carry out the terminations.

**Superannuation**

Staff of the Commission are members of the Commonwealth Superannuation Scheme (CSS), the Public Sector Superannuation Scheme (PSS) or the PSS accumulation plan (PSSap).

The CSS and PSS are defined benefit schemes for the Australian Government. The PSSap is a defined contribution scheme.

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 by the Department of Finance and Deregulation as an administered item.

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

The Commission accounts for the contributions as if they were contributions to defined contribution plans.

The liability for superannuation recognised as at 30 June 2010 represents outstanding contributions for the final fortnight of the year.

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**1.9 Leases**

A distinction is made between finance leases and operating leases. Finance leases effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of leased non-current assets. An operating lease is a lease that is not a finance lease. In operating leases, the lessor effectively retains substantially all such risks and benefits.

Where an asset is acquired by means of a finance lease, the asset is capitalised at either the fair value of the lease property or, if lower, the present value of minimum lease payments at the inception of the contract and a liability recognised at the same time and for the same amount. The discount rate used is the interest rate implicit in the lease. Leased assets are amortised over the period of the lease. Lease payments are allocated between the principal component and the interest expense.

Operating lease payments are expensed on a straight line basis which is representative of the pattern of benefits derived from the leased assets.

There are currently no finance leases within the Commission.

**1.10 Borrowing costs**

All borrowing costs are expensed as incurred.

**1.11 Cash**

Cash and cash equivalents includes cash on hand, cash held with outsiders, demand deposits in bank accounts with an original maturity of 3 months or less that are readily convertible to known amounts of cash to insignificant risk of changes in value. Cash is recognised at its nominal amount.

No interest is earned on the Commission's bank balances.

**1.12 Financial assets**

The Commission classifies its financial assets in the following categories:

- financial assets as 'at fair value through profit or loss'
- 'held-to-maturity investments',
- 'available-for-sale' financial assets, and
- '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*

The effective interest method is a method of calculating the amortised cost of a financial asset and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts through the expected life of the financial asset, or, where appropriate, a shorter period.

Income is recognised on an effective interest rate basis except for financial assets 'at fair value through profit or loss'.



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Loans and receivables

Trade receivables, loans and other receivables that have fixed or determinable payments 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. Interest is recognised by applying the effective interest rate.

Impairment of financial assets

Financial assets are assessed for impairment at the end of each reporting periods.

· *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.

· *Available for sale financial assets* - if there is objective evidence that an impairment loss on an available-for-sale financial asset has been incurred, the amount of the difference between its cost, less principal repayments and amortisation, and its current fair value, less any impairment loss previously recognised in expenses, is transferred from equity to 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.

**1.13 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.

Other financial liabilities are subsequently measured at amortised cost using the effective interest method, with interest expense recognised on an effective yield basis.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash payments through the expected life of the financial liability, or, where appropriate, a shorter period.

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).

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**1.14 Contingent Liabilities and Contingent Assets**

Contingent liabilities and contingent assets are not recognised in the balance sheet but are reported in the relevant schedules and 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.

**1.15 Acquisition of Assets**

Assets are recorded at cost of acquisition except as stated below. The cost of acquisition includes the fair value of assets transferred in exchange and liabilities undertaken. 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 agency's accounts immediately prior to the restructuring.

**1.16 Property, Plant and Equipment**

**Asset Recognition Threshold**

Purchases of property, plant and equipment are recognised initially at cost in the balance sheet, 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 'makegood' 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 'makegood' recognised.

**Revaluations**

Fair value of each class of asset are determined as shown below:

<b>Asset Class</b>	<b>Fair value measured at</b>
Leasehold improvements	Depreciated replacement cost
Plant and equipment	Market selling price

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 do not differ materially from the assets' fair values as at the reporting date. The regularity of independent valuations depends 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 reverses a previous revaluation decrement of the same asset class that was previously recognised through operating result. Revaluation decrements for a class of assets are recognised directly through the operating result except to the extent that they reverse 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.

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**Depreciation and Amortisation**

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. Leasehold improvements are amortised on a straight-line basis over the lesser of the estimated useful life of the improvements or the unexpired period of the lease.

Depreciation/amortisation rates (useful lives), 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 and amortisation rates applying to each class of depreciable asset are based on the useful lives in the table below.

<b>Asset Class</b>	<b>2010</b>	<b>2009</b>
Leasehold Improvements	Lesser of the term of the lease or 15 years	Lesser of the term of the lease or 15 years
Furniture and fittings	10 years	10 years
Office Equipment	5 years	5 years
Computer hardware	3 to 5 years	3 to 5 years
Computer software	3 to 7 years	3 to 7 years

The aggregate amount of depreciation allocated for each class of asset during the reporting period is disclosed in Note 3C.

**Impairment**

All assets were assessed for impairment at 30 June 2010. 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 to sell 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 Commission 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

**1.17 Intangibles**

The Commission's intangibles comprise software that has been externally acquired for internal use. 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 years to 7 years. (2008-09: 3 to 7 years).

All software assets were assessed for impairment as at 30 June 2010. There were no indicators of impairment.

**1.18 Inventories**

Inventories (publications) held for sale are valued at the lower of cost or net realisable value. Costs incurred in bringing inventory to its present location and condition relate solely to printing and delivery. These costs are assigned to inventory at purchase cost and recognised on a first-in-first-out basis.

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**1.19 Taxation/ Competitive Neutrality**

The Commission is exempt from all forms of taxation except Fringe Benefits Tax (FBT) and the Goods and Services Tax (GST).

Revenues, expenses and assets are recognised net of GST except:

- where the amount of GST incurred is not recoverable from the Australian Taxation Office; and
- for receivables and payables.

**Competitive Neutrality**

The Commission provides services on a not-for-profit basis which are not subject to Competitive Neutrality arrangements.

**1.20 Reporting of Administered Activities**

Administered revenues, expenses, assets, liabilities and cash flows are disclosed in the schedule of administered items and related notes. There are no administered commitments in 2010, nor were there any in 2009.

Except where otherwise stated below, 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.

**Administered Cash Transfers to and from 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 and Deregulation. 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 statement of cash flows in the schedule of administered items and in the administered reconciliation table in Note 18.

**Revenue**

All administered revenues are revenues relating to the core operating activities performed by the Commission on behalf of the Australian Government.

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 balance date. Allowances are made when collection of the debt is judged to be less rather than more likely.

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**Note 2: Events after Reporting Date**

On 28th July 2010, Justice Middleton in the Federal Court, Melbourne, penalised Telstra \$18.55 million for denying competitors access to infrastructure in contravention of its carrier licence. The event occurred after the end of the reporting period, and together with costs, has been brought to account in this financial report. The financial effect on the Commission's result is an addition to administered revenues and administered receivables of \$19.1 million.

**Note 3: Expenses**

	2010 \$'000	2009 \$'000
<b>Note 3A: Employee Benefits</b>		
Wages and salaries	59,889	55,010
Superannuation		
Defined contribution plans	3,749	3,103
Defined benefit plans	6,466	6,307
Leave and other entitlements	8,272	7,400
Separation and redundancies	253	133
Other employee expenses	380	385
<b>Total employee benefits</b>	<b>79,009</b>	<b>72,338</b>
<b>Note 3B: Supplier Expenses</b>		
<b>Goods and Services</b>		
Legal expenses	20,890	19,792
Consultants and contracted services	13,257	11,699
Information technology and communications	6,402	6,447
Property operating expenses	3,922	3,846
Travel expenses	3,313	3,780
Information management expenses	2,535	2,401
Employee related expenses	1,477	1,515
Other administration expenses	1,301	1,193
<b>Total goods and services</b>	<b>53,097</b>	<b>50,673</b>
Goods and services are made up of:		
Provision of goods - related entities	7	10
Provision of goods - external parties	2,332	2,355
Rendering of services - related entities	11,639	11,767
Rendering of services - external parties	39,119	36,541
<b>Total goods and services</b>	<b>53,097</b>	<b>50,673</b>
<b>Other supplier expenses</b>		
Operating lease rentals - minimum lease payments	9,053	7,705
Workers' compensation premiums	222	257
<b>Total other supplier expenses</b>	<b>9,275</b>	<b>7,962</b>
<b>Total supplier expenses</b>	<b>62,372</b>	<b>58,635</b>

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	2010 \$'000	2009 \$'000
<b>Note 3C: Depreciation and Amortisation</b>		
Depreciation		
Property, plant and equipment	1,467	1,345
<b>Total Depreciation</b>	<b>1,467</b>	<b>1,345</b>
Amortisation		
Leasehold improvements	1,844	1,074
Intangibles		
Computer software	834	567
<b>Total Amortisation</b>	<b>2,678</b>	<b>1,641</b>
<b>Total depreciation and amortisation</b>	<b>4,145</b>	<b>2,986</b>
<b>Note 3D: Finance Costs</b>		
Unwinding of discount on makegood provision	92	-
<b>Total finance costs expense</b>	<b>92</b>	<b>-</b>
<b>Note 3E: Write down and impairment of assets</b>		
Asset Write-Downs from:		
Property, Plant & Equipment	3	4
Leasehold Improvements	43	64
Inventory	-	14
<b>Total write-down and impairment of assets</b>	<b>46</b>	<b>82</b>
<b>Note 3F: Losses from asset sales</b>		
Property, plant and equipment:		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
Leasehold Improvements		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
Intangibles		
Proceeds from sale	-	-
Carrying value of assets sold	-	-
<b>Total losses from asset sales</b>	<b>-</b>	<b>-</b>
<b>Note 3G: Other Expenses</b>		
Settlement of litigation	-	572
<b>Total other expense</b>	<b>-</b>	<b>572</b>

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**Note 4: Income**

	2010 \$'000	2009 \$'000
<b>Note 4A: Sale of goods and rendering of services</b>		
Provision of goods - related entities	-	-
Provision of goods - external parties	11	8
Rendering of services - related entities	210	184
Rendering of services - external parties	344	316
<b>Total sale of goods and rendering of services</b>	<b>565</b>	<b>508</b>
<b>Note: 4B Other Revenue</b>		
Rebates and expense refunds	293	722
Other miscellaneous revenues	-	80
<b>Total other revenue</b>	<b>293</b>	<b>802</b>
<b>Note: 4C Sale of Assets</b>		
Property, plant and equipment:		
Proceeds from sale	-	10
Carrying value of assets sold	-	(1)
Selling expense	-	(3)
<b>Net Gains from sale of assets</b>	<b>-</b>	<b>6</b>
<b>Note: 4D Other Gains</b>		
Resources received free of charge	71	69
Other Gains <sup>1</sup>	3,275	686
<b>Total Other Gains</b>	<b>3,346</b>	<b>755</b>
<sup>1</sup> Includes \$3,182,564 relating to the write back of the Litigation Provision (refer note 8B)		
<b>Note 4E: Revenues from Government</b>		
Appropriations		
Departmental outputs	142,892	132,555
<b>Total revenues from government</b>	<b>142,892</b>	<b>132,555</b>

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**Note 5: Financial Assets**

	2010 \$'000	2009 \$'000
<b>Note 5A: Cash and cash equivalents</b>		
Cash on hand or on deposit	1,403	1,783
<b>Total cash and cash equivalents</b>	<b>1,403</b>	<b>1,783</b>
<b>Note 5B: Trade and other receivables</b>		
Goods and services - related entities	307	-
Goods and services - external parties	1,372	371
<b>Total receivables for goods and services</b>	<b>1,679</b>	<b>371</b>
Appropriations receivable:		
for existing outputs	50,197	55,607
for additional outputs	-	-
<b>Total appropriations receivable</b>	<b>50,197</b>	<b>55,607</b>
GST receivable from the Australian Taxation Office	2,032	1,050
<b>Total trade and other receivables (gross)</b>	<b>53,908</b>	<b>57,028</b>
Less impairment allowance account:		
Goods and services	-	-
Other	-	-
<b>Total trade and other receivables (net)</b>	<b>53,908</b>	<b>57,028</b>
Receivables are expected to be recovered in:		
No more than 12 months	53,908	57,028
More than 12 months	-	-
<b>Total trade and other receivables (net)</b>	<b>53,908</b>	<b>57,028</b>
Receivables are aged as follows:		
Not overdue	53,837	57,021
Overdue by:		
Less than 30 days	58	7
31 to 60 days	13	-
61 to 90 days	-	-
More than 90 days	-	-
<b>Total receivables (gross)</b>	<b>53,908</b>	<b>57,028</b>



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	2010 \$'000	2009 \$'000
The impairment allowance account is aged as follows:		
Not overdue	-	-
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	-	-
More than 90 days	-	-
<b>Total impairment allowance account</b>	<u>-</u>	<u>-</u>

**Reconciliation of the impairment allowance account:**

Movements in relation to 2010

	Goods and services	Other receivables	Total
	2010 \$'000	2010 \$'000	2010 \$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

Movements in relation to 2009

	Goods and services	Other receivables	Total
	2009 \$'000	2009 \$'000	2009 \$'000
Opening balance	-	-	-
Amounts written off	-	-	-
Amounts recovered and reversed	-	-	-
Increase/Decrease recognised in net surplus	-	-	-
<b>Closing balance</b>	-	-	-

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**Note 6: Non-Financial Assets**

	2010	2009
	\$'000	\$'000

**Note 6A: Leasehold Improvements**

*Leasehold improvements*

- Fair Value	14,234	9,561
- Work in progress	-	-
- Less: Accumulated amortisation	(1,603)	-
- Less: Accumulated impairment losses	-	-
<b>Total Leasehold Improvements (non-current)</b>	<b>12,631</b>	<b>9,561</b>

\$0 (2009: \$0) of total leasehold improvements refers to special purpose buildings, which may not be disposed of without prior Ministerial approval.

**Note 6B: Property, Plant and Equipment**

*Property, plant and equipment*

- Fair Value	9,200	6,091
- Less: Accumulated depreciation	(1,478)	(16)
- Less: Accumulated impairment losses	-	-
<b>Total property, plant and equipment (non-current)</b>	<b>7,722</b>	<b>6,075</b>

All revaluations are independent and in accordance with the revaluation policy stated at Note 1.

No indicators of impairment were found for infrastructure, plant and equipment.

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Note 6: Non-Financial Assets

Note 6C: Analysis of Property, Plant, and Equipment

Table A – Reconciliation of the opening and closing balances of property, plant and equipment (2009-10)

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	9,561	6,091	15,652
Accumulated depreciation/amortisation	-	(16)	(16)
<b>Net book value 1 July 2009</b>	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>
Additions			
by purchase	4,957	3,116	8,073
Reclassifications	-	-	-
Revaluations and impairment through comprehensive income	-	-	-
Depreciation/amortisation expense	(1,844)	(1,467)	(3,311)
Disposals:			
Other disposals			
Other disposals (gross book value)	(284)	(7)	(291)
Other disposals (accumulated depreciation)	241	5	246
<b>Net book value 30 June 2010</b>	<b>12,631</b>	<b>7,722</b>	<b>20,353</b>
<b>Net book value as at 30 June 2010 represented by:</b>			
Gross book value	14,234	9,200	23,434
Accumulated depreciation/amortisation	(1,603)	(1,478)	(3,081)
Accumulated impairment losses	-	-	-
	<b>12,631</b>	<b>7,722</b>	<b>20,353</b>

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**Table B – Reconciliation of the opening and closing balances of property, plant and equipment (2008-09)**

Item	Leasehold improvements \$'000	Infrastructure plant and equipment \$'000	Total \$'000
<b>As at 1 July 2008</b>			
Gross book value	11,482	8,106	19,588
Accumulated depreciation/amortisation	(1,400)	(2,725)	(4,125)
<b>Net book value 1 July 2008</b>	<b>10,082</b>	<b>5,381</b>	<b>15,463</b>
Additions			
by purchase	282	1,665	1,947
Reclassifications	-	-	-
Revaluations and impairment through equity	334	379	713
Depreciation/amortisation expense	(1,074)	(1,345)	(2,419)
Disposals:			
Other disposals	(247)	(350)	(597)
Other disposals (gross book value)	184	345	529
Other disposals (accumulated depreciation)	-	-	-
<b>Net book value 30 June 2009</b>	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>
<b>Net book value as at 30 June 2009 represented by:</b>			
Gross book value	9,561	6,091	15,652
Accumulated depreciation/amortisation	-	(16)	(16)
Accumulated impairment losses	-	-	-
	<b>9,561</b>	<b>6,075</b>	<b>15,636</b>

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	2010	2009
	\$'000	\$'000
<b>Note 6D: Intangibles</b>		
Computer Software at cost:		
Purchased software	5,397	3,092
Internally developed in use	723	413
Internally developed - in progress	-	-
<b>Total Computer Software</b>	<b>6,120</b>	<b>3,505</b>
Accumulated impairment write-down	-	-
Accumulated amortisation	(3,193)	(2,360)
<b>Total intangibles (non-current)</b>	<b>2,927</b>	<b>1,145</b>
No indicators of impairment were found for intangible assets.		

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**Note 6D: Intangibles (cont.)**

**Table A – Reconciliation of the opening and closing balances of intangibles (2009-10)**

Item	Computer software internally developed \$'000	Computer Software Purchased \$'000	Total \$'000
<b>As at 1 July 2009</b>			
Gross book value	502	3,003	3,505
Accumulated depreciation/amortisation	(89)	(2,271)	(2,360)
<b>Net book value 1 July 2009</b>	<b>413</b>	<b>732</b>	<b>1,145</b>
Additions			
by purchase	221	2,394	2,615
Depreciation/amortisation expense	(167)	(666)	(833)
Disposals:			
Other disposals	-	-	-
Other disposals (accumulated depreciation)	-	-	-
<b>Net book value 30 June 2010</b>	<b>467</b>	<b>2,460</b>	<b>2,927</b>
<b>Net book value as at 30 June 2010 represented by:</b>			
Gross book value	723	5,397	6,120
Accumulated depreciation/amortisation	(256)	(2,937)	(3,193)
Accumulated impairment losses	-	-	-
	<b>467</b>	<b>2,460</b>	<b>2,927</b>

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Table B – Reconciliation of the opening and closing balances of intangibles (2008-09)

Item	Computer software internally developed \$'000	Computer Software Purchased \$'000	Total \$'000
<b>As at 1 July 2008</b>			
Gross book value	408	2,727	3,135
Accumulated depreciation/amortisation	-	(1,793)	(1,793)
<b>Net book value 1 July 2008</b>	408	934	1,342
Additions			
by purchase	94	276	370
Depreciation/amortisation expense	(89)	(478)	(567)
Disposals:			
Other disposals	-	-	-
Other disposals (accumulated depreciation)	-	-	-
<b>Net book value 30 June 2009</b>	413	732	1,145
<b>Net book value as at 30 June 2009 represented by:</b>			
Gross book value	502	3,003	3,505
Accumulated depreciation/amortisation	(89)	(2,271)	(2,360)
Accumulated impairment losses	-	-	-
	413	732	1,145

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	2010 \$'000	2009 \$'000
<b>Note 6E: Inventories</b>		
Publications held for sale	<u>36</u>	<u>28</u>
<b>Total inventories</b>	<b><u>36</u></b>	<b><u>28</u></b>
No items of inventory were recognised at fair value less costs to sell.		
<b>Note 6F: Other Non-Financial Assets</b>		
Prepayments	<u>1,364</u>	<u>1,304</u>
<b>Total other non-financial assets</b>	<b><u>1,364</u></b>	<b><u>1,304</u></b>
Total other non-financial assets - are expected to be recovered in:		
No more than 12 months	<u>1,362</u>	<u>1,304</u>
More than 12 months	<u>2</u>	<u>-</u>
<b>Total other non-financial assets</b>	<b><u>1,364</u></b>	<b><u>1,304</u></b>



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**Note 7: Payables**

	2010 \$'000	2009 \$'000
<b>Note: 7A Supplier Payables</b>		
Trade creditors and accruals	5,606	5,472
<b>Total supplier payables</b>	<b>5,606</b>	<b>5,472</b>
Supplier payables expected to be settled within 12 months:		
Related entities	1,111	970
External parties	4,495	4,502
Supplier payables expected to be settled in greater than 12 months:		
Related entities	-	-
External parties	-	-
<b>Total supplier payables</b>	<b>5,606</b>	<b>5,472</b>
Settlement is usually made net 30 days.		
<b>Note 7B: Other Payables</b>		
Lease incentives	2,510	1,311
Operating lease payment increases	2,190	1,561
Salaries and wages	1,214	927
Unearned revenue	333	333
Superannuation	205	151
Salary sacrifice payable	53	-
<b>Total other payables</b>	<b>6,505</b>	<b>4,283</b>
Total other payables are expected to be settled in:		
No more than 12 months	2,115	1,581
More than 12 months	4,390	2,702
<b>Total other payables</b>	<b>6,505</b>	<b>4,283</b>

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**Note 8 Provisions**

	2010 \$'000	2009 \$'000
<b>Note 8A: Employee Provisions</b>		
Leave	21,464	18,526
Separation and redundancies	-	-
Other	-	-
<b>Total Employee Provisions</b>	<b>21,464</b>	<b>18,526</b>

Employee provisions are expected to be settled in:

No more than 12 months	7,466	5,938
More than 12 months	13,998	12,588
<b>Total Employee Provisions</b>	<b>21,464</b>	<b>18,526</b>

The classification of current includes amounts for which there is not an unconditional right to defer settlement by one year, hence in the case of employee provisions the above classification does not represent the amount expected to be settled within one year of reporting date. Employee provisions expected to be settled in twelve months from the reporting date \$7,466,000 (2009: \$12,588,000), in excess of one year \$13,998,000 (2009: \$12,588,000).

**Note 8B: Other Provisions**

Provision for 'Makegood' on leasehold improvements <sup>1</sup>	1,361	1,168
Provision for Litigation Settlement <sup>2</sup>	-	3,913
	<b>1,361</b>	<b>5,081</b>

Other provisions are expected to be settled in:

No more than 12 months	196	3,922
More than 12 months	1,165	1,159
<b>Total Other Provisions</b>	<b>1,361</b>	<b>5,081</b>

	Provision for restoration \$'000	Provision for Litigation Settlement \$'000	Total \$'000
<b>Carrying amount 1 July 2009</b>	<b>1,168</b>	<b>3,913</b>	<b>5,081</b>
Additional provisions made	209	(730)	(521)
Amounts used	(16)	-	(16)
Amounts reversed	(93)	(3,183)	(3,276)
Unwinding of discount or change in discount rate	93	-	93
<b>Closing balance 30 June 2010</b>	<b>1,361</b>	<b>-</b>	<b>1,361</b>

<sup>1</sup> The Commission has 12 agreements for the leasing of premises which have provisions requiring it to restate the premises to their original condition at the conclusion of the lease. The Commission has made a provision to reflect the present value of this obligation.

<sup>2</sup> The Commission had provided \$3,913,000 for the future settlement of Litigation settlements, all of which have been settled or released in the 2009-10 period.

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**Note 9: Cash Flow Reconciliation**

	2010	2009
	\$'000	\$'000
<b>Reconciliation of cash and cash equivalents as per Balance Sheet to cash Flow Statement</b>		
<b>Report cash and cash equivalents as per:</b>		
Cash flow statement	1,403	1,783
Balance Sheet	<u>1,403</u>	<u>1,783</u>
<i>Difference</i>	<u>-</u>	<u>-</u>
<b>Reconciliation of operating result to net cash from operating activities:</b>		
Net cost of services	(141,460)	(132,542)
Add revenue from Government	<u>142,892</u>	<u>132,555</u>
<b>Adjustments for non-cash items</b>		
Depreciation and amortisation	4,145	2,986
Net write down of non-financial assets	46	67
Gain on disposal of assets	-	(6)
<b>Changes in assets/liabilities</b>		
(Increase) / decrease in appropriation receivable	3,394	(1,303)
(Increase) / decrease in GST receivable	101	447
(Increase) / decrease in other receivables	(1,309)	98
(Increase) / decrease in inventories	(9)	14
(Increase) / decrease in prepayments	(59)	(338)
(Increase) / decrease in other assets	-	41
Increase / (decrease) in employee provisions	2,938	3,116
Increase / (decrease) in supplier payables	328	434
Increase / (decrease) in prepayments received	(1)	13
Increase / (decrease) in other provisions	(3,719)	(2,566)
Increase / (decrease) in other payables	<u>2,168</u>	<u>863</u>
<i>Net cash from / (used by) operating activities</i>	<u><u>9,455</u></u>	<u><u>3,879</u></u>

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**Note 10: Contingent Liabilities and Assets**

	Claims for damages or costs		Total	
	2,010 \$'000	2,009 \$'000	2,010 \$'000	2,009 \$'000
<b>Contingent liabilities</b>				
Balance from previous period	313	396	313	396
New	-	313	-	313
Re-measurement	25	-	25	-
Liabilities recognised	(144)	(314)	(144)	(314)
Obligations expired	(149)	(82)	(149)	(82)
<b>Total contingent liabilities</b>	<b>45</b>	<b>313</b>	<b>45</b>	<b>313</b>

**Quantifiable Contingencies**

The Schedule of Contingencies reports contingent liabilities in respect of claims for damages/costs of \$44,545 (2009: \$312,719). The Commission is expecting to be unsuccessful in 1 matter (2009: 3 matters) before the Courts alleging breaches of the Trade Practices Act, although the cases are continuing. The amount represents an estimate of the Commission's liability based on legal advice and the precedents in such cases. The Commission is defending the claims.

**Unquantifiable Contingencies**

As at 30 June 2010, the Commission has 1 matter (2009: 1 matter) before the Courts alleging breaches of the Trade Practices Act. In the event of an unfavourable judgment by the court in the other matter, the Commission stands to lose by way of penalties or costs awarded. It is not possible to determine the amount in relation to these matters.

**Remote Contingencies**

As at 30 June 2010, the Commission has 0 matters (2009: 0 matters) before the Courts alleging breaches of the Trade Practices Act in respect of which it has received legal advice that there is a remote chance of unfavourable judgments by the court.

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**Note 11: Senior Executive Remuneration**

**Note 11A: Actual Remuneration Paid to Senior Executives**

**Executive Remuneration**

	2010	2009
The number of senior executives who received:		
less than \$145,000*	-	1
\$145,000 to \$159,999	2	1
\$160,000 to \$174,999	-	1
\$175,000 to \$189,999	1	5
\$190,000 to \$204,999	4	8
\$205,000 to \$219,999	11	5
\$220,000 to \$234,999	5	2
\$235,000 to \$249,999	4	2
\$250,000 to \$264,999	2	4
\$265,000 to \$279,999	4	2
\$280,000 to \$294,999	1	-
\$295,000 to \$309,999	-	2
\$310,000 to \$324,999	2	2
\$325,000 to \$339,999	2	1
\$340,000 to \$354,999	1	-
\$355,000 to \$369,999	2	1
\$370,000 to \$384,999	1	2
\$400,000 to \$414,999	1	-
\$415,000 to \$429,999	-	2
\$535,000 to \$549,999	-	1
\$580,000 to \$594,999	1	-
<b>Total</b>	<b>44</b>	<b>42</b>

\* Senior Executive with acting arrangements or part year service are excluded where remuneration is less than \$145,000.

For the purpose of this note disclosure remuneration includes:

- (a) Salary (including payment for leave taken)
- (b) Movement in annual leave and long service leave provisions
- (c) Superannuation (post-employment benefits)
- (d) Motor vehicle and other allowances
- (e) Reportable fringe benefits

	\$	\$
<b>Total expenses recognised in relation to Senior Executive employment</b>		
Short-term employee benefits:		
Salary (including payment for annual leave taken)	8,522,155	7,973,894
Movement in annual leave provisions	91,218	(49,142)
Performance bonus	453,099	381,994
Other <sup>1</sup>	474,960	553,670
Total Short-term employee benefits	<u>9,541,432</u>	<u>8,860,416</u>
Superannuation (post-employment benefits)	1,283,270	1,258,981
Long service leave paid	182,183	214,198
Movement in long service provisions	348,079	277,175
Total	<u>11,354,964</u>	<u>10,610,770</u>

During the year the Commission did not pay any termination benefits to senior executives (2009: \$132,659)

Notes

- 1. "Other" includes motor vehicle allowances and other allowances

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**Note 11B: Salary Packages for Senior Executives**

Average annualised remuneration packages for substantive Senior Executives

Total Remuneration	As at 30 June 2010			As at 30 June 2009		
	No. SES	Base Salary (including annual leave)	Total Remuneration package <sup>1</sup>	No. SES	Base Salary (including annual leave)	Total Remuneration package <sup>1</sup>
\$175,000 to \$189,999	1	130,087	181,048	3	134,664	184,785
\$190,000 to \$204,999	14	145,560	198,987	12	139,461	195,880
\$205,000 to \$219,999	12	151,289	212,379	8	148,353	211,066
\$220,000 to \$234,999	2	164,431	227,566	1	147,217	220,657
\$235,000 to \$249,999	1	167,520	235,766	4	172,007	243,361
\$250,000 to \$264,999	3	186,043	258,052	-	-	-
\$265,000 to \$279,999	2	205,592	273,120	1	198,930	269,856
\$280,000 to \$294,999	2	202,692	285,855	3	201,098	285,701
\$295,000 to \$309,999	1	213,761	295,324	-	-	-
\$310,000 to \$324,999	-	-	-	6	242,752	318,833
\$325,000 to \$339,999	5	250,030	328,594	-	-	-
\$340,000 to \$354,999	2	263,180	354,730	2	255,510	344,390
\$400,000 to \$414,999	1	282,192	413,328	-	-	-
\$415,000 to \$429,999	-	-	-	1	273,973	422,421
\$520,000 to \$534,999	-	-	-	1	364,300	529,830
\$535,000 to \$549,999	-	-	-	-	-	-
<b>Total</b>	<b>47</b>	<b>375,230</b>	<b>545,730</b>	<b>42</b>	<b>-</b>	<b>-</b>

Notes:

1. The total remuneration package includes:
  - (a) Agreed base salary (including annual leave)
  - (b) Motor vehicle allowances
  - (c) Superannuation (post-employment benefits)
- Long service leave is excluded as entitlement to this is not certain until 10 years of service is reached.

**Major differences between Note 11A and 11B**

- Note 11A discloses senior executive remuneration based upon:
- (a) Actual Salary paid during the year
  - (b) Movement in annual leave and Long service leave provisions (including revaluations of provisions)
  - (c) Superannuation (post-employment benefit)
  - (d) Motor Vehicle and other allowances
  - (e) Reportable fringe benefits

These amounts may differ to the remuneration package disclosed in Note 11B depending upon: the amount of leave taken during the year; part year service; periods of leave without pay; acting arrangements; changes in base salary; salary for superannuation p

Note 11A includes acting arrangements and part year service where the \$145,000 threshold was reached during the year. Note 11B reflects only substantive senior executive packages in existence as at 30 June.

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**Note 12: Remuneration of Auditors**

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

	<b>2010</b>	2009
	\$	\$
The fair value of the services provided was:		
	<u><b>70,740</b></u>	<u>68,680</u>

No other services were provided by the Auditor-General during the reporting period.

**Note 13: Financial Instruments**

<b>2010</b>	2009
<b>\$'000</b>	\$'000

**Note 13A: Categories of financial instruments**

**Financial Assets**

Loans and receivables		
Cash and cash equivalents	<b>1,403</b>	1,783
Goods and Services Receivables	<b>1,679</b>	371
<b>Carrying amount of financial assets</b>	<u><b>3,082</b></u>	<u>2,154</u>

**Financial Liabilities**

Other Liabilities		
Payables - suppliers	<b>5,606</b>	5,472
<b>Carrying amount of financial liabilities</b>	<u><b>5,606</b></u>	<u>5,472</u>

**Note 13B: Net income and expense from financial assets and financial liabilities**

The Commission received/incurred \$0 (2009: \$0) in income and expenses from financial assets and financial liabilities.

**Note 13C: Fair value of financial instruments**

	Carrying amount 2010 \$'000	Fair value 2010 \$'000	Carrying amount 2009 \$'000	Fair value 2009 \$'000
<b>Financial Assets</b>				
Cash and cash equivalents	1,403	1,403	1,783	1,783
Goods and Services Receivables	1,679	1,679	371	371
<b>Total Financial Assets</b>	<b>3,082</b>	<b>3,082</b>	2,154	2,154
<b>Financial Liabilities</b>				
Payables - Suppliers	5,606	5,606	5,472	5,472
<b>Total Financial Liabilities</b>	<b>5,606</b>	<b>5,606</b>	5,472	5,472

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**Note 13D: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2010: \$1,679,000 and 2009: \$371,000). The Commission has assessed the risk of the default on payment and has allocated \$nil in 2010 (2009: \$0) to an impairment allowance account.

The Commission manages its credit risk by undertaking background and credit checks prior to allowing a debtor relationship. In addition, the Commission has policies and procedures that guide employees debt recovery techniques that are to be applied.

The Commission holds no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	<b>Not Past Due Nor Impaired</b>	<b>Not Past Due Nor Impaired</b>	<b>Past due or impaired</b>	<b>Past due or impaired</b>
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>				
Cash and cash equivalents	1,403	1,783	-	-
Goods and Services Receivables	1,608	364	71	7
<b>Total</b>	<b>3,011</b>	<b>2,147</b>	<b>71</b>	<b>7</b>

**Ageing of financial assets that are past due but not impaired for 2010**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Goods and Services Receivables	58	13	-	-	71
<b>Total</b>	<b>58</b>	<b>13</b>	<b>-</b>	<b>-</b>	<b>71</b>

**Ageing of financial assets that are past due but not impaired for 2009**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Goods and Services Receivables	7	-	-	-	7
<b>Total</b>	<b>7</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>7</b>



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**Note 13E: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Commission will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2010 \$'000	within 1 year 2010 \$'000	1 to 5 years 2010 \$'000	> 5 years 2010 \$'000	Total 2010 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	5,606	-	-	-	5,606
<b>Total</b>	<b>5,606</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,606</b>

	On demand 2009 \$'000	within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	> 5 years 2009 \$'000	Total 2009 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	5,472	-	-	-	5,472
<b>Total</b>	<b>5,472</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>5,472</b>

The Commission is appropriated funding from the Australian Government. 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 payment are made when due and has no past experience of default.

**Note 13F: Market risk**

The Commission holds basic financial instruments that do not expose the Commission to certain market risks. The Commission is not exposed to 'Currency risk' or 'Other price risk'.

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**Note 14: Income Administered on Behalf of Government**

	2010	2009
	\$'000	\$'000
<b>REVENUE</b>		
<b>Non-taxation revenue</b>		
<b><u>Note 14A: Other Fees and Fines</u></b>		
Fines and costs	41,274	44,197
Authorisation fees	168	224
Notifications	107	71
Arbitration fees	15	27
Other	-	1
<i>Total Other fees and fines</i>	<u>41,564</u>	<u>44,520</u>
<b>GAINS</b>		
<b><u>Note 14B: Other Gains</u></b>		
Financial gains	19	663
<i>Total Other gains</i>	<u>19</u>	<u>663</u>

**Note 15: Expenses Administered on Behalf of Government**

<b>EXPENSES</b>		
<b>Write-Down and Impairment of Assets</b>		
Bad and doubtful debt expense	1,745	229
<i>Total write-down and impairment of assets</i>	<u>1,745</u>	<u>229</u>

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**Note 16: Assets Administered on Behalf of Government**

	2010 \$'000	2009 \$'000
<b>Financial Assets</b>		
<b>Note 16A: Cash and cash equivalents</b>		
Cash at bank	61	29
<b>Total Cash and cash equivalents</b>	<b>61</b>	<b>29</b>
<b>Note 16B: Receivables</b>		
<b>Other Receivables:</b>		
Fines and costs	30,361	20,411
<b>Total other receivables</b>	<b>30,361</b>	<b>20,411</b>
<b>Total receivables (gross)</b>	<b>30,361</b>	<b>20,411</b>
Less: impairment allowance account		
Other	(7,587)	(16,340)
<b>Total impairment allowance account</b>	<b>(7,587)</b>	<b>(16,340)</b>
<b>Total receivables (net)</b>	<b>22,774</b>	<b>4,071</b>
Receivables are expected to be recovered in:		
No more than 12 months	22,774	4,071
More than 12 months	-	-
<b>Total receivables (net)</b>	<b>22,774</b>	<b>4,071</b>
Receivables (gross) are aged as follows:		
Current	21,790	113
Overdue by:		
Less than 30 days	-	101
31 to 60 days	21	-
61 to 90 days	1,970	-
More than 90 days	6,580	20,197
<b>Total receivables (gross)</b>	<b>30,361</b>	<b>20,411</b>

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	2010 \$'000	2009 \$'000
The impairment allowance account is aged as follows:		
Current	-	-
Overdue by:		
Less than 30 days	-	-
31 to 60 days	-	-
61 to 90 days	1,007	-
More than 90 days	6,580	16,340
<b>Total impairment allowance account</b>	<b>7,587</b>	<b>16,340</b>
<b>Total Assets Administered on Behalf of Government</b>	<b>22,835</b>	<b>4,100</b>

**Reconciliation of the impairment allowance account:**

Movements in relation to 2010

	Goods and services 2010 \$'000	Other receivables 2010 \$'000	Total 2010 \$'000
Opening balance	-	16,340	16,340
Amounts written off	-	(9,806)	(9,806)
Amounts recovered and reversed	-	(19)	(19)
Increase/Decrease recognised in net surplus	-	1,072	1,072
<b>Closing balance</b>	<b>-</b>	<b>7,587</b>	<b>7,587</b>

Movements in relation to 2009

	Goods and services 2009 \$'000	Other receivables 2009 \$'000	Total 2009 \$'000
Opening balance	-	16,788	16,788
Amounts written off	-	(10)	(10)
Amounts recovered and reversed	-	(663)	(663)
Increase/Decrease recognised in net surplus	-	225	225
<b>Closing balance</b>	<b>-</b>	<b>16,340</b>	<b>16,340</b>

**Note 17: Liabilities Administered on Behalf of Government**

	2010 \$'000	2009 \$'000
<b>Payables</b>		
<b>Suppliers</b>		
Trade creditors and accruals	-	-
<b>Total Liabilities Administered on Behalf of Government</b>	<b>-</b>	<b>-</b>

All liabilities are expected to be settled within 12 months of balance date.

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**Note 18: Administered Reconciliation Table**

	2010	2009
	\$'000	\$'000
<b>Opening administered assets less administered liabilities as at 1 July</b>	<b>4,100</b>	6,137
Add: Administered revenues	41,583	45,183
Less: Administered expenses	(1,745)	(229)
Administered transfers to Australian Government	-	-
Transfers to OPA	(21,103)	(46,991)
<b>Closing administered assets less administered liabilities as at 30 June</b>	<b>22,835</b>	4,100

**Note 19: Administered Contingent Assets and Liabilities**

	Claims for damages or costs		Total	
	2010	2009	2010	2009
	\$'000	\$'000	\$'000	\$'000
<b>Contingent assets</b>				
Balance from previous period	16,711	7,942	16,711	7,942
New	224	9,561	224	9,561
Re-measurement	(8,150)	-	(8,150)	-
Assets recognised	(7,095)	(530)	(7,095)	(530)
Expired	(466)	(262)	(466)	(262)
<b>Total contingent assets</b>	<b>1,224</b>	16,711	<b>1,224</b>	16,711

*Quantifiable Administered Contingencies*

The Schedule of Administered Items reports contingent assets in respect of claims for damages/costs of \$1,224,153 (2009: \$16,711,390). The Commission is expecting to succeed in 7 alleged breaches (2009: 11 alleged breaches) of the Trade Practices Act, although the cases are continuing. The estimate is based on legal advice and the precedents in such cases.

*Unquantifiable Administered Contingencies*

As at 30 June 2010, the Commission has 40 matters (2009: 15 matters) considered unquantifiable. In the event of favourable judgment by the court, the Commission stands to gain by way of penalties or costs awarded. It is not possible to determine the amounts in relation to these matters.

*Remote Administered Contingencies*

As at 30 June 2010, the Commission has 0 matters (2009: 0 matters) before the Courts alleging breaches of the Trade Practices Act for which it has received legal advice that there is a remote chance of favourable judgment by the court.

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**Note 20: Administered Financial Instruments**

	2010 \$'000	2009 \$'000
<b>Note 20A: Categories of financial instruments</b>		
<b>Loans and receivables</b>		
Loans and receivables		
Cash and cash equivalents	61	29
Fines and Costs Receivable	22,774	4,071
<b>Carrying amount of financial assets</b>	<b>22,835</b>	<b>4,100</b>
<b>Financial Liabilities</b>		
Carrying amount of financial liabilities	-	-

**Note 20B: Net income and expense from financial assets**

<b>Loans and receivables</b>		
Interest revenue	-	-
Exchange gains/(loss)	-	-
Impairment	(1,745)	(229)
Gain/loss on disposal	-	-
<b>Net gain/(loss) loans and receivables</b>	<b>(1,745)</b>	<b>(229)</b>

**Note 20C: Net income and expense from financial liabilities**

<b>Other Liabilities</b>	-	-
<b>Net gain/(loss) financial liabilities - at amortised cost</b>	<b>-</b>	<b>-</b>
<b>Net gain/(loss) from financial liabilities</b>	<b>-</b>	<b>-</b>

**Note 20D: Fair value of financial instruments**

	Carrying amount 2010 \$'000	Fair value 2010 \$'000	Carrying amount 2009 \$'000	Fair value 2009 \$'000
<b>Financial Assets</b>				
Cash & cash equivalents	61	61	29	29
Fines and Costs Receivable	22,774	22,774	4,071	4,071
<b>Total Financial Assets</b>	<b>22,835</b>	<b>22,835</b>	<b>4,100</b>	<b>4,100</b>
<b>Financial Liabilities</b>	-	-	-	-

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**Note 20E: Credit risk**

The Commission is exposed to minimal credit risk as loans and receivables are cash and trade receivables. The maximum exposure to credit risk is the risk that arises from potential default of a debtor. This amount is equal to the total amount of trade receivables (2010: \$11,261,000 and 2009: \$20,411,000). The Commission has assessed the risk of the default on payment and has allocated \$7,587,000 in 2010 (2009: \$16,340,000) to an allowance for doubtful debts account.

The Commission holds no collateral to mitigate against credit risk.

**Credit quality of financial instruments not past due or individually determined as impaired**

	<b>Not Past Due Nor Impaired</b>	<b>Not Past Due Nor Impaired</b>	<b>Past due or impaired</b>	<b>Past due or impaired</b>
	<b>2010</b>	<b>2009</b>	<b>2010</b>	<b>2009</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>				
Cash and cash equivalents	61	29	-	-
Trade and other receivables	21,790	113	984	3,958
<b>Total</b>	<b>21,851</b>	<b>142</b>	<b>984</b>	<b>3,958</b>

**Ageing of financial assets that are past due but not impaired for 2010**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	-	21	963	-	984
<b>Total</b>	<b>-</b>	<b>21</b>	<b>963</b>	<b>-</b>	<b>984</b>

**Ageing of financial assets that are past due but not impaired for 2009**

	<b>0 to 30 days</b>	<b>31 to 60 days</b>	<b>61 to 90 days</b>	<b>90+ days</b>	<b>Total</b>
	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>	<b>\$'000</b>
<b>Loans and receivables</b>					
Trade and other receivables	101	-	-	3,857	3,958
<b>Total</b>	<b>101</b>	<b>-</b>	<b>-</b>	<b>3,857</b>	<b>3,958</b>

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**Note 20F: Liquidity risk**

The Commission's financial liabilities are payables. The exposure to liquidity risk is based on the notion that the Commission will encounter difficulty in meeting its obligations associated with financial liabilities. This is highly unlikely due to appropriation funding and mechanisms available to the Entity (e.g. Advance to the Finance Minister) and internal policies and procedures put in place to ensure there are appropriate resources to meet its financial obligations.

The following tables illustrates the maturities for financial liabilities

	On demand 2010 \$'000	within 1 year 2010 \$'000	1 to 5 years 2010 \$'000	> 5 years 2010 \$'000	Total 2010 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

	On demand 2009 \$'000	within 1 year 2009 \$'000	1 to 5 years 2009 \$'000	> 5 years 2009 \$'000	Total 2009 \$'000
<b>Other Liabilities</b>					
Payables - Suppliers	-	-	-	-	-
<b>Total</b>	-	-	-	-	-

The Commission's administered activities relate to fines and costs awarded by courts or through agreements. 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 payment are made when due and has no past experience of default.

**Note 20G: Market risk**

The Commission holds basic financial instruments that do not expose the Commission to certain market risks. The Commission is not exposed to 'Currency risk' or 'Other price risk'.



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**Note 21: Appropriations**

**Table A: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations**

Particulars	Departmental Outputs			Total	
	2010	2009	2010	2010	2009
	\$'000	\$'000	\$'000	\$'000	\$'000
Balance carried from previous period (Appropriation Acts)	29,222	27,815	29,222	27,815	
<i>Appropriation Act:</i>					
Appropriation Act (No. 1, 3&5) 2009-2010 as passed	138,930	139,227	138,930	139,227	
Other annual appropriation acts	-	-	-	-	-
Departmental appropriations reduced ( <i>Appropriation Act</i> sections 10, 11&12)	-	(7,936)	-	(7,936)	
Advance to the Finance Minister (Appropriations Act section 13)	-	-	-	-	-
FMA Act:					
Repayments to the Commonwealth ( <i>FMA Act</i> section 30)	1,153	1,214	1,153	1,214	
Appropriations to take account of recoverable GST ( <i>FMA Act</i> section 30A) <sup>7</sup>	6,483	5,478	6,483	5,478	
Relevant Agency receipts ( <i>FMA Act</i> section 31)	974	875	974	875	
Adjustments of appropriations on change of entity function ( <i>FMA Act</i> section 32)	-	(1,060)	-	(1,060)	
<b>Total appropriations available for payments</b>	<b>176,762</b>	<b>165,613</b>	<b>176,762</b>	<b>165,613</b>	
Cash payments made during the year (GST inclusive)	(151,872)	(136,391)	(151,872)	(136,391)	
Appropriations credited to Special Accounts (excluding GST)	-	-	-	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual	24,890	29,222	24,890	29,222	
Cash at bank and on hand	1,403	1,783	1,403	1,783	
Departmental appropriations receivable	21,455	26,389	21,455	26,389	
Undrawn, unexpired administered appropriations	-	-	-	-	-
Net GST payable from ATO	2,032	1,050	2,032	1,050	
Adjustments under s101.13 of the Finance Minister's Orders not reflected above	-	-	-	-	-
<b>Total as at 30 June</b>	<b>24,890</b>	<b>29,222</b>	<b>24,890</b>	<b>29,222</b>	

<sup>7</sup> The amounts in this line item are calculated on an accrual basis to the extent that an expense may have been incurred that includes GST but has not been paid by year end.

Departmental and non-operating appropriations do not lapse at financial year end. However, the responsible Minister may decide that part or all of a departmental or non-operating appropriation is not required and request the Finance Minister to reduce that appropriation. The reduction in the appropriation is effected by the Finance Minister's determination and is disallowable by Parliament.

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**Table B: Acquittal of Authority to Draw Cash from the Consolidated Revenue Fund for Other than Ordinary Annual Services Appropriations**

Particulars	Non-operating				Total	
	Equity		Previous Years' Outputs			
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
Balance brought forward from previous period ( <i>Appropriation Acts</i> )	26,795	21,543	99	-	26,894	21,543
<i>Appropriation Act:</i>						
<i>Appropriation Act (No. 2-4&amp;6) 2009-2010 as passed</i>	61	6,299	2,324	2,948	2,385	9,247
<i>Other annual appropriation acts</i>	-	-	-	-	-	-
<i>Appropriations reduced (Appropriation Act section 12, 13&amp;14)</i>	-	(356)	-	-	-	(356)
<i>Advance to the Finance Minister (Appropriations Act section 15)</i>	-	-	-	-	-	-
<i>FMA Act:</i>						
<i>Repayments to the Commonwealth (FMA Act section 30)</i>	-	-	-	-	-	-
<i>Appropriations to take account of recoverable GST (FMA Act section 30A) <sup>1</sup></i>	208	190	-	190	208	190
<i>Transfer of agency functions (FMA Act section 32)</i>	-	-	-	(949)	-	(949)
<b>Total appropriations available for payments</b>	<b>27,064</b>	<b>27,486</b>	<b>2,423</b>	<b>2,189</b>	<b>29,487</b>	<b>29,675</b>
Cash payments made during the year (GST inclusive)	(2,285)	(691)	(2,423)	(2,090)	(4,708)	(2,781)
Appropriations credited to Special Accounts (excluding GST)	-	-	-	-	-	-
Balance of Authority to Draw Cash from the Consolidated Revenue Fund for Ordinary Annual Services Appropriations and as represented by:	24,779	26,795	-	99	24,779	26,894
Cash at bank and on hand	-	-	-	-	-	-
Departmental appropriation receivable <sup>2</sup>	24,779	26,795	3,962	2,423	28,741	29,218
Undrawn, unapplied administered appropriations	-	-	-	-	-	-
Adjustments under s101.13 of the Finance Minister's Orders not reflected above	-	-	(3,962)	(2,324)	(3,962)	(2,324)
<b>Total as at 30 June</b>	<b>24,779</b>	<b>26,795</b>	<b>-</b>	<b>99</b>	<b>24,779</b>	<b>26,894</b>

<sup>1</sup> The amounts in this line item are calculated on an accrual basis to the extent that an expense may have been incurred that includes GST but has not been paid by year end.

<sup>2</sup> Previous year's outputs for 2009-10 includes \$3,962,272 allocated in *Appropriation Act (No. 1) 2010-11*. This funding relates to outputs delivered in 2009-10 for the NBN program.

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**Note 22: Special Accounts**

<b>Other Trust Monies Special Account</b>	<b>2010</b>	<b>2009</b>
	<b>\$</b>	<b>\$</b>
Legal authority: <i>Financial Management and Accountability Act 1997; s20</i>		
<i>Purpose</i> : for the receipt of monies temporarily held on trust or otherwise for the benefit of another person other than the Australian Government.		
Balance carried forward from previous period	<b>51,918</b>	51,918
Other receipts	<b>3,726,995</b>	-
<b>Total credits</b>	<b>3,778,913</b>	51,918
Payments made	<b>3,029,965</b>	-
<b>Total debits</b>	<b>3,029,965</b>	-
<b>Balance carried to the next period and represented by:</b>		
Cash at bank	<b>748,948</b>	51,918
<b>Total balance to be carried to the next period</b>	<b>748,948</b>	51,918

**Note 23: Compensation and Debt Relief**

**Administered**

No Acts of Grace payments were made during the reporting period (2009: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2009: No waivers made).

No ex-gratia payments were made during the reporting period (2009: No payments made).

**Departmental**

No Acts of Grace payments were made during the reporting period (2009: No payments made).

No waivers of amounts owing to the Australian Government were made pursuant to subsection 34(1) of the *Financial Management Accountability Act 1997* (2009: No waivers made).

No payments were made under the 'Compensation for Detriment caused by Defective Administration (CDDA) Scheme' during the reporting period (2009: No payments made).

No payments were made under s73 of the *Public Service Act 1999* during the reporting period (2009: No payments made).

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**Note 24: Reporting of Outcomes**

The Commission attributes its outcome between its two output groups on the basis of identifiable actual costs. Shared costs incurred with respect to these output groups are apportioned according to these resulting actual costs. This basis of attribution is consistent with that used for the 2008-09 budget.

**Note 24A: Net Cost of Outcome Delivery**

	Outcome 1		Total	
	2010	2009	2010	2009
	\$'000	\$'000	\$'000	\$'000
<b>Expenses</b>				
Administered	1,745	229	1,745	229
Departmental	145,664	134,613	145,664	134,613
<b>Total expenses</b>	<b>147,409</b>	<b>134,842</b>	<b>147,409</b>	<b>134,842</b>
<b>Costs recovered from provision of goods and services to the non government sector</b>				
Administered	-	-	-	-
Departmental	355	324	355	324
<b>Total costs recovered</b>	<b>355</b>	<b>324</b>	<b>355</b>	<b>324</b>
<b>Other external income</b>				
Administered	41,583	45,183	41,583	45,183
Departmental	3,849	1,747	3,849	1,747
<b>Total other external income</b>	<b>45,432</b>	<b>46,930</b>	<b>45,432</b>	<b>46,930</b>
<b>Net cost/(contribution) of outcome</b>	<b>101,622</b>	<b>87,588</b>	<b>101,622</b>	<b>87,588</b>

Outcome 1 is described in Note 1.1.1. Net costs shown include intra-government costs that are eliminated in calculating the actual Budget outcome.

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**Note 24B: Major Classes of Departmental Expenses, Income, Assets and Liabilities by Outcomes**

	Outcome 1		Total	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
<b>Departmental expenses</b>				
Employees	79,009	72,338	79,009	72,338
Suppliers	62,372	58,635	62,372	58,635
Depreciation & amortisation	4,145	2,986	4,145	2,986
Finance costs	92	-	92	-
Losses from asset sales	-	-	-	-
Write-down and impairment of assets	46	82	46	82
Other expenses	-	572	-	572
<b>Total</b>	<b>145,664</b>	<b>134,613</b>	<b>145,664</b>	<b>134,613</b>
<b>Departmental income</b>				
Revenue from government	142,892	132,555	142,892	132,555
Sale of goods and services	565	508	565	508
Other income	293	802	293	802
Gains	3,346	761	3,346	761
<b>Total</b>	<b>147,096</b>	<b>134,626</b>	<b>147,096</b>	<b>134,626</b>
<b>Departmental assets</b>				
Cash and cash equivalents	1,403	1,783	1,403	1,783
Trade and other receivables	53,908	57,028	53,908	57,028
Leasehold improvements	12,631	9,561	12,631	9,561
Property, plant and equipment	7,722	6,075	7,722	6,075
Intangibles	2,927	1,145	2,927	1,145
Inventories	36	28	36	28
Other non-financial assets	1,364	1,304	1,364	1,304
<b>Total</b>	<b>79,991</b>	<b>76,924</b>	<b>79,991</b>	<b>76,924</b>
<b>Departmental liabilities</b>				
Suppliers	5,606	5,472	5,606	5,472
Other payables	6,505	4,283	6,505	4,283
Employee provisions	21,464	18,526	21,464	18,526
Other provisions	1,361	5,081	1,361	5,081
<b>Total</b>	<b>34,936</b>	<b>33,362</b>	<b>34,936</b>	<b>33,362</b>

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

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**Note 24C: Major Classes of Administered Expenses, Income, Assets and Liabilities by Outcomes**

	Outcome 1			Total	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	
<b>Administered expenses</b>					
Write-down of assets	1,745	229	1,745	229	
<b>Total</b>	1,745	229	1,745	229	
<b>Administered Income</b>					
Fines and costs	41,274	44,197	41,274	44,197	
Authorisation fees	168	224	168	224	
Other	141	762	141	762	
<b>Total</b>	41,583	45,183	41,583	45,183	
<b>Administered Assets</b>					
Cash and cash equivalents	61	29	61	29	
Receivables	22,774	4,071	22,774	4,071	
<b>Total</b>	22,835	4,100	22,835	4,100	
<b>Administered Liabilities</b>					
Supplier payables	-	-	-	-	
<b>Total</b>	-	-	-	-	

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



# Part six

## Appendixes







# Appendix 1: Agency and outcome resource statements

This appendix provides details of the ACCC's and AER's resources and expenses in 2009–10, as required by the Joint Committee of Public Accounts and Audit *Requirements for annual reports for departments, executive agencies and FMA Act bodies*.

The tables in this appendix correspond to tables in the portfolio budget statement for 2009–10. They are:

- > the agency resource statement, which provides information about the various funding sources that the ACCC and AER were able to draw on during the year (Table A1.1)
- > a table showing the detail of Budget appropriations and total resourcing for the ACCC's and AER's single outcome (Table A1.2).

**Table A1.1: Agency resource statement, 2009–10**

		Actual available appropriations for 2009–10 (a) \$'000	Payments made in 2009–10 (b) \$'000	Balance remaining (a-b) \$'000
<b>Ordinary annual services</b>				
<b>Departmental</b>				
Prior year departmental carried forward		24 619	3 962	20 657
Departmental appropriation		138 930	138 930	–
Receipts from other sources (s31)		4 204	2 772	1 432
<b>Total ordinary annual services</b>	<b>A</b>	<b>167 753</b>	<b>145 664</b>	<b>22 089</b>
<b>Other services</b>				
<b>Departmental non–operating</b>				
Equity injections		61	61	–
Previous years' outputs		2 324	–	2 324
<b>Total other services</b>	<b>B</b>	<b>2 385</b>	<b>61</b>	<b>2 324</b>
<b>Special accounts</b>				
Opening balance		52		
Appropriation receipts		–		
Appropriation receipts—other agencies		–		
Non–appropriation receipts to special accounts		3 727		
Payments made			3 030	
Closing balance				749
<b>Total resourcing and payments</b>				

**Table A1.2: Budget expenses and resources for Outcome 1, 2009–10**

	Budget Expenses 2009–10 \$'000 (a)	Actual Expenses 2009–10 \$'000 (b)	Variation 2009–10 \$'000 (a–b)
<b>Program 1.1: Other Departmental</b>			
Departmental Expenses			
Ordinary Annual Services (Appropriation Bill No. 1)	138 930	138 930	–
Revenues from independent sources (Section 31)	565	565	–
Expenses not requiring Appropriation in the Budget year	3 639	2 207	1 432
Previous years' outputs	3 962	3 962	–
<b>Total Expenses for Outcome 1</b>	<b>147 096</b>	<b>145 664</b>	<b>1 432</b>
	<b>2009–10</b>		
<b>Average Staffing Level (number)</b>	<b>756</b>		

# Appendix 2: Staffing

Table A2.1 and Table A2.2 provide details of the ACCC/AER staffing complement in 2009–10. The figures in parentheses are the totals for 2008–09.

**Table A2.1: Ongoing staff employed, including staff on higher duties arrangements, by classification, gender and location, 30 June 2010**

Location and classification	Female		Male		Total
	Part-time	Full-time	Part-time	Full-time	
<b>Canberra</b>	<b>33 (29)</b>	<b>98 (104)</b>	<b>0 (3)</b>	<b>114 (109)</b>	<b>245 (245)</b>
SES 3	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
SES 2	0 (0)	2 (1)	0 (0)	5 (3)	7 (4)
SES 1	0 (0)	2 (1)	0 (0)	13 (12)	15 (13)
EL 2	8 (8)	18 (14)	0 (0)	27 (26)	53 (48)
EL 1	5 (5)	18 (20)	0 (1)	19 (19)	42 (45)
APS 6	3 (3)	17 (18)	0 (1)	16 (14)	36 (36)
APS 5	9 (6)	21 (23)	0 (0)	15 (14)	45 (43)
APS 4	5 (3)	13 (17)	0 (1)	13 (13)	31 (34)
APS 3	2 (3)	5 (6)	0 (0)	0 (2)	7 (11)
APS 2	1 (1)	0 (0)	0 (0)	1 (1)	2 (2)
APS 1	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
GRAD	0 (0)	2 (3)	0 (0)	4 (4)	6 (7)
<b>Sydney</b>	<b>10 (7)</b>	<b>37 (38)</b>	<b>1 (1)</b>	<b>46 (42)</b>	<b>94 (88)</b>
SES 2	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
SES 1	1 (0)	0 (0)	0 (0)	2 (2)	3 (2)
EL 2	4 (3)	7 (6)	0 (0)	7 (6)	18 (15)
EL 1	0 (0)	8 (9)	1 (1)	9 (8)	18 (18)
APS 6	0 (0)	7 (8)	0 (0)	12 (12)	19 (20)
APS 5	1 (1)	6 (5)	0 (0)	8 (5)	15 (11)
APS 4	1 (0)	6 (6)	0 (0)	3 (3)	10 (9)
APS 3	3 (3)	1 (0)	0 (0)	2 (1)	6 (4)
APS 2	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
GRAD	0 (0)	1 (3)	0 (0)	2 (4)	3 (7)
<b>Melbourne</b>	<b>19 (19)</b>	<b>127 (114)</b>	<b>5 (3)</b>	<b>151 (155)</b>	<b>302 (291)</b>
SES 2	0 (0)	1 (1)	0 (0)	1 (2)	2 (3)
SES 1	0 (0)	4 (4)	1 (0)	9 (9)	14 (13)
EL 2	5 (4)	21 (17)	1 (1)	33 (30)	60 (52)
EL 1	6 (6)	27 (24)	2 (1)	44 (48)	79 (79)

Location and classification	Female		Male		Total
	Part-time	Full-time	Part-time	Full-time	
APS 6	3 (4)	23 (20)	0 (1)	29 (27)	55 (52)
APS 5	2 (3)	21 (21)	0 (0)	14 (20)	37 (44)
APS 4	2 (1)	23 (16)	1 (0)	12 (7)	38 (24)
APS 3	0 (0)	0 (3)	0 (0)	3 (2)	3 (5)
APS 2	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
APS 1	1 (1)	0 (0)	0 (0)	0 (0)	1 (1)
GRAD	0 (0)	6 (7)	0 (0)	6 (10)	12 (17)
<b>Brisbane</b>	<b>5 (6)</b>	<b>17 (16)</b>	<b>1 (0)</b>	<b>12 (16)</b>	<b>35 (38)</b>
SES 1	0 (0)	1 (0)	0 (0)	1 (2)	2 (2)
EL 2	1 (2)	1 (1)	0 (0)	1 (2)	3 (5)
EL 1	1 (2)	4 (4)	1 (0)	4 (5)	10 (11)
APS 6	2 (1)	5 (5)	0 (0)	3 (4)	10 (10)
APS 5	0 (0)	2 (2)	0 (0)	2 (1)	4 (3)
APS 4	0 (0)	3 (3)	0 (0)	0 (0)	3 (3)
APS 3	1 (1)	0 (0)	0 (0)	0 (0)	1 (1)
GRAD	0 (0)	1 (1)	0 (0)	1 (2)	2 (3)
<b>Perth</b>	<b>1 (0)</b>	<b>8 (8)</b>	<b>0 (0)</b>	<b>12 (13)</b>	<b>21 (21)</b>
SES 1	0 (0)	0 (0)	0 (0)	2 (1)	2 (1)
EL 2	0 (0)	0 (0)	0 (0)	2 (3)	2 (3)
EL 1	0 (0)	0 (0)	0 (0)	3 (3)	3 (3)
APS 6	0 (0)	3 (3)	0 (0)	5 (4)	8 (7)
APS 5	1 (0)	2 (3)	0 (0)	0 (1)	3 (4)
APS 4	0 (0)	3 (1)	0 (0)	0 (0)	3 (1)
APS 2	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
GRAD	0 (0)	0 (1)	0 (0)	0 (1)	0 (2)
<b>Adelaide</b>	<b>1 (3)</b>	<b>11 (13)</b>	<b>0 (0)</b>	<b>19 (19)</b>	<b>31 (35)</b>
SES 1	0 (0)	0 (0)	0 (0)	1 (0)	1 (0)
EL 2	0 (0)	0 (0)	0 (0)	5 (5)	5 (5)
EL 1	0 (0)	3 (2)	0 (0)	5 (5)	8 (7)
APS 6	1 (3)	3 (3)	0 (0)	5 (4)	9 (10)
APS 5	0 (0)	0 (1)	0 (0)	1 (1)	1 (2)
APS 4	0 (0)	4 (4)	0 (0)	2 (3)	6 (7)
APS 3	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
GRAD	0 (0)	0 (2)	0 (0)	0 (1)	0 (3)
<b>Hobart</b>	<b>0 (0)</b>	<b>1 (1)</b>	<b>0 (0)</b>	<b>3 (3)</b>	<b>4 (4)</b>
EL 1	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
APS 6	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
APS 5	0 (0)	1 (1)	0 (0)	1 (1)	2 (2)

Location and classification	Female		Male		Total
	Part-time	Full-time	Part-time	Full-time	
<b>Townsville</b>	<b>1 (0)</b>	<b>2 (4)</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>3 (4)</b>
EL 1	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
APS 5	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
APS 2	1 (0)	0 (1)	0 (0)	0 (0)	1 (1)
GRAD	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
<b>Darwin</b>	<b>1 (1)</b>	<b>4 (5)</b>	<b>0 (0)</b>	<b>2 (3)</b>	<b>7 (9)</b>
SES 3	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SES 2	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
SES 1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
EL 2	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
EL 1	1 (1)	0 (0)	0 (0)	1 (1)	2 (2)
APS 6	0 (0)	3 (3)	0 (0)	0 (0)	3 (3)
APS 5	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
APS 4	0 (0)	1 (0)	0 (0)	0 (1)	1 (1)
APS 3	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
APS 2	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
APS 1	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)
GRAD	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
<b>ACCC total</b>	<b>71 (65)</b>	<b>305 (303)</b>	<b>7 (7)</b>	<b>359 (360)</b>	<b>742 (735)</b>

APS = Australian Public Service; SES = Senior Executive Service.

Figures exclude ACCC and AER members and non-ongoing employees.

Figures in parentheses are for 2008–09.

**Table A2.2: Non-ongoing staff employed, including staff on higher duties arrangements, by classification, gender and location, 30 June 2010**

Location and classification	Female		Male		Total
	Part-time	Full-time	Part-time	Full-time	
<b>Canberra</b>	<b>12 (10)</b>	<b>14 (9)</b>	<b>2 (6)</b>	<b>14 (5)</b>	<b>42 (30)</b>
SES 1	1 (1)	0 (0)	0 (0)	0 (0)	1 (1)
EL 2	0 (0)	0 (1)	0 (0)	3 (0)	3 (1)
EL 1	0 (0)	0 (0)	0 (2)	0 (0)	0 (2)
APS 6	1 (0)	3 (1)	0 (0)	0 (1)	4 (2)
APS 5	1 (2)	2 (2)	0 (0)	2 (0)	5 (4)
APS 4	2 (6)	2 (4)	0 (3)	5 (1)	9 (14)
APS 3	7 (1)	7 (1)	2 (1)	4 (3)	20 (6)
<b>Sydney</b>	<b>1 (1)</b>	<b>0 (0)</b>	<b>0 (1)</b>	<b>1 (1)</b>	<b>2 (3)</b>
EL 2	0 (0)	0 (0)	0 (1)	0 (0)	0 (1)
APS 3	0 (1)	0 (0)	0 (0)	0 (1)	0 (2)
APS 2	1 (0)	0 (0)	0 (0)	1 (0)	2 (0)

Location and classification	Female		Male		Total
	Part-time	Full-time	Part-time	Full-time	
<b>Melbourne</b>	<b>1 (3)</b>	<b>3 (4)</b>	<b>6 (1)</b>	<b>3 (5)</b>	<b>13 (13)</b>
EL 2	0 (0)	1 (0)	0 (1)	0 (1)	1 (2)
EL 1	0 (0)	1 (1)	1 (0)	2 (2)	4 (3)
APS 6	0 (1)	0 (0)	0 (0)	0 (0)	0 (1)
APS 5	0 (0)	0 (1)	0 (0)	0 (1)	0 (2)
APS 4	0 (0)	1 (1)	0 (0)	1 (0)	2 (1)
APS 3	0 (0)	0 (1)	0 (0)	0 (1)	0 (2)
APS 1	1 (2)	0 (0)	5 (0)	0 (0)	6 (2)
<b>Brisbane</b>	<b>0 (0)</b>	<b>1 (2)</b>	<b>0 (0)</b>	<b>0 (1)</b>	<b>1 (3)</b>
APS 4	0 (0)	0 (0)	0 (0)	0 (1)	0 (1)
APS 3	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
APS 2	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
<b>Perth</b>	<b>0 (0)</b>	<b>1 (2)</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>1 (2)</b>
APS 5	0 (0)	0 (1)	0 (0)	0 (0)	0 (1)
APS 1	0 (0)	1 (1)	0 (0)	0 (0)	1 (1)
<b>Adelaide</b>	<b>0 (0)</b>	<b>2 (1)</b>	<b>0 (0)</b>	<b>1 (2)</b>	<b>3 (3)</b>
APS 6	0 (0)	2 (1)	0 (0)	0 (0)	2 (1)
APS 5	0 (0)	0 (0)	0 (0)	1 (1)	1 (1)
APS 4	0 (0)	0 (0)	0 (0)	0 (1)	0 (1)
<b>Darwin</b>	<b>1 (0)</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>0 (0)</b>	<b>1 (0)</b>
APS 3	1 (0)	0 (0)	0 (0)	0 (0)	1 (0)
<b>ACCC total</b>	<b>15 (14)</b>	<b>21 (18)</b>	<b>8 (8)</b>	<b>19 (14)</b>	<b>63 (54)</b>

Figures exclude ACCC and AER members and ongoing employees.

Figures in parentheses are for 2008–09.



# Appendix 3:

## Occupational health and safety

### Health and safety management arrangements

The ACCC established its health and safety management arrangements in 2008. These arrangements outline the consultation process, the constitution and operation of the Health and Safety Committee, the establishment of designated work groups, the role and appointment of health and safety representatives, and the workplace health and safety policy.

### Health and safety activities

The ACCC provided a wellbeing program in 2009–10 consisting of influenza vaccinations, the Employee Assistance Program, information seminars, and ergonomic assessments.

The Employee Assistance Program is available to all employees and their families. It includes face-to-face counselling, telephone counselling, online counselling, counselling by email, counselling in relation to mortgage/financial issues, online material and self-delivered programs. From September 2009 the Employee Assistance Program was used by 42 staff and five family members. It also provided mediation services to work groups and assistance to managers.

The ACCC moved premises in Brisbane and relocated to other floors within the same building in Melbourne. Employees in Brisbane and Melbourne were provided with ergonomic workstation assessments by qualified occupational therapists.

The ACCC continued its infectious diseases contingency plan to inform employees and their families about, and prepare them for, influenza A (H1N1). In November and December 2009 the ACCC arranged for vaccinations against H1N1 to be provided to employees. Seasonal influenza vaccinations were made available to employees in April 2010. A total of 587 vaccinations were provided to employees through these programs.

### Health and safety outcomes

#### Comcare premiums

The ACCC's Comcare premium for 2009–10 was set at 0.31 per cent of total salaries, compared with the all-agencies combined rate of 1.25 per cent. The premium for 2010–11 has been set at 0.48 per cent of total salaries, compared with the all-agencies combined rate of 1.2 per cent.

## Compensation claims

During 2009–10, Comcare accepted six new compensation claims from the ACCC. The ACCC has nine open compensation claims and one pending.

## Non-compensable cases

The ACCC provides ongoing support for employees suffering from physical and psychological injuries/illnesses. During 2009–10 the ACCC provided assistance to seven employees with non-compensable physical injuries or illnesses.

## Incident statistics

Twenty-six injuries/incidents were reported to the ACCC in 2009–10. Three of these incidents were notifiable to Comcare, as they involved employees sustaining serious personal injuries that arose from ACCC activities or from work performed by an employee in connection with those activities (section 68 of the *Occupational Health and Safety Act 1991*).

## Investigations, directions and notices

The ACCC received no notices under sections 29, 46 and 47 of the Occupational Health and Safety Act, and did not conduct any investigations during 2009–10.

# Appendix 4:

## Freedom of information

Information in this appendix meets the requirements of section 8 of the *Freedom of Information Act 1982*.

### Organisation, functions and decision making

The structure, functions, legal basis, organisation and detailed descriptions of the exercise of powers of the ACCC are set out in detail earlier in this report.

### Categories of documents

The ACCC maintains the following categories of documents:

- > particulars of agreements furnished to the Commissioner of Trade Practices under previous Acts
- > court, adjudication and legal material
- > library material, organisation matters and operational guidelines
- > publications, speeches and media releases
- > personnel records
- > working documents, including staff investigations, reports, analyses, recommendations, correspondence and complaints, public registers and confidential material excluded from public registers
- > ACCC papers relating to parliamentary committees, and questions relating to meetings of the ACCC with government and non-government bodies about new and amending legislation
- > general correspondence with members of the public.

### Arrangements for outside participation

The ACCC's functions bring it into frequent contact with private individuals, companies, industry and consumer groups and other state, territory and Commonwealth government agencies. This contact allows interested bodies outside the ACCC to express their opinions and to have them taken into account by the ACCC when it establishes its policies and priorities.

### Arrangements for access to documents

The ACCC maintains 27 statutory and voluntary public registers. These include registers of section 87B undertakings, authorisations, notifications, mergers and acquisitions, access to services, product safety conferences, and communications (e.g. competition notices, access undertakings and agreements and tariff information).

## On the public registers

Most documents on the registers can be downloaded from the ACCC website, [www.accc.gov.au](http://www.accc.gov.au).

To discuss access to earlier registers or to arrange personal inspection of any register, contact the Public Registers Officer by calling 02 6243 1330 or emailing [public.registers@acc.gov.au](mailto:public.registers@acc.gov.au). Please note that fees are charged for copies of documents on the earlier registers.

More contact details and information about access for hearing or speech impaired people are available on p. 23 of this annual report.

## Under the Freedom of Information Act

Under Part III of the Freedom of Information Act, members of the public may apply to access ACCC documents that are not generally available.

To discuss access to ACCC documents or other matters using the Freedom of Information Act, contact the Freedom of Information Officer on 02 6243 1244 during business hours, or email [foi@acc.gov.au](mailto:foi@acc.gov.au).

To access documents under the Freedom of Information Act, apply in writing to:

Freedom of Information Officer  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

Access may be refused to a document deemed to be exempt or to contain exempt material. Alternatively, access may be granted in part, if practicable. A refusal to grant access will be supported by a statement of reasons.

## Fees and charges

The FOI application fee is \$30, which should accompany the request. The ACCC levies the applicable fees and charges imposed under the Freedom of Information (Fees and Charges) Regulations. Such fees and charges may be remitted, reduced or not imposed for any reason, including on the grounds of financial hardship or general public interest (if established).

## Internal review

An applicant may apply for internal review of the decision. The chairman of the ACCC is authorised to make these decisions, although that power has been delegated to certain specified officers.

## Review by Administrative Appeals Tribunal

An applicant may ask the Administrative Appeals Tribunal (AAT) to review certain freedom of information decisions of the ACCC.

## Freedom of information statistics

### *Requests and reviews*

The ACCC received 35 freedom of information requests during 2009–10, and 46 requests were carried over from 2008–09.

**Table A4.1: Freedom of information requests and reviews, 2004–05 to 2009–10**

	Requests received	Internal review requests received	Requests to the AAT for review
2009–10	35	8	1
2008–09	140	21	12
2007–08	82	52	36
2006–07	29	4	2
2005–06	26	2	0
2004–05	14	2	1

Note: these figures do not include requests carried over from previous years.

Freedom of information applicants most commonly seek access to documents in relation to complaints received by the ACCC, ACCC investigations, merger reviews and regulatory activities.

### *Initial decisions*

In 12 cases, access was granted in full. In 23 cases, access was granted in part. Access was refused in 13 cases, and 12 cases were not proceeded with. At the end of the year, 21 requests had not been finalised.

Where access was refused or granted in part, this was most often because the information was considered exempt on the grounds of personal privacy, legal professional privilege, business affairs, or irrelevant material.

### *Internal review*

One request for internal review was carried over from 2008–09. On internal review of this matter, more material was exempted due to third-party objections. Eight new requests for internal review were received during 2009–10, all of which were completed. In four cases the initial decision was upheld; greater access was given in the other four cases.

### *Review by the Administrative Appeals Tribunal*

Nine matters were carried over from 2008–09—all involved the same law firm as applicant. The applicant withdrew eight matters prior to their hearing dates, and consent orders were agreed on in September 2009 for the remaining one matter.

One new request from the same applicant was received during 2009–10 for review by the AAT. This request remains outstanding.

# Appendix 5: Advertising and market research

Under section 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.

Table A5.1 provides details of payments of more than \$11 200, GST inclusive, that the ACCC made to such agencies in 2009–10.

**Table A5.1: Payments of more than \$11 200 (GST inclusive) on advertising and market research, 2009–10**

Agency type	Agency name	Details	Amount (\$)
Advertising agency	Adcorp Australia	Proposed increases in postage	13 979
Advertising agency	Adcorp Australia	Water Branch advertising	12 363

# Appendix 6:

## Ecologically sustainable development

The ACCC provides an annual report on its environmental performance in accordance with section 516A of the *Environment Protection and Biodiversity Conservation Act 1999*.

The ACCC aims to identify, implement and promote best practice in environmental management and to operate in an ecologically sustainable manner according to the principles of ecologically sustainable development in section 3A of the Environment Protection and Biodiversity Conservation Act.

The ACCC has developed a register of potential actions that could help minimise the effect of the ACCC's activities on the environment. The register is regularly reviewed to identify any initiatives that could be implemented. Before implementation, all potential actions are reviewed against the environmental benefit, the cost or saving involved and any system or process that measures the benefit.

### 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 through regulation. At all times, the ACCC pursues its outcome and objectives in a manner that provides the maximum benefit to the maximum number of consumers with the minimum 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 section 3A of the Environment Protection and Biodiversity Conservation Act, factors in the economic, environmental, social and equitable considerations over both the short and long term.

### ACCC activities that affect the environment

The ACCC administers legislation that ensures lawful competition, consumer protection, and regulated national infrastructure markets and services through regulation. This brings greater competitiveness, which leads to a more efficient and sustainable market.

The ACCC operates nine offices around Australia.

## 'Green' claims and the Trade Practices Act

The ACCC has a strong focus on the widespread practice of 'green washing' – false, misleading or deceptive claims through advertising, marketing or branding whereby businesses misrepresent the environmental effects of their products or services. This type of conduct is illegal under the *Trade Practices Act 1974*, and the ACCC takes action in such cases to protect consumers and enforce the law. The Australian Consumer Law (ACL) provides a further incentive for businesses to be careful about making 'green' claims, as it empowers the ACCC to issue substantiation notices requiring them to supply evidence backing up such claims. Penalties under the relevant sections of the Trade Practices Act and the ACL include:

- > injunctions, damages, corrective advertising and other ancillary orders
- > civil pecuniary penalties of up to \$1.1 million
- > non-party redress for consumers who have suffered loss resulting from a misleading environmental claim
- > disqualification of directors and managers for making misleading environmental claims
- > infringement notices and on-the-spot fines
- > public warning notices alerting consumers about misleading claims by specific businesses.

## Measures taken to minimise the effect of activities on the environment

To reduce the environmental impact of its activities, the ACCC:

- > buys 10 per cent green electricity for the Canberra office
- > procures office equipment with low energy use and power-save modes
- > recycles paper and cardboard products, including pulping classified waste and providing use-again office envelopes
- > uses LCD computer screens
- > uses recycled toner cartridges where possible
- > disposes of toner cartridges through a recycling outlet
- > implements duplex printing and photocopying
- > disposes of mobile phones and batteries through a recycling outlet
- > services vehicles in accordance with manufacturers' specifications
- > uses E10 fuels for fleet vehicles where possible.

The ACCC buys goods and services in accordance with environmental purchasing guides promoted by the Department of the Environment, Water, Heritage and the Arts. This ensures that goods and services are:

- > environmentally sound in manufacture
- > reusable or recyclable
- > designed and made for reliability and long life
- > environmentally best practice in energy efficiency and/or energy consumption.



## Mechanisms for reviewing and increasing the effectiveness of measures

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 7: Consultancies

The ACCC engages external consultants where specialised expertise is not available in house or where independent evaluation is needed.

The guiding principles applied to all purchasing are:

- > value for money
- > encouraging competition
- > efficient, effective and ethical use of resources
- > accountability and transparency.

This appendix lists all consultancy contracts begun in 2009–10 to the value of \$10 000 or more (including GST).

Supplier name	Contract description	Value	Selection process	Consultancy reason
Regulatory Economics Ltd	Developing Indicators for the Evaluation of Infrastructure Regulation	\$68 000	Direct	Need for independent research or assessment
Access Economics Pty Ltd	Forecasts of Labour Cost Growth	\$70 000	Direct	Need for independent research or assessment
Sinclair Knight Merz	Water Trade and the Hydrological Connectivity of Surface Water Systems	\$30 007	Panel	Need for independent research or assessment
Sinclair Knight Merz	Water Trade and Conveyance Losses with Irrigation Networks	\$27 518	Panel	Need for independent research or assessment
Sinclair Knight Merz	Water Trade between Water Sources	\$33 840	Panel	Need for independent research or assessment
Economic Insights Pty Ltd	External Advisory Committee for the research project Developing Indicators for the Evaluation of Infrastructure Regulation	\$28 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Prof Jeff Borland	External Advisory Committee for the research project 'Developing Indicators for the Evaluation of Infrastructure Regulation'	\$17 600	Direct	Need for independent research or assessment
PIRAC Economics	External Advisory Committee for the research project 'Developing Indicators for the Evaluation of Infrastructure Regulation'	\$17 600	Direct	Need for independent research or assessment
PriceWaterhouseCoopers	DORC Valuation of Hunter Valley Segment	\$50 000	Direct	Need for independent research or assessment
Bruce Farquhar	Review of the Consumer Product Safety System	\$20 000	Direct	Need for independent research or assessment
Frontier Economics Pty Ltd	Effect of Volumetric Restrictions on Benefits of Water Trade	\$40 700	Panel	Need for independent research or assessment
McGrathNicol	Assessment of the Appropriateness of Forecast Corporate Income Tax for Ergon Energy, Energex and ETSA Utilities	\$26 334	Direct	Need for independent research or assessment
ABARE	Irrigators on Water Trading	\$52 469	Direct	Need for independent research or assessment
Colmar Brunton Social Research Pty Ltd	Market Research Product Safety Recall System	\$79 990	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Nuttall Consulting	AER Technical assistance for lodgement of regulatory proposals by Victorian electricity distribution businesses	\$129 000	Panel	Need for independent research or assessment
Wizard Computer Training	Database scope and design assistance	\$20 000	Direct	Skills currently unavailable
Frontier Economics Pty Ltd	Assessment of demand and other inputs used by Australia Post in its July 2009 draft price notification	\$225 713	Panel	Need for independent research or assessment
Teamic Pty Ltd	Independent Member of ACCC's Audit Committee	\$19 200	Direct	Need for independent research or assessment
Core Research	Economic advice Caltex Australia Ltd proposed acquisition of retail assets of Mobil Oil Australia Pty Ltd	\$15 400	Direct	Need for independent research or assessment
AccessUTS	Report re Thermilate	\$2 821	Direct	Need for independent research or assessment
EnergyQuest	Supply of Gas Essay for the State of the Energy Market Report	\$14 300	Direct	Need for independent research or assessment
McGrathNicol	Review of Victorian DNSP cost allocation methods	\$50 000	Direct	Need for independent research or assessment
Analysys Mason	Fixed Services Cost Model Support	\$80 000	Panel	Need for independent research or assessment
University of Melbourne	Fine art advice	\$11 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Rowena Armstrong	Drafting of amendments Water Market Rules	\$20 000	Direct	Need for independent research or assessment
TP Econ Pty Ltd	Advice on Gorgon joint marketing authorisation applications	\$5 000	Direct	Need for independent research or assessment
Frontier Economics	Regulated Water Charges	\$3 300	Panel	Need for independent research or assessment
Transcomp Consulting	Virgin Blue Airlines & Ors	\$25 000	Direct	Need for independent research or assessment
Peter Renehan	Expert litigation advice	\$1 107 045	Direct	Need for independent research or assessment
Waccdorc Pty Ltd	Economic advice— Finance theory	\$81 360	Direct	Need for independent research or assessment
Frontier Economics Pty Ltd	Management of Water Access Entitlement Trading	\$87 500	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Review of Public Lighting Charges for Victorian DNSPs— modelling and required inputs	\$11 000	Direct	Need for independent research or assessment
Motorbis Pty Ltd	Modelling services for AMI final determination	\$19 995	Direct	Need for independent research or assessment
LECG Ltd	Thomson Reuters proposed acquisition of Ernst & Young	\$50 000	Panel	Need for independent research or assessment
LECG LLC	Caltex Australia proposed acquisition of Mobil Oil Australia	\$70 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
University of Melbourne	AER distribution for Energex, Ergon Energy and ETSA Utilities for 2010–2015	\$23 100	Direct	Need for independent research or assessment
Resolve Advisors Pty Ltd	Dispute resolution adviser under Part 15c of the National Gas Rules	\$49 500	Direct	Need for independent research or assessment
Incentive Economics Pty Ltd	Expert economic advice	\$905 784	Panel	Need for independent research or assessment
Sinclair Knight Merz	Murray-Darling Basin groundwater advice	\$11 745	Panel	Need for independent research or assessment
Frontier Economics Pty Ltd	Proposed accreditation process under the Water (Infrastructure) Charge Rules	\$60 000	Panel	Need for independent research or assessment
Nuttall Consulting	Review capital expenditure proposals—AER distribution determination for the Victorian electricity distribution businesses for 1/1/2011 to 31/12/2015 regulatory control period	\$646 426	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Modelling and analysis of distribution network service providers 2010 tariff submissions	\$16 000	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Victorian Public Lighting Models	\$5 500	Panel	Need for independent research or assessment
Frontier Economics Pty Ltd	Advice on price discrimination in the context of National Broadband Network (NBN)	\$46 000	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
EcoAssist Pty Ltd	Gunns Ltd proposed acquisition of ITC Timber Pty Ltd	\$6 160	Direct	Need for independent research or assessment
Transcomp Consulting	A91195 Qantas Airways Ltd and British Airways	\$20 000	Direct	Need for independent research or assessment
ACIL Tasman Pty Ltd	Forecasts of electricity demand, energy consumption	\$278 154	Panel	Need for independent research or assessment
NERA Australia Pty Ltd	Economic advice on the investigation into Cement Australia and Pozzolanac Enterprises (Flyash)	\$423 981	Panel	Need for independent research or assessment
NERA Australia Pty Ltd	Caltex Australia proposed acquisition of the retail assets of Mobil Oil Australia	\$25 000	Panel	Need for independent research or assessment
Motorbis Pty Ltd	Modelling services for the AER Victorian electricity distribution network determinations for the Vic distribution service providers	\$158 400	Panel	Need for independent research or assessment
AccessUTS	Enersonic Power Saver device	\$17 781	Direct	Need for independent research or assessment
Energy & Management Services	Advice re assessment of the Qld and SA DNSPs revised regulatory proposals	\$20 000	Direct	Need for independent research or assessment
Transcomp Consulting	Monitoring of and advice about undertakings accepted by the ACCC in relation to mergers and acquisitions	\$16 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Risk Management Partners	Development and population of a Skills Model	\$14 300	Direct	Need for independent research or assessment
Leadership Management Australia	Mentoring Program	\$19 800	Direct	Skills currently unavailable
Arup Pty Ltd	Water Market Rules conversion formula approach	\$39 227	Panel	Need for independent research or assessment
Sinclair Knight Merz	AER 2009 Standard Compliance review TNSPs	\$65 000	Panel	Need for independent research or assessment
Analysys Mason	Report on emerging trends in the way audiovisual content is sold	\$72 800	Panel	Need for independent research or assessment
Ovum Pty Ltd	Advice on systems equivalence issues—NBN	\$71 757	Panel	Need for independent research or assessment
Core Research	Expert economic advice	\$50 000	Direct	Need for independent research or assessment
WIK Consult GmbH	International approaches to regulating duct access	\$48 200	Direct	Need for independent research or assessment
Allen Consulting Group	Price and Revenue Cap Regulation in a NBN context	\$33 594	Panel	Need for independent research or assessment
University of Melbourne	Finance theory—Weighted Average Cost of Capital (WACC)	\$50 000	Direct	Need for independent research or assessment
Parsons Brinckerhoff Australia	AER Qld & SA electricity distribution determinations (2010–15)	\$199 598	Panel	Need for independent research or assessment



Supplier name	Contract description	Value	Selection process	Consultancy reason
McLennan Magasanik Assoc Pty Ltd	Revised demand forecast of the Qld electricity distribution networks	\$31 500	Panel	Need for independent research or assessment
Core Research	Dividend drop-off study	\$23 650	Direct	Need for independent research or assessment
Impaq Consulting	AER Vic electricity distribution determinations for the Vic NDSP	\$73 390	Panel	Need for independent research or assessment
Frontier Economics Pty Ltd	Regulatory Investment Test for Transmission Investments	\$70 000	Panel	Need for independent research or assessment
Risk Management Partners	Review business continuity plans	\$9 900	Direct	Need for independent research or assessment
University of Melbourne	AER electricity determinations for Qld & SA for 2010–15, Vic 2011–15 and gas distribution NSW & ACT 2010–15	\$66 000	Direct	Need for independent research or assessment
Deloitte Touche Tohmatsu	AER final decision on self-assurance for the Qld & SA DNSPs	\$55 450	Panel	Need for independent research or assessment
McGrathNicol	Assessment of appropriateness of forecast corporate income tax for Ergon Energy, Energex and ETSA Utilities	\$17 475	Panel	Need for independent research or assessment
Energy & Management Services Pty Ltd	Assessment of Energy Australia's public lighting operational expenditure proposal	\$19 800	Direct	Need for independent research or assessment
Arup Pty Ltd	Guidelines to the Tier 2 requirements of the Water (Infrastructure) Charge Rules	\$11 760	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Frontier Economics Pty Ltd	Advice on information templates for Part 7 of the Water (Infrastructure) Charge Rules	\$19 000	Panel	Need for independent research or assessment
Economic Analyst for Litigation	Link market Services Ltd proposed acquisition of Newreg Pty Ltd	\$16 250	Direct	Need for independent research or assessment
DeRiSC Pty Ltd	Report on international factors affecting Australian fuel prices and Australia's capacity to import fuel	\$11 000	Direct	Need for independent research or assessment
Energy & Management Services	Advice on energy Australia's public lighting operational expenditures and the deliverability of ETSA Utilities Capital Expenditure program	\$19 800	Direct	Need for independent research or assessment
Wilson Cook	Assess the access arrangement proposals submitted by ACT and NSW gas distribution network service providers in relation to operating expenditure	\$95 770	Direct	Need for independent research or assessment
DGI Technology	Development of techniques to detect market power in the National Electricity Market	\$16 500	Direct	Need for independent research or assessment
Morningstar Australasia	NAB proposed acquisition of AXA and AMP Ltd— proposed acquisition of AXA Asia Pacific	\$10 000	Direct	Need for independent research or assessment
Sirca Ltd	AER electricity distribution determinations for Qld & SA 2010–15, Vic 2011–15 and gas distribution for NSW & ACT 2010–15	\$60 000	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Allegany Consulting	Development planning	\$15 000	Direct	Skills currently unavailable
Wilson Cook	Assess the access arrangement proposals submitted by ACT and NSW gas distribution network service providers in relation to operating expenditure	\$80 000	Direct	Need for independent research or assessment
Transcomp Consulting	Monitoring of and advice about undertakings accepted by the ACCC in relation to mergers and acquisitions	\$3 750	Direct	Need for independent research or assessment
Centre for Public Management	Executive Review	\$40 536	Direct	Need for independent research or assessment
ACIL Tasman	Review of demand forecasting in the NSW/ACT gas distribution access arrangement proposals	\$32 472	Panel	Need for independent research or assessment
David Jess & Associates	Cleaning evaluation services	\$21 120	Direct	Need for independent research or assessment
The Nous Group	Review Regulatory Affairs Division	\$50 820	Direct	Need for independent research or assessment
Total Decision Support	Review of compliance with the <i>Financial Management Act 1997</i>	\$11 088	Direct	Need for independent research or assessment
The Berkeley Research Group	BHP Billiton and Rio Tinto Ltd joint venture in WA iron ore production	\$37 500	Direct	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Deloitte Touche Tohmatsu	Framework approach review aspect of the Tasmanian electricity 2012–17 process	\$24 475	Direct	Need for independent research or assessment
Wallis Consulting Group	AER Retail Pricing Information Guidelines Market Research Services contract	\$32 032	Direct	Need for independent research or assessment
Deloitte Touche Tohmatsu	Provision of retailer of last resort (ROLR)	\$30 938	Panel	Need for independent research or assessment
Clientwise	Corporate performance benchmarking	\$8 250	Direct	Need for independent research or assessment
Total Decision Support	Review of ACCC Use of Time Recording System—Timekeeper	\$13 522	Direct	Need for independent research or assessment
Transcomp Consulting	Summit Grain Investment (Australia) Pty Ltd; Summit Agribusiness (Australia) Pty Ltd; and BIS Industries Ltd	\$19 625	Direct	Need for independent research or assessment
HBA Consulting	APS documentation and work level standards review project	\$37 400	Direct	Need for independent research or assessment
Strategic Economic Solutions	ACCC Infocentre Scams Survey & Analysis	\$10 868	Direct	Need for independent research or assessment
Ovum Pty Ltd	Develop spreadsheet to calculate the cost and price of fixed line telecommunications services	\$39 749	Panel	Need for independent research or assessment
ACIL Tasman Pty Ltd	Market Analysis Investment Signals and General Equilibrium	\$85 000	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
SFS Economics	Qualitative Analysis— Barriers to Entry	\$27 500	Direct	Need for independent research or assessment
Intelligent Energy Systems	Short-term economic harm resulting for suspected instances of market abuse in the National Electricity Market	\$34 100	Panel	Need for independent research or assessment
Risk Management Partners	Internal Risk and Security Unit	\$65 000	Direct	Need for independent research or assessment
Farrier Swier Consulting	Develop indicators for the reporting of energy affordability under the proposed national energy customer framework	\$20 000	Panel	Need for independent research or assessment
Analysys Mason	Prices and pricing methodologies of Domestic Transmission Capacity Services in key overseas jurisdictions	\$75 131	Panel	Need for independent research or assessment
McLennan Magasanik Assoc	Unit Pricing Survey	\$78 961	Panel	Need for independent research or assessment
Griffith University	Develop a pre-entry education program for prospective franchisees	\$55 000	Direct	Need for independent research or assessment
Fenton Strategic Communications	External review of ACCC corporate published materials	\$16 280	Direct	Need for independent research or assessment
ACIL Tasman	Review regarding the Structure and Economics Regulation of Rail Networks	\$49 464	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Serco Aust T/A Hiser Group	The usability review of the ACCC SCAMwatch website	\$23 562	Direct	Need for independent research or assessment
Verve Economics	Expert economic advice for current and anticipated issues	\$215 050	Direct	Need for independent research or assessment
EnergyQuest	Biofuels in the Australian market	\$18 920	Panel	Need for independent research or assessment
Monash University	Targeted study of injury data involving motorised mobility scooters	\$32 749	Direct	Need for independent research or assessment
EcoAssist Pty Ltd	Caltex Aus Ltd proposed acquisition of retail assets of Mobil Oil (Aust)	\$5 582	Direct	Need for independent research or assessment
NERA Australia Pty Ltd	Economic advice of the investigation into Cement Australia and Pozzolanic Enterprises (Flyash)	\$452 330	Panel	Need for independent research or assessment
Abar Rubber Pty Ltd	Research services for improving hot water bottle safety	\$9 000	Direct	Need for independent research or assessment
Enersol Pty Ltd	Research services for improving hot water bottle safety	\$26 675	Direct	Need for independent research or assessment
SmithersRAPRA Technology	Research services for improving hot water bottle safety	\$8 777	Direct	Need for independent research or assessment
Arup Pty Ltd	Specification and trade water delivery rights	\$23 690	Panel	Need for independent research or assessment
Arup Pty Ltd	Specification of irrigation rights	\$14 460	Panel	Need for independent research or assessment

Supplier name	Contract description	Value	Selection process	Consultancy reason
Cultural & Indigenous Research	ACCC Indigenous market research	\$33 000	Direct	Need for independent research or assessment
Rohan Holmes	Research services for improving hot water bottle safety	\$2 000	Direct	Need for independent research or assessment
Robert Burford	Research services for improving hot water bottle safety	\$2 000	Direct	Need for independent research or assessment
Cordelta Pty Ltd	ACCC Information Technology Security Advisory	\$17 424	Direct	Need for independent research or assessment
Zincara Pty Ltd	Technical advice regarding connection charges to new electricity and gas connections under the Vic re framework; & Vic gas distribution business; gas meter sampling plans	\$10 800	Direct	Need for independent research or assessment
Metals Consulting International	BHP Billiton Ltd and Rio Tinto Ltd joint venture in Western Australia's iron ore production	\$35 700	Direct	Need for independent research or assessment
Core Research	Specialist finance/ econometric/ economic advice for a range of projects including advice on WACC parameters for forthcoming AER tribunal cases and a dividend drop-off study	\$70 000	Direct	Need for independent research or assessment

# Appendix 8: Commonwealth Disability Strategy

Tables A8.1 to A8.3 indicate outcomes in the three core roles identified in the Commonwealth Disability Strategy that apply to the ACCC: regulator, provider of services and purchaser of services.



## Regulator role

Objective 1: To ensure that people with disabilities are aware of their rights and obligations arising from the laws and regulations administered by the ACCC and AER.

**Table A8.1: Regulator role—Commonwealth Disability Strategy**

Performance indicators	Performance measures	Current level of performance 2009–10	Goals for 2010–11	Actions for 2010–11
Publicly available information about the laws and regulations administered by the ACCC and AER and publicly available decisions and reports are available in accessible formats for people with disabilities.	Percentage of publicly available information that is provided in accessible electronic formats or accessible in another format.	100% of web content produced by the ACCC complies with mandatory requirements for Australian Government agencies. A large number of PDF materials on ACCC/AER websites are scanned images of hard copy documents that are not accessible to screen readers. Information on how to access this material is provided from the 'Accessibility' link on the websites.	Maintain current performance standards by following: the World Wide Web Consortium's Web Accessibility Initiative Guidelines mandatory requirements for Australian Government agencies from the Australian Government Information Management Office.	Test existing, new and/or revamped websites with various diagnostic and evaluation tools.

Performance indicators	Performance measures	Current level of performance 2009–10	Goals for 2010–11	Actions for 2010–11
The ACCC's disability, disadvantaged and vulnerable consumer campaign involves people with disabilities.	Increase in reach to people with disabilities.	<p>The Australian Federation of Disability Organisations and the Public Interest Advocacy Centre were represented on the ACCC's Consumer Consultative Committee.</p> <p>The ACCC liaised with vision-impaired groups to produce audio, Braille and large-print publications of the new unfair contract terms laws for small business and consumers.</p> <p>The ACCC initiated liaison with hearing-impaired groups on possible assistance with regard to scam behaviour.</p> <p>On a quarterly basis, the ACCC collected and analysed data on complaints and inquiries about the <i>Trade Practices Act 1974</i> made by people with disabilities.</p>	As part of the ACCC's disability, disadvantaged and vulnerable consumer campaign, continue to engage with disability groups to increase reach to these groups.	Review current material in conjunction with vision- and hearing-impaired groups to produce products that provide information that assists people with disabilities as consumers and business owners. Continue relationships and consultative mechanisms with the Australian Federation of Disability Organisations and the Public Interest Advocacy Centre.

## Provider role

Objective 2: To ensure people with disabilities are able to have their issues and concerns addressed.

**Table A8.2: Provider role – Commonwealth Disability Strategy**

Performance indicator	Performance measure	Current level of performance 2009–10	Goal for 2010–11	Actions for 2010–11
People with disabilities are able to contact the ACCC or AER for further information or to make a complaint about possible breaches of the laws and regulations or to make a submission to assist the ACCC or AER in their decision making.	Fulfilment of the requirement that no complaint, inquiry or submission from a person with a disability is not received and acted upon.	Established complaints, inquiry and submission processes operated in a timely way, including arrangements with the National Relay Service. One person who requested further assistance was provided with advice in a timely way.	Maintain current performance standards.	Continue with the National Relay Service. Ensure that ACCC/AER websites provide clear advice on how to complain and inquire about possible breaches of the law. Ensure that lodgement systems (electronic and non-electronic) enable people with disabilities to make submissions to assist the ACCC and AER with their decisions.

## Purchaser role

Objective 3: To ensure that the ACCC and AER purchase services which reflect the needs of people with disabilities and that service providers are accountable for the delivery of accessible goods and services.

**Table A8.3: Purchaser role – Commonwealth Disability Strategy**

Performance indicators	Performance measures	Current level of performance 2009–10	Goals for 2010–11	Actions for 2010–11
Complaint/grievance mechanisms are in place to address concerns raised about the ACCC's service or that of its service providers.	Existence and effectiveness of complaints/grievance mechanisms.	The ACCC Service Charter enables members of the public, including those with disabilities, to lodge a complaint/grievance. The ACCC's contracted providers are required to adhere to all Australian Government legislation, including the <i>Disability Discrimination Act 1992</i> .	Promote adherence to service delivery standards.	Ensure that all new contracts use the ACCC template that binds all signatories to compliance with Australian Government legislation. Ensure that the service charter remains accessible via the websites, and deal with any complaints/grievances in accordance with the procedure set out in the service charter.

Performance indicators	Performance measures	Current level of performance 2009–10	Goals for 2010–11	Actions for 2010–11
Needs of people with disabilities are met when they visit the facilities of the ACCC.	Extent to which ACCC facilities provide a safe and accessible environment for people with disabilities.	ACCC facilities were assessed by appropriately qualified disability specialists as part of the planning of new accommodation.	Maintain and improve accessibility of facilities.	Ensure that new accommodation plans meet the accessibility needs of people with disabilities. Maintain existing facilities to a safe and comfortable standard for people with disabilities.

# Appendix 9: Trade Practices Act and other legislation

## Trade Practices Act

The *Trade Practices Act 1974* promotes competition and fair trading and provides for consumer protection to enhance the welfare of Australians.

### Lawful competition and informed markets

**Table A9.1: Parts of the Trade Practices Act 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; misuse of market power; exclusive dealing; resale price maintenance; mergers substantially lessening competition
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.

The ACCC will 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 \$220 000 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 breaches of the Trade Practices Act.

To enforce the civil provisions of the Trade Practices Act relating to anti-competitive conduct, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages

- > 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 \$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.

## Fair trading and consumer protection

**Table A9.2: Parts of the Trade Practices Act dealing with fair trading and consumer protection**

IVA	Unconscionable conduct in commercial and consumer transactions
IVB	Industry codes of conduct—the franchising, horticulture and oil codes are mandatory codes prescribed under Part IVB
V	Unfair practices: misleading and deceptive conduct; pyramid selling; country of origin representations; product safety and information; conditions and warranties in consumer transactions
VA	Liability of manufacturers and importers for defective goods
VC	Criminal conduct relating to fair trading and consumer protection

### *Enforcement*

To enforce the civil provisions of the Trade Practices Act relating to fair trading and consumer protection, the ACCC can seek:

- > declarations of contraventions
- > findings of facts
- > injunctions
- > damages
- > community service orders
- > probation orders
- > adverse publicity orders
- > corrective advertising, public notices and disclosure
- > penalties of up to \$1.1 million for companies and \$220 000 for individuals.

## Infrastructure services and markets where competition is limited

**Table A9.3: Parts of the Trade Practices Act dealing with regulated industries and prices surveillance**

IIIA	Access to the services of essential national infrastructure facilities such as transmission wire networks, natural gas pipelines, rail tracks and airport facilities
VIIA	Price monitoring and surveillance in relation to industries or businesses declared by the Australian Government
X	Limited exemptions in relation to international liner cargo shipping
XIB	Anti-competitive conduct in telecommunications
XIC	Access to services for telecommunications

### Regulation

The ACCC and the AER are responsible for regulating the electricity, gas, telecommunications and transport sectors to ensure equity of access to infrastructure and to monitor services and prices.

## Legislative amendments in 2009–10

### Amendments to the Trade Practices Act

*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*—commenced 1 July 2009

*Trade Practices Amendment (Cartel Conduct and Other Measures) Act 2009*—commenced 24 July 2009

*Statute Stocktake (Regulatory and Other Laws) Act 2009*—commenced 17 November 2009

*Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010*—commenced 20 February 2010

*Statute Law Revision Act 2010*—commenced 1 March 2010

*Trade Practices Amendment (Australian Consumer Law) Act (No. 1) 2010*—commenced 15 April 2010

### Amendments to the Trade Practices Regulations

Trade Practices Amendment Regulations 2009 (No. 2)—commenced 1 July 2009

Trade Practices Amendment Regulations 2009 (No. 3)—commenced 24 July 2009

Trade Practices (Consumer Product Safety Standard) (Bicycle Helmets) Amendment Regulations 2009 (No. 1)—commenced 15 December 2009

Trade Practices Amendment Regulations 2010 (No. 1)—commenced 8 June 2010

Trade Practices Amendment Regulations 2010 (No. 2)—commenced 8 June 2010



## *Regulations introduced under the Trade Practices Act*

*Trade Practices (Industry Codes—Unit Pricing) Regulations 2009*—commenced 1 July 2009

## **Other laws**

*Airports Act 1996*—focusing on access, prices and the quality of service at Australia’s privatised airports

*Australian Postal Corporation Act 1989*—defining access to the postal network

*Broadcasting Services Act 1992*—covering the payment of television licences

*Copyright Act 1968*

National Electricity Law 2005

National Electricity Rules

National Gas Law 2008

National Gas Rules

*Radiocommunications Act 1992*—implementing a regulatory framework for the radiocommunications industry

*Telecommunications (Consumer Protection and Service Standards) Act 1999*—providing a range of safeguards to consumers of telecommunication services

*Telecommunications Act 1997*—implementing a regulatory framework for the telecommunications industry

*Trade Marks Act 1995*—governing the approval of a trademark that certifies that goods or services are of a particular standard of quality, origin, material or mode of manufacture

*Water Act 2007*—providing for the management of water resources within the Murray-Darling Basin

Water Charge (Termination Fees) Rules 2009

Water Market Rules 2009

*Wheat Export Marketing Act 2008*

# Appendix 10: Information required under the Trade Practices Act

Section 171 of the *Trade Practices Act 1974* specifies certain information that must be included in ACCC annual reports.

## Section 171(2) reporting requirements

Section 51(1) of the Trade Practices Act provides that conduct that would normally contravene the Act may be permitted if it is specifically authorised under other Commonwealth, state or territory legislation. Section 171(2) of the Act requires this report to list all such laws.

## Exceptions under Commonwealth, state and territory legislation

Some Commonwealth, state and territory Acts permit conduct that would normally contravene the Trade Practices Act. Section 51(1) of the Trade Practices Act provides that such conduct may be permitted if it is specifically authorised under those other Acts.

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*

*Customs Act 1901*

*Financial Sector (Business Transfer and Group Restructure) Act 1999*

*Insurance Act 1973*

*Life Insurance Act 1995*

*Liquid Fuel Emergency Act 1984*

*Northern Territory National Emergency Response Act 2007*

*Payment Systems (Regulation) Act 1998*

Payment Systems (Regulation) Regulations 2006

*Trade Practices Act 1974* (section 173)

## *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*

*Road Transport (Public Passenger Services) Act 2001*

*Territory Records Act 2002*

## *New South Wales*

*Australian Jockey Club Act 2008*

*Casino Control Regulation 2009*

*Coal Industry Act 2001*

*Competition Policy Reform (New South Wales) Act 1995*

*Competition Policy Reform (New South Wales) Regulation 2008*

*Competition Policy Reform (New South Wales) Savings and Transitional Regulation 1996*

*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*

*Poultry Meat Industry Act 1986*

*Protection of the Environment Operations Act 1997*

*Racing Administration Act 1998*

*Rice Marketing Act 1983*

*Thoroughbred Racing Act 1996*

*Totalizator Act 1997*

*Transport Administration Act 1988*

*Wine Grapes Marketing Board (Reconstitution) Act 2003*

## *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*

*Liquor Act 1978*

*Water Supply and Sewerage Act 2000*

### **Queensland**

*Chicken Meat Industry Committee Act 1976*

*Competition Policy Reform (Queensland) Act 1996*

*Gladstone Power Station Agreement Act 1993*

*Sugar Industry Act 1999*

*Transport Operations (Passenger Transport) Act 1994*

### **South Australia**

*Authorised Betting Operations Act 2000*

Authorised Betting Operations Regulations 2001

*Chicken Meat Industry Act 2003*

*Cooper Basin (Ratification) Act 1975*

*Industries Development Act 1941*

*Roxby Downs (Indenture Ratification) Act 1982*

### **Tasmania**

*Competition Policy Reform (Tasmania) Act 1996*

*Electricity Supply Industry Act 1995*

*Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995*

### **Victoria**

*Competition Policy Reform (Victoria) Act 1995*

*Electricity Industry (Residual Provisions) Act 1993*

*Gambling Regulation Act 2003*

*Gas Industry (Residual Provisions) Act 1994*

*Health Services Act 1988*

*Legal Profession Act 2004*

*Liquor Control Reform Act 1998*

*Outworkers (Improved Protection) Act 2003*

*Owner Drivers and Forestry Contractors Act 2005*

*State Owned Enterprises Act 1992*

*Water Industry Act 1994*

## 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*

*Grain Marketing Act 2002*

*North West Gas Development (Woodside) Agreement Act 1979*

*Owner-Drivers (Contracts and Disputes) Act 2007*

## Section 171(3) reporting requirements

Section 171(3) calls for details of the time taken by the ACCC to make final determinations on access disputes, and final decisions on access undertaking applications, access code applications and government tendering applications.

### Time taken to make final determinations and decisions

#### *Final determinations on access disputes under section 44V*

The ACCC did not issue any final determinations on access disputes in 2009–10.

#### *Decisions on access undertaking applications and access code applications*

##### Rail

- > On 5 March 2010 the ACCC issued a draft decision that the access undertaking for the Hunter Valley rail network lodged on 22 April 2009 by the Australian Rail Track Corporation (ARTC), as drafted, was unlikely to be appropriate under section 44ZZA. The ARTC withdrew its undertaking on 19 April 2010 with the expressed intention of lodging a revised undertaking.

##### Wheat export marketing arrangements

The ACCC accepted three access undertakings under section 44ZZA.

- > On 29 September 2009 the ACCC accepted an access undertaking from AusBulk Ltd (now Viterra) lodged on 16 April 2009. The assessment took 5½ months.
- > On 29 September 2009 the ACCC accepted an access undertaking from Co-operative Bulk Handling Ltd lodged on 14 April 2009. The assessment took 5½ months.
- > On 29 September 2009 the ACCC accepted an access undertaking from GrainCorp Operations Ltd lodged on 15 April 2009. The assessment took 5½ months.

#### *Decisions on government tendering applications*

The ACCC did not issue any decisions on government tendering applications in 2009–10.

## Notices under sections 155 and 155A

During 2009–10 the ACCC issued 300 notices under section 155.

### *General description of matters for which notices were given*

These notices were as follows:

- > 11 notices under section 155(1)(a) (requiring the addressee to provide information in writing)
- > 25 notices under section 155(1)(b) (requiring the addressee to provide documents)
- > 63 notices under section 155(1)(c) (requiring the addressee to appear in person and give evidence)
- > 189 notices under section 155(1)(a) and (b) (requiring the addressee to provide information in writing and documents)
- > seven notices under section 155(1)(b) and (c) (requiring the addressee to provide documents and to appear in person and give evidence)
- > five notices under section 155(1)(a), (b) and (c) (requiring the addressee to provide information in writing, provide documents and appear in person and give evidence).

Notices were issued in the course of investigations into conduct potentially in contravention of restrictive trade practices provisions, unconscionable conduct provisions, industry codes and consumer protection provisions of the Trade Practices Act.

The ACCC did not issue any notices under section 155A during 2009–10.

### *Challenges to the validity of notices*

#### *Singapore Airlines Pte Ltd and Singapore Airlines Cargo Pte Ltd v ACCC*

Commenced 24 April 2009

Concluded 2 October 2009

Full Federal Court, Melbourne

The Full Federal Court dismissed (with costs) the appeal by Singapore Airlines and Singapore Airlines Cargo against a judgement of Justice Middleton which upheld the validity of section 155 notices issued in 2007 and 2008.

## Search warrants issued or signed

Under ss. 154X and 154Y of the Act, search warrants can be issued or signed by a magistrate. During 2009–10 the ACCC sought four search warrants.

### *General description of the matters for which search warrants were issued*

One search warrant was issued in relation to alleged contraventions of the competition provisions of the Act.

Three search warrants were issued in relation to alleged contraventions of the consumer protection and fair trading provisions of the Act.

### *Challenges to the validity of a search warrant*

No such proceedings have been brought.

### *Notices under Part XID*

On four occasions ACCC inspectors sought and were granted search warrants by a magistrate under Part XID.

## Entry to premises

The ACCC entered four premises under Part XIX in 2009–10.

## Intervention in proceedings

The ACCC intervened in two proceedings.

### [Auskey International Manufacturing and Trade Pty Ltd v Qantas Airways Ltd and others](#)

Commenced 18 December 2009

Full Federal Court, Melbourne

In January 2010 the ACCC sought leave to intervene in a private class action against a number of international airlines related to alleged agreements to fix the price of fuel and other surcharges imposed on international air cargo. The ACCC's decision to intervene was linked to its own completed and ongoing air cargo proceedings. As of 30 June 2010 this matter is still before the court.

### [Allphones Retail Pty Ltd v Hoy Mobile Pty Ltd](#)

Commenced 4 July 2008

Concluded 9 July 2009

Full Federal Court, Sydney

In February 2009 the ACCC sought leave to intervene in private proceedings alleging Allphones unconscionably withheld commission payments. The ACCC's decision to intervene was related to the ACCC's own proceedings against Allphones, which alleged non-compliance with the Franchising Code of Conduct and misleading or deceptive conduct and unconscionable conduct by Allphones towards its franchisees.

## Copyright

Under section 157B of the *Copyright Act 1968*, the ACCC may become a party to a reference or application before the Copyright Tribunal.

The ACCC intervened in proceedings in two Copyright Tribunal matters in 2009–10.

The ACCC became a party to the Phonographic Performance Company of Australia's reference of its fitness class tariff to the Copyright Tribunal in May 2007. The tribunal conducted hearings between March and July 2009 and handed down its decision on 17 May 2010.

The ACCC also became a party to the reference by the Australasian Performing Right Association and the Australasian Mechanical Copyright Owners Society to the Copyright Tribunal in September 2007 of the licence fee payable for the use of its repertoire by means of digital music services, including digital download services. During the hearing in December 2009 the commercial parties reached a settlement as to the terms of the licence fee. The tribunal made its decision on 17 December 2009 after hearing the ACCC's views.

# Appendix 11: Section 87B undertakings accepted 2009–10

A public register is available on the ACCC website of all s. 87B undertakings.

## Lawful competition and informed markets

Sci-Fleet Motors Pty Ltd, Brisbane 29 July 2009

Vanderfield Pty Ltd, Brisbane 29 July 2009

Coles Group Ltd, Sydney 17 September 2009

Woolworths Ltd, Sydney 17 September 2009

International Beauty Supplies Pty Ltd, Adelaide 18 November 2009

Aldi Foods Pty Ltd, Sydney 23 December 2009

Australian United Retailers Ltd trading as Foodworks, Sydney 23 December 2009

Franklins Pty Ltd, Sydney 23 December 2009

Metcash Ltd, Sydney 23 December 2009

SPAR Australia Ltd, Sydney 23 December 2009

SCUBAPRO UWATEC Australia Pty Ltd, Sydney 8 April 2010

## Fair trading and consumer protection

Direct Savings Stones Corner Pty Ltd, Brisbane 7 July 2009

Direct Savings Pty Ltd, Brisbane 7 July 2009

I-Life Pty Ltd, Brisbane 7 July 2009

Spray Pave Australia Pty Ltd, Adelaide 7 July 2009

AMV Holding Ltd (UK company no. 05811953), Canberra 10 July 2009

Gemtime Nominees Pty Ltd, Perth 24 July 2009

R King Enterprises Pty Ltd trading as Mocare, Adelaide 28 July 2009

Mitre 10 Australia Ltd, Melbourne 10 August 2009

Australian Regional Employment Agencies Pty Ltd and Shreyas Narayana, Sydney  
12 August 2009



Fang Long Tan Pty Ltd, Brisbane 31 August 2009

Image Blinds Pty Ltd, Brisbane 8 September 2009

Wicked Travel Pty Ltd, Brisbane 8 September 2009

Telstra Corporation Ltd, SingTel Optus Pty Ltd and Vodafone Hutchison Australia Pty Ltd, Melbourne 14 September 2009

Green Tree Corporation Pty Ltd trading as Adventure Travel Bugs, Brisbane 16 September 2009

Peter Pan's Backpacker Adventure Travel Pty Ltd, Brisbane 16 September 2009

Angelo Sette and Susan Sette, Perth 21 September 2009

Gregory Gardner, Darren Wallis, Joanne Harris and Netdeen Pty Ltd, Brisbane 21 September 2009

The Australian Bush Hat Co. Pty Ltd, Perth 21 September 2009

Basfoods Australia Pty Ltd, Melbourne 28 September 2009

Calcorp (Australia) Pty Ltd and Antonio Dattilo, Melbourne 28 September 2009

Australian Loans Management Pty Ltd and Active Money (Aust.) Pty Ltd, Melbourne 30 September 2009

Dirt Works Australia Pty Ltd, Melbourne 30 September 2009

IGA Distribution Pty Ltd, Melbourne 2 October 2009

Auction Alliance Pty Ltd trading as Deals Direct, Melbourne 22 October 2009

Snooze Management Pty Ltd, Adelaide 18 November 2009

Yarrabee Investments Pty Ltd, Melbourne 19 November 2009

TMJ Pty Ltd trading as Premier Blinds and Awnings, Brisbane 16 December 2009

Young Pii Sohn, Brisbane 16 December 2009

Mark Zschech, Mark Caldwell, Stephen Crouch, Darlene Zschech and Clark Pearson, Brisbane 16 December 2009

Global Green Plan Ltd, Henry Clement Hewett and Donald Raymond Hewett, Sydney 24 December 2009

WTH Pty Ltd trading as Avis Australia, Brisbane 23 December 2009

Vodafone Hutchison Australia Pty Ltd, Sydney 7 January 2010

Apollo Bicycle Co. Pty Ltd, Perth 29 January 2010

Austar Port Lincoln Pty Ltd trading as Austar Seafood Warehouse, Adelaide 8 February 2010

Australian Opal Cutters Pty Ltd, Canberra 11 February 2010

Sony Trading Pty Ltd, Sydney 18 February 2010

Linksea Pty Ltd, Canberra 23 February 2010

People Telecom Ltd, Canberra 23 February 2010

Esel Pty Ltd trading as Mwave, Canberra 1 March 2010

HJ Heinz Company Australia Ltd, Canberra 17 March 2010  
ATQOL Pty Ltd, Melbourne 18 March 2010  
Vinetex & Co. Pty Ltd, Melbourne 29 March 2010  
Woolworths Ltd trading as Big W, Melbourne 29 March 2010  
Kincrome Australia Pty Ltd, Canberra 31 March 2010  
Wendy Wu Tours Pty Ltd, Sydney 28 April 2010

# Appendix 12: Litigation in 2009–10

## Litigation concluded 2009–10

### Lawful competition and informed markets

#### Admiral Mechanical Services Pty Ltd and others

Commenced 17 December 2004

Concluded 13 April 2010

Federal Court, Perth

#### Australian Karting Association (NSW) Inc. and others

Commenced 9 June 2009

Concluded 6 November 2009

Federal Court, Sydney

#### Bill Express Ltd and others

Commenced 29 October 2008

Concluded 14 September 2009

Federal Court, Melbourne (Fast Track list)

#### Bridgestone Corporation and others

Commenced 1 June 2009

Concluded 13 April 2010

Federal Court, Melbourne

#### DRS C3 Systems Inc.

Commenced 18 June 2009

Concluded 5 February 2010

Federal Court, Sydney

#### Toll (PRK) Ltd and others

Commenced 24 August 2007

Concluded 3 July 2009

Federal Court, Sydney

#### Vanderfield Pty Ltd and others

Commenced 1 July 2009

Concluded 3 November 2009

Federal Court, Brisbane

## Fair trading and consumer protection

### Allergy Pathway Pty Ltd (formerly known as Advanced Allergy Elimination Pty Ltd) and Paul Keir

Commenced 12 May 2009  
Concluded 27 August 2009  
Federal Court, Melbourne (Fast Track list)

### Allphones Retail Pty Ltd and others (*Representative action*)

Commenced 14 August 2009  
Concluded 28 April 2010  
Federal Court, Sydney

### Allphones Retail Pty Ltd and others

Commenced 25 March 2008  
Concluded 28 April 2010  
Federal Court, Sydney

### Australian Dreamtime Creations Pty Ltd and Tony Antoniou

Commenced 15 June 2009  
Concluded 21 December 2009  
Federal Court, Adelaide

### Australialink Pty Ltd and others

Commenced 4 December 2008  
Concluded 18 September 2009  
Federal Court, Brisbane

### Burnan Pty Ltd and Keith Patrick William Rolston

Commenced 23 April 2009  
Concluded 2 October 2009  
Federal Court, Perth

### Clarion Marketing Australia Pty Ltd

Commenced 27 May 2009  
Concluded 22 December 2009  
Federal Court, Sydney (Fast Track list)

### Cosic Holdings Pty Ltd

Commenced 6 May 2009  
Concluded 8 December 2009  
Federal Court, Perth

### Craftmatic Australia Pty Ltd and others

Commenced 7 April 2009  
Concluded 15 October 2009  
Federal Court, Brisbane

### Harvey Fresh (1994) Pty Ltd

Commenced 7 May 2009  
Concluded 30 July 2009  
Federal Court, Perth

### Lift Shop Pty Ltd and Leslie Katz

Commenced 26 March 2010  
Concluded 4 May 2010  
Federal Court, Sydney (Fast Track list)

[Mailpost Australia Ltd](#)

Commenced 23 December 2009

Concluded 20 April 2010

Federal Court, Sydney

[Ozdirect Online Brands Pty Ltd and Paul Albright](#)

Commenced 24 July 2009

Concluded 23 February 2010

Federal Court, Sydney

[Personalised Chocolates 4 U Pty Ltd and Troy Nathan Patching](#)

Commenced 13 July 2009

Concluded 30 November 2009

Federal Court, Sydney (Fast Track list)

[Powerballwin.com.au Pty Ltd](#)

Commenced 16 September 2009

Concluded 22 June 2010

Federal Court, Melbourne

[Prime Carbon Pty Ltd and Kenneth Michael Bellamy](#)

Commenced 18 December 2009

Concluded 8 March 2010

Federal Court, Brisbane

[Refund Home Loans Pty Ltd and Wayne Rodney Ormond](#)

Commenced 12 October 2009

Concluded 12 March 2010

Federal Court, Brisbane (Fast Track list)

[Seal-A-Fridge Pty Ltd and Nigel John Rooney](#)

Commenced 4 July 2008

Concluded 4 June 2010

Federal Court, Brisbane

[Star Promotions Club Pty Ltd](#)

Commenced 24 July 2009

Concluded 4 March 2010

Federal Court, Sydney (Fast Track list)

[Teracomm Ltd](#)

Commenced 23 January 2009

Concluded 20 August 2009

Federal Court, Sydney

[Wilson Parking 1992 Australia Pty Ltd](#)

Commenced 7 October 2009

Concluded 15 December 2009

Federal Court, Perth

[Leanne Vassallo and Aaron Smith](#)

Commenced 23 July 2009

Concluded 24 August 2009

Federal Court, Sydney

#### Zanok Technologies Pty Ltd

Commenced 7 May 2009  
Concluded 2 October 2009  
Federal Court, Sydney

### Other proceedings

#### ACCC v Darryl Peter Jones (*Contempt*)

Commenced 31 March 2010  
Concluded 14 April 2010  
Federal Court, Brisbane

#### Colin Thompson

Commenced 2 July 2009  
Concluded 5 August 2009  
Federal Court, Darwin

#### Storesonline International Inc. and Storesonline Inc.

Commenced 5 October 2007  
Concluded 5 May 2010  
Federal Court, Sydney

## Litigation continuing at end of 2009–10

### Lawful competition and informed markets

#### Air New Zealand Ltd

Commenced 17 May 2010  
Federal Court, Sydney

#### ANZ Banking Group Ltd

Commenced 17 August 2007  
Federal Court, Brisbane

#### April International Marketing Services Australia Pty Ltd and others

Commenced 6 December 2006  
Federal Court, Sydney

#### Baxter Healthcare Pty Ltd

Commenced 1 November 2002  
Federal Court, Sydney

#### Cabcharge Australia Ltd

Commenced 24 June 2009  
Federal Court, Melbourne

#### Cathay Pacific Airways Ltd

Commenced 30 April 2009  
Federal Court, Sydney

#### Cement Australia Pty Ltd

Commenced 12 September 2008  
Federal Court, Brisbane

#### Emirates ARBN 073 569 696

Commenced 18 August 2009  
Federal Court, Sydney

[Korean Air Lines Co. Ltd](#)

Commenced 5 March 2010

Federal Court, Sydney

[Japan Airlines International Co. Ltd](#)

Commenced 17 May 2010

Federal Court, Sydney

[Link Solutions Pty Ltd and others](#)

Commenced 17 September 2008

Federal Court, Sydney

[Malaysia Airlines Cargo Sdn Bhd and Malaysian Airline System Berhad](#)

Commenced 9 April 2010

Federal Court, Sydney

[Prysmian Cavi e Sistemi Energia Srl and others](#)

Commenced 2 September 2009

Federal Court, Adelaide

[PT Garuda Indonesia Ltd](#)

Commenced 2 September 2009

Federal Court, Sydney

[Singapore Airlines Cargo Pte Ltd](#)

Commenced 22 December 2008

Federal Court, Sydney

[TF Woollam & Son Pty Ltd](#)

Commenced 18 September 2009

Federal Court, Brisbane

[Thai Airways International PCL](#)

Commenced 28 October 2009

Federal Court, Sydney

## Fair trading and consumer protection

[Alvaton Holdings Pty Ltd trading as Cut Price Imports](#)

Commenced 26 March 2010

Federal Court, Perth (Fast Track list)

[Boost Tel Pty Ltd and Prepaid Services Pty Ltd](#)

Commenced 24 July 2009

Federal Court, Perth (Fast Track list)

[European City Guide SL](#)

Commenced 18 August 2009

Federal Court, Sydney

[Jetplace Pty Ltd, Maxwell McGuire and Mark Semaan](#)

Commenced 4 November 2009

Federal Court, Perth

[Darryl Peter Jones](#)

Commenced 24 February 2010

Federal Court, Brisbane

[Laulhati Jutsen and others](#)

Commenced 14 May 2010  
Federal Court, Sydney

[Panasonic Australia Pty Ltd](#)

Commenced 18 December 2009  
Federal Court, Adelaide (Fast Track list)

[PB Supplies Pty Ltd and others](#)

Commenced 16 April 2010  
Federal Court, Sydney (Fast Track list)

[Phillip James Robinson](#)

Commenced 14 May 2010  
Federal Court, Adelaide

[SingTel Optus Pty Ltd](#)

Commenced 3 June 2010  
Federal Court, Melbourne (Fast Track list)

[Telstra Corporation Ltd](#)

Commenced 19 March 2009  
Federal Court, Melbourne

[Trading Post Australia Pty Ltd, Google Inc. and others](#)

Commenced 11 July 2007  
Federal Court, Sydney

## Other proceedings

[ACCC v Allphones Retail Pty Ltd \(\*Contempt\*\)](#)

Commenced 17 August 2009  
Federal Court, Sydney

[Darryl Peter Jones \(\*Contempt\*\)](#)

Commenced 28 May 2010  
Federal Court, Brisbane

[Global Green Plan Ltd](#)

Commenced 2 June 2010  
Federal Court, Sydney (Fast Track list)



# Appendix 13: Mergers in 2009–10— major assessments

All public merger decisions for 2009–10 were published on the ACCC website at [www.accc.gov.au/mergers](http://www.accc.gov.au/mergers). Notable examples are listed below.

## Merger reviews publicly opposed

- > POTA NSW Pty Ltd—proposed acquisition of Maritime Container Services
- > Thomson Reuters (Professional) Australia Ltd—proposed acquisition of Ernst & Young’s tax compliance software products
- > Gunns Ltd—proposed acquisition of ITC Timber Pty Ltd
- > Caltex Australia Ltd proposed acquisition of the retail assets of Mobil Oil Australia Pty Ltd
- > GUD Holdings Ltd—proposed acquisition of Breville
- > Link Market Services Ltd—proposed acquisition of Newreg Pty Ltd
- > Cargill Australia Ltd—proposed acquisition of Goodman Fielder’s commercial fats and oils
- > National Australia Bank Ltd—proposed acquisition of AXA Asia Pacific Holdings Ltd

## Merger reviews resolved by court enforceable undertakings

- > Pfizer Inc.—proposed merger with Wyeth
- > Schering-Plough Corporation and Merck & Co. Inc.—proposed merger between international pharmaceutical manufacturers
- > Woolworths Ltd—proposed acquisition of Danks Holdings Ltd
- > Agilent Technologies Inc.—proposed acquisition of Varian Inc.

## Merger reviews not opposed

- > AMP Ltd—proposed acquisition of AXA Asia Pacific Holdings’ Australian and New Zealand businesses
- > Amcor Ltd—proposed acquisition of certain businesses of Alcan Packaging from Rio Tinto PLC
- > Pact Group Pty Ltd—proposed acquisition of certain assets from Huhtamaki Australia Pty Ltd
- > National Australia Bank Ltd—proposed acquisition of mortgage management business from Challenger Financial Services Group Ltd
- > Australian United Retailers Ltd (FoodWorks)—proposed acquisition of 45 supermarkets and eight liquor stores from Wesfarmers Ltd

# Appendix 14: Authorisations and notifications in 2009–10—significant decisions

## Authorisations

In 2009–10 the ACCC was asked to make a number of significant decisions relating to authorisation matters.

Authorisation decisions were made in respect of a wide range of industries, including the energy sector, finance, aviation and agriculture.

Collective bargaining arrangements continued to make up a large proportion of decisions. In 2009–10, ACCC authorisations enabled collective bargaining arrangements between vegetable growers, newsagents, milk vendors, freelance journalists and iron ore producers, among others.

All authorisation decisions are available on the ACCC website at [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister). Notable examples are listed below.

### Agricultural sector

#### Softwood Tasmania Joint Venture

Joint venture agreement in relation to softwood logs.

Result | 29 July 2009 | granted for a period of 10 years.

#### Tasmanian Farmers and Graziers Association

Collective bargaining between vegetable growers and processors.

Result | 25 March 2010 | granted for a period of five years.

#### Victorian Farmers Federation

Collective bargaining between chicken growers and chicken meat processors.

Result | 21 April 2010 | granted for a period of five years.

## Aviation

### Virgin Blue Airlines Pty Ltd and others

Joint venture between Virgin Blue and Delta on routes between Australia and the United States.

Result | 10 December 2009 | granted for a period of 5½ years.

### Qantas Airways Ltd and British Airways PLC

Joint services agreement and coordination of schedules and pricing.

Result | 31 March 2010 | granted for a period of five years.

### Board of Airline Representatives of Australia

Collective bargaining with airport operators in relation to essential airport services.

Result | 14 May 2010 | granted on condition for a period of five years.

## Building and construction

### Australian Brick & Blocklaying Training Foundation Ltd

Levy on bricks to fund new bricklaying apprenticeships.

Result | 26 August 2009 | granted for a period of five years.

## Education

### University of Melbourne and others

Policies governing the selection of applicants to graduate entry medical schools.

Result | 26 November 2009 | granted for a period of five years.

## Energy sector

### Woodside Energy Ltd and Benaris International Pty Ltd

Otway Gas Project joint marketing arrangements.

Result | 2 September 2009 | granted until 31 December 2012.

### Retail Energy Market Company Limited

Certain chapters of the Retail Market Rules governing the gas retail market systems in South Australia and Western Australia.

Result | 26 August 2009 | granted for a period of 10 years.

### Chevron Australia Pty Ltd and others

Joint marketing of natural gas produced by the Gorgon Gas Project.

Result | 5 November 2009 | granted on condition until 31 December 2015.

### Macquarie Generation and others

New South Wales electricity joint risk management arrangement (co-insurance).

Result | 20 May 2010 | denied.

#### Rio Tinto Aluminium Limited and others

Agreements in relation to electricity generated by Gladstone Power Station.

Result | 2 June 2010 | granted on condition until 29 March 2029.

#### Santos QNT Pty Ltd and others

Oil joint marketing arrangements.

Result | 2 June 2010 | granted until 30 June 2020.

## Finance sector

#### Australian Payments Clearing Association Limited

Consumer Electronic Clearing System regulations and manual.

Result | 16 December 2009 | granted for a period of five years.

#### Australian Payments Clearing Association Limited

Suspension and termination provisions of the Australian Paper Clearing System.

Result | 15 April 2010 | granted for a period of five years.

#### Cuscal Limited and others

RediATM network direct charging and ATM deployment arrangements.

Result | 27 January 2010 | granted for a period of five years.

#### Australian Payments Clearing Association Limited

Suspension and termination provisions of the Bulk Electronic Clearing System regulations.

Result | 3 June 2010 | granted for a period of five years.

## Health services

#### Medicines Australia Limited

Medicines Australia Code of Conduct (edition 16).

Result | 3 December 2009 | granted until 31 December 2014.

## Gaming industry

#### Tabcorp Manager Pty Ltd

Agreements governing the SuperTAB Pool.

Result | 9 September 2009 | granted until 14 September 2012.

#### TOTE Tasmania Pty Ltd and others

Joint venture regarding fixed-odds wagering services.

Result | 11 September 2009 | granted until 28 May 2014.

## Independent contractors

#### Transport Workers Union of Australia SA/NT Branch

Collective bargaining between milk vendors and National Foods and Parmalat.

Result | 9 September 2009 | granted for a period of five years.

## Infrastructure

### Australian Amalgamated Terminals

Joint venture enabling AAT to operate motor vehicle and general cargo handling facilities at certain ports.

Result | 3 December 2009 | granted on condition until 31 December 2019.

### Port Waratah Coal Services

Capacity framework arrangements in the Hunter Valley coal chain.

Result | 9 December 2009 | granted until 31 December 2024.

### Gladstone Ports Corporation Limited and others

Transfer of coal-handling capacity between coal terminals.

Result | 21 April 2010 | granted for a period of five years.

### North West Iron Ore Alliance

Collective bargaining between iron ore producers and BHP, Rio Tinto and Fortescue Metals.

Result | 29 April 2010 | granted on condition for a period of 15 years.

## Liquor accords

### Casuarina All Sports Club Inc.

Liquor accord in the Casuarina business precinct in Darwin.

Result | 12 May 2010 | granted on condition for a period of three years.

## Licensing/royalty arrangements

### Australasian Performing Right Association Limited

Arrangements governing the acquisition and licensing of performing rights.

Result | 16 April 2010 | granted on condition until 31 October 2013.

## Local government

### Southern Sydney Regional Organisation of Councils

Collective tender for waste services.

Result | 22 October 2009 | granted until 31 December 2027.

### Hurstville City Council and others

Collective tender for waste services.

Result | 6 November 2009 | granted until 31 December 2029.

## Media

### Media Entertainment and Arts Alliance

Collective bargaining between freelance journalists and newspaper and magazine publishers.

Result | 26 May 2010 | granted for a period of five years.

## Newsagency sector

### Australian Newsagents Federation

Collective bargaining between newsagents and newspaper and magazine publishers and distributors.

Result | 16 July 2009 | granted on condition for a period of five years.

## Collective bargaining notifications

The collective bargaining notification process provides legal protection for activities that may otherwise breach the *Trade Practices Act 1974*, if it can be demonstrated that it is in the public interest to do so. After lodging a collective bargaining notification, legal protection for the collective bargaining group is automatic after 14 days, unless the ACCC moves to revoke the notification.

The process is open and transparent, with notifications placed on a public register. When considering the revocation of a notification, the ACCC is required to consult with interested parties and to issue a draft decision document setting out the reasons why it is considering revocation.

### Australian Independent Record Labels Association Ltd

Bargaining on behalf of members with Telstra, Optus, Foxtel and others in relation to licensing of sound recording rights.

Result | 5 August 2009 | allowed to stand.

### PaintRight Ltd

Bargaining on behalf of paint retailers with suppliers in relation to paint and painting accessories.

Result | 16 September 2009 | allowed to stand.

### Hertz Australia Pty Ltd

Bargaining on behalf of rental car companies with Mackay Airport in relation to counter space and car park space.

Result | 7 December 2009 | allowed to stand.

### Chess Moving Australia Pty Ltd

Bargaining on behalf of furniture removal companies with Asciano in relation to rail line haul freight services.

Result | 16 December 2009 | allowed to stand.

### APC Prosthetics Pty Ltd

Bargaining on behalf of prosthetics companies and NSW Health in relation to supply of lower limb interim prosthetic services.

Result | 5 February 2010 | withdrawn.

### RJ Nuss Removals Pty Ltd

Bargaining on behalf of furniture removal companies with Asciano in relation to rail line haul freight services.

Result | 14 April 2010 | allowed to stand.

### Tasmanian Chicken Growers Association

Bargaining on behalf of chicken growers with Inghams in relation to grower contracts.

Result | 14 May 2010 | allowed to stand.

### Carter Holt Harvey Woodproducts Australia Pty Ltd

Bargaining on behalf of plantation timber suppliers with timber exporters in relation to price and other terms of supply.

Result | 14 May 2010 | allowed to stand.

## Exclusive dealing notifications

The exclusive dealing notification process provides legal protection for potential breaches of the exclusive dealing provisions of the Trade Practices Act. It differs from the authorisation process because exemption from the exclusive dealing provisions does not depend on a decision by the ACCC. Lodging a notification with the ACCC provides automatic exemption from the date of lodgement (or soon after in the case of third line forcing conduct), and the exemption remains in force unless revoked by the ACCC.

The process is open and transparent, with notifications placed on a public register. When considering the revocation of a notification, the ACCC is required to consult with interested parties and to issue a draft decision document setting out the reasons why it is considering revocation.

Notifications may be reviewed at any time.

In 2009–10 the ACCC assessed 745 notifications, compared to 563 in 2008–09.

## Revocation notices

### Ice Hockey Australia

Proposal to sanction, through suspension or expulsion, any member of Ice Hockey Australia who has participated or is participating in a non-sanctioned Australian or international ice hockey game or league.

Result | 2 March 2010 | notification revoked.

### Brisbane International Speedway Pty Ltd, Murray Bridge Sporting Car Club and Motorcycle Club Inc., and Premier Speedway Club Warrnambool

Proposal to only allow access to speedway track facilities to National Association of Speedway Racing licence holders.

Result | 13 May 2010 | notification revoked.

## Draft revocation notices

### eDosh Pty Ltd

Proposal to offer rebates and referral commissions to customers who join the eDosh website and buy goods or services through the site or refer others to buy through the site.

Result | 19 February 2010 | notification allowed to stand.

### Placide Pty Ltd and Corio Park Pty Ltd

Proposal to only allow access to speedway track facilities to National Association of Speedway Racing licence holders.

Result | under assessment.

## Applications for review by Australian Competition Tribunal

Decisions under the authorisation process and decisions to revoke either exclusive dealing or collective bargaining notifications may be reviewed by the Australian Competition Tribunal.

There were no applications for review lodged with the tribunal within the last financial year.

## Certification trademarks

ACCC approval is required before certification trademarks can be registered under the *Trade Marks Act 1995*. Consistent with its role in enforcing the Trade Practices Act, the ACCC assesses whether certification trademark applications and rules raise consumer protection, competition or associated concerns.

In 2009–10 the ACCC issued 29 final assessments for certification trademarks.



# Glossary and abbreviations

AAT	Administrative Appeals Tribunal
ACL	Australian Consumer Law
ACMA	Australian Communications and Media Authority
AGS	Australian Government Solicitor
APS	Australian Public Service
ARTC	Australian Rail Track Corporation
CEO	Chief Executive Officer
COAG	Council of Australian Governments
cpl	cents per litre
DEHP	diethylhexyl phthalate
DTCS	domestic transmission capacity service
ECA	ACCC Employee Collective Agreement 2009–10
EL	executive level
FMA Act	<i>Financial Management and Accountability Act 1997</i>
IMTS Branch	Information Management and Technology Services Branch
LCS	local carriage services
LSS	line-sharing services
LPG	liquefied petroleum gas
MDBA	Murray-Darling Basin Authority
minister, the	Minister for Competition Policy and Consumer Affairs
Mogas	motor gasoline
MTAS	mobile terminating access service
PBS	portfolio budget statements
PSM Branch	People Services and Management Branch
PSTN OA	public switched telephone network originating access
PSTN TA	public switched telephone network terminating access
section 87B undertaking	court enforceable undertaking made under section 87B of the <i>Trade Practices Act 1974</i>
SES	Senior Executive Service
TSLRIC+	total service long-run incremental cost
TPA	<i>Trade Practices Act 1974</i>
ULLS	unconditioned local loop services
WLR	wholesale line rental

# Compliance index

## List of requirements

The following list shows this report's compliance with the requirements for annual reports for departments, executive agencies and FMA Act bodies.

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	Index	Mandatory	246
	Glossary	Mandatory	240
	Contact officer(s)	Mandatory	IFC
	Internet home page address and internet address for report	Mandatory	IFC
Review by secretary	Review by departmental secretary <b>Note:</b> for the ACCC annual report, this review is by the ACCC chairman.	Mandatory	3–13
	Summary of significant issues and developments	Suggested	9–11
	Overview of department's performance and financial results	Suggested	4–9, 11–3
	Outlook for following year	Suggested	9–11
	Significant issues and developments portfolio	Portfolio departments—suggested	Not applicable
Departmental overview	Overview description of department	Mandatory	17
	Role and functions	Mandatory	19–20
	Organisational structure	Mandatory	18
	Outcome and program structure	Mandatory	19
	Where outcome and program structures differ from PBS/PAES or other portfolio statements accompanying any other additional appropriation bills (other portfolio statements), details of variation and reasons for change	Mandatory	No variations

Part of report	Description	Requirement	Page
Report on performance	Review of performance during the year in relation to programs and contribution to outcomes	Mandatory	29–84
	Actual performance in relation to deliverables and key performance indicators set out in PBS/PAES or other portfolio statements	Mandatory	35–8, 62–4
	Performance of purchaser/provider arrangements	If applicable, suggested	Not applicable
	Where performance targets differ from the PBS/PAES, details of both former and new targets, and reasons for the change	Mandatory	No variations
	Narrative discussion and analysis of performance	Mandatory	29–84
	Trend information	Mandatory	33
	Significant changes in nature of principal functions/services	Suggested	Not applicable
	Factors, events or trends influencing departmental performance	Suggested	33
	Contribution of risk management in achieving objectives	Suggested	96
	Social justice and equity impacts	Suggested	29–84
	Performance against service charter customer service standards, complaints data, and the department's response to complaints	If applicable, mandatory	49–53
	Discussion and analysis of the department's financial performance	Mandatory	11–3
	Discussion of any significant changes from the prior year or from budget	Suggested	Not applicable
	Agency resource statement and summary resource tables by outcomes	Mandatory	177–9
	Developments since the end of the financial year that have affected or may significantly affect the department's operations or financial results in future	If applicable, mandatory	111
Management and accountability			87–111

Part of report	Description	Requirement	Page
Corporate governance	Statement of the main corporate governance practices in place	Mandatory	87–95
	Names of the senior executives and their responsibilities	Suggested	87–94
	Senior management committees and their roles	Suggested	95
	Corporate and operational planning and associated performance reporting and review	Suggested	95–6
	Approach adopted to identifying areas of significant financial or operational risk	Suggested	96
	Agency heads are required to certify that their agency comply with the Commonwealth Fraud Control Guidelines	Mandatory	iii
	Policy and practices on the establishment and maintenance of appropriate ethical standards	Suggested	97
	How nature and amount of remuneration for SES officers is determined	Suggested	97–8
External scrutiny	Significant developments in external scrutiny	Mandatory	98–9
	Judicial decisions and decisions of administrative tribunals	Mandatory	97, 99
	Reports by the Auditor-General, a parliamentary committee or the Commonwealth Ombudsman	Mandatory	98, 99
Management of human resources	Assessment of effectiveness in managing and developing human resources to achieve departmental objectives	Mandatory	103–6
	Workforce planning, staff turnover and retention	Suggested	103, 104, 180–3
	Impact and features of enterprise or collective agreements, determinations, common law contracts and AWAs	Suggested	104–6
	Training and development undertaken and its impact	Suggested	106–7
	Occupational health and safety performance	Suggested	108, 184–5
	Statistics on staffing	Mandatory	180–3

Part of report	Description	Requirement	Page
	Enterprise or collective agreements, determinations, common law contracts and AWAs	Mandatory	105–6
	Performance pay	Mandatory	105
Assets management	Assessment of effectiveness of assets management	If applicable, mandatory	109
Purchasing	Assessment of purchasing against core policies and principles	Mandatory	109
Consultants	The annual report must include a summary statement detailing the number of new consultancy services contracts let during the year; the total actual expenditure on all new consultancy contracts let during the year (inclusive of GST); the number of ongoing consultancy contracts that were active in the reporting year; and the total actual expenditure in the reporting year on the ongoing consultancy contracts (inclusive of GST). The annual report must include a statement noting that information on contracts and consultancies is available through the AusTender website	Mandatory	110, 193–206
Exempt contracts	Contracts exempt from AusTender	Mandatory	111
Commonwealth Disability Strategy	Report on performance in implementing the Commonwealth Disability Strategy	Mandatory	207–12
Financial statements	Financial statements	Mandatory	115–73
Other Information	Occupational health and safety (section 74 of the <i>Occupational Health and Safety Act 1991</i> )	Mandatory	184–5
	Freedom of information (subsection 8(1) of the <i>Freedom of Information Act 1982</i> )	Mandatory	186–8
	Advertising and market research (section 311A of the <i>Commonwealth Electoral Act 1918</i> ) and statement on advertising campaigns	Mandatory	189

Part of report	Description	Requirement	Page
	Ecologically sustainable development and environmental performance (section 516A of the <i>Environment Protection and Biodiversity Conservation Act 1999</i> )	Mandatory	190–2
Other	Grant programs	Mandatory	110
	Correction of material errors in previous annual report	If applicable, mandatory	Not applicable
	List of requirements	Mandatory	241–5

## Trade Practices Act requirements

The following list shows this report's compliance with additional reporting requirements under the Trade Practices Act.

Requirement	Page
Cumulative list of all Commonwealth, state and territory laws that the ACCC knows about that authorise things for the purposes of subsection 51(1) of the Trade Practices Act or subsection 41(1) of the Competition Code	217–20
Details of the time taken by the ACCC to make final determinations under section 44V in relation to access disputes	220
Details of the time taken by the ACCC to make decisions on access undertaking applications (within the meaning of section 44B) or access code applications (within the meaning of that section)	220
Details of the time taken by the ACCC to make decisions on applications under subsection 44PA(1) about government tendering	220
Number of notices given by the ACCC under section 155	221
Number of notices given by the ACCC under section 155A	221
General description of the nature and the matters in respect of which the notices were given	221
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